



EUROPEAN COMMISSION  
DIRECTORATE-GENERAL FOR JUSTICE  
Directorate B. Criminal Justice

**HANDBOOK FOR JUDGES, PROSECUTORS AND OTHER  
COMPETENT AUTHORITIES ON HOW TO ISSUE AND  
EXECUTE A REQUEST FOR ENFORCEMENT OF A FREEZING  
ORDER, IN ACCORDANCE WITH COUNCIL FRAMEWORK  
DECISION 2003/577/JHA OF 22 JULY 2003**

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## **PART 1: THE «FREEZING ORDER» SYSTEM, ACCORDING TO FRAMEWORK DECISION 2003/577/JHA: A GENERAL OVERVIEW**

### **1.1 The need to articulate international judicial cooperation systems to secure property subject to confiscation and evidence**

The key issue in the confiscation of property consists in the effective depriving of a certain right or property, based on the link between such property and an unlawful act. This is the reason why in many legal systems, confiscation is intended as a penalty or accessory measure to a penalty. In both cases, confiscation is an effective way of fighting crime, particularly organised crime. Indeed, if one of the main goals of committing an unlawful act is the quest for certain gain, deprivation of the property obtained is highly persuasive and effective punishment, in the majority of cases even more so than the punishment foreseen as the main punitive measures, such as the deprivation of freedom or similar personal rights.

Furthermore, money laundering is very often linked to primary criminal acts as a related activity; this connection clearly proves that the final outcome of most criminal groups is to legalise the property resulting from an offence, to enable it to be used and enjoyed by criminals in their daily lives. Accordingly, the confiscation of property also constitutes a major tool in the fight against money laundering, subsequently making it a highly effective – but not the only way of fighting primary crime.

Similarly, but from a slightly different approach, the confiscation of financial resources used to finance terrorist activities is seen as a major tool in the fight against terrorism.

The increasingly transnational dimension of the activities carried out by organised crime – a reality particularly evident in certain areas of the European Union – results in property that is potentially subject to confiscation being displaced to different Member States (hereinafter, “MS”) to those in which the criminal offence was committed, or at least a different MS from where the relevant criminal proceedings commence.

Verification of the situation described above has led to an increasing awareness of the importance of attaining both the highest levels of international cooperation in terms of prosecution of money laundering, as well as maximum efficiency in the confiscation of property. It is therefore feasible to refer to confiscation in such cases as “transnational confiscation”, which can involve three different stages of procedure:

- Investigation, mainly focused in the identification and location of the property subject to confiscation, if located in a different MS to that in which the criminal proceedings are taking place.
- Freezing of property by means of provisional or protective measures, once the property has been located and until the competent authorities issue a final ruling on the matter.

- Execution of confiscation and the deployment of its main effects, namely the deprivation of ownership of the property involved.

This handbook focuses on the second stage; although its connection to the other two cannot be overlooked, given that: (i) the freezing of property is only possible when it has been previously located and identified; and (ii), definitive confiscation is often only possible when the property subject to a freezing order actually exists.

In fact, once the particular property connected to a criminal offence has been identified as potentially subject to confiscation, the adopting of provisional or protective measures is vital to ensure, if necessary, that the process will conclude with the effective confiscation of such property. In such scenarios, there is always a risk of the owner of the property potentially subject to confiscation disposing, encumbering or underselling it, so that when the procedure has concluded and final confiscation takes place, the property cannot be confiscated. This risk is much higher in cross border situations, since the adoption of provisional measures to ensure freezing and preservation of the given property may be more difficult .

## **1.2. Mutual Recognition as a means of structuring cooperation between criminal courts and authorities for the freezing of property potentially subject to confiscation**

Two different procedures can be identified to deploy a given provisional measure in a MS other than the State in which the criminal proceedings are taking place: the “Classic” procedure of international judicial cooperation and the “Modern” mutual recognition systems.

Until recently, transnational legal texts were used to impose traditional/classic procedures, based on a formal request (letter rogatory) sent by an issuing state to a requested state. This system was applied by the two Conventions adopted by the Council of Europe in 1990 and 2005 on money laundering, seizure and confiscation of property (Convention No. 141 on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and Convention No. 198 on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism), as well as the United Nations Conventions on drug traffic, financing of terrorism, organised crime and corruption issues (United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1998; United Nations Convention against Transnational Organized Crime 2000; International Convention for the Suppression of the Financing of Terrorism 1999; United Nations Convention against Corruption 2003).

However, a different system is also feasible, based on the mutual recognition of judicial decisions providing for provisional and protective measures: the competent authority in the country in which proceedings begin issues an order and the corresponding provisional measures to make the order enforceable in the recipient country, whose courts will restrain themselves to recognise the effectiveness of the decision and execute it upon the relevant property. This modern way of proceeding implies a whole new underlying approach: the mutual recognition and execution of foreign court and authority orders is possible due to the high level of mutual trust in the authorities and procedural systems of the countries involved. This is why the system has only so far been implemented in the European Union, pursuant to the wording of Framework

Decision 2003/577. The freezing order is actually the second feature of the criminal proceedings – following the European Arrest Warrant – to be constructed on the principle of mutual recognition.

The Framework Decision (hereinafter, FD) deals mainly with two diverging issues: provisional and protective measures affecting certain property in order to ensure the effectiveness of a potential confiscation order issued in a different MS and the freezing of evidence that may be needed in criminal proceedings pending in a MS other than the State in which the measures were taken.

Despite the different nature of both issues, legislators have considered it appropriate to deal with them jointly, mainly because the activities to be carried out for both purposes are basically the same from a material point of view: the taking of particular measures to freeze and preserve certain elements (property, evidence) that run the risk of being altered or destroyed and thus undermining the effectiveness of public interest in criminal prosecution.

The recognition procedure foreseen under the FD has to overcome a barrier that is not present in the classic international cooperation systems, namely when the provisional or protective measures requested by the issuing country do not match those available in the executing country: how can courts or prosecutors in the recipient country be expected to execute a measure that does not exist under their own national legislation? For instance, in some MS legislations, freezing orders tend to subject property to the State control, while in other countries, property is frozen differently and the owner unable to dispose of it.

The FD overcomes this difficulty in a very simple way, thanks to the common notion of a “freezing order”, under which provisional or protective measures to ensure future confiscation fit into the legislation of any issuing MS: whatever the content of the measures, the FD makes national legislation the essence, which is to “provisionally prevent the destruction, transformation, moving, transfer or disposal of property that could be subject to confiscation or deemed as evidence”. With this “shortcut”, the executing judicial authority does not receive a decision requesting the execution of certain measures under the legislation of the issuing country (execution that could involve problems), but rather a freezing order according to the meaning of the FD, in other words, with Community Law. Therefore, the executing authority will have to seek to achieve the result envisaged in the FD (“prevent the destruction, transformation, moving, transfer or disposal of property that could be subject to confiscation or evidence”) with the means available under its national legislation, including if required, coercion.

In conclusion, the FD is based on a comparison of all the preventive measures intended to ensure the confiscation of property within the EU Member States, by considering their essence [as defined in article 2 c) of the FD] in such a way that once a freezing order is received, the executing authorities can assume authority and execute it according to the provisions of their own national legislation.

### **1.3. System established by FD 2003/577**

In theory, the system designed by the FD 2003/577 has an unlimited material scope: it will always be possible whenever there is the need for securing the confiscation of property or evidence in another European Union MS, regardless of the offence that gave rise to the proceedings that resulted in the measure (freezing-confiscation). European legislators have established a long list of criminal offences (article 3.2 FD) for which the verification of double criminality (issuing and executing state) is not allowed, provided it is punishable in the issuing MS by a custodial sentence of at least 3 years.

Given that we are dealing with mutual recognition, proceedings will commence in the issuing MS before the court or authority handling criminal proceedings becomes aware of the existence of property susceptible of being seized or of relevant evidence in another MS. Once the suitability of a provisional or protective measure has been assessed, the judicial authority issues a ruling in which it orders the provisional freezing of particular property or evidence, despite it not being located in its MS, nor being under its direct authority (articles 2.a and 4.1 FD). At the same time it will have to complete a certificate (art 9 FD) according to the standard model annexed to the FD, including all the data concerning the judicial authority, the criminal proceedings, the scope of such proceedings, the defendant accused and the property at hand; said certificate will have to be translated into the official language or one of the official languages of the executing State, or into the official language of the European Institutions that the executing State has declared as acceptable within its territory (arts 9.2 and 3 FD).

Once the ruling is issued and the certificate completed, the issuing authority transfers it, together with the certificate to the competent authority in the executing State (art 4.3 and 5.2). Therefore, no central authorities nor Interpol intervene in the process; on the contrary, the procedure is structured through direct contact between the authorities in the two MS involved; this direct contact speeds up the procedure remarkably.

When the request is issued and received in the executing State by the competent authority, the executing State takes charge. After receiving the decision of the issuing State authority, the competent authority in the executing State must restrain itself to recognize it and proceed to adopt the required measures for execution (art 5.1 FD). Mutual Recognition means that in the country of execution, the validity and effectiveness of a decision issued by a foreign court is taken for granted. At most, the executing authority will have to issue a decision in which it formally grants recognition of the foreign ruling and establishes the adequate execution measures for each particular case.

Although the general rule is that a competent authority receiving a freezing order has to recognize and execute it automatically, the FD foresees that in certain situations recognition and execution must be denied or execution stayed, on justified grounds set forth in the FD. The grounds for denial or staying of recognition and execution are set forth in art. 7 FD.

Assuming there are no grounds to refuse recognition or to stay the execution of a freezing order, the executing authority will adopt all the necessary measures to execute it. With respect to the freezing of evidence, the executing authority will transfer the evidence to the issuing State. If the freezing order refers to property in order to secure later confiscation, two possibilities remain open: if the competent authority in the

issuing State has already ordered final confiscation, the executing authority can be requested to enforce it; otherwise, the property will remain in the executing State, until it is possible for the issuing State to order final confiscation.

## **PART 2: TEXT OF THE FRAMEWORK DECISION. COMMENTS**

THE COUNCIL OF THE EUROPEAN UNION,

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

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

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

Whereas:

(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.

(2) The principle of mutual recognition should also apply to pre-trial orders, in particular to those which would enable competent judicial authorities quickly to secure evidence and to seize property which is easily movable.

(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 property.

(4) Cooperation between Member States, based on the principle of mutual recognition and immediate execution of judicial decisions, presupposes confidence that the decisions to be recognised and enforced will always be taken in compliance with the principles of legality, subsidiarity and proportionality.

(5) Rights granted to the parties or bona fide interested third parties should be preserved.

(6) This Framework Decision respects the fundamental rights and observes the principles recognised by Article 6 of the Treaty and reflected by the Charter of Fundamental Rights of the European Union, notably Chapter VI thereof. Nothing in this Framework Decision may be interpreted as prohibiting refusal to freeze property for which a freezing order has been issued when there are reasons to believe, on the basis of objective elements, that the freezing order is issued for the purpose of prosecuting or punishing a person on account of his or her sex, race, religion, ethnic origin, nationality, language, political opinions or sexual orientation, or that that person's position may be prejudiced for any of these reasons.

This Framework Decision does not prevent any Member State from applying its constitutional rules relating to due process, freedom of association, freedom of the press and freedom of expression in other media,

HAS ADOPTED THIS FRAMEWORK DECISION:

## **TITLE I**

### **SCOPE**

#### **Article 1**

##### **Objective**

The purpose of the Framework Decision (FD) is to establish the rules under which a Member State shall recognise and execute in its territory a freezing order issued by a judicial authority of another Member State in the framework of criminal proceedings. It shall not have the effect of amending the obligation to respect the fundamental rights and fundamental legal principles as enshrined in Article 6 of the Treaty.

##### *Comments*

The purpose of the Framework Decision is to apply the consequences of the principle of mutual recognition to the decisions ordering the securing of evidence or property for subsequent confiscation.

In doing so, it abandons the traditional system of international legal assistance, by virtue of which the court of the State of origin requests the competent authority of the required State to take the relevant measures in its territory. The principle of mutual recognition means that the competent authority of the issuing State issues a freezing order, in spite of the fact that the property is not located in its territory. The freezing order is sent to the competent authority of the State in which the property is located, which recognises it - as if it were issued by the court itself or by another competent authority of its State - and enforces it.

It is also important to highlight that the Framework Decision focuses on criminal proceedings: it can therefore not be used in civil or administrative proceedings, despite there being cases in which it may also be necessary to secure evidence or freeze property for subsequent confiscation.

Finally, it should also be clarified that the duty of Member States in complying with the Framework Decision cannot serve the purpose of introducing limitations to the fundamental rights and legal principles set forth in art. 6 of the Treaty of the European Union.

#### **Article 2**

##### **Definitions**

For the purposes of this Framework Decision:

(a) "issuing State" shall mean the Member State in which a judicial authority, as defined in the national law of the issuing State, has made, validated or in any way confirmed a freezing order in the framework of criminal proceedings;



(b) "executing State" shall mean the Member State in whose territory the property or evidence is located;

(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 be subject to confiscation or evidence;

(d) "property" includes property of any description, whether corporeal or incorporeal, movable or immovable, and legal documents and instruments evidencing title to or interest in such property, which the competent judicial authority in the issuing State considers:

- is the proceeds of an offence referred to in Article 3, or equivalent to either the full value or part of the value of such proceeds, or
- constitutes the instrumentalities or the objects of such an offence;

(e) "evidence" shall mean objects, documents or data which could be produced as evidence in criminal proceedings concerning an offence referred to in Article 3.

### Comments

Given that the FD is based on the principle of mutual recognition, there is no longer a "requesting State" and a "required State", but rather "issuing" and "executing States".

In the "issuing State", the FD grants the authority to issue a freezing order to the competent authority to do so under criminal proceedings, despite the fact that the evidence or property concerned is not located in its territory. It is then national legislation that determines the competent judicial authority to issue the freezing order. In fact, even though the term used is judicial authority, the concept should also include prosecutors, specialised agencies and the police, if so allowed under the legislation of the issuing State.

In the "executing State", the freezing order is recognised and enforced, given that it is where the evidence or property subject to the decision is located. Each State should also decide which specific authority is to recognise and enforce the order, although it is important for the competent authorities of the issuing State to have accurate information on such authority, given that as a general rule, it must be sent directly to the competent authority.

The definition provided of a "freezing order" is very broad and thus intended to overcome a barrier not present in the classic international cooperation systems, namely that the provisional or protective measures requested by the issuing country do not match those available in the executing country: how can courts or prosecutors in the recipient country be expected to execute a measure that does not exist under their own national legislation? The FD overcomes this difficulty in a very simple way, thanks to the common notion of a "freezing order" in which provisional or protective measures to ensure future confiscation fit into the legislation of any issuing MS: whatever the content of the measures, the FD makes national legislation the essence, which is to "provisionally prevent the destruction, transformation, moving, transfer or disposal of property that could be subject to confiscation or deemed as evidence". With this

“shortcut”, the executing judicial authority does not receive a decision requesting the execution of certain measures under the legislation of the issuing country (execution that could involve problems), but rather a freezing order in line with the meaning of the FD, in other words, with Community Law. Therefore, the executing authority will have to seek to achieve the result envisaged in the FD (“prevent the destruction, transformation, moving, transfer or disposal of property that could be subject to confiscation or evidence”) with the means available under its national legislation, including if required, coercion. The FD is thus based on a comparison of all the protective measures foreseen in order to secure the confiscation of property within EU Member States, taking it to the essence in such a way that once the freezing order is received, the executing authorities can assume the authority and execute it in accordance with their own national legislation.

The definition of “property” is also a very broad, due to the intention to include two large groups of confiscation cases and objectives: firstly, confiscation of the proceeds and instruments used to commit a crime and, secondly, confiscation of the reward obtained. In addition, this concept of “property” is compatible with the progressive extending of property subject to confiscation in European Union legislation: firstly, with FD 2001/500/JHA, of 26 June 2001 on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds of crime (OJ L 182, of 5 July 2001), intended to reinforce the incorporating of the so-called «value confiscation» into the internal legislation of Member States; and later, with FD 2005/212/JHA on Confiscation of Crime-Related Proceeds, Instrumentalities and Property, which refers to the power of extended confiscation (OJ L 68, of 15 March 2005).

A broad definition is also used for "evidence", as goods, documents or data that may be submitted as evidence in criminal proceedings. It is nevertheless important to highlight a particular issue: the FD can only be used to secure evidence that already exists and is determined; it cannot be used to request an investigation nor to seek possible evidence. Such cases require international cooperation in criminal matters.

### **Article 3**

#### **Offences**

1. This Framework Decision applies to freezing orders issued for purposes of:
  - (a) securing evidence, or
  - (b) subsequent confiscation of property.
2. The following offences, as they are defined by the law of the issuing State, and if they are punishable in the issuing State by a custodial sentence of a maximum period of at least three years shall not be subject to verification of the double criminality of the act:
  - participation in a criminal organisation,
  - terrorism,
  - trafficking in human beings,
  - sexual exploitation of children and child pornography,

- illicit trafficking in narcotic drugs and psychotropic substances,
- illicit trafficking in weapons, munitions and explosives,
- corruption,
- fraud, including that affecting the financial interests of the European Communities within the meaning of the Convention of 26 July 1995 on the Protection of the European Communities' Financial Interests,
- laundering of the proceeds of crime,
- counterfeiting currency, including of the euro,
- computer-related crime,
- environmental crime, including illicit trafficking in endangered animal species and in endangered plant species and varieties,
- facilitation of unauthorised entry and residence,
- murder, grievous bodily injury,
- illicit trade in human organs and tissue,
- kidnapping, illegal restraint and hostage-taking,
- racism and xenophobia,
- organised or armed robbery,
- illicit trafficking in cultural goods, including antiques and works of art,
- swindling,
- racketeering and extortion,
- counterfeiting and piracy of products,
- forgery of administrative documents and trafficking therein,
- forgery of means of payment,
- illicit trafficking in hormonal substances and other growth promoters,
- illicit trafficking in nuclear or radioactive materials,
- trafficking in stolen vehicles,
- rape,
- arson,
- crimes within the jurisdiction of the International Criminal Tribunal,
- unlawful seizure of aircraft/ships,
- sabotage.

3. The Council may decide, at any time, acting unanimously after consultation of the European Parliament under the conditions laid down in Article 39(1) of the Treaty, to add other categories of offence to the list contained in paragraph 2. The Council shall examine, in the light of the report submitted by the Commission pursuant to Article 14 of this Framework Decision, whether the list should be extended or amended.

4. For cases not covered by paragraph 2, the executing State may subject the recognition and enforcement of a freezing order made for purposes referred to in paragraph 1(a) to the condition that the acts for which the order was issued constitute an offence under the laws of that State, whatever the constituent elements or however described under the law of the issuing State.

For cases not covered by paragraph 2, the executing State may subject the recognition and enforcement of a freezing order made for purposes referred to in paragraph 1(b) to the condition that the acts for which the order was issued constitute an offence which, under the laws of that State, allows for such freezing, whatever the constituent elements or however described under the law of the issuing State.

### Comments

#### Paragraph 1

Paragraph 1 is intended to make it clear that this FD is limited to “freezing orders”, as instruments with two very specific purposes:

- To secure existing evidence, but not investigation or the search for evidence.
- To seize property and thus ensure future confiscation, making it a provisional and protective but not independent measure. The instrument can therefore be related to Framework Decision 2006/783/JHA, of 6 October 2006 on the application of the principle of mutual recognition to confiscation orders.

On the other hand, the FD cannot be used for freezing orders intended to enforce civil or commercial judgments, even if they form part of criminal proceedings: such proceedings require the application of Regulation 44/2001, allowing the securing and enforcement of the *ex delicto* civil action.

#### Paragraphs 2 and 3

The system designed by the FD has a material scope of limitation that is theoretically unlimited: the FD is applicable whenever there is a need to secure evidence or confiscate property located in another Member State of the European Union, irrespective of the offence subject to the criminal proceedings for which the evidence is required or may result in the application of the measure.

To make the system more efficient, European legislators have established an extensive catalogue of criminal matters which cannot be subject to verification of the double criminality of the act (in the issuing State and executing State), provided that in the issuing State, the particular offence subject to the proceedings and capable of belonging to one of such categories is punishable by a custodial sentence of at least three years.

This practice is common in European Union legislation, which implement the principle of mutual recognition in criminal matters. In fact, the list is not closed, which allows the Council to include offences that benefit from the absence of verification of double criminality.

#### Paragraph 4

When an offence does not fulfil the requirements set forth in paragraph 2 of the first section of art. 3.4, Member States are entitled to subject the application of mutual

recognition to the fact that it also constitutes a criminal offence in the executing State: the absence of verification of double criminality therefore functions as a reason for justifying refusal of recognition, in such a way that when incorporating the FD into their national law, Member State legislators may decide whether or not to require it and, under what conditions.

Annex 1 shows how Member States have made use of this possibility.

In addition, the second section of art. 3.4, relating to offences that are not included in the list provided in art. 3.2 FD also entitles States to subject the application of mutual recognition to the fact that confiscation is also allowed in such cases: which therefore constitutes an additional requirement of double criminality and may be considered as a comparison of legal consequences.

Annex 1 shows how Member States have made use of this possibility.

## **TITLE II**

### **PROCEDURE FOR EXECUTING FREEZING ORDERS**

#### **Article 4**

##### **Transmission of freezing orders**

1. A freezing order within the meaning of this Framework Decision, together with the certificate provided for in Article 9, shall be transmitted by the judicial authority which issued it directly to the competent judicial authority for execution by any means capable of producing a written record under conditions allowing the executing State to establish authenticity.
2. The United Kingdom and Ireland, respectively, may, before the date referred to in Article 14(1), state in a declaration that the freezing order together with the certificate must be sent via a central authority or authorities specified by it in the declaration. Any such declaration may be modified by a further declaration or withdrawn any time. Any declaration or withdrawal shall be deposited with the General Secretariat of the Council and notified to the Commission. These Member States may at any time by a further declaration limit the scope of such a declaration for the purpose of giving greater effect to paragraph 1. They shall do so when the provisions on mutual assistance of the Convention implementing the Schengen Agreement are put into effect for them.
3. If the competent judicial authority for execution is unknown, the judicial authority in the issuing State shall make all necessary inquiries, including via the contact points of the European Judicial Network(3), in order to obtain the information from the executing State.
4. When the judicial authority in the executing State which receives a freezing order has no jurisdiction to recognise it and take the necessary measures for its execution, it shall, ex officio, transmit the freezing order to the competent judicial authority for execution and shall so inform the judicial authority in the issuing State which issued it.

### Comments

Given that we are dealing with an area in which the principle of mutual recognition is applied, proceedings in all cases are initiated in the issuing State, before the court or authority handling the criminal proceedings becomes aware that there is relevant evidence or property capable of being confiscated in another Member State. The FD does not deal with how the court becomes aware of such information, which may be the result of cooperation in investigations by the authorities of a required State, under a cooperation instrument.

After determining whether or not the measure of securing evidence or property can be applied to the case at hand, the competent issuing authority will issue a ruling that directly orders the freezing of the property in question, despite the fact that it is not in its territory or under its direct authority. As the FD makes no reference whatsoever to how a court should adopt a freezing order, it must be understood that the procedure is governed by its national law.

The decision will also have to identify the property and the measure to be used to secure it. The court must state whether the cooperation requested consists in transfer of the property subject to the measure or if it is to remain in the executing State (art. 10.1 FD). Obviously, the choice of either alternative will depend on the phase of proceedings at which the order is issued:

— If the provisional measure is adopted during criminal proceedings – *e.g.* during the investigation phase –, at a time when confiscation is yet to be ordered, or the decision to order confiscation is not final, the court of origin is only entitled to request that the property in question remain in the executing State, pending the final result of the proceedings with respect to said confiscation: the property cannot be transferred if final confiscation cannot be enforced.

— It is also possible for the measure to be adopted after a confiscation order is final: the process of effectively obtaining cooperation may be more complicated and an urgent provisional measure may be requested, in which case it would be possible to specify in the ruling that transfer of the property is required – not as an effect of the provisional measure as such, but rather by effectively having achieved the execution of confiscation in the executing State.

— In the case of evidence, the normal situation would be to directly request the secured evidence; nevertheless, it is also possible to wait until the relevant authority of the issuing State has decided whether or not it is necessary for the evidence to be sent (for example, when it is first necessary to decide whether or not to go to trial).

When sending a freezing order, the issuing authority is required to complete a certificate (art. 9 FD) using the standard template appearing in the FD Annex, which requires all the information relating to the court, criminal proceedings, subject matter, the accused and the property subject to the freezing order or the evidence to be secured; the certificate must be translated into the official language of the executing State – or into the official language of the European Community institutions that the executing State has stated it will accept (art. 9.2 and 3 FD).

Once the order has been issued and the certificate completed, the issuing judicial authority sends it and the certificate to the authority of the executing State that is competent to proceed (art. 4.3 FD); for information on determining the authority, see Part 6 (Relevant Information) of Annex 1 and, of course, the European Judicial Network Atlas (available at the following address:

[http://www.ejn-crimjust.europa.eu/ejn/EJN\\_EAWAtlas.aspx](http://www.ejn-crimjust.europa.eu/ejn/EJN_EAWAtlas.aspx)).

As a general rule, there are no central authorities, nor is Interpol involved, but rather direct contact between the judicial authorities of the States involved, which obviously accelerates the procedure. There are several issues to be considered:

— Firstly, it is necessary to determine how the ruling and certificate are to be sent. Art. 4.1 *i.f.* the FD basically admits «any means capable of producing a written record under conditions allowing the executing State to establish authenticity». As an example, certified mail, fax and automated or telematic means of communication are possible (and reasonably expected to be electronically signed).

— It is also necessary to determine how the issuing authority determines to what particular court in the executing State it is required to send its order, accompanied by the certificate: the solution provided by the FD is to obtain all the relevant information from the executing State by all necessary means, including the European Judicial Network contacts (art. 4.3 FD). The information is also available in Annex 1 of this Handbook and the European Judicial Network Atlas.

— Finally, provision has to be made for cases in which an order is mistakenly sent to a judicial authority of an executing State that is not competent to proceed: the court receiving the ruling shall, on its own motion, transfer it to the competent authority and notify the remitting foreign authority accordingly (art. 4.4 FD).

As a special case, if the order is to be sent to United Kingdom or Ireland, it must be through a central authority, as indicated by such States, pursuant to art. 4.2 FD.

## **Article 5**

### **Recognition and immediate execution**

1. The competent judicial authorities of the executing State shall recognise a freezing order, transmitted in accordance with Article 4, without any further formality being required and shall forthwith take the necessary measures for its immediate execution in the same way as for a freezing order made by an authority of the executing State, unless that authority decides to invoke one of the grounds for non-recognition or non-execution provided for in Article 7 or one of the grounds for postponement provided for in Article 8.

Whenever it is necessary to ensure that the evidence taken is valid and provided that such formalities and procedures are not contrary to the fundamental principles of law in the executing State, the judicial authority of the executing State shall also observe the formalities and procedures expressly indicated by the competent judicial authority of the issuing State in the execution of the freezing order.

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

2. Any additional coercive measures rendered necessary by the freezing order shall be taken in accordance with the applicable procedural rules of the executing State.

3. The competent judicial authorities of the executing State shall decide and communicate the decision on a freezing order as soon as possible and, whenever practicable, within 24 hours of receipt of the freezing order.

### Comments

Once a request has been sent and received by the competent authority of the executing State, the procedure passes to such State.

Upon receiving the decision from the issuing State containing the freezing order, the competent authority of the executing State recognises it immediately and takes the necessary measures for it to be executed: thus treating it in the same way as if it were its own or another national court's ruling and subsequently providing for it to be enforced as quickly as possible.

According to art. 5.3 FD, the competent judicial authority of the executing State must decide and notify its decision on a freezing order as quickly as possible, whenever possible within 24 hours after receiving the order; in fact, certain national legislations consider the period of 24 hours as an absolute maximum deadline. Annex 1 provides information on how national legislations govern the deadlines to comply with a freezing order.

Unlike what occurs in traditional systems of international judicial assistance, mutual recognition means that there are no formalities required in the executing State to adopt the measure of securing property or evidence, the procedure being based on the validity and enforceability of the ruling issued by a foreign court, which is subsequently executed: at most, the executing court will have to issue a ruling in which it formally grants recognition of the foreign authority's decision and orders the appropriate measures to fulfil or execute it, according to the case. In any event, it is an issue that depends on each Member State's internal legislation. What would be logical, nevertheless, is to consider that it is not necessary for the person subject to the measure to be granted prior audience, meaning that it would simply suffice to notify him/her that the order has been issued: a possible summons and audience of the person affected would prevent compliance with the established deadlines. As a result, the person affected by the executing court's ruling would only be able to challenge it using the applicable remedy, pursuant to the provisions of art. 11. If the person affected by the measure is the subject of the criminal proceedings that have initiated the process, the possibility should not be overlooked that he/she is in a different country: in such cases, notice of the rulings of the executing court will require international judicial assistance, in which case the cooperation of the issuing court may be necessary.

Compliance with a freezing order in the executing State is carried out according to the laws of such State: accordingly, the FD requires that the property subject to confiscation or the evidence is secured. Initially, the means of achieving this purpose must be provided for under the laws of the executing State. Furthermore, if coercive measures are required to fully comply with the freezing order, they must be according to the laws of the State concerned.

In the case of a freezing order to secure evidence, section two of art. 5.1 FD opens the door to the application of *lex fori*. In its order, the issuing court may indicate that certain formalities or procedures in accordance with its own laws are required to ensure that the evidence taken is valid (for example, that a judicial authority be physically present or certain precautions taken to ensure the chain of custody of the



evidence). If such additional requirements are not contrary to the fundamental principles of the executing State's legal system, the executing authority would be obliged to observe them when complying with the freezing order.

In any event, the executing authority will be required to issue a report on how the measure was fulfilled and send it to the issuing authority by any means capable of producing a written record. It is reasonable to expect that this could be by the same procedure used by the issuing authority to send its decision containing the freezing order.

## **Article 6**

### **Duration of the freezing**

1. The property shall remain frozen in the executing State until that State has responded definitively to any request made under Article 10(1)(a) or (b).
2. However, after consulting the issuing State, the executing State may in accordance with its national law and practices lay down appropriate conditions in the light of the circumstances of the case in order to limit the period for which the property 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.
3. The judicial authorities of the issuing State shall forthwith notify the judicial authorities of the executing State that the freezing order has been lifted. In these circumstances, it shall be the responsibility of the executing State to lift the measure as soon as possible.

### Comments

After a freezing order issued by the court conducting the criminal proceedings has been recognised and executed in the State in which the property is located, it should not be overlooked that it is a provisional and instrumental measure, intended to ensure the validity of a possible court judgment ordering final confiscation of the property involved. The same situation would occur in the case of evidence. Duration can therefore not be indefinite and there must also be a link between the main proceedings and the freezing order following its execution.

Initially, a freezing order must be maintained in the executing State until the issuing court reaches a decision in relation to the final situation of the property (whether to confiscate it or not) and the executing court complies with such decision (art. 6.1 FD).

Art. 6.2 FD also contemplates the possibility of the executing court subjecting the duration of a freezing order to certain conditions specifically applicable to the case and provided for under its internal law. Should the failure of complying with such conditions lead to the lifting of the measure in question, the issuing State must be previously informed and allowed to make pleadings.

Finally, if the decision is reached by the issuing authority to lift a freezing order, the decision must be immediately notified to the executing authority, in order for it to cancel the relevant measures (art. 6.3 FD).

The connection between the issuing and executing courts, which is necessary for the above to be possible, is regulated by art. 10 FD.

## **Article 7**

### **Grounds for non-recognition or non-execution**

1. The competent judicial authorities of the executing State may refuse to recognise or execute the freezing order only if:

(a) the certificate provided for in Article 9 is not produced, is incomplete or manifestly does not correspond to the freezing order;

(b) there is an immunity or privilege under the law of the executing State, which makes it impossible to execute the freezing order;

(c) it is instantly clear from the information provided in the certificate that rendering judicial assistance pursuant to Article 10 for the offence in respect of which the freezing order has been made, would infringe the *ne bis in idem* principle;

(d) if, in one of the cases referred to in Article 3(4), the act on which the freezing order is based does not constitute an offence under the law of the executing State; however, in relation to taxes or duties, customs and exchange, execution of the freezing order may not be refused on the ground that the law of the executing State does not impose the same kind of tax or duty or does not contain a tax, duty, customs and exchange regulation of the same kind as the law of the issuing State.

2. In case of paragraph 1(a), the competent judicial authority may:

(a) specify a deadline for its presentation, completion or correction; or

(b) accept an equivalent document; or

(c) exempt the issuing judicial authority from the requirement if it considers that the information provided is sufficient.

3. Any decision to refuse recognition or execution shall be taken and notified forthwith to the competent judicial authorities of the issuing State by any means capable of producing a written record.

4. In case it is in practice impossible to execute the freezing order for the reason that the property or evidence has disappeared, been destroyed, cannot be found in the location indicated in the certificate or the location of the property or evidence has not been indicated in a sufficiently precise manner, even after consultation with the issuing State, the competent judicial authorities of the issuing State shall likewise be notified forthwith.

### **Comments**

The general rule is that the competent court receiving a freezing order must recognise it and proceed immediately, however the FD allows for the possibility, in certain cases, for recognition and execution to be refused or execution suspended for a justified reason.

With respect to refusal of recognition and execution, art. 7.1 FD establishes a general rule that restricts the possibility to four specific cases:

1. The certificate to be provided with the ruling is not produced, incomplete or manifestly does not correspond to the freezing order.

The FD nevertheless grants this defect the possibility of being remedied by the executing court before proceeding to refuse the order, in three different ways: a) to specify a deadline for the certificate to be presented, completed or corrected; b) accept an equivalent document or; c) to dispense the issuing judicial authority from the requirement if it considers that the information provided is sufficient (art. 7.2 FD).

2. Under the law of the executing State, there is an immunity or privilege, which makes it impossible to execute the freezing order. The concepts of immunity and privilege may have effects in two different areas:

— With regard to confiscation, it is possible that under International Law or internal legislation, the property cannot be subject to provisional measures that produce the same effects as a freezing order: recognition and execution of provisional measures on property belonging to a foreign State would therefore be refused (immunity from enforcement) as well as those belonging to diplomatic or consular missions (diplomatic or consular immunity); and, for example, refusal would also be applicable in the case of public property defined as such under the executing State's legislation.

— With respect to the securing of evidence, immunity and evidential privilege *lato sensu* also appear as barriers to enforcing decisions issued in other countries.

3. It is clear from the information provided in the certificate that the criminal proceedings requiring execution of the freezing order would infringe the *ne bis in idem* principle.

The principle is not breached when two freezing orders are issued on the same property: in such case, there would be a combination of measures relating to the same property that would be resolved by applying the legal criteria granting priority. A breach of the *ne bis in idem* principle, as the case may be, would occur when the issuing court is conducting criminal proceedings relating to the same subject matter as that of previous proceedings in which there has already been a final judgment.

On the other hand, there may be two criminal proceedings taking place at the same time with the same subject matter and the situation discovered precisely when a foreign decision requesting recognition of a freezing order is received. The proceedings in the foreign country should not be in course, as the «second proceedings with the same subject matter», however in this case, *bis in idem* does not exist in the sense the law recognises the principle. In this case, what should take place is the suspension of the executing of the freezing order and use of the mechanisms to resolve conflicts of jurisdiction set forth in Council FD 2009/948/JHA dated 30 November 2009 on prevention and settlement of conflicts of exercise of jurisdiction in criminal proceedings.

4. In any of the cases referred to in Article 3(4) FD, the act on which the freezing order is based does not constitute an offence under the law of the executing State: nevertheless, it should be highlighted that under the FD, this particular circumstance is not considered as grounds for automatic refusal, unless the internal implementing legislation established the requirement in such cases.

In any case, such grounds for refusal are not fully applicable in matters relating to taxes and customs: the execution of a freezing order cannot be refused by claiming that the laws of the executing State do not impose the same kind of taxes or duties, or it does not contain the same type of regulations relating to taxes, customs duties and exchange as those of the issuing State.

The court or authority that refuses recognition or the execution of a freezing order sent by a court from another Member State must do so without delay and provide the reasons for refusal. It is reasonable to expect that refusal be decided within the same period time for recognition and execution. This requirement is nevertheless not applicable if the grounds for refusal are discovered at a later date, *e.g.*, when proceeding to comply with the initially recognised measure.

A ruling that refuses recognition or execution must be notified to the issuing judicial authority in writing by any means.

Irrespective of the refusal of recognition and execution, the FD assumes the practical impossibility of complying with an order when the property has disappeared, been destroyed, cannot be found in the location indicated in the certificate or the location of the property or evidence has not been indicated in a sufficiently precise manner: in such cases, the executing court will have no alternative other than to inform the court of origin accordingly (art. 7.4 FD). In such cases, there is no refusal as such, but rather the absence of execution that, strictly speaking, should re-commence when the cause making execution impossible has disappeared – for example, if the property were to reappear or be found at a later date, or the issuing judicial authority were to provide additional information as to its location.

## **Article 8**

### **Grounds for postponement of execution**

1. The competent judicial authority of the executing State may postpone the execution of a freezing order transmitted in accordance with Article 4:
  - (a) where its execution might damage an ongoing criminal investigation, until such time as it deems reasonable;
  - (b) where the property or evidence concerned have already been subjected to a freezing order in criminal proceedings, and until that freezing order is lifted;
  - (c) where, in the case of an order freezing property in criminal proceedings with a view to its subsequent confiscation, that property is already subject to an order made in the course of other proceedings in the executing State and until that order is lifted. However, this point shall only apply where such an order would have priority over subsequent national freezing orders in criminal proceedings under national law.
2. A report on the postponement of the execution of the freezing order, including the grounds for the postponement and, if possible, the expected duration of the postponement, shall be made forthwith to the competent authority in the issuing State by any means capable of producing a written record.

3. As soon as the ground for postponement has ceased to exist, the competent judicial authority of the executing State shall forthwith take the necessary measures for the execution of the freezing order and inform the competent authority in the issuing State thereof by any means capable of producing a written record.

4. The competent judicial authority of the executing State shall inform the competent authority of the issuing State about any other restraint measure to which the property concerned may be subjected.

### Comments

Refusal of recognition or enforcement is permanent, which may also be the case with the impossibility of execution. However, it is equally possible, for different reasons, that the executing authority will need to suspend the execution of a freezing order received from an issuing court. Such suspension is possible in two types of situation:

1) When the execution of the order could prevent an ongoing criminal investigation in the State of execution from being properly conducted: in such case, the suspension will last as long as is reasonable or necessary to prevent damage [art. 8.1.a) FD]. Indeed, if a national court proceeds to seize and secure property or evidence, it is clear that the criminal prosecution authorities have acted, which could damage an investigation into other criminal activities committed or being committed by the same person or organized group.

2) When the property concerned has already been subject to a prior or prevailing freezing or similar order: the suspension will remain in such case, until the previous measure creating the obstacle is lifted [art. 8.1.b) and c) FD].

As in refusal of recognition or enforcement, the suspension of the execution of the order, as well as the grounds upon which it was based, must be immediately notified to the issuing judicial authority by any means providing written proof thereof. Furthermore and if possible, the expected duration of the suspension must also be notified (art. 8.2 FD).

In addition, in both cases, the executing court must proceed automatically to comply with a foreign freezing order as soon as the cause of suspension has been lifted (art. 8.3 FD).

The judicial authority that is executing the freezing order must inform the issuing judicial authority of any other restraint measure to which the property concerned has been subject (art. 8.4 FD). Therefore, even though the existence or adoption of such other measures does not cause the suspension of the execution (e.g., when applied later), the foreign court must be aware of them and their repercussions and take them into account when adopting subsequent decisions.

## **Article 9**

### **Certificate**

1. The certificate, the standard form for which is given in the Annex, shall be signed, and its contents certified as accurate, by the competent judicial 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.

### Comments

As already mentioned in the comments on article 4, the judicial authority issuing a freezing order must also complete a certificate, using the template appearing in the Annex of the FD. This certificate must contain all the information relating to the court, criminal proceedings, subject matter thereof, the accused and the property subject to confiscation or the evidence to be secured.

With regard to language, the general rule is that the certificate should be translated into the official language - or one of the official languages - of the executing State. Nevertheless, it may be sufficient to translate the certificate into one of the official languages of the institutions of the European Communities that the executing State has stated it will accept when implementing the FD, or by means of a subsequent declaration deposited with the General Secretary of the Council. It should be highlighted that the FD only requires translation of the certificate and not that of the freezing order itself, which may be sent in the language of the issuing State in which it was prepared.

Part 6 and Annex 1 list the languages that each Member State considers acceptable in which to receive a certificate.

## **Article 10**

### **Subsequent treatment of the frozen property**

1. The transmission referred to in Article 4:

(a) shall be accompanied by a request for the evidence to be transferred to the issuing State;

or

(b) shall be accompanied by a request for confiscation requiring either enforcement of a confiscation order that has been issued in the issuing State or confiscation in the executing State and subsequent enforcement of any such order;

or

(c) shall contain an instruction in the certificate that the property shall remain in the executing State pending a request referred to in (a) or (b). The issuing State shall indicate in the certificate the (estimated) date for submission of this request. Article 6(2) shall apply.

2. Requests referred to in paragraph 1(a) and (b) shall be submitted by the issuing State and processed by the executing State in accordance with the

rules applicable to mutual assistance in criminal matters and the rules applicable to international cooperation relating to confiscation.

3. However, by way of derogation from the rules on mutual assistance referred to in paragraph 2, the executing State may not refuse requests referred to under paragraph 1(a) on grounds of absence of double criminality, where the requests concern the offences referred to in Article 3(2) and those offences are punishable in the issuing State by a prison sentence of at least three years.

### Comments

The FD only regulates the executing of measures in the executing State intended to secure evidence or property that are not independent, but related to the main proceedings conducted in the issuing State. For such purpose, it is necessary for a link to exist between the issuing and executing judicial authorities with respect to the final destination of the property subject to a freezing order, which may be structured in different ways according to the specific situation of the foreign criminal proceedings when the order is sent for execution in another State. In this respect, the certificate that must accompany the order sent by the issuing authority to the executing authority is also of particular importance.

It may occur that when the ruling containing a freezing order is sent, the main proceedings are still in course in the issuing State and therefore a judgment or similar decision for confiscation on the property is yet to be issued; nevertheless, given that it is known that the property exists and is located in another Member State, the system of mutual recognition can be used to secure it. In such case, when a court sends a freezing order for recognition and execution, as final confiscation has still not been ordered, the certificate shall contain an instruction that orders the property to remain for the time being in the executing State, until the issuing State is able to send the executing State a request for final confiscation. The certificate must also specify an estimated date for submission of the request [art. 10.1 c) FD].

However, it is also possible that, at the time a ruling containing a freezing order is sent, final confiscation of the property has been ordered: and strangely enough, it may also make sense in such case for a freezing order to be issued and sent independently to the executing State. A request for the executing of final confiscation does not always benefit from the system of mutual recognition and may therefore be much slower, thus making it much more convenient to do so by means of freezing order. In this scenario, the certificate must make mention of the fact and the issuing court attach the relevant request for final confiscation [art. 10.1.b) FD].

The cooperation required to enforce final confiscation may or may not benefit from the system of mutual recognition: which will be in Member States that have incorporated Framework Decision 2006/783/JHA, dated 6 October 2006 relating to the application of the principle of mutual recognition of confiscation orders; on the other hand, Member States that are yet to incorporate the Framework Decision will deal with the issue using regulations based on the classic criteria of international assistance in criminal matters (art. 10.2 FD). In either case, once a request for final confiscation is received and enforced either by means of the channels provided and under the conditions set forth in the 2006 FD or the transnational instrument applicable, the competent executing court will have to «convert» the measures to comply with the

freezing order into measures to execute final confiscation. And, of course, if the request for final confiscation is refused by the executing State, the measures adopted to comply with the freezing order will cease to be effective; the same situation will occur when the request is not even sent to the executing State, in cases in which the main criminal proceedings conclude without an order to confiscate property subject to a freezing order.

In the case of a freezing order to secure evidence, the general rule is that the certificate be accompanied by a request for the evidence sent to the issuing court [art. 10.1.a) FD]. Nevertheless, art. 10.1.c) FD also provides for the possibility of the evidence remaining in the executing State until a later date. In any event, the sending of evidence would have to take place by means of instruments of international judicial co-operation in criminal matters (1959 Convention of the Council of Europe, 2000 Convention of the European Union and, when implemented, Framework Decision 2008/978, of 18 December 2008, on the European evidence warrant for the purpose of obtaining objects, documents and data for use in proceedings in criminal matters).

In fact, art. 10.3 FD establishes a specific provision to avoid secured evidence being prevented by double criminality requirements that often exists in transnational regulations on international judicial assistance in criminal matters: if the requirements set forth in art. 3.2 FD are met, compliance with the letter rogatory involving the sending of evidence secured under the FD from one Member State to another cannot be refused.

## **Article 11**

### **Legal remedies**

1. Member States shall put in place the necessary arrangements to ensure that any interested party, including bona fide third parties, have legal remedies without suspensive effect against a freezing order executed pursuant to Article 5, in order to preserve their legitimate interests; the action shall be brought before a court in the issuing State or in the executing State in accordance with the national law of each.
2. The substantive reasons for issuing the freezing order can be challenged only in an action brought before a court in the issuing State.
3. If the action is brought in the executing State, the judicial authority of the issuing State shall be informed thereof and of the grounds of the action, so that it can submit the arguments that it deems necessary. It shall be informed of the outcome of the action.
4. The issuing and executing States shall take the necessary measures to facilitate the exercise of the right to bring an action mentioned in paragraph 1, in particular by providing adequate information to interested parties.
5. The issuing State shall ensure that any time limits for bringing an action mentioned in paragraph 1 are applied in a way that guarantees the possibility of an effective legal remedy for the interested parties.



### Comments

In addition to the above, the system of immediate mutual recognition and execution of freezing orders relating to property must contain mechanisms that are sufficient and suitable to protect the rights and interests of the persons subject to the relevant judicial acts performed under the system. In particular, bearing in mind the extent of the purpose of confiscation and the possibilities of it extending to property that does not formally belong to the person subject to the criminal proceedings, consideration must be given to the fact that judicial acts may affect third parties that are the bona fide holders of rights or interests in the property involved.

In broad terms, art. 11.1 FD requires Member States to provide all the necessary means for those with a legitimate interest, including bona fide third parties, to be able to defend themselves by means of «legal remedies without suspensive effects against a freezing order». The provision adds that the remedy shall be brought before a court in the issuing State or in the executing State, in accordance with the national laws of each. The following sections of art. 11 FD allow a distinction to be made between the remedies of defence available in the issuing State and those that are valid in the executing State, which is coherent with the different types of acts performed in both: in the issuing state, appeals can be filed and action taken against the decisions of the issuing court; in the executing State, on the other hand, the decisions adopted by the executing court, as such, can be challenged.

The FD also imposes on Member State's the obligation to facilitate the exercising of the remedies provided, in particular by providing the parties involved with suitable information. Annex 1 lists the appeals and instruments available under the national laws of both the issuing and/or executing States.

#### *Remedies in the Issuing State*

In an issuing State, the persons that are legitimately entitled to challenge the order are provided with mechanisms to protect their rights and interests that have been damaged, whenever the detriment suffered is the direct result of the ruling containing a freezing order. Therefore, in the State of origin, the action must be taken against the decision to adopt the provisional measures: *e.g.*, because the legal requirements for the decision have not been met, the measures adopted relate to property that is not subject to confiscation or because the court has made a mistake in relation to the ownership of the accused's property, to the detriment of third-party.

This is logical, as the ruling containing a freezing order proceeds from the issuing State in accordance with its internal law: it should therefore be the court of the issuing state that is competent to amend it in the event of a mistake. As an additional precaution, it must be clear that the substantive reasons for issuing the freezing order can never be challenged in the executing State (art. 11.2 FD).

However, given that an appeal against the order does not have suspensive effects, it cannot prevent the issuing court from sending the order to the executing court and the latter executing it, even if an appeal is pending; obviously, should the appeal be upheld in the issuing State and therefore annul the freezing order, the executing State must be notified immediately in order for all measures taken to be lifted accordingly (art. 6.3 FD).

It should also be taken into account that it will not be easy for a third party affected by a provisional measure to immediately file an appeal in the issuing State,

unless notified of the measure in said issuing State; however, if this is not the case, it is more than likely that the third party will not become aware of the existence of the measure until it is enforced in the executing State. Nevertheless, the challenging of the measure - and its subsequent execution - cannot be structured in the executing State, as a general rule, but rather in the issuing State, in accordance with the provisions of art. 11.2 FD: allegations by a third party aimed at demonstrating that the property could not be subject to the adopted provisional measure and executed because it belongs to such party - who has not been criminally accused - and/or because the property is not linked to the criminal act are matters of substance and must therefore be defended in the issuing State. The authorities of the executing State are not competent to deal with such matters, given that they only comply with the order given by the issuing authority and any possible review of such allegations would mean a review of the merits of the case for issuing a freezing order.

Art. 11.5 FD therefore obliges issuing States not to subject the exercising of this type of action to short deadlines, as it would be detrimental to the rights of third parties to challenge unfair freezing orders.

#### *Appeals in the Executing State*

In the executing State, defence is possible against damaged rights and interests caused by the acts of the court in charge of complying with a freezing order: all appeals, therefore, must relate to the decisions of the court concerning recognition and execution. For example, the decision not to recognise or execute the order could be challenged; or, on the contrary, an appeal filed against the decision to recognise the order and execute measures to enforce it, in spite of grounds for refusal; or the appeal based on the specific measures of complying with the order, which are considered incompatible or affect property that is not subject to the order.

The right to appeal is granted to the Public Prosecutors Office, the person subject to the criminal proceedings in the foreign State from which the order proceeds and the holders of legitimate rights and interests.

The person subject to criminal proceedings is entitled to appeal upon being informed of the order issued by the executing judicial authority which, by definition, must be notified. In the event notice is required by means of international judicial assistance, consideration should be given to the delay that may occur between the moment at which the order is issued and the deadline for an appeal.

With respect to bona fide third parties, a provisional measure can only be lifted if requested in the issuing State, as mentioned above and the property affected identified. In the executing State, any possible defence by a third party is therefore related to the way in which the measures are executed, in exceptional cases, third parties being entitled to request the lifting of a measure. In one particular case, the party concerned can request the lifting of the measure, when it has extended to his/her property, despite not being included in the order sent by the issuing State, given that only then is the adopting of the measure entirely the responsibility of the executing court.

In theory, the handling of an appeal is pursuant to the laws of the executing State. Nevertheless, art. 11.3 FD imposes additional requirements on Member States: the issuing court must be informed of the appeal and the grounds upon which it is based, in such a way that it is able to take part by filing the pleadings deemed appropriate; and also be informed of the result.

Although there is no specific mention in the FD, it appears reasonable to expect that in order to comply with such provisions - in other words, that the executing court notify the issuing court that an appeal has been filed and for the issuing court to file pleadings with the executing court - it would suffice to use the same channels as those employed to send the freezing order (any means that enables written proof that it has been sent). With respect to language, it would also be reasonable to expect that the proceedings be recorded in the language of the executing State or in the language accepted by such State in order to receive freezing orders, as acts that form part of the executing phase of a provisional measure.

## **Article 12**

### **Reimbursement**

1. Without prejudice to Article 11(2), where the executing State under its law is responsible for injury caused to one of the parties mentioned in Article 11 by the execution of a freezing order transmitted to it pursuant to Article 4, the issuing State shall reimburse to the executing State any sums paid in damages by virtue of that responsibility to the said party except if, and to the extent that, the injury or any part of it is exclusively due to the conduct of the executing State.
2. Paragraph 1 is without prejudice to the national law of the Member States on claims by natural or legal persons for compensation of damage.

### Comments

In general, the adopting and executing of provisional measures constitute acts that cause detriment to the person concerned: the same can therefore be said of the freezing of property to secure future confiscation, both in internal as well as cross border cases. In the event a final judgment following criminal proceedings orders confiscation, the person subject to the provisional measure is legally obliged to suffer the consequences. However, when a measure is lifted without confiscation having been ordered, such person may be entitled to compensation for the damages caused.

According to the internal laws of each Member State, it could be understood that the State is liable for such damages, for two reasons: it is the State that benefits from the measures, given that it assumes ownership of the seized property in the event it is eventually confiscated; and it has been due to the incorrect decision of the court - a State body - that has resulted in the ordering of a provisional measure causing damages and thus the State's liability to compensate its citizens for the incorrect functioning of its services - in this case, abnormal functioning of the administration of justice.

The FD does not contain a legal regime governing compensation: nor does it establish when compensation should be paid, by whom or under what conditions; the issue is simply referred to the internal law of each particular State. However, the possible existence of such compensation is in fact subject to regulation in art. 12.1 FD, which has a very specific scope of application. In accordance with the cross-border nature of the protective judicial act in this regard, it is possible for damages to be produced and compensation obtained both in the issuing State and executing State.

What may occur therefore is that the acts performed in the issuing State had produced the damages and that such State is obliged to compensate the person affected;

it could also be possible that, although the damages arise as a result of the acts of the executing State, the person concerned has claimed and obtained compensation in the issuing State (for example, when the laws of the issuing State consider that the ultimate cause of the damages is the ruling ordering the provisional measure and that there are sufficient grounds to claim compensation in such State). The FD makes no reference to either case.

However, it is also possible that the damages are the result of compliance with a measure in the executing State, which has reimbursed the damages, in accordance with its internal law. In such case, art. 12.1 FD states that the issuing State shall reimburse the executing State for all sums paid in damages. What is inherent to this approach is the consideration that the executing State would not have incurred such damages if it had not complied with the duty of recognising and executing the order issued by a court of the issuing State. Therefore, the provision excludes the duty to reimburse such damages in cases in which they are due exclusively to the conduct of the executing State.

### **TITLE III**

#### **FINAL PROVISIONS**

#### **Article 13**

##### **Territorial application**

This Framework Decision shall apply to Gibraltar.

#### **Article 14**

##### **Implementation**

1. Member States shall take the necessary measures to comply with the provisions of this Framework Decision before 2 August 2005.
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 using this information and a written report by the Commission, the Council shall, before 2 August 2006, assess the extent to which Member States have complied with the provisions of this Framework Decision.
3. The General Secretariat of the Council shall notify Member States and the Commission of the declarations made pursuant to Article 9(3).

#### **Article 15**

##### **Entry into force**

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

## **PART 3: HOW TO ISSUE A FREEZING ORDER**

### **HOW TO COMPLETE THE CERTIFICATE USING THE STANDARD FORM CONTAINED IN THE ANNEX TO FD 2003/577/JHA**

#### **General Instructions**

##### *Prerequisites for completing the form*

- Under the framework of criminal proceedings, a court judgment must have been issued to order (confirm or validate) the freezing of property that constitutes the instrument or proceeds of an offence and/or the securing of evidence (articles 1 and 2 of FD 2003/577/JHA).
- The issuing judicial authority must be aware that the property or evidence is located in a Member State (article 2 of FD 2003/577/JHA)

##### *Completion of the Form*

- The Certificate provided in FD 2003/577/JHA must be completed by using the standard form appearing in the FD Annex (article 9 of FD 2003/577/JHA). Such standard form shall also be provided in the law transposed by the Member State of the issuing judicial authority.
- Translation of the certificate to other languages of the European Union is available in pdf version from the OJ website (as the Official Journal can be consulted in different languages). The EJM website also contains a link to the different language versions of the certificate contained in the OJ:

<http://www.ejm-crimjust.europa.eu/ejm/libcategories.aspx?Id=24>

- The content of the certificate must be in the official language or one of the official languages of the executing State. It may also be translated into one of the official languages of the institutions of the European Communities, if accepted by executing State (article 9. 2 and 3 of FD 2003/577/JHA). For information on the languages accepted by Member States for receive the certificate, see the EJM (also its website, via the above-mentioned link) or Eurojust (as well as Part 5 and Annex 1).
- The size of the sections of the form is the decision of the issuing judicial authority. The authorised signature of the issuing judicial authority is compulsory.
- Completion of the certificate using a different form may give rise to the executing State refusing to recognise or execute an order to freeze property or secure evidence (article 7.1, letter a of FD 2003/577/JHA), however, executing the executing authority may opt to accept an equivalent document (article 7.2 b) of FD 2003/577/JHA).

#### *Annexes*

- The certificate must be accompanied by the freezing order (article 4.1 de la FD 2003/577/JHA). Although not necessary, it is nevertheless advisable for the order to be translated into the same language used to complete the form or be accompanied by a translation into such language.
- The Certificate must be accompanied by a request for evidence to be transferred to the issuing State or for confiscation to take place in the executing State or the enforcement of a confiscation order issued in the issuing State, as the case may be, unless it is requested that the property, goods or information concerned remain in the executing State, pending a request for transfer (article 10 FD 2003/577/JHA). Although not necessary, but also advisable is that the request be accompanied by a translation thereof.

### *Transfer*

- The completed original form and annexes must be sent to the competent judicial authority of the executing State, for it to proceed. In order to correctly identify such authority, information is available from the EJN (whose website contains a specific atlas under construction, listing all the competent authorities to enforce such orders:
  - [http://www.ejn-crimjust.europa.eu/ejn/EJN\\_QuickLinks.aspx?id=27](http://www.ejn-crimjust.europa.eu/ejn/EJN_QuickLinks.aspx?id=27)) or Eurojust.
- It should be pointed out that the form does not contain a specific section showing the executing authority to which the certificate is to be forwarded, despite the fact that such authority must be known at the time the certificate is sent. If the information is required, it must be specified in a different section of the standard form, namely section k), with an indication of the circumstances that enable confirmation that the property or evidence is located in the territory of the executing State.
- Electronic mail must be used to send the certificate, with international confirmation of receipt or by courier. Other automatic or computerised means of communication can be used, if accepted by the Member State addressed, especially when urgent and notwithstanding the subsequent forwarding of the original, which is always recommendable.

### **Section (a)**

Insert here the text of Section (a) of the Certificate

Section (a) must contain information relating to the issuing judicial authority.

Identification of the authority must be by the official name of the entity, body or organisation designated as such in the Member State, including the name and surname of the specific public servant signing the certificate in representation thereof.

To facilitate communications between competent judicial authorities in the issuing and executing States and the adopting of the means to secure the property or evidence concerned in a timely manner, it is advisable that the postal address also appear and other information be included, such as telephone number, fax and electronic mail address.

The FD expressly refers to cases in which it is necessary for executing authorities to notify the issuing authority specifically when a freezing order is enforced or evidence secured (art. 5.1 *in fine* of the FD), when it is refused (article 7.3 FD), practically impossible to enforce (article 7.4 FD), suspended or when postponements of the execution takes place or the grounds for such postponement cease to exist (article 8, sections 2 and 3 FD), when any other restraints are applied to the property (article 8.4 FD), conditions imposed in order to limit the duration for which the property will be frozen (art. 6.2 FD) or when an action is brought against the freezing order measures and securing of evidence in the executing State (article 11.3 FD).

The issuing authorities are also required to communicate with the executing authorities when a freezing order or securing of evidence measure must be lifted (art. 6.3 FD).

The languages indicated for communications with the issuing judicial authority must coincide with those accepted by its Member State to receive requests for freezing orders.

However, information such as telephone numbers provides informal contact, which may be necessary to facilitate the recognition and execution of the order. Notwithstanding the requirement that the document must be translated into one of the languages accepted by the State, it is recommendable in this section to add the other languages known to the issuing judicial authority and which may simplify informal communications with the executing authority.

Although not compulsory, is recommended that the name of one or several contact persons be included for the judicial authority of the executing State to contact directly for further information on the executing of a freezing order or to arrange (if necessary) practical aspects of transferring evidence. If such contacts are given, there should also be other information to facilitate communications (name, position, telephone and fax number and e-mail address). Mention should also be made of the languages spoken by the contact person which, even if not indicated by the Member State as acceptable, may enable informal contact to assist recognition and execution.

## **Section (b)**

Insert here the text of Section (b) of the Certificate

This section may contain information relating to the competent authority to enforce a freezing order in the issuing State, in the same way described in the preceding section.

Nevertheless, the section should only be completed when the competent judicial authority for issuing the certificate is different to the competent authority for executing the freezing order in the issuing State.

### **Section (c)**

Insert here the text of Section (c) of the Certificate

Only applicable if the two preceding sections have been completed.

If this section is applicable, the alternatives are as follows:

- exclusively specify the authority mentioned in point (a);
- exclusively specify the authority mentioned in point (b); or
- specify both the authorities mentioned in points (a) and (b). If this alternative is chosen, it would be advisable to indicate the decisions or action taken by the executing State that should be notified to both authorities, to avoid unnecessary duplication.

### **Section (d)**

Insert here the text of Section (d) of the Certificate

It is understood that this section should only be completed when the certificate is issued in the United Kingdom or Ireland. In such case, Sections a), b) and c) should therefore not be completed and the term «not applicable» used.

Nevertheless, the literal wording of the form states that a central authority has been designated for the transfer *and administrative receipt* of the order, which means that when a certificate is sent to the United Kingdom or Ireland, the information on such



central authority should be specifically indicated. It would therefore be the exception to the general rule, which does not contain a specific section for details on the receiving authority. In such case, depending on the receiving country, the information on the central authority would be:

Ireland:

Mutual Assistance and Extradition Division, Department of Justice, Equality and Law Reform, Pinebrook House, 71-74 Harcourt Street. Dublin 2, Ireland.

Tel :- + 353 1 6028589, 6028535, 6028605

Fax No:- + 353 1 6028606,

The United Kingdom:

For England, Wales and Northern Ireland:

UK Central Authority

Home Office

5th Floor Fry

2 Marsham Street

London

SW1P 4DF

Scotland:

International Co-operation Unit

Crown Office

25 Chambers Street

Edinburgh

EH1 1LA

In addition to the specific fields in the form, this section must also state the languages that can be used by the competent judicial authority of the executing State to communicate with the central authority.

### **Section (e)**

Insert here the text of Section (e) of the Certificate

#### **➤ Point 1**

Despite it being compulsory to enclose the order, the certificate expressly requires the date of issue of the freezing order of property or evidence.

#### **➤ Point 2**

Only one section should be completed — 2.1 or 2.2 —, depending on whether the freezing order is intended for the subsequent confiscation of property (2.1) or securing of evidence (2.2).

➤ **Point 3**

Point 3 must be completed only if section 2.2 was chosen (the purpose being to secure evidence). It may contain the formalities and procedures (*e.g.* need for coercion to be ordered by the judicial authority to enforce the freezing order and justification provided, notification that the house of the person concerned had been entered and searched, presence of a lawyer, etc.) that should be observed when enforcing an order to secure evidence, with the aim of guaranteeing that it can be validly used in criminal proceedings being conducted in the issuing State.

Although the certificate does not contain a similar requirement when the purpose is eventual confiscation, there is no doubt that it is also necessary in such case to subsequently validate confiscation when certain formalities and procedures are required (*e.g.* the need to notify the spouse of the accused when the marriage is a joint estate regime). In the absence of a specific section in this respect, such necessary formalities for later confiscation may be specified in section k.

**Section (f)**

Insert here the text of Section (f) of the Certificate

➤ **Point 1**

An accurate description of the property or evidence subject to the freezing order must be provided. In the event of several items of property or evidence, a separate description must be provided for each.

○ Section a) must be completed once the freezing order is aimed at subsequent confiscation of property.

The description of the property must bear in mind that the property may be movable or immovable, but also legal documents and instruments evidencing title or rights and even amounts of money — article 2 d) FD — (normally in the form of current account balances or financial securities). In the latter case, the amount of money to be secured must be specified (in numbers and words).

If the aim is to freeze an item of value or equivalent, the maximum amount of money intended to be recovered must be indicated (in words and numbers).

Given that the condition to send the order to the executing authority is the knowledge that it is located in its territory, it appears reasonable to have the details of the specific bank account in which the money is deposited and that it has been opened in such

executing State. It is therefore foreseeable that the issue of an order and certificate will be preceded by a financial enquiry to identify the bank account details.

- Section b) must be completed when the freezing order is intended to secure evidence.

Again in this section, it is important to bear in mind that «evidence» can only be objects, documents or data that can be produced as evidence [article 2 e) FD]. It is therefore not possible to resort to a freezing order to obtain, for example, a statement from a witness or the accused.

The issuing judicial authority must also be sure that the objects, documents or data effectively exist. It is therefore not possible to use a freezing order to request an investigation or search. In this regard, other mutual recognition instruments are available, such as the European evidence warrant or a letter rogatory for mutual judicial assistance under the Convention on mutual assistance in criminal matters between Member States of the European Union, of 29 May 2000.

➤ **Point 2**

The present location of the property or evidence must be stated. If the information is not reliable, the last known location should be indicated.

As above, this information should be as accurate as possible, in order to avoid delays in execution resulting from the practical impossibility to carry it out.

➤ **Point 3**

This point should only be completed when the effective possessor or beneficiary of the property or evidence is different to the person suspected (or convicted) of committing the offence and is also known.

If these two requirements are met, all information available must be given, including the relationship with the suspected (or convicted) person.

**Section (g)**

Insert here the text of Section (g) of the Certificate

All available information must be provided on the person subject to the freezing order, be it the person suspected (or convicted) of committing an offence or a different person.

According to the provisions of the freezing order, both or only one of the following two points should be completed.

➤ **Point 1**

If the freezing order refers to a natural person, the information available must be stated in this point.

If the order refers to several natural persons, information on each must be provided individually.

➤ **Point 2**

If the freezing order refers to a legal person, the known information must be provided in this point.

If the order refers to several legal persons, information on each must be provided individually.

**Section (h)**

Insert here the text of Section (h) of the Certificate

The completion of section (h) will depend on the specific phase of the criminal proceedings in the issuing State (in particular, whether or not a final confiscation order has been issued). Accordingly, the executing state must be informed as to how to act once the freezing order has been executed.

○ If the freezing order is for subsequent confiscation of property, only the section called «Confiscation» should be completed .

If the aim is to transfer the property for the purpose of final confiscation, the certificate and the freezing order must be accompanied by:

- either the confiscation order issued in the issuing State for recognition and execution in the executing State (1.1.1); or
- a request for the confiscation order and execution be adopted in the executing State (1.1.2)

It should be pointed out that the case referred to in 1.1.1 is exceptional, as it does not appear likely that recognition and execution of a freezing order will be requested if a confiscation order has been issued and it will be more likely in such case that the confiscation order be sent directly pursuant to FD 2006/783/JHA relating to the application of the principle of mutual recognition to confiscation orders between Member States of the European Union. In practice, case 1.1.1. would basically take place when it is urgent, in other words, when immediate freezing is required and it is foreseeable that the sending of a confiscation order would take longer and therefore its purpose be defeated.

In any event, it appears obvious that the frozen property cannot be transferred, but must remain in the executing State until confiscated.

On the other hand, if the aim is for the property to remain in the executing State, section 1.1 must be completed and section 1.1.3 again indicate the estimated date of submission of either of the requests stated in sections 1.1.1 or 1.1.2.

○ If the freezing order is intended to secure evidence, only the section titled «Securing of Evidence» should be completed.

If the aim is to transfer the property for the purposes of evidence, sections 2.1 and 2.1.1 must be marked, without forgetting to attach the request for transfer of evidence to the certificate and freezing order.

On the other hand, if the aim is for the property to remain in the executing State, section 2.2 must be marked and section 2.2.2 indicate the estimated date of submission of the request for the transfer of the property to the executing State for the purpose of evidence.

\* With regard to the indications required to complete this section, it should be pointed out that the options for the transfer of *property* or *evidence* do not mean exemption from the obligation of sending and processing applications for final confiscation and transfer of evidence according to the rules of international cooperation applicable in matters of confiscation (or according to FD 2006/783/JHA, if the FD has been transposed into the national law of the State receiving the freezing order) and international judicial assistance in criminal matters, respectively.

#### Section (i)

Insert here the text of Section (i) of the Certificate

There are four items of information that must be clearly specified in this section:

Firstly, the reasons justifying the freezing order, in other words, the facts behind the risk that the property, documents, objects or data to be secured for the purpose of evidence or subsequent confiscation may be hidden, transferred, encumbered or even destroyed by the person responsible for the offence or a third party.

Secondly, there must be a description of the facts known to the judicial authority in relation to the offence giving rise to the order (or each offence, if several). Although it should be brief, the description must be precise and provide sufficient detail for the competent judicial authority of the executing State to determine whether or not the *bis in idem* prohibition exists.

Thirdly, it is not only compulsory, but essential that the nature and illegal essence of the offence be specified, including the wording of the provision that classifies it as such.

Fourthly and lastly, information must be provided on the legal provisions that constitute the basis for the adopting of provisional measures, in other words, the freezing order.

With regard to the last requirement, in addition to stating the provision and Code that serve as a basis for measures aimed at securing future confiscation or evidence by means of the freezing order, it is advisable to provide the literal wording of the applied law, in order for the competent judicial authority to order similarly effective measures under its own legislation.

As far as the legal classification of the offence is concerned, it is particularly important to correctly provide the information required in the two points of this section.

➤ **Point 1**

Point 1 lists the categories of offences that give rise to recognition and execution of a freezing order, without verification of double criminality. This means that in such cases and provided the crimes are punishable by a custodial sentence exceeding at least three years under the legislation of the issuing State, the judicial authority of the executing State cannot refuse compliance with the freezing order on the grounds that the act does not constitute a crime under its own laws (article 3.2 FD).

Accordingly, completion of this section is only mandatory when:

The freezing order is issued in relation to acts classified as one or more of the crimes contained in the list, according to its own internal legislation.

And, that the crime is also punishable by a custodial sentence of at least three years.

➤ **Point 2**

This section should only be completed if the previous section was left blank, in other words, when the acts do not coincide with any of the categories set forth in Point 1, or the punishment is a custodial sentence of less than three years or the deprivation of other rights.

In such cases and in relation to the securing of evidence, the executing authority may condition recognition and execution of the order to the requirement that the act constitutes an offence in the executing State (art. 3.4 FD). The exceptions are matters relating to taxes or customs duties and exchange, in which case, recognition and execution cannot be refused on the grounds that the laws of the executing State do not impose the same taxes or duties (art. 7.1.d) FD).

The description should provide as much detail as possible on the offence, in order to allow the judicial authority of the executing State to determine whether or not it constitutes an offence under its own legislation.

In addition, with respect to the freezing of property, the executing State may condition recognition and execution of an order issued with the aim of subsequent confiscation not only to the requirement that the acts subject to the order constitute an offence, but also that confiscation is applicable under the laws of the executing State (article 3.4, second paragraph FD).

**Section (j)**

Insert here the text of Section (j) of the Certificate

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Information must be provided on procedural remedies - considered *stricto sensu* as appeals or not - that are available to persons affected by a freezing order.

Information must also contain a brief description of the proceedings relating to such appeal/s, the competent court to hear them and the legal term provided for submission (article 11 FD).

For the purpose of providing as much information as possible, in particular on the procedural aspects of the legal remedies and the possibility of legal aid and translation, details on the authority from which they can be obtained must also be included. In this respect, it is nevertheless possible not to make reference to a specific person and substitute the personal details required in the form for those of the entity or body that may provide the specific information.

It is also particularly important to include information relating to the persons entitled to challenge a freezing order, to the extent that the person subject to criminal proceedings or a third party may not be aware of the order until it is executed in the executing State and, with respect to such State, to provide information to the persons concerned as to the mechanisms available to protect their rights and interests that may have been damaged.

#### **Section (k)**

Insert here the text of Section (k) of the Certificate
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Completion of this section is optional and may include any other information considered relevant in relation to the procedure of recognition and execution of a freezing order, for example, whether or not a freezing order has been previously or also sent to one or more other Member States.

#### **Section (l)**

Insert here the text of Section (l) of the Certificate
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This Section reminds us of the need to attach the order to the certificate and that the certificate must include an essential element for it to proceed and its contents be certified: the signature of the issuing judicial authority or its representative.

The date specified must be that upon which the certificate is signed.

In addition to the above, certain information already included in section (a) is again required, as is the official stamp - if applicable - of the issuing judicial authority.



## **PARTS 4: FAQ's**

### **1) What is the difference between an order to freeze property or secure evidence and a conventional request for legal mutual assistance with the same objective?**

FD 2003/577/JHA creates an instrument based on the mutual recognition of judicial decisions within the European Union and not a traditional mutual legal assistance instrument.

In a mutual legal assistance system based on conventions, a State (hereinafter, the requiring State) sends a request to another (the required State) to adopt a measure, in this case the freezing of property. The required State has a broad margin to refuse the assistance and can specifically do so when the acts subject to the criminal proceedings in the requiring State do not constitute an offence in the required State. The process of adopting the decision as to whether or not to grant a letter rogatory is not subject to any deadline whatsoever.

Under a mutual recognition system, a State (the issuing State) sends an order to freeze property or secure evidence not located in its territory and another (the executing State), in which the property is located, is called upon to recognise and execute the order. Therefore, there are no requests, but rather orders issued by a Member State, in compliance with the requirements of a single area of freedom, security and justice in the EU. Recognition and/or execution can only be refused or suspended in certain cases. The recognition and execution of a particular category of listed crimes cannot be conditioned to the verification of double criminality (in other words, that the acts are considered as an offence in both the issuing as well as the executing State). In addition, the executing State is subject to certain deadlines and remedies of appeal in such State are limited to the challenging of the act of recognition or execution, but not the substance of the matter giving rise to the order, which can only be reviewed in the issuing State. A feature of mutual recognition instruments is the requirement that the order be documented by means of a standard form to facilitate the providing of all the necessary information for the order to be recognised and executed in another Member State.

Accordingly, mutual recognition instruments and, in particular, freezing orders and the securing of evidence have been designed as faster and more efficient measures to coordinate proceedings between the competent authorities of different Member States. They constitute a step forward, although conventional mutual assistance channels have not been abolished, meaning that both systems continue to coexist.

### **2) How can FD 2003/577/JHA be used in practice?**

Application of FD 2003/577/JHA enables situations to be avoided in which property (the instrument used to commit a crime or the proceeds or equivalent thereof) or evidence in criminal proceedings is outside the reach of a judicial authority when located in a Member State other than that in which the crime is being persecuted. With this aim in mind, FD 2003/577/JHA regulates the procedure involving the transfer and execution of a «freezing order»; a term that includes all the measures aimed at provisionally avoiding the destruction, transformation, displacement, transfer or disposal of property that may be subject to confiscation or constitute evidence in criminal proceedings.

Despite its importance, the practical application of FD 2003/577/JHA is nevertheless limited.

Firstly, because such application may require a private investigation to determine the existence and location of the property and evidence involved and also the need to resort to other legislative or conventional instruments.

Secondly, once the property or evidence has been secured in the executing State, other legislative or conventional instruments are also required to effectively transfer it to the issuing State.

**3) Should the provisions of FD 2003/577/JHA be applied although they have not been totally or partially transposed into the internal legislation of the executing Member State?**

Yes. Although Framework Decisions are not directly applicable and only bind Member States as to the result to be, they must interpret and apply their respective internal laws in accordance with the provisions of this type of Community instrument. This is required under the so-called «principle of interpretation in conformity<sup>1</sup>».

**4) Is it possible to require recognition and execution of an order to freeze property or secure evidence relating to any kind of property?**

A freezing order issued for the purpose of subsequent confiscation can relate to any kind of property — including money —, as well as documents evidencing title or rights to any kind of asset. The only requirement, in this regard, is that the property or documents must be capable of subsequent confiscation, either because they constitute the object or instrument of the crime or the proceeds or equivalent thereof (value confiscation).

An order to secure evidence can relate to all objects, documents and even data that may subsequently be used as evidence in criminal proceedings.

**5) Does FD 2003/577/JHA regulate the freezing of property in relation to *ex delicto* civil liability?**

No. An order to freeze property is only intended to ensure subsequent effective confiscation (given that such property is the instrument used to commit a crime or the proceeds are equivalent thereof) or the securing of evidence.

It can therefore not be issued to compensate for the civil liability *ex delicto* of the accused or a third party, which is only possible under Regulation 44/2001, regulating the bringing and enforcement of the *ex delicto* civil action.

**6) Is it possible to issue and subsequently recognise and execute an order to freeze property or secure evidence in relation to any offence?**

In theory, it is possible to request recognition and execution of a freezing order, irrespective of the legal classification of the act to which the order refers and the relevant punishment set forth in the issuing State.

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<sup>1</sup> ECJ Judgment, Pupino, Case-105/03 (16 June 2005), OJ C 193, 6.8.2005, p.3.

However, in practice, these issues — type of offence and punishment — are relevant when deciding whether or not to execute a freezing order. In this context, it is necessary to determine whether the acts subject to the order are included in the list provided in section 2 of article 3 FD 2003/577/JHA and are punishable by a custodial term of not less than three years in the issuing State, or do not fulfil these requirements.

Should the requirements be met, the freezing order is not subject to verification of double criminality by the executing State, meaning that the judicial authorities of such State cannot refuse recognition and execution on the grounds that the act does not constitute an offence or is punishable by a custodial sentence of less than three years or other punishment according to its own internal legislation.

On the other hand, if the offence giving rise to a freezing order is not contained in the list provided in section 2 of article 3 FD 2003/577/JHA, according to the legislation of the issuing State or, even if included, is punishable by a custodial sentence of less than three years or the deprivation of other rights, execution of the order *may* be subject to verification in the executing State. Before sending a freezing order for recognition, it is therefore advisable to confirm that the conditions are met.

With regard to a possible freezing order intended to *secure evidence*, confirmation will be required as to whether or not the internal laws of the executing State subject execution to verification of double criminality and, if so, whether or not the acts giving rise to the order constitute a crime.

The same procedure will be required when the intention of the freezing order is *the subsequent confiscation of the property*, with the added requirement that, in such case, the confirmation will have to extend to whether or not the acts that constitute a crime under the laws of the executing State provide for confiscation.

## **7) What documents are required for an order to freeze property or secure evidence to be recognised and executed in another EU Member State?**

Initially, only two:

- An order to secure evidence or freeze property for subsequent confiscation, issued by a judicial authority in the framework of criminal proceedings; and
- A certificate issued by the same judicial authority, using the standard form appearing in the Annex to FD 2003/577/JHA or the relevant transposed internal law.

The order is issued in accordance with the internal law of the issuing State, identifying the property and the freezing measure to be adopted by the State in which the property is located.

For the purposes of subsequent transfer of the evidence or property subject to confiscation in the issuing State, the above-mentioned documents will also have to be accompanied by a request for transfer of such evidence or for confiscation, in accordance with the provisions of section 1 of article 10 FD 2003/577/JHA. Frozen property can therefore not be transferred to the issuing State until it has been confiscated.

## **8) Is it possible to use one certificate and only one freezing order for several items of property?**

Provided the property or evidence is located in the same European Union Member State, yes; for reasons based on procedural efficiency. In such case, special care should nevertheless be taken to ensure that the certificate contains detailed and individual information on the different items of property or evidence referred to in the freezing order.

On the other hand, if the property or evidence is located in different Member States, it is advisable to send an order and certificate to each State, given that the original order and certificate are required and therefore it is not possible to send them to different Member States at the same time.

**9) Is it possible to use one certificate and one freezing order for several offences?**

Yes, also for reasons based on procedural efficiency. The information on each offence subject to a freezing order must be provided in the certificate.

**10) Should it be understood that only judges and courts are «competent judicial authorities» for the purposes of issuing a freezing order or the securing of evidence and subsequent execution?**

No. In the European Union, the term «competent judicial authority» does not have one sole meaning. It therefore extends to all authorities that have been appointed as such in their respective Member States.

From a general perspective, «competent judicial authorities» is a term referring to judges, magistrates and courts, as well as public prosecutors, the police or other bodies and entities.

**11) Should it be understood that an order to freeze property or secure evidence can only be issued if criminal proceedings are pending?**

No. Under the scope of FD 2003/577/JHA, «criminal proceedings» is an independent concept comparable to a criminal investigation conducted by a «competent judicial authority».

It is therefore possible for this kind of order to be issued and transferred to the relevant authorities of the executing State prior to the formal commencement of criminal proceedings — within the framework, for example, of preliminary enquiries conducted by the Police or Public Prosecutor's Office.

**12) Is it necessary to have an order to freeze property or evidence translated before sending it to the Executing State?**

FD 2003/577/JHA expressly establishes the obligation for the certificate attached to the freezing order be translated into the official language or one of the official languages of the executing State, or into one of the official languages of the Community institutions acceptable to the executing State. Nevertheless, it does not contain a similar provision in relation to the order to freeze property or evidence itself and it can therefore be assumed that the order does not have to be translated.

Even if not mandatory, translation of the freezing order or the enclosing a translation into one of the languages referred to above is advisable in order to enable the judicial authority of the executing State to ensure that the certificate correctly coincides with the order and, in general, facilitate recognition and execution.

**13) Should the original certificate and freezing order be sent to the competent judicial authorities of the executing State?**

Unlike in other European mutual recognition legislative instruments, FD 2003/577/JHA makes no reference to this issue.

Despite the lack of regulation, the rule should be that the originals be sent to the executing State. However, if there are grounds for the freezing measures ordered by the issuing State to be adopted urgently, a copy of the certificate and freezing order would suffice, notwithstanding the subsequent sending of the originals.

**14) What means can be used to transmit a freezing order and the relevant certificate?**

Any means can be used, provided they ensure written certification that both documents have been transmitted and enable the executing State to check their authenticity. Accordingly, such means include certified mail, fax, courier services and even information or telematic systems containing electronic signature.

The communications system provided by the EJM points of contact may facilitate the transmission of the order and certificate and speed up the process, but are not equivalent to official transmission.

**15) How can information be obtained on the executing State authority to which a freezing order for property or evidence must be transmitted and the language/s accepted?**

The EJM website provides the information, as it gathers information reported by Member States in relation to FD 2003/577/JHA. The link providing the information is: <http://www.ejm-crimjust.europa.eu/ejm/libcategories.aspx?Id=24>. With regard to the authority to which orders must be sent, the website is developing an atlas to facilitate the identification of competent authorities for recognition and execution of freezing orders. The link is [http://www.ejm-crimjust.europa.eu/ejm/EJM\\_QuickLinks.aspx?id=27](http://www.ejm-crimjust.europa.eu/ejm/EJM_QuickLinks.aspx?id=27). For this and all other information relating to the application of the instrument, an enquiry can also be sent to the EJM or Eurojust points of contact.

The FD expressly states that the issuing judicial authority must gather all the information necessary on the competent authority from the executing State. Such information is also normally available on the websites of certain official bodies, such as the Ministry of Justice or the *Public Prosecutor's Office* of each Member State.

Finally, the e-justice website:

(<https://e-justice.europa.eu/home.do?plang=es&action=home>)

provides information on the legal systems of the different Member States and their legislation.

**16) What is the procedure to be observed by the judicial authority of an executing State that receives an order to freeze property or secure evidence and is not competent for its recognition and execution?**

The authority should transmit the order, of its own motion, to the authority of its State that is competent for recognition and execution and notify the issuing judicial authority accordingly.

**17) What is the procedure for transmitting a freezing order relating to property in different locations in the executing State when jurisdiction in such State is determined according to where the property is located?**

There are two possible solutions to the issue: either to issue the same number of freezing orders as locations of the property, or to issue a sole order and the issuing State authority decide on a competent judicial authority of the executing State to which it should be sent. The latter solution is obviously the most efficient from a procedural perspective, the authority receiving the order and then applying its internal laws to either execute all the orders received or send those relating to property outside its territory to the relevant authorities of its State, or finally resort to national legal assistance to comply with execution in full.

**18) Are the authorities of the executing State that receive an order to freeze property or secure evidence also competent to decide whether or not it should be recognised and executed?**

It depends on the executing Member State.

Some Member States allow orders to freeze property and secure evidence to be sent directly to the judicial authority competent to execute them.

Other States require that the transmission to the competent legal authority be carried out by a central authority or other authorities specifically designated to receive this type of request.

**19) How should the competent executing authority proceed after receiving a freezing order from the issuing authority?**

The executing authority must recognise the order without any further formality by taking the necessary measures for its immediate execution, as if it were issued by an authority of its own State (unless it considers that there are grounds for refusing recognition or for refusing or suspending execution).

**20) How long does the executing authority have to recognize and execute an order it receives to freeze property or secure evidence?**

The competent executing authority must reach a decision on recognition and execution as soon as possible and, whenever possible, within 24 hours after receiving it.

**21) What decisions or formalities relating to a freezing order must be notified to the issuing State? How should such notification be made, in what timeframe and in what language?**

The competent judicial authorities of the executing State must provide the issuing State with information, including the following:

- The decision ordering enforcement of the freezing order, as well as the fact that it has been executed and the measures adopted accordingly;
- The decision to refuse recognition or execution of the freezing order and the grounds for refusal;
- The practical impossibility of executing the order to freeze the property or secure the evidence, due to its disappearance or destruction or the fact that it was not found at the location specified in the certificate; and
- The suspension of the executing of a freezing order, the grounds for suspension and, if possible, the expected duration thereof. In this regard, the issuing judicial authority must be informed of the restrictive measures adopted during the suspension, as well as when it is lifted and the subsequent execution carried out.

Given that notification of the above-mentioned information must be performed as quickly as possible and by any means that enables written certification of the content, it is advisable that electronic mail be used.

With respect to the language for notification, it is reasonable to expect that it would be the official language or one of the official languages of the issuing State, or one of the official languages of the Community institutions it accepts for receiving freezing order requests from other Member States.

**22) What is the procedure when the certificate is missing, incomplete or does not correspond to the freezing order?**

According to the FD, the executing authority has several options: to determine a deadline for the certificate to be submitted, completed or amended or accept an equivalent document or even dispense the issuing judicial authority from submitting it, if it considers that sufficient information is available. In any event, it will be necessary to confirm that the transposed law of the executing State grants the executing authority the same options.

**23) What is the procedure when the certificate accompanying the freezing order is not translated into the official language of the executing State or in a language that it does not accept?**

In this case, the certificate should be considered as incomplete. The judicial authority specified by the issuing State in the certificate should then be notified that it must provide a translation as soon as possible or within a specific period of time.

**24) In what cases can the recognition and execution of a freezing order be refused on the grounds that it breaches the principle of *ne bis in idem*?**

Within the European Union, a *bis in idem* prohibition only prevents criminal proceedings with the same subject matter that has already concluded with a final judgment. Accordingly, the *bis in idem* prohibition does not apply to simultaneous proceedings dealing with the same subject matter (*lis pendens*).

Having established the above, it is clear that in the context of FD 2003/577/JHA, the refusal of recognition and execution of a freezing order on the grounds of *non bis in idem* is only possible when criminal proceedings are taking place in relation to the same substance matter already judged in previous criminal proceedings and the situation is discovered precisely when a freezing order is received.

On the other hand, such grounds cannot be claimed when it is discovered that two criminal proceedings are taking place in relation to the same subject matter upon receipt of a freezing order. Neither is it possible when two or more freezing orders have been issued in relation to the same property or evidence. In such cases, the correct procedure would be to suspend execution.

## **25) What procedural rules are applicable to the execution of an order to freeze property or secure evidence?**

Both the execution of a freezing order or the securing of evidence, as well as the measures that may be adopted accordingly — including coercion — must be carried out in accordance with the procedural rules of the executing State.

Nevertheless, if certain formalities or procedures are specified in the certificate in order to guarantee the validity of the evidence, the competent judicial authority of the executing State must observe the instructions, provided they are not contrary to the fundamental principles of its internal law.

Although there is no provision made in the FD, it would be logical to expect that the issuing State also indicate the necessary formalities or procedures to be observed during the freezing of the property, in order to ensure the success thereof and the subsequent confiscation.

## **26) How long can a recognised and executed freezing order be maintained in the executing State?**

In general, until the executing State itself eventually transfers the evidence or confiscation ordered by the issuing State.

It is nevertheless likely that, in accordance with its own internal legislation, the executing State will establish certain conditions limiting the duration of the order. When such conditions involve the lifting of a freezing order, the issuing State must be informed accordingly and allowed to submit allegations.

In the same respect, should the judicial authorities of the issuing State resolve to lift an order to freeze property or evidence, it must be implemented as soon as possible.

## **27) Once the property has been frozen or the evidence secured, is it mandatory to grant the request for subsequent confiscation?**

The issuing State has two ways to confiscate previously frozen property. One is by means of the standard conventional request for confiscation. In such case, the request



for confiscation must be pursuant to applicable regulations governing mutual legal assistance in criminal matters and therefore to the Convention under which the request is made. It would be the Convention that determines any possible grounds for refusal of confiscation.

The other would be for the issuing authority to apply the European Union instrument of mutual recognition of judicial decisions relating to confiscation, FD 2006/783/JHA. In this case, it would be the issuing authority that issues the confiscation order and transmits it to the executing authority for recognition and execution. The executing authority could only refuse recognition and execution in special cases.

## **28) After securing evidence, is it compulsory to transmit it to the issuing State?**

The request for transmission of evidence sent by the issuing State to the executing State must be in accordance with the applicable regulations governing legal assistance in criminal matters and therefore with the convention under which the request is made.

However, notwithstanding the applicable convention, it will not be possible to refuse transmission based on double criminality grounds, when verification is not permitted on recognising the order for securing the evidence (art. 10.3 de la FD).

## **29) What remedies are available to the persons affected, including third parties that wish to challenge freezing measures that violate their rights or legitimate interests?**

The «remedies» are those available under the internal laws of the issuing or executing State against the orders issued or acts carried out in their respective territories.

In particular, the substance matter of a freezing order can only be challenged in the courts of the issuing State.

On the other hand, with regard to the acts or decisions relating to the execution of a freezing order, the respective internal legislations shall determine whether an action is to be brought before a court of the issuing State or executing State (article 11.1 FD).

Finally, it should be pointed out that the term «remedies» does not have the same meaning here as in internal legislation, but rather a broader interpretation that includes any procedure enabling rectification of a wrong decision or an act relating to a freezing order and is capable of having it revoked.

## **30) Are such remedies capable of suspending a freezing order?**

The FD leaves no room for doubt with respect to internal legislation, stating that such remedies cannot suspend a freezing order.

## **31) Where should a remedy be filed and who is liable for the damages resulting from the execution of a freezing order?**

All natural and legal persons, as well as bona fide third parties that suffer damages as a result of the execution of a freezing order are entitled to claim compensation in the issuing or executing State, according to their respective laws.

When a claim is filed and compensation obtained in the executing State, said State is entitled to reimbursement by the issuing State of the amounts paid in compensation for damages, unless such damages are exclusively due to the acts of the executing State.

## **PART 5: RELEVANT INFORMATION; COMPETENT AUTHORITIES TO RECEIVE FREEZING ORDERS AND LANGUAGES ACCEPTED FOR CERTIFICATES PURSUANT TO ART. 9(3) FD**

The information below regarding competent authorities has been prepared using the information furnished by some Member states to the European Commission. In order to ascertain the territorial jurisdiction of the authorities listed below and to avoid mistakes due to changes, it is always advisable to consult the European judicial atlas, available on the European Judicial Network website (<http://www.ejn-crimjust.eu.int/>).

### **1. AUSTRIA**

#### **1.1. Competent authority to receive freezing orders:**

Regional Court of First Instance (*Landesgericht erster Instanz*) with jurisdiction where the property or evidence is located.

##### **1. Landesgericht Eisenstadt**

(Eisenstadt Regional Court)

Wiener Straße 9

7000 Eisenstadt

Tel: +43/2682/701

Fax: +43/2682/701-444

[lg Eisenstadt.praesidium@justiz.gv.at](mailto:lg Eisenstadt.praesidium@justiz.gv.at)

##### **2. Landesgericht Feldkirch**

(Feldkirch Regional Court)

Schillerstraße 1

6800 Feldkirch

Tel: +43/5522/302-0

Fax: +43/5522-31779

[lgfeldkirch.praesidium@justiz.gv.at](mailto:lgfeldkirch.praesidium@justiz.gv.at)

##### **3. Landesgericht für Strafsachen Graz**

(Graz Regional Criminal Court)

C. v. Hötzen Dorfstraße 41

8010 Graz

Tel: +43/316/8047

Fax: +43/316-5600

[lgstrafsachengraz.praesidium@justiz.gv.at](mailto:lgstrafsachengraz.praesidium@justiz.gv.at)

##### **4. Landesgericht Innsbruck**

(Innsbruck Regional Court)

Maximilianstraße 4

6020 Innsbruck

Tel: +43/512/5930-0

Fax: +43/512-582286

[lginnsbruck.praesidium@justiz.gv.at](mailto:lginnsbruck.praesidium@justiz.gv.at)

**5. Landesgericht Klagenfurt**

(Klagenfurt Regional Court)

Dobernigstraße 2

9020 Klagenfurt

Tel: +43/463/5840-0

Fax: +43/4635840-300

[lgklagenfurt.praesidium@justiz.gv.at](mailto:lgklagenfurt.praesidium@justiz.gv.at)

**6. Landesgericht Korneuburg**

(Korneuburg Regional Court)

Hauptplatz 18

2100 Korneuburg

Tel: +43/2262/799-0

Fax: +43/2262/799-275

[lgkorneuburg.praesidium@justiz.gv.at](mailto:lgkorneuburg.praesidium@justiz.gv.at)

**7. Landesgericht Krems an der Donau**

(Krems an der Donau Regional Court)

Josef Wichner Straße 2

3500 Krems

Tel: +43/2732/809-0

Fax: +43/2732/809-401

[lgkrems.praesidium@justiz.gv.at](mailto:lgkrems.praesidium@justiz.gv.at)

**8. Landesgericht Leoben**

(Leoben Regional Court)

Justizzentrum Leoben

Dr. Hanns-Groß-Straße 7

8700 Leoben

Tel: +43/3842/404-0

Fax: +433842/404-1035

[lgleoben.praesidium@justiz.gv.at](mailto:lgleoben.praesidium@justiz.gv.at)

**9. Landesgericht Linz**

(Linz Regional Court)

Fadingerstraße 2

4020 Linz

Tel: +43/5 7601-21

Fax: +43/5 7601-2930

[lglinz.praesidium@justiz.gv.at](mailto:lglinz.praesidium@justiz.gv.at)

**10. Landesgericht Ried im Innkreis**

(Ried im Innkreis Regional Court)

Bahnhofstraße 56

4910 Ried im Innkreis

Tel: +43/5 7601-25

Fax: +43/5 7601-1188

[lgried.praesidium@justiz.gv.at](mailto:lgried.praesidium@justiz.gv.at)

**11. Landesgericht Salzburg**

(Salzburg Regional Court)

Rudolfsplatz 2

5020 Salzburg

Tel: +43/5 7601-233

Fax: +43/5 7601-1201

[lgsalzburg.praesidium@justiz.gv.at](mailto:lgsalzburg.praesidium@justiz.gv.at)

**12. Landesgericht St. Pölten**

(St. Pölten Regional Court)

Schießstattring 6

3100 St. Pölten

Tel: +43/2742/809

Fax: +43/2742-79566

[lgstpoelten.praesidium@justiz.gv.at](mailto:lgstpoelten.praesidium@justiz.gv.at)

**13. Landesgericht Steyr**

(Steyr Regional Court)

Spitalskystraße 1

4400 Steyr

Tel: +43/5 7601-26

Fax: +43/5 7601-1188

[lgsteyr.praesidium@justiz.gv.at](mailto:lgsteyr.praesidium@justiz.gv.at)

**14. Landesgericht Wels**

(Wels Regional Court)

Maria-Theresien-Straße 12

4600 Wels

Tel: +43/5 7601-24

Fax: +43/5 7601-1188

[lgwels.praesidium@justiz.gv.at](mailto:lgwels.praesidium@justiz.gv.at)

**15. Landesgericht für Strafsachen Wien**

(Vienna Regional Criminal Court)

Landesgerichtsstraße 11

1082 Wien

Tel: +43/1/40127

Fax: +43/4025904

[lgstrafsachenwien.praesidium@justiz.gv.at](mailto:lgstrafsachenwien.praesidium@justiz.gv.at)

**16. Landesgericht Wiener Neustadt**

(Wiener Neustadt Regional Court)

Maria-Theresien-Ring 5

2700 Wiener Neustadt

Tel: +43/2622/21510 Serie

Fax: +43/2622/21510-272 or 276

[lgwienerneustadt.praesidium@justiz.gv.at](mailto:lgwienerneustadt.praesidium@justiz.gv.at)

**1.2. Languages accepted for certificates pursuant to art. 9(3):**

- German
- Other languages are also accepted on the basis of reciprocity, i.e., on condition that the Member State in question, as the executing State, also accepts certificates in German.

## **2. BELGIUM**

### **2.1. Competent authority to receive a freezing order:**

- Public Prosecutor of the Courts of First Instance with jurisdiction where the property or evidence is located (Parquets auprès des tribunaux de première instance).
- Once the order is received, the Prosecutor should transfer it to the ‘examining magistrate’ (juge d’instruction), who is the authentic Belgian ‘executing authority’.
- When the issuing State has doubts, the Central Authority for Seizure and Confiscation (Organe Central des saisies et confiscation) may be consulted.
- A detailed list of the competent authorities is provided in 14288/06 COPEN 109 EJM 25 EUROJUST 49.

#### **1. Rechtbank van eerste aanleg te Antwerpen (Antwerp court of first instance)**

Gerechtsgebouw  
Britselei, 55  
2000 Antwerpen  
Belgium  
Tel.: +32 (0)3 216 54 01  
Fax: +32 (0)3 248 31 94

#### **2. Tribunal de première instance d'Arlon (Arlon court of first instance)**

Palais de Justice  
Place Léopold  
6700 Arlon  
Belgium  
Tel.: +32 (0)63 21 44 40  
Fax: +32 (0)63 21 83 42

#### **3. Rechtbank van eerste aanleg te Brugge (Bruges court of first instance)**

Kazernevest, 3  
8000 Brugge  
Belgium  
Tel.: +32 (0)50 47 35 00  
Fax : +32 (0)50 47 36 90-91

#### **4. Tribunal de première instance de Bruxelles (Brussels court of first instance)**

Palais de Justice – Extension  
Rue Quatre Bras, 13  
1000 Bruxelles  
Belgium  
Tel.: +32 (0)2 508 71 11  
Fax: +32 (0)2 508 70 97

#### **5. Tribunal de première instance de Charleroi (Charleroi court of first instance)**

Palais de Justice

Avenue Général Michel  
6000 Charleroi  
Belgium  
Tel.: +32 (0)71 23 66 99  
Fax: +32 (0)71 23 65 47

**6. Rechtbank van eerste aanleg te Dendermonde (Dendermonde court of first instance)**

Gerechtsgebouw  
Justitieplein, 1  
9200 Dendermonde  
Belgium  
Tel.: +32 (0)52 26 07 11  
Fax: +32 (0)52 20 00 35

**7. Tribunal de première instance de Dinant (Dinant court of first instance)**

Palais de Justice  
5500 Dinant  
Belgium  
Tel.: +32 (0)82 22 32 25  
Fax: +32 (0)82 22 42 55

**8. Staatsanwaltschaft Eupen (Eupen public prosecutor's office)**

Rathausplatz, 8  
4700 Eupen  
Belgium  
Tel.: +32 (0)87 59 65 40  
Fax: +32 (0)87 74 03 88

**9. Rechtbank van eerste aanleg te Gent (Ghent court of first instance)**

Gerechtsgebouw  
Koophandelsplein, 23  
9000 Gent  
Belgium  
Tel.: +32 (0)9 267 41 11  
Fax: +32 (0)9 267 43 84

**10. Rechtbank van eerste aanleg te Hasselt (Hasselt court of first instance)**

Thonissenlaan, 75  
3500 Hasselt  
Belgium  
Tel.: +32 (0)11 24 65 00  
Tel.: +32 (0)11 24 66 12  
Fax: +32 (0)11 24 66 18  
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**11. Tribunal de première instance de Huy (Huy court of first instance)**

Nouveau Palais de Justice  
Quai d'Arona, 4  
4500 Huy



Belgium

Tel.: +32 (0)85 24 44 29

Fax: +32 (0)85 24 45 32

**12. Rechtbank van eerste aanleg te Ieper (Ypres court of first instance)**

Gerechtsgebouw

Grote Markt, 1

8900 Ieper

Belgium

Tel.: +32 (0)57 22 49 60

Fax: +32 (0)57 20 36 74

**13. Rechtbank van eerste aanleg te Kortrijk (Kortrijk court of first instance)**

Gerechtsgebouw

Burg. Nolfstraat, 10 A

8500 Kortrijk

Belgium

Tel.: +32 (0)56 26 93 11

Fax: +32 (0)56 26 93 12

**14. Rechtbank van eerste aanleg te Leuven (Louvain court of first instance)**

Gerechtsgebouw

Smoldersplein, 5

3000 Leuven

Belgium

Tel.: +32 (0)16 27 21 11

Fax: +32 (0)16 27 27 27

**15. Tribunal de première instance de Liège (Liège court of first instance)**

Palais de Justice

Place Saint-Lambert, 16

4000 Liège

Belgium

Tel.: +32 (0)4 232 51 11

Fax: +32 (0)4 232 53 26

**16. Tribunal de première instance de Marche-en-Famenne (Marche-en-Famenne court of first instance)**

Palais de Justice

rue Victor Libert, 19

6900 Marche-en-Famenne

Belgium

Tel.: +32 (0)84 31 09 00

Fax: +32 (0)84 31 09 01

**17. Rechtbank van eerste aanleg te Mechelen (Mechelen court of first instance)**

Keizerstraat, 20

2800 Mechelen

Belgium

Tel.: +32 (0)15 28 81 11

Fax: + 32 (0)15 28 82 22

**18. Tribunal de première instance de Mons (Mons court of first instance)**

Palais de Justice

rue de Nimy, 35

7000 Mons

Belgium

Tel.: +32 (0)65 31 31 71

Fax: +32 (0)65 33 70 19

**19. Tribunal de première instance de Namur (Namur court of first instance)**

Place du Palais de Justice

5000 Namur

Belgium

Tel.: +32 (0)81 25 17 11

Fax: +32 (0)81 25 18 90

**20. Tribunal de première instance de Neufchâteau (Neufchâteau court of first instance)**

Palais de Justice

Place Charles Bergh, 1

6840 Neufchâteau

Belgium

Tel.: +32 (0)61 27 53 31

Fax: +32 (0)61 27 53 33

**21. Tribunal de première instance de Nivelles (Nivelles court of first instance)**

Palais de Justice

Place Albert 1er

1400 Nivelles

Belgium

Tel.: +32 (0)67 28 22 11

Fax: +32 (0)67 28 22 70

**22. Rechtbank van eerste aanleg te Oudenaarde (Oudenaarde court of first instance)**

Gerechtsgebouw

Bourgondiëstraat, 5

9700 Oudenaarde

Belgium

Tel.: +32 (0)55 33 16 11

Fax: +32 (0)55 33 16 02

**23. Rechtbank van eerste aanleg te Tongeren (Tongeren court of first instance)**

Gerechtsgebouw

Kielenstraat, 24 bus 1

3700 Tongeren  
Belgium  
Tel.: +32 (0)12 39 96 44  
Fax: +32 (0)12 39 96 72

**24. Tribunal de première instance de Tournai (Tournai court of first instance)**

Place du Palais de Justice  
7500 Tournai  
Belgium  
Tel.: +32 (0)69 22 21 41-44  
Fax: +32 (0)69 23 31 61

**25. Rechtbank van eerste aanleg te Turnhout (Turnhout court of first instance)**

Gerechtsgebouw  
Kasteelstraat, 1  
2300 Turnhout  
Belgium  
Tel.: +32 (0)14 47 15 11  
Fax: +32 (0)14 47 18 80

**26. Tribunal de première instance de Verviers (Verviers court of first instance)**

Palais de Justice  
rue du Tribunal, 4  
4800 Verviers  
Belgium  
Tel.: +32 (0)87 32 37 76  
Fax: +32 (0)87 32 37 78  
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**27. Rechtbank van eerste aanleg te Veurne (Veurne court of first instance)**

Gerechtsgebouw  
P. Benoitlaan, 2  
8480 Veurne  
Belgium  
Tel.: +32 (0)58 31 10 65  
Fax: +32 (0)58 31 21 12

**Contact details of the Central Office for Seizure and Confiscation:**

Rue Quatre Bras, 19  
1000 Bruxelles  
Belgium  
Tel.: +32 (0)2 557 78 81  
+32 (0)2 557 78 82  
Fax: +32 (0)2 557 78 80  
+32 (0)2 557 78 79  
E-mail: [ocsc@confiscaid.be](mailto:ocsc@confiscaid.be)  
Website: <http://www.confiscaid.be>

## **2.2. Languages accepted for certificates pursuant to art. 9(3):**

- French
- Dutch
- German
- English

### **3. BULGARIA**

#### **3.1. Competent authority to receive freezing orders:**

Sofia City Court.

A mandatory hearing must be held before the Court in order to decide whether the order is recognized, refused or postponed.

If recognition is granted, execution of the order is carried out by “the respective competent authority in accordance with the procedure set forth in the Civil Procedure Code”.

After execution, the Sofia City Court must also rule on requests made under art 10(1) of the FD.

#### **3.2. Languages accepted for certificates pursuant to art. 9(3):**

Bulgarian.

## **4. CYPRUS**

### **4.1. Competent authorities to receive freezing orders:**

- (a) Ministry of Justice and Public Order.
- (b) Unit for Combating Money Laundering (MOKAS), Attorney General's Office.

Once the order is received, if the requirements are met, it will be submitted to the District Court of Nicosia for “registration” and enforcement.

### **4.2. Languages accepted for certificates pursuant to art. 9(3):**

Greek and English

## **5. CZECH REPUBLIC**

### **5.1. Competent authority to receive freezing orders:**

The Prosecutor of the Regional Prosecutor's office in the region in which the property/evidence subject to the freezing order is located.

#### **1. Municipal Prosecutor's Office in Prague (Městské státní zastupitelství v Praze)**

Náměstí 14. října 2188/9

Praha 5

150 00

Tel : +420257111611

Fax :+420257111723

E-mail: [podatelna@msz.pha.justice.cz](mailto:podatelna@msz.pha.justice.cz)

#### **2. Regional Prosecutor's Office in Prague (Krajské státní zastupitelství v Praze)**

Husova 11

110 01 Praha

Tel.: +420222111700

Fax: +420222220075

E-mail: [podatelna@ksz.pha.justice.cz](mailto:podatelna@ksz.pha.justice.cz)

#### **3. Regional Prosecutor's Office in České Budějovice (Krajské státní zastupitelství v Českých Budějovicích)**

Goethova 2

370 70 České Budějovice

Tel.: +420386798111

Fax: +420386798140

E-mail: [posta@ksz.cbu.justice.cz](mailto:posta@ksz.cbu.justice.cz)

#### **4. Regional Prosecutor's Office in Plzeň (Krajské státní zastupitelství v Plzni)**

Veleslavínova 38

306 36 Plzeň

Tel.: +420377868511

Fax: +420377868512

E-mail: [podatelna@ksz.plz.justice.cz](mailto:podatelna@ksz.plz.justice.cz)

#### **5. Regional Prosecutor's Office in Ústí nad Labem (Krajské státní zastupitelství v Ústí nad Labem)**

tř. Národního odboje 1274

400 85 Ústí nad Labem

Tel.: +420475531162

Fax: +420475532850

E-mail: [posta@ksz.unl.justice.cz](mailto:posta@ksz.unl.justice.cz)

#### **6. Regional Prosecutor's Office in Hradec Králové (Krajské státní zastupitelství v Hradci Králové)**

Zieglerova 189

500 39 Hradec Králové  
Tel.: +420495078111  
Fax: +420495512946  
E-mail: [ksz@ksz.hrk.justice.cz](mailto:ksz@ksz.hrk.justice.cz)

**7. Regional Prosecutor's Office in Brno (Krajské státní zastupitelství v Brně)**

Mozartova 3  
601 52 Brno  
Tel.: +420542427427  
Fax: +420542215004  
E-mail: [podatelna@ksz.brn.justice.cz](mailto:podatelna@ksz.brn.justice.cz)

**8. Regional Prosecutor's Office in Ostrava (Krajské státní zastupitelství v Ostravě)**

Na Hradbách 21  
729 01 Ostrava 1  
Tel: +420595131511  
Fax: +420596118544  
E-mail: [podatelna@ksz.ova.justice.cz](mailto:podatelna@ksz.ova.justice.cz)

**5.2. Languages accepted for certificates pursuant to art. 9(3):**

Czech

Provided reciprocity is granted, Certificates from Slovakia in Slovak and from Austria in German are also accepted.



## **6. DENMARK**

### **6.1. Competent authority to receive freezing orders:**

Local Prosecutor

The decision as to the execution of a freezing order is reached by the courts on the application by a public prosecutor, unless the public prosecutor finds that execution should be refused. In such case, the decision whether or not to refuse execution is taken by the Minister of Justice, or a person duly authorised by said Minister.

When a final decision on the execution of a freezing order has been adopted, execution is carried out by the police.

### **6.2. Languages accepted for certificates pursuant to § 9(3):**

Danish.

## **7. ESTONIA**

### **7.1. Competent authority to receive freezing orders:**

The Public Prosecutor's Office

### **7.2. Languages accepted for certificates pursuant to art. 9(3):**

Estonian

English

## **8. FINLAND**

### **8.1. Competent authority to receive freezing orders:**

- Public Prosecutors

1) The Public Prosecutor attached to the Helsinki District Court if the property or evidence mentioned in the freezing order is located within the jurisdiction of the Court of Appeal of Helsinki or Kouvola:

#### **The Prosecutors of the Helsinki Judicial District**

The Prosecutor's Office of the Helsinki District

P.O. Box 318  
FIN-00181 HELSINKI  
Finland

Tel. +358 10 362 2100  
Fax +358 10 362 2203  
E-mail: [helsinki.sy@om.fi](mailto:helsinki.sy@om.fi)

On call 24 hours during weekends: Tel. +358 10 362 2485

2) The Public Prosecutor attached to the Kuopio District Court, if the property or evidence mentioned in the freezing order is located within the jurisdiction of the Court of Appeal of Eastern Finland:

#### **The Prosecutors of the Kuopio Judicial District**

The Prosecutor's Office of the Kuopio District

P.O. Box 224  
FIN-70101 KUOPIO  
Finland

Tel. +358 10 362 7800  
Fax +358 10 362 7829  
E-mail: [kuopio.sy@om.fi](mailto:kuopio.sy@om.fi)

On call 24 hours during weekends: Tel. +358 10 366 2090

#### **The Prosecutor's Office of the Varkaus District**

P.O. Box 192  
FIN-78201 VARKAUS  
Finland

Tel. +358 10 362 7303  
Fax +358 10 362 7304  
E-mail: [yarkus.sy@om.fi](mailto:yarkus.sy@om.fi)

### **The Prosecutor's Office of the Upper Savo District**

P.O. Box 24  
FIN-74101 IISALMI  
Finland

Tel. +358 10 362 7380  
Fax +358 10 362 7399  
E-mail: [yla-savo.sy@om.fi](mailto:yla-savo.sy@om.fi)

3) The Public Prosecutor attached to the Oulu District Court, if the property or evidence mentioned in the freezing order is located within the jurisdiction of the Court of Appeal of Rovaniemi:

### **The Prosecutors of the Oulu Judicial District**

The Prosecutor's Office of the Oulu District

P.O. Box 225  
FIN-90101 OULU  
Finland

Tel. +358 10 362 9000  
Fax +358 10 362 9001  
E-mail: [oulu.sy@om.fi](mailto:oulu.sy@om.fi)

On call 24 hours during weekends: Tel. +358 10 366 2090

4) The public prosecutor attached to the Tampere District Court, if the property or evidence mentioned in the freezing order is located within the jurisdiction of the Court of Appeal of Turku or Vaasa:

### **The Prosecutors of the Tampere Judicial District**

The Prosecutor's Office of the Tampere District

P.O. Box 503  
FIN-33101 TAMPERE  
Finland

Tel. +358 10 362 4600  
Fax +358 10 362 4624  
E-mail: [tampere.sy@om.fi](mailto:tampere.sy@om.fi)

The Prosecutor's Office of the Ikaalinen District

P.O. Box 48  
FIN-39501 IKAALINEN  
Finland

Tel. +358 10 362 3935  
Fax +358 10 362 3931  
E-mail: [ikaalinen.sy@om.fi](mailto:ikaalinen.sy@om.fi)

The Prosecutor's Office of the Valkeakoski District

P.O. Box 38  
FIN-37601 VALKEAKOSKI  
Finland

Tel. +358 10 362 3632  
Fax +358 10 362 3639  
E-mail: [valkeakoski.sy@om.fi](mailto:valkeakoski.sy@om.fi)

On call 24 hours during weekends: Tel. +358 10 362 2485

If the property or evidence is located within the jurisdiction of several of the above mentioned Courts of Appeal, the location is unclear or other special reasons exist, the Public Prosecutor of Helsinki is the competent authority regardless of which Court of Appeal has jurisdiction for the property or evidence.

## **8.2. Languages accepted for certificates pursuant to art. 9(3):**

The certificate must be sent in Finnish, Swedish or English or a translation of the certificate into one of these languages must be attached. The competent Prosecutor may also approve a certificate in a language other than Finnish, Swedish or English if no obstacles to its being approved exist.

## **9. FRANCE**

### **9.1. Competent authority to receive freezing orders:**

- Examining Magistrate (*Juge d'instruction*) of the location of the property or evidence subject to the freezing request or, if the location is not defined, the Examining Magistrate of Paris.
- The freezing order and certificate issued by the judicial authority of the issuing State may also be transmitted to the Examining Magistrate through the intermediary of the District Prosecutor or the Prosecutor General.

### **9.2. Languages accepted for certificates pursuant to art. 9(3):**

- French

## **10. GERMANY**

### **10.1. Competent authority to receive freezing orders:**

- State Prosecutors (*Staatsanwaltschaften der Länder*)

### **10.2 Languages accepted for certificates pursuant to art. 9(3):**

- German
- Official languages of other Member States which accept freezing orders issued in German by German judicial authorities

## **11. GREECE**

Greece is yet to implement the Framework Decision



## **12. HUNGARY**

### **12.1. Competent authority to receive freezing orders:**

- Ministry of Public Administration and Justice  
Address: Kossuth tér 4., 1055  
Budapest  
Tel.: +36 (1) 795 5823  
Fax: +36 (1) 795 0552; +36 (1) 795 0554  
e-mail: [nemzb@kim.gov.hu](mailto:nemzb@kim.gov.hu)
  
- Office of the Prosecutor General Office  
Address: Markó u. 16., 1055  
Budapest  
Tel.: +36 (1) 354 5545  
Fax: +36 (1) 269 2662  
e-mail: [IntlEU@mku.hu](mailto:IntlEU@mku.hu)
  
- A detailed list of the competent authorities is provided in 11960/05 COPEN 135  
EJN 53 EUROJUST 60

### **Languages accepted for certificates pursuant to art. 9(3):**

- Hungarian

## **13. IRELAND**

### **13.1. Competent authority to receive freezing orders:**

- Central Authority: Minister for Justice, Equality and Law Reform  
Mutual Assistance and Extradition Division, Department of Justice, Equality and Law Reform,  
Pinebrook House, 71-74 Harcourt Street. Dublin 2, Ireland.  
Tel :- + 353 1 6028589, 6028535, 6028605  
Fax No:- + 353 1 6028606

### **13.2. Languages accepted for certificates pursuant to art. 9(3):**

- Irish
- English

## **14. ITALY**

Italy is yet to implement the Framework Decision

## **15. LATVIA**

### **15.1. Competent authority to receive freezing orders:**

- Procurator General's Office (Ģenerālprokuratūra)  
Kalpaka bulvāris 6, Rīga,  
LV-1801  
Latvia  
Tel.: +371 67044400  
Fax: +371 67044449  
e-mail: [gen@lrp.gov.lv](mailto:gen@lrp.gov.lv)

### **15.2 Languages accepted for certificates pursuant to art. 9(3):**

- Latvian
- English

## **16. LITHUANIA**

### **16.1. Competent authority to receive freezing orders:**

- General Prosecutor's Office  
A. Smetonos g. 4,  
01515 Vilnius,  
Lithuania;  
Tel. (370) 5266 2305  
Fax. (370) 5266 2317

### **Languages accepted for certificates pursuant to art. 9(3):**

- Lithuanian
- English

## **17. LUXEMBOURG**

Luxembourg is yet to implement the Framework Decision

## **18. MALTA**

### **18.1 Competent authority to receive freezing orders:**

- Attorney General's Office
- Execution of the freezing order will be carried out by a police officer not below the rank of Inspector (following the Attorney General instructions)

### **18.2 Languages accepted for certificates pursuant to art. 9(3):**

- Maltese
- English

## **19. THE NETHERLANDS**

### **19.1. Competent authority to receive freezing orders:**

- Examining Magistrates
- Prosecutors

#### **1. De Officier van Justitie (= Public Prosecutor)**

**p/a IRC-Noord Oost Nederland**

Postbus 346

9400 AH Assen

The Netherlands

tel: +31 (0)592 - 38 30 30

fax: +31 (0)592 - 38 30 31

e-mail: [ircnoord@drenthe.politie.nl](mailto:ircnoord@drenthe.politie.nl)

contactperson: Mr. W. van de Vrede

(This IRC will be moved to Groningen in the very near future)



**2. De Officier van Justitie**

**p/a IRC-Limburg**

Postbus 133

6200 AC Maastricht

The Netherlands

tel: +31 (0)45 - 400 56 80

fax: +31 (0)45 – 400 56 99

e-mail: [maa-info-irc@maarr.drp.minjus.nl](mailto:maa-info-irc@maarr.drp.minjus.nl)

contact person: Mr. J. Arets

(This IRC will be combined with the IRC ZUID in the very near future)

**3. De Officier van Justitie**

**p/a IRC-Rotterdam-Dordrecht**

Postbus 70023

3000 LD Rotterdam

The Netherlands

tel: +31 (0)10 - 274 79 50

fax: +31 (0)10- 275 02 75

e-mail: [irc@easynet.nl](mailto:irc@easynet.nl)

contact person: Mr. M. Sprenger

**4. De Officier van Justitie**

**p/a IRC-Amsterdam**

Postbus 84500

1080 BN Amsterdam

The Netherlands

tel: +31 (0)20 - 54 13 696

fax: +31 (0)20 -54 12 175

e-mail: [ircamsterdam@amsarr.drp.minjus.nl](mailto:ircamsterdam@amsarr.drp.minjus.nl)

contact person: Ms. L. Ang

**5. De Officier van Justitie**

**p/a Landelijk IRC**

Postbus 891  
2700 AW Zoetermeer  
The Netherlands  
tel: +31 (0)79 - 345 99 88  
fax: +31 (0)79 - 345 99 80  
e-mail: [jessica.jansen@klpd.politie.nl](mailto:jessica.jansen@klpd.politie.nl)  
contact person: Jessica Jansen

**6. De Officier van Justitie**

**p/a IRC-Noordwest en Midden Nederland**

Postbus 6079  
2001 HB Haarlem  
The Netherlands  
tel: +31 (0)23 - 512 64 92  
fax: +31(0)23 - 512 68 41  
e-mail: [irchaarlem@haaarr.drp.minjus.nl](mailto:irchaarlem@haaarr.drp.minjus.nl)  
contact person: Ms. M.T. Ford-Claasen  
(The telephone and fax numbers were changed in November 2005)

**7. De Officier van Justitie**

**p/a IRC-Den Haag**

Postbus 264  
2501 CG The Hague  
The Netherlands  
tel: +31 (0)70 - 424 16 70  
fax: +31 (0)70 - 424 16 71  
e-mail: [ircdenhaag@tiscali.nl](mailto:ircdenhaag@tiscali.nl)  
contactperson: Mr. L. Den Brabander

**8. De Officier van Justitie**

**p/a IRC-Zuid**

Geer 10

5501 LA Veldhoven

The Netherlands

tel: +31 (0)40 – 233 18 50

fax: +31 (0)40 – 233 18 94

e-mail: <mailto:betty.oosterveen@brabant-zo.politie.nl>

contact person: Mrs Oosterveen (temporary)

**19.2. Languages accepted for certificates pursuant to art. 9(3):**

- Dutch
- English
- In addition to certificates completed in Dutch or English, certificates in another official languages of the Member States of the European Union will be accepted on the condition that they are accompanied by a translation into English.

## **20. POLAND**

### **20.1. Competent authority to receive freezing orders:**

- At trial stage, the District Court (*sad rejonowy*)
- At pre-trial stage, the Circuit Prosecutor's Office (*prokuratura okregowa*)
- A comprehensive list of competent authorities is set out in 7199/06 COPEN 23 EJM 5 EUROJUST 10
- <http://www.ejm-crimjust.europa.eu/ejm/libdocumentproperties.aspx?Id=112>
- 
- .

### **20.2. Languages accepted for certificates pursuant to art. 9(3):**

Polish

## **21. PORTUGAL**

### **21.1. Competent authority to receive freezing orders:**

- The competent Portuguese authority to issue orders freezing property or evidence located in another Member State is the Portuguese judicial authority competent to issue such orders against property located in Portugal
- Requests for the execution of freezing orders must be submitted to the Public Prosecutor's Office [*Ministério Público*].
- The competent authority to execute a freezing order in Portugal is the court with jurisdiction to conduct criminal investigations in the area in which the property or evidence covered by the freezing order is located at the date on which the order is issued. When a freezing order covers more than one item of property or piece of evidence, the competent authority is the court corresponding to the area in which the largest number of items of property or evidence is located. When it is not possible to determine the court within whose area the largest number of items of property or evidence is located, the competent authority is the court which was first notified of the freezing order.

### **21.2. Languages accepted for certificates pursuant to art. 9(3):**

- Portuguese

## **22. ROMANIA**

### **22.1. Competent authority to receive freezing orders:**

- Prosecution Offices (at the prosecution stage) in the circumscription in which the property or evidence subject to the freezing orders is found.
- Courts (at the trial stage) in the circumscription in which the property or the evidence subject to the freezing order is found.
- When the freezing orders refers to more than one item of property or evidence and they are found in the circumscription of more than one judicial authority, the competent authority is the Prosecutor's Office of the District Court of Bucharest or the District Court of Bucharest, depending of the stage of the procedure
- A comprehensive list of competent authorities is set out in 16286/08 COPEN 238 EJM 79 EUROJUST 105

<http://www.ejm-crimjust.europa.eu/ejm/libdocumentproperties.aspx?Id=105>

### **22.2. Languages accepted for certificates pursuant to art. 9(3):**

- Romanian

## **23. SLOVAKIA**

### **23.1. Competent authority to receive freezing orders:**

- District Prosecutors
- The judicial authority of the Slovak Republic authorised to recognise and execute a freezing order is the Public Prosecutor in whose jurisdiction the property or evidence to be frozen on the basis of the freezing order is located at the time the order and certificate are sent.
- For the execution of procedural acts requiring a court decision under Slovakian law, the prosecutor must take the necessary action for such a decision to be issued; the competent court is the court in whose jurisdiction the prosecutor submitting the relevant proposal operates.

### **23.2 Languages accepted for certificates pursuant to art. 9(3):**

- Slovakian

## **24. SLOVENIA**

### **24.1. Competent authority to receive freezing orders:**

- Examining Magistrates at District Courts, according to the location of the object or property to be seized or temporarily protected. In the case of more than one object or type of property, the competent authority is the court for the first object or property mentioned in the decision. If the above rules are not applicable, the District Court of Ljubljana.
- A detailed list of the competent authorities is set out in 8549/08 COPEN 80 EJN 33 EUROJUST 39

There are eleven district courts in Slovenia:

#### **1. Okrožno sodišče v Celju**

Prešernova 22

SLO-3000 Celje

Tel: (+386) 3 427 51 00

Fax: (+386) 3 427 51 73

#### **2. Okrožno sodišče v Kopru**

Ferrarska 9

SLO-6000 Koper

Tel: (+386) 5 668 30 00

Fax: (+386) 5 639 52 47

#### **3. Okrožno sodišče v Novi Gorici**

Kidričeva 14

SLO-5000 Nova Gorica

Tel: (+386) 5 335 17 00

Fax: (+386) 5 335 16 97

#### **4. Okrožno sodišče v Kranju**

Zoisova 2

SLO-4000 Kranj

Tel: (+386) 4 271 12 00

Fax: (+386) 4 271 12 03

#### **5. Okrožno sodišče v Krškem**

Cesta krških žrtev 12

SLO-8270 Krško

Tel: (+386) 7 488 17 00

Fax: (+386) 7 488 17 68

#### **6. Okrožno sodišče v Ljubljani**

Tavčarjeva 9

SLO-1000 Ljubljana

Tel: (+386) 1 366 44 44

Fax: (+386) 1 366 45 18

#### **7. Okrožno sodišče v Novem mestu**

Jerebova ulica 2



SLO-8000 Novo mesto  
Tel: (+386) 7 338 11 00  
Fax: (+386) 7 332 20 58

**8. Okrožno sodišče na Ptuju**

Krempljeva ulica 7  
SLO-2250 Ptuj  
Tel: (+386) 2 748 08 00  
Fax: (+386) 2 748 08 10

**9. Okrožno sodišče v Mariboru**

Sodna ulica 14  
SLO-2000 Maribor  
Tel: (+386) 2 234 71 00  
Fax: (+386) 2 234 73 06

**10. Okrožno sodišče v Murski Soboti**

Slomškova 21  
SLO-9000 Murska Sobota  
Tel: (+386) 2 535 29 00  
Fax: (+386) 2 535 29 45

**11. Okrožno sodišče v Slovenj Gradcu**

Kidričeva 1  
SLO-2380 Slovenj Gradec  
Tel: (+386) 2 884 69 08  
Fax: (+386) 2 884 69 10

**24.2. Languages accepted for certificates pursuant to art. 9(3):**

- Slovenian
- English

## **25. SPAIN**

### **25.1. Competent authority to receive freezing orders:**

- Examining Magistrate (“Juez de Instrucción”) in whose jurisdiction the property or evidence is located.
- Public prosecutors for orders for securing evidence, within their jurisdiction.

### **25.2 Languages accepted for certificates pursuant to art. 9(3):**

- Spanish

## **26. SWEDEN**

### **26.1. Competent authority to receive freezing orders:**

- Public Prosecutors at the international Public Prosecution Offices (in Stockholm, Uppsala, Göteborg, Malmö, Linköping and Sundsvall).
- Public Prosecutors at the Economic Crimes Bureau (in Stockholm, Göteborg and Malmö).
- Outside office hours, regular duty and on-call prosecutors.
- When a freezing order has been executed, the Public Prosecutor shall immediately request the court to verify the declaration that the order can be executed. The competent court is the District Court within whose jurisdiction the freezing order has been executed or, if more than one order has been executed, a District Court within whose jurisdiction one of the freezing orders has been executed.
- A detailed list of the competent authorities (and addresses) is set out in 11728/05 COPEN 125 EJM 44 EUROJUST 48.

#### **Sweden's International Public Prosecution Offices and their respective geographical regions**

##### **1. The International Public Prosecution Office in Stockholm**

Box 70296

107 22 STOCKHOLM

Tel: + 46-8-762 10 00

Fax: + 46-8-762 16 99

E-mail: [registrator.ak.int-stockholm@aklagare.se](mailto:registrator.ak.int-stockholm@aklagare.se)

Counties: Stockholm county, Gotland county

##### **2. The International Public Prosecution Office in Uppsala**

Box 1943

751 49 UPPSALA

Tel: +46-18-710 00

Fax: +46-18-13 62 41

E-mail: [registrator.ak.int-uppsala@aklagare.se](mailto:registrator.ak.int-uppsala@aklagare.se)

Counties: Uppsala county, Värmland county, Örebro county, Västmanland county, Dalarna county, Gävleborg county

##### **3. The International Public Prosecution Office in Göteborg**

Box 2565

403 17 Göteborg

Tel: + 46-31-739 41 00

Fax: + 46-31-701 73 16

E-mail: [registrator.ak.int-goteborg@aklagare.se](mailto:registrator.ak.int-goteborg@aklagare.se)

Counties: Västra Götaland county, Halland county

#### **4. The International Public Prosecution Office in Malmö**

Box 6202

200 11 MALMÖ

Tel: +46-40-664 68 00

Fax: +46-40-10 33 85

E-mail: [registrator.ak.int-malmo@aklagare.se](mailto:registrator.ak.int-malmo@aklagare.se)

Counties: Skåne county, Blekinge county

#### **5. The International Public Prosecution Office in Linköping**

Box 4

581 02 LINKÖPING

Tel: +46-13-24 13 00

Fax: +46-13-24 59 70

E-mail: [registrator.ak.linkoping@aklagare.se](mailto:registrator.ak.linkoping@aklagare.se)

Counties: Södermanland county, Östergötland county, Kalmar county, Kronoberg county, Jönköping county

#### **6. The International Public Prosecution Office in Sundsvall**

Box 721

851 21 SUNDSVALL

Tel: +46-60-18 59 00

Fax: +46-60-18 59 34

E-mail: [registrator.ak.sundsvall@aklagare.se](mailto:registrator.ak.sundsvall@aklagare.se)

Counties: Norrbotten county, Västerbotten county, Jämtland county, Västernorrland county

## **The Economic Crimes Bureau and its respective geographical catchment areas**

### **1. Eastern division of the Economic Crimes Bureau**

Box 821

101 36 STOCKHOLM

Tel: +46-8-762 00 00

Fax: +46-8-762 01 01

E-mail: [registrator.ostra@ekobrottsmyndigheten.se](mailto:registrator.ostra@ekobrottsmyndigheten.se)

Counties: Stockholm county, Gotland county

### **2. Western division of the Economic Crimes Bureau**

Box 2333

403 15 GÖTEBORG

Tel: +46-31-743 18 00

Fax: +46-31-743 19 50

E-mail: [registrator.vastra@ekobrottsmyndigheten.se](mailto:registrator.vastra@ekobrottsmyndigheten.se)

Counties: Västra Götaland county, Halland county

### **3. Southern division of the Economic Crimes Bureau**

Box 27

201 20 MALMÖ

Tel: +46-40-662 28 00

Fax: +46-40-662 29 00

E-mail: [registrator.sodra@aklagarmyndigheten.se](mailto:registrator.sodra@aklagarmyndigheten.se)

Counties: Skåne county, Blekinge county

## **26.2. Languages accepted for certificates pursuant to art. 9(3):**

- Swedish
- Danish
- Norwegian
- English

## **27. UNITED KINGDOM**

### **27.1. Competent authority to receive freezing orders:**

For England, Wales and Northern Ireland:

UK Central Authority

Home Office

5th Floor Fry

2 Marsham Street

London

SW1P 4DF

For Scotland:

International Co-operation Unit

Crown Office

25 Chambers Street

Edinburgh

EH1 1LA

Once its has been received, the order will be directed to a court for a decision on recognition/execution

### **27.2. Languages accepted for certificates pursuant to art. 9(3):**

English.

## **PART 6: RELEVANT CASE LAW OF THE CPURT OF JUSTICE, APPLICABLE TO THE FRAMEWORK DECISION SYSTEM**

### **EUROPEAN COURT OF JUSTICE: JUDGMENTS AND DECISIONS RELATING TO MUTUAL RECOGNITION OF DECISIONS AND JUDICIAL COOPERATION IN CRIMINAL MATTERS WITHIN THE EUROPEAN UNION**

The Court of Justice of the European Union is yet to issue judgment in relation to Framework Decision 2003/577. Nevertheless, it has judged certain aspects of other Framework Decisions based on the principle of mutual recognition (in particular, the European Arrest Warrant), establishing some criteria and interpretations that are applicable to FD 2003/577. In relation to such matters, the following is a summary of the different judgments of the Court of Justice, showing the most relevant fragments in *italics*.

#### **I. Framework Decisions and the principle of interpretation in conformity**

##### **1. ECJ RULING, *Pupino*, Case 105-3 (16 June 2005), OJ C 193 of 06.08.2005, p. 3.**

In spite of the fact that they do not directly affect the national law of Member States, framework decisions are binding upon States as to the result achieved. This binding nature — set forth in article 34 of the Treaty of the European Union, section 2, point b) — in addition to the pre-judicial competence granted to the Court of Justice under Title VI of the former European Union Treaty and the convenience of increasing police and judicial cooperation in criminal matters between Member States, it can be concluded that the principle of interpretation in conformity is applicable to framework decisions.

*«43 In the light of all the above considerations, the Court concludes that the principle of conforming interpretation is binding in relation to framework decisions adopted in the context of Title VI of the Treaty on European Union. When applying national law, the national court that is called upon to interpret it must do so as far as possible in the light of the wording and purpose of the framework decision in order to attain the result which it pursues and thus comply with Article 34(2)(b) EU.»*

National judges are therefore obliged to do their utmost to interpret their laws according to the content of framework decisions and with the aim of achieving the result intended by the decision. Nevertheless, this obligation has limits and even the principle of interpretation in conformity does not allow interpretations of national law *contra legem*, nor those based exclusively on a framework decision that determine or increase the criminal liability of those that violate its provisions.

*«47 The obligation on the national court to refer to the content of a framework decision when interpreting the relevant rules of its national law ceases when the latter cannot receive an application which would lead to a result compatible*

*with that envisaged by that framework decision. In other words, the principle of conforming interpretation cannot serve as the basis for an interpretation of national law contra legem. That principle does, however, require that, where necessary, the national court consider the whole of national law in order to assess how far it can be applied in such a way as not to produce a result contrary to that envisaged by the framework decision.»*

## **II. Offences not subject to verification of double criminality**

### **2. ECJ RULING, *Advocaten voor de Wereld*, Case 303-05 (3 May 2007), OJ C 140 of 23.06.2007, p.3.**

The list of over thirty offences for which Framework Decision 2002/584/JHA eliminates the traditional requirement of verification of double criminality does not breach the principle of legality of criminal law, as the definition of the offences and the punishment applicable — which must consist in a custodial sentence of at least three years — is determined according to the Law of the issuing Member State and, if necessary, subject to the interpretation of its courts.

*«50 This principle implies that legislation must define clearly offences and the penalties which they attract. That condition is met in the case where the individual concerned is in a position, on the basis of the wording of the relevant provision and with the help of the interpretative assistance given by the courts, to know which acts or omissions will make him criminally liable (see, inter alia, European Court of Human Rights judgment of 22 June 2000 in Coëme and Others v Belgium, Reports 2000-VII, § 145).*

*51 In accordance with Article 2(2) of the Framework Decision, the offences listed in that provision give rise to surrender pursuant to a European arrest warrant, without verification of the double criminality of the act, 'if they are punishable in the issuing Member State by a custodial sentence or a detention order for a maximum period of at least three years and as they are defined by the law of the issuing Member State'.»*

Neither does the choice of such offences breach the principle of equality and non-discrimination. It is an objectively justifiable choice based on the nature of the crime or applicable punishment and the serious damage that may be caused to public order and safety, which therefore justifies not requiring a verification of double criminality. In the same respect and in relation to the fact that the imprecise definition of the categories of offences in question could give rise to differences in the implementing of Framework Decision 2002/584/JHA under national law, it should be highlighted that the FD is not aimed at standardising the criminal laws of Member States and that none of the provisions of Title VI of the EU Treaty condition the application of a European Arrest Warrant to the consistency of Member State criminal legislation.

*«59 With regard, second, to the fact that the lack of precision in the definition of the categories of offences in question risks giving rise to disparate implementation of the Framework Decision within the various national legal orders, suffice it to point out that it is not the objective of the Framework Decision to harmonise the substantive criminal law of the Member States and that nothing in Title VI of the EU Treaty, Articles 34 and 31 of which were indicated as forming the legal basis of the Framework Decision, makes the application of the European arrest warrant conditional on harmonisation of the*



*criminal laws of the Member States within the area of the offences in question (see by way of analogy, inter alia, Joined Cases C-187/01 and C-385/01 Gözütok and Brügge [2003] ECR I-1345, paragraph 32, and Case C-467/04 Gasparini and Others [2006] ECR I-0000, paragraph 29).»*

### **III. Grounds for non-recognition or non-execution: *ne bis in idem***

#### **3. ECJ RULING, Gözütok and Brügge, Cases 187-01 and 385-01 (11 February 2003), OJ C 83 of 5.04.2003, p.5.**

According to article 54 of the Convention Implementing the Schengen Agreement (hereinafter, CISA) it can be understood that a person «whose trial has finally been disposed of» in a Member State cannot be prosecuted for the same offence in another Member State. The fact that a decision is not a final judgment and that a court has not intervened does not prevent the application of the principle.

*«26. It is clear from the wording of Article 54 of the CISA that a person may not be prosecuted in a Member State for the same acts as those in respect of which his case has been ‘finally disposed of’ in another Member State.»*

Firstly, because the principle *ne bis in idem* implies the existence of mutual trust by Member States in their respective criminal laws, meaning that they all accept the application of the Law currently in force in other States, even when the application of their own national law would lead to a different solution. Furthermore, but along the same lines, it should be taken into account that neither the provisions of the Treaty of the European Union relating to cooperation in police and criminal matters, nor those of the Schengen Agreement or the CISA itself condition application of the principle *non bis in idem* to the requirement of harmonisation or approximation of national criminal laws.

*«32. Furthermore, it should be pointed out that nowhere in Title VI of the Treaty on European Union relating to police and judicial cooperation in criminal matters (Articles 34 and 31 of which were stated to be the legal basis for Articles 54 to 58 of the CISA), or in the Schengen Agreement or the CISA itself, is the application of Article 54 of the CISA made conditional upon harmonisation, or at the least approximation, of the criminal laws of the Member States relating to procedures whereby further prosecution is barred.*

*33. In those circumstances, whether the *ne bis in idem* principle enshrined in Article 54 of the CISA is applied to procedures whereby further prosecution is barred (regardless of whether a court is involved) or to judicial decisions, there is a necessary implication that the Member States have mutual trust in their criminal justice systems and that each of them recognises the criminal law in force in the other Member States even when the outcome would be different if its own national law were applied.»*

In addition, because the very purpose of the provision – to avoid a person exercising his/her right to movement being prosecuted for the same acts in several Member States — requires the application of *non bis in idem* to all decisions involving the extinction of public prosecution, such as the decision to conclude proceedings as a result of a settlement between the Public Prosecutor’s Office and the accused, as well as the compliance of the accused with certain obligations, such as payment of the amount established by the Public Prosecutor.

«27. A procedure whereby further prosecution is barred, such as those at issue in the main actions, is a procedure by which the prosecuting authority, on which national law confers power for that purpose, decides to discontinue criminal proceedings against an accused once he has fulfilled certain obligations and, in particular, has paid a certain sum of money determined by the prosecuting authority.

37. Furthermore, as the first paragraph of the preamble to the Protocol shows, the integration of the Schengen acquis (which includes Article 54 of the CISA) into the framework of the European Union is aimed at enhancing European integration and, in particular, at enabling the Union to become more rapidly the area of freedom, security and justice which it is its objective to maintain and develop.

48. In the light of the foregoing considerations, the answer to the questions must be that the *ne bis in idem* principle laid down in Article 54 of the CISA also applies to procedures whereby further prosecution is barred, such as the procedures at issue in the main actions, by which the Public Prosecutor in a Member State discontinues, without the involvement of a court, a prosecution brought in that State once the accused has fulfilled certain obligations and, in particular, has paid a certain sum of money determined by the Public Prosecutor.»

**4. ECJ RULING, *Miraglia*, Case 469-03 (10 March 2005), OJ C 132 of 28.05-2005, p.10.**

A decision to file criminal proceedings solely based on the fact that other proceedings are pending in another State relating to the same person and acts cannot be considered as «finally disposed of» according to article 54 CISA, nor therefore allows application of the principle *non bis in idem*.

There are two reasons. The first is that this type of decision does not involve a review of the merits of the case — judging the facts and the accused's involvement. The second is that the linking of such decisions to the excluding nature of *non bis in idem* would benefit criminal impunity in the European Union.

«29 It is clear from the actual wording of Article 54 of the CISA that a person may not be prosecuted in a Member State for the same acts as those in respect of which his case has been 'finally disposed of' in another Member State.

30 Now, a judicial decision, such as that at issue in the case in the main proceedings, taken after the public prosecutor has decided not to pursue the prosecution on the sole ground that criminal proceedings have been initiated in another Member State against the same defendant and in respect of the same acts, but where no determination has been made as to the merits of the case, cannot constitute a decision finally disposing of the case against that person within the meaning of Article 54 of the CISA.

31 The aptness of that interpretation of Article 54 of the CISA is borne out by the fact that it is the only interpretation to give precedence to the object and purpose of the provision rather than to procedural or purely formal matters, which, after all, vary as between the Member States concerned, and to ensure that that article has proper effect.

32 It is in fact settled case-law that the objective of Article 54 of the CISA is to ensure that no one is prosecuted on the same facts in several Member States on account of his having exercised his right to freedom of movement (Joined Cases C-187/01 and C-385/01 *Gözütok and Brügger* [2003] ECR I-1345, paragraph 38).

33 Now, the consequence of applying that article to a decision to close criminal proceedings, such as that in question in the main proceedings, would be to make it more difficult, indeed impossible, actually to penalise in the Member States concerned the unlawful conduct with which the defendant is charged.

34 First, that decision to close proceedings was adopted by the judicial authorities of a Member State when there had been no assessment whatsoever of the unlawful conduct with which the defendant was charged. Next, the bringing of criminal proceedings in another Member State in respect of the same facts would be jeopardised even when it was the very bringing of those proceedings that justified the discontinuance of the prosecution by the Public Prosecutor in the first Member State. Such a consequence would clearly run counter to the very purpose of the provisions of Title VI of the Treaty on European Union, as set out in the fourth indent of the first subparagraph of Article 2 EU, namely: ‘to maintain and develop the Union as an area of freedom, security and justice, in which the free movement of persons is assured in conjunction with appropriate measures with respect to ... prevention and combating of crime’.

35 Consequently, the reply to be given to the question referred has to be that the principle *ne bis in idem*, enshrined in Article 54 of the CISA, does not fall to be applied to a decision of the judicial authorities of one Member State declaring a case to be closed, after the Public Prosecutor has decided not to pursue the prosecution on the sole ground that criminal proceedings have been started in another Member State against the same defendant and for the same acts, without any determination whatsoever as to the merits of the case.»

##### **5. ECJ RULING, *Van Esbroeck*, Case 436-04 (9 March 2006), OJ C 131 of 03.06.2006, p.18.**

The problem of applying the principle *ne bis in idem* only arises when second proceedings are initiated in a Member State against the same person that has already been judged in another State «in respect of the same acts».

The wording, purpose and aim of article 54 CISA leads to the belief that the expression —«same acts»— exclusively means the identity of the material acts involved, irrespective of their legal classification and the protected interest.

«27 In the first place, however, the wording of Article 54 of the CISA, ‘the same acts’, shows that that provision refers only to the nature of the acts in dispute and not to their legal classification.

30 There is a necessary implication in the *ne bis in idem* principle, enshrined in that article, that the Contracting States have mutual trust in their criminal justice systems and that each of them recognises the criminal law in force in the other Contracting States even when the outcome would be different if its own national law were applied (*Gözütok and Brügger*, paragraph 33).

31 *It follows that the possibility of divergent legal classifications of the same acts in two different Contracting States is no obstacle to the application of Article 54 of the CISA.*

32 *For the same reasons, the criterion of the identity of the protected legal interest cannot be applicable since that criterion is likely to vary from one Contracting State to another.*

33 *The above findings are further reinforced by the objective of Article 54 of the CISA, which is to ensure that no one is prosecuted for the same acts in several Contracting States on account of his having exercised his right to freedom of movement (Gözütok and Brügghe, paragraph 38, and Case C-469/03 Miraglia [2005] ECR I-2009, paragraph 32).»*

The key criteria in determining whether or not the facts are identical and therefore to apply the *bis idem* prohibition is the existence of a series of events inexorably linked in time, place and purpose. Any possible difference between the legal classification of such events or the legal interest protected does not constitute an obstacle to its application.

«41 *It follows that the reference made in Article 71 of the CISA to existing United Nations Conventions cannot be understood as hindering the application of the ne bis in idem principle laid down in Article 54 of the CISA, which prevents only the plurality of proceedings against a person for the same acts and does not lead to decriminalisation within the Schengen territory.*

42 *In the light of the above, the answer to the second question must be that Article 54 of the CISA must be interpreted as meaning that:*

- *the relevant criterion for the purposes of the application of that article of the CISA is identity of the material acts, understood as the existence of a set of facts which are inextricably linked together, irrespective of the legal classification given to them or the legal interest protected;*
- *punishable acts consisting of exporting and importing the same narcotic drugs and which are prosecuted in different Contracting States to the CISA are, in principle, to be regarded as ‘the same acts’ for the purposes of Article 54 of the Convention, the definitive assessment in that respect being the task of the competent national courts.»*

Based on the above, the criminal act consisting in the export and import of narcotics in different States could be considered as «the same acts» in the sense of article 54 CISA, however the final decision corresponds to the competent national authorities as to whether or not apply the prohibition of double proceedings and penalties.

« On those grounds, the Court hereby rules:

1. *The ne bis in idem principle, enshrined in Article 54 of the Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders, signed on 19 June 1990 in Schengen, must be applied to criminal proceedings brought in a Contracting State for acts for which a person has already been convicted in another Contracting State even though the Convention was not yet in force in the latter State at the time at which that person was convicted, in so far as the Convention was in force in the*

*Contracting States in question at the time of the assessment, by the court before which the second proceedings were brought, of the conditions of applicability of the ne bis in idem principle.*

2. *Article 54 of the Convention must be interpreted as meaning that:*

- *the relevant criterion for the purposes of the application of that article is identity of the material acts, understood as the existence of a set of facts which are inextricably linked together, irrespective of the legal classification given to them or the legal interest protected;*
- *punishable acts consisting of exporting and importing the same narcotic drugs and which are prosecuted in different Contracting States to the Convention are, in principle, to be regarded as ‘the same acts’ for the purposes of Article 54, the definitive assessment in that respect being the task of the competent national courts.»*

**6. ECJ RULING, Gasparini and others, Case 467/04 (28 September 2006), OJ C 294 of 02.12.2006, p.10.**

The Court of Justice ratifies its doctrine that «the same acts» should be understood as the existence of a set of specific circumstances inextricably linked together, as assessed by the competent national courts for the purposes of applying the principle of *ne bis in idem*. In any event, the Court does not discard the possibility that the sale of goods in another Member State after they are imported to the State in which final judgment has been delivered constitutes «the same act» for the purposes of applying article 54 CISA.

«53 By Question 4(b), the national court essentially asks whether the marketing of goods in another Member State, after their importation into the Member State where the accused was acquitted because the prosecution was time-barred, forms part of the same acts or constitutes conduct independent of importation into the latter Member State.

54 The only relevant criterion for applying the concept of ‘the same acts’ within the meaning of Article 54 of the CISA is identity of the material acts, understood as the existence of a set of concrete circumstances which are inextricably linked together (see Van Esbroeck, paragraph 36).

55 More specifically, a situation such as that at issue in the main proceedings may involve such a set of facts.

56 However, the definitive assessment in this regard is a matter for the competent national courts which are charged with the task of determining whether the material acts at issue constitute a set of facts which are inextricably linked together in time, in space and by their subject-matter (see Van Esbroeck, paragraph 38).

57 It follows from the foregoing that the marketing of goods in another Member State, after their importation into the Member State where the accused was acquitted, constitutes conduct which may form part of the ‘same acts’ within the meaning of Article 54 of the CISA.

On those grounds, the Court (First Chamber) hereby rules:

4. *The marketing of goods in another Member State, after their importation into the Member State where the accused was acquitted, constitutes conduct*

*which may form part of the 'same acts' within the meaning of Article 54 of the Convention.»*

As far as the subjective aspect of the *bis in idem* prohibition is concerned, it can only apply to the persons that have been subject to a final judgment. Time-barred acquittal of an accused person in a Member State will therefore not benefit others accused of the same acts in another State.

*«35 It is clear from the wording of Article 54 of the CISA that only persons who have already had a trial finally disposed of once may derive advantage from the ne bis in idem principle.*

*37 Consequently, the answer to the second question must be that the ne bis in idem principle, enshrined in Article 54 of the CISA, does not apply to persons other than those whose trial has been finally disposed of in a Contracting State.»*

Finally, to the extent that the *bis in idem* prohibition is aimed at ensuring the free movement of persons within the European Union without the fear of being subject to new criminal proceedings for the same acts already disposed of, the term —«finally disposed of» — must be understood as including condemnatory as well as acquitting judgments. The principle of *non bis in idem* is therefore applicable to cases of acquittal, including cases in which such an acquittal is based on the time barring of events giving rise to criminal proceedings under the criminal law of the Member State that finally disposed of the case.

*«27 It is settled case-law that Article 54 of the CISA has the objective of ensuring that no one is prosecuted for the same acts in several Contracting States on account of the fact that he exercises his right to freedom of movement (see Joined Cases C-187/01 and C-385/01 Gözütok and Brügge [2003] ECR I-1345, paragraph 38, and Van Straaten, paragraph 57). It ensures that persons who, when prosecuted, have their cases finally disposed of are left undisturbed. They must be able to move freely without having to fear a fresh prosecution for the same acts in another Contracting State.*

*28 Not to apply Article 54 of the CISA when a court of a Contracting State, following the bringing of criminal proceedings, has made a decision acquitting the accused finally because prosecution of the offence is time-barred would undermine the implementation of that objective. Such a person must therefore be regarded as having had his trial finally disposed of for the purposes of that provision.*

*On those grounds, the Court (First Chamber) hereby rules:*

*1. The ne bis in idem principle, enshrined in Article 54 of the Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders, signed in Schengen on 19 June 1990, applies in respect of a decision of a court of a Contracting State, made after criminal proceedings have been brought, by which the accused is acquitted finally because prosecution of the offence is time-barred.»*

**7. ECJ RULING, Van Straaten, Case 150-05 (28 September 2006) OJ C 294 of 02.12.2006, p.14**

The consideration of «*idem*» as the same material facts allows the conclusion that the export and import of narcotics in different Member States are «the same facts». The decision, which ultimately corresponds to the national authorities, prevents the quantities of narcotics or the persons alleged to have been party to the acts from being different.

«53 In the light of the foregoing, the answer to the first question must be that Article 54 of the CISA must be interpreted as meaning that:

- the relevant criterion for the purposes of the application of that article is identity of the material acts, understood as the existence of a set of facts which are inextricably linked together, irrespective of the legal classification given to them or the legal interest protected;
- in the case of offences relating to narcotic drugs, the quantities of the drug that are at issue in the two Contracting States concerned or the persons alleged to have been party to the acts in the two States are not required to be identical;
- punishable acts consisting of exporting and of importing the same narcotic drugs and which are prosecuted in different Contracting States party to that Convention are, in principle, to be regarded as ‘the same acts’ for the purposes of Article 54 of the Convention, the definitive assessment in that respect being the task of the competent national courts.»

With regard to the «*bis*», even though the wording of article 54 CISA makes no reference to the content of the decision resulting in a *bis in idem* prohibition, a teleological interpretation would lead to the conclusion that the prohibition is applicable to both condemnatory as well as acquitting judgments and therefore to those that acquit the accused on the grounds of a lack of evidence.

«61 Consequently, the answer to the second question must be that the *ne bis in idem* principle, enshrined in Article 54 of the CISA, falls to be applied in respect of a decision of the judicial authorities of a Contracting State by which the accused is acquitted finally for lack of evidence.»

#### **8. ECJ RULING, Kretzinger, Case 288-05 (18 July 2007), OJ C 235 of 06.10.2007, p.4.**

The case reiterates the criteria of the same material acts for the purposes of *non bis in idem*, as a set of facts which are inextricably linked together and that considerations based on the legal interest protected are not to be deemed relevant. In this regard, the Court of Justice considers that the possession of contraband tobacco and the intention to transport it within the internal Schengen area borders is capable of constituting conduct considered as «the same acts», although points out that final assessment corresponds to the competent national courts.

«34 Consequently, it must be confirmed that the competent national courts which are called upon to determine whether there is identity of the material acts must confine themselves to examining whether those acts constitute a set of facts which are inextricably linked together in time, in space and by their subject-matter (see, to that effect, Van Esbroeck, paragraph 38), and considerations based on the legal interest protected are not to be deemed relevant.

35 As regards more specifically a situation such as that at issue in the main proceedings, it should be recalled that the Court has already held that punishable acts consisting of exporting and importing the same illegal goods and which are prosecuted in different CISA Contracting States constitute conduct which may be covered by the notion of 'same acts' within the meaning of Article 54 of the CISA (see, to that effect, *Van Esbroeck*, paragraph 42, *Van Straaten*, paragraph 51, and *Case C-467/04 Gasparini and Others* [2006] ECR I-9199, paragraph 57).

36 The transportation of contraband cigarettes such as those at issue in the main proceedings, involving successive crossings of internal Schengen area borders, is therefore capable of constituting a set of facts covered by the notion of 'same acts'. However, it is for the competent national courts to make a final assessment in that respect; they must determine whether the material acts in question constitute a set of facts which are inextricably linked together in time, in space and by their subject-matter.

37 In the light of the foregoing, the answer to the first question must be that Article 54 of the CISA must be interpreted as meaning that:

- the relevant criterion for the purposes of the application of that article is identity of the material acts, understood as the existence of a set of facts which are inextricably linked together, irrespective of the legal classification given to them or the legal interest protected;
- acts consisting in receiving contraband foreign tobacco in one Contracting State and of importing that tobacco into another Contracting State and being in possession of it there, characterised by the fact that the defendant, who was prosecuted in two Contracting States, had intended from the outset to transport the tobacco, after first taking possession of it, to a final destination, passing through several Contracting States in the process, constitute conduct which may be covered by the notion of 'same acts' within the meaning of Article 54. It is for the competent national courts to make the final assessment in that respect.»

In addition to the identity of the material acts, article 54 CISA subjects the application of *non bis in idem* to the so-called «enforcement condition», in other words to a final custodial sentence that «has been enforced, is actually in the process of being enforced or can no longer be enforced under the laws of the sentencing Contracting Party». In this regard, it can be concluded that when applying the laws of a Contracting State a custodial sentence is issued and the sentence suspended, it must be deemed as «having been enforced» or «in the process of being enforced».

«39 It should be recalled, first, that, in accordance with Article 54 of the CISA, the prohibition on criminal prosecutions for the same acts applies, in the case of a penalty such as that at issue in the main proceedings, only if 'it has been enforced, is actually in the process of being enforced or can no longer be enforced under the laws of the sentencing Contracting Party' ('the enforcement condition').

40 Second, as the Advocate General stated at points 44 and 45 of her Opinion, the mechanism enabling national courts to suspend a sentence if the legal conditions are satisfied is a feature of the criminal systems of the Contracting States.



41 *Mr Kretzinger, the governments which submitted observations in this case and the Commission of the European Communities agree that a person who has been given a suspended custodial sentence must be regarded as having been tried, convicted and sentenced, with all the consequences that the legal system concerned attaches thereto.*

42 *In that respect, it must be noted that, in so far as a suspended custodial sentence penalises the unlawful conduct of a convicted person, it constitutes a penalty within the meaning of Article 54 of the CISA. That penalty must be regarded as ‘actually in the process of being enforced’ as soon as the sentence has become enforceable and during the probation period. Subsequently, once the probation period has come to an end, the penalty must be regarded as ‘having been enforced’ within the meaning of that provision.*

43 *That interpretation, according to which a suspended custodial sentence also satisfies the enforcement condition, is borne out, as stated in particular by the Czech Government and the Commission, by the fact that it would be inconsistent, on the one hand, to regard any deprivation of liberty actually suffered as enforcement for the purposes of Article 54 of the CISA and, on the other hand, to rule out the possibility of suspended sentences, which are normally passed for less serious offences, satisfying the enforcement condition in that article, thus allowing further prosecutions.*

44 *In those circumstances, the answer to question 2(a) must be that, for the purposes of Article 54 of the CISA, it is necessary to consider that a penalty imposed by a court of a Contracting State ‘has been enforced’ or ‘is actually in the process of being enforced’ if the defendant has been given a suspended custodial sentence in accordance with the law of that Contracting State.»*

Nevertheless, for the purposes of considering the «enforcement requirement» as having been met, no relevance is given to the fact that the accused was held on remand and/or taken into police custody. Even if, according to the laws of the sentencing State, the term of custody counts towards any subsequent enforcement of the custodial sentence, the *non bis in idem* prohibition cannot be applied before the accused has been «tried, convicted and sentenced».

«52 *Consequently, the answer to question 2(b) must be that, for the purposes of Article 54 of the CISA, a penalty imposed by a court of a Contracting State is not to be regarded as ‘having been enforced’ or ‘actually in the process of being enforced’ where the defendant was for a short time taken into police custody and/or held on remand pending trial and that detention would count towards any subsequent enforcement of the custodial sentence under the law of the State in which judgment was given.»*

## **9. ECJ RULING, *Kraaijenbrink*, Case 367-05 (18 July 2007), OJ C of 06.10.2007, p.6.**

The Court of Justice again highlights that, for the purposes of article 54 CISA, the term «the same acts» shall mean identical material acts, understood as the existence of a set of concrete circumstances which are inextricably linked together. In addition, to determining the existence of such set of circumstances, the competent national courts must determine whether the material acts in both proceedings constitute a set of acts linked in time, space and subject matter.

«26 In order to answer that question, it should be noted that the Court has already held that the only relevant criterion for the application of Article 54 of the CISA is identity of the material acts, understood as the existence of a set of concrete circumstances which are inextricably linked together (see *Van Esbroeck*, paragraph 36; *Case C-467/04 Gasparini and Others* [2006] ECR I-9199, paragraph 54, and *Case C-150/05 Van Straaten* [2006] ECR I-9327, paragraph 48).

27 In order to assess whether such a set of concrete circumstances exists, the competent national courts must determine whether the material acts in the two proceedings constitute a set of facts which are inextricably linked together in time, in space and by their subject-matter (see, to that effect, *Van Esbroeck*, paragraph 38; *Gasparini and Others*, paragraph 56, and *Van Straaten*, paragraph 52).»

With the aim of determining whether or not the acts are «the same», no relevance should therefore be given to the legal classification of such acts in the Member States involved, nor to the legal interest protected. Neither is criminal intention a sufficient condition on its own to consider the acts as the same. Accordingly, in an issue such as the one giving rise to this judgment, the acts consisting firstly in possessing quantities of money resulting from drug trafficking in a particular State and, secondly, the laundering of quantities of money through money exchange offices located in another State, cannot be considered as «the same acts» for the sole reason that they are linked by the same criminal intention; only if it were possible to establish an objective relationship between the quantities of money, could such consideration be possible.

«29 On the other hand, if the material acts do not make up such an inseparable whole, the mere fact that the court before which the second prosecution is brought finds that the alleged perpetrator of those acts acted with the same criminal intention does not suffice to indicate that there is a set of concrete circumstances which are inextricably linked together covered by the notion of ‘same acts’ within the meaning of Article 54 of the CISA.

31 As regards more specifically a situation such as that at issue in the main proceedings, in which it has not been clearly established to what extent it is the same financial gains derived from the drug trafficking that underlie, in whole or in part, the unlawful conduct in the two Contracting States concerned, it must be stated that, in principle, such a situation can be covered by the notion of ‘same acts’ within the meaning of Article 54 of the CISA only if an objective link can be established between the sums of money in the two sets of proceedings.

36 In the light of the foregoing, the answer to the first question must therefore be that Article 54 of the CISA is to be interpreted as meaning that:

- the relevant criterion for the purposes of the application of that article is identity of the material acts, understood as the existence of a set of facts which are inextricably linked together, irrespective of the legal classification given to them or the legal interest protected;
- different acts consisting, in particular, first, in holding in one Contracting State the proceeds of drug trafficking and, second, in the

*exchanging at exchange bureaux in another Contracting State of sums of money also originating from such trafficking should not be regarded as 'the same acts' within the meaning of Article 54 of the CISA merely because the competent national court finds that those acts are linked together by the same criminal intention;*

- *it is for that national court to assess whether the degree of identity and connection between all the facts to be compared is such that it is possible, in the light of the said relevant criterion, to find that they are 'the same acts' within the meaning of Article 54 of the CISA.»*

#### **10. ECJ RULING, Bourquain, Case 299-07 (11 December 2008), OJ C 32 of 7.02.2009, p.5.**

The *bis in idem* prohibition can apply in criminal proceedings conducted in a State based on acts for which the accused was convicted in another State, even if under the laws of the latter, the conviction has not been enforced as a result of specific features of procedure of the laws of such State. In particular, the fact that the judgment was rendered in absentia does not prevent it from being «disposed of», given that article 54 CISA does not exclude this type of judgment from its scope of application, even when the legislation of the sentencing State grants the person convicted in absentia the right to a new hearing or trial in his/her presence.

*«The ne bis in idem principle, enshrined in Article 54 of the Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders, signed in Schengen (Luxembourg) on 19 June 1990, is applicable to criminal proceedings instituted in a Contracting State against an accused whose trial for the same acts as those for which he faces prosecution was finally disposed of in another Contracting State, even though, under the law of the State in which he was convicted, the sentence which was imposed on him could never, on account of specific features of procedure such as those referred to in the main proceedings, have been directly enforced.*

*35 In the first place, according to the actual wording of Article 54 of the CISA, judgments rendered in absentia are not excluded from its scope of application, the sole condition being that there has been a final disposal of the trial by a Contracting Party.»*

Even the fact that a judgment given in absentia cannot be enforced until a trial or hearing is held after locating the person concerned would not prevent the «enforcement requirement» from being considered as met. In this regard, the only relevant issue is to determine whether or not, at the time the second criminal proceedings initiated in another Member State in relation to the same acts and person already judged, the sentence imposed has been enforced, is being enforced or can no longer be enforced under the laws of the sentencing State.

*40 However, the sole fact that the proceedings in absentia would, under French law, have necessitated the reopening of the proceedings if Mr Bourquain had been arrested while time was running in the limitation period applicable to the penalty, and before he benefited from the amnesty, that is, between 26*

*January 1961 and 31 July 1968, does not, in itself, mean that the conviction in absentia cannot be regarded as a final decision within the meaning of Article 54 of the CISA.*

*48 It follows that the condition regarding enforcement referred to in that article is satisfied when it is established that, at the time when the second criminal proceedings were instituted against the same person in respect of the same acts as those which led to a conviction in the first Contracting State, the penalty imposed in that first State can no longer be enforced according to the laws of that State.*

There are three situations in which the penalty imposed can no longer be enforced: the type of penalty imposed at the time has been abolished according to the law of the convicting State (death penalty); amnesty has been decreed; or the penalty has been time-barred.

**11. ECJ RULING, Turanský, Case 491-07 (22 December 2008), OJ C 44 of 21.02.2009, p.19.**

To determine whether a trial has been «disposed of», according to the wording of article 54 CISA, it is necessary to ascertain if the Law of the State whose authorities have adopted the decision considers it as final, therefore giving rise to the protection granted under the principle of *non bis in idem* in such State. In other words: a decision that does not definitively bar further prosecution at a national level cannot constitute a procedural obstacle to the opening or continuation of criminal proceedings in respect of the same acts against that person in another Contracting State.

*«36 A decision which does not, under the law of the first Contracting State which instituted criminal proceedings against a person, definitively bar further prosecution at national level cannot, in principle, constitute a procedural obstacle to the opening or continuation of criminal proceedings in respect of the same acts against that person in another Contracting State.»*

Such is the case that gives rise to this judgment: an order to suspend criminal enquiries issued by the police authorities prior to the charging of a person suspected of a crime did not, under the national law of the State, bar further prosecution.

*«45 In the light of the foregoing, the answer to the question referred must be that the ne bis in idem principle enshrined in Article 54 of the CISA does not fall to be applied to a decision by which an authority of a Contracting State, after examining the merits of the case brought before it, makes an order, at a stage before the charging of a person suspected of a crime, suspending the criminal proceedings, where the suspension decision does not, under the national law of that State, definitively bar further prosecution and therefore does not preclude new criminal proceedings, in respect of the same acts, in that State.*

*On those grounds, the Court (Sixth Chamber) hereby rules:*

*The ne bis in idem principle enshrined in Article 54 of the Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders, signed in Schengen (Luxembourg) on 19 June 1990, does not fall to be applied to a decision by which an authority of a Contracting State,*

*after examining the merits of the case brought before it, makes an order, at a stage before the charging of a person suspected of a crime, suspending the criminal proceedings, where the suspension decision does not, under the national law of that State, definitively bar further prosecution and therefore does not preclude new criminal proceedings, in respect of the same acts, in that State.»*

## **12. ECJ RULING, Mantello, Case 261/09 (16 November 2010), OJ C 13 of 15.01.2011, p. 13**

The Court of Justice again issued a ruling on the content and scope of *non bis in idem*, in the more specific area of the issue and enforcement of a European arrest warrant.

For the Court of Justice, here the concept of «the same acts» is also an independent concept of European Union Law, the interpretation of which coincides with that of the Court itself in relation to the Convention Interpreting the Schengen Agreement. For the purposes therefore of FD 2002/584/JHA, the term «the same acts» must be understood as a set of concrete circumstances that are inextricably linked together, irrespective of the legal classification or legal interest protected.

*«38 In that regard, the concept of ‘same acts’ in Article 3(2) of the Framework Decision cannot be left to the discretion of the judicial authorities of each Member State on the basis of their national law. It follows from the need for uniform application of European Union law that, since that provision makes no reference to the law of the Member States with regard to that concept, the latter must be given an autonomous and uniform interpretation throughout the European Union (see, by analogy, Case C-66/08 Koszłowski [2008] ECR I-6041, paragraphs 41 and 42). It is therefore an autonomous concept of European Union law which, as such, may be the subject of a reference for a preliminary ruling by any court before which a relevant action has been brought, under the conditions laid down in Title VII of Protocol No 36 to the Treaty on the Functioning of the European Union on transitional provisions.*

*39 It should be recalled that that concept of the ‘same acts’ also appears in Article 54 of the CISA. In that context, the concept has been interpreted as referring only to the nature of the acts, encompassing a set of concrete circumstances which are inextricably linked together, irrespective of the legal classification given to them or the legal interest protected (see Case C-436/04 Van Esbroeck [2006] ECR I-2333, paragraphs 27, 32 and 36, and Case C-150/05 Van Straaten [2006] ECR I-9327, paragraphs 41, 47 and 48).»*

A different situation is the Court’s consideration of the term «finally judged», given that it is determined according to the national law of the sentencing Member State. Accordingly, only when a final sentence can be considered as such under the sentencing State’s national law can further prosecution be definitively barred and the *bis in idem* prohibition applied.

*«45 In that regard, a requested person is considered to have been finally judged in respect of the same acts within the meaning of Article 3(2) of the Framework Decision where, following criminal proceedings, further prosecution is definitively barred (see, by analogy, Joined Cases C-187/01 and C-385/01 Gözütok and Brügge [2003] ECR I-1345, paragraph 30, and Case C-491/07 Turanský [2008] ECR I-11039, paragraph 32) or where the judicial authorities*

*of a Member State have adopted a decision by which the accused is finally acquitted in respect of the alleged acts (see, by analogy, Van Straaten, paragraph 61, and Turanský, paragraph 33).*

*46 Whether a person has been 'finally' judged for the purposes of Article 3(2) of the Framework Decision is determined by the law of the Member State in which judgment was delivered.*

*47 Thus, a decision which, under the law of the Member State which instituted criminal proceedings against a person, does not definitively bar further prosecution at national level in respect of certain acts cannot, in principle, constitute a procedural obstacle to the possible opening or continuation of criminal proceedings in respect of the same acts against that person in one of the Member States of the European Union (see, by analogy, Turanský, paragraph 36).»*

The novelty of the Mantello Judgment with respect to *bis in idem* lies in the establishing that the State enforcing a European Arrest Warrant cannot independently decide to proceed or therefore refuse surrender when the issuing judicial authority expressly states in reply to a request for information by the executing State that the previous sentence is not a final judgment relating to the same acts resulting in the enquiries requested under the arrest warrant.

*«On those grounds, the Court hereby rules:*

*For the purposes of the issue and execution of a European arrest warrant, the concept of 'same acts' in Article 3(2) of Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States constitutes an autonomous concept of European Union law.*

*In circumstances such as those at issue in the main proceedings where, in response to a request for information within the meaning of Article 15(2) of that Framework Decision made by the executing judicial authority, the issuing judicial authority, applying its national law and in compliance with the requirements deriving from the concept of 'same acts' as enshrined in Article 3(2) of the Framework Decision, expressly stated that the earlier judgment delivered under its legal system did not constitute a final judgment covering the acts referred to in the arrest warrant issued by it and therefore did not preclude the criminal proceedings referred to in that arrest warrant, the executing judicial authority has no reason to apply, in connection with such a judgment, the ground for mandatory non-execution provided for in Article 3(2) of the Framework Decision.»*

## **PART 7: PROBLEMS, RECOMMENDATIONS AND GOOD PRACTICE**

For the purpose of gathering information on the practical experiences of legal practitioners in the use of the freezing order pursuant to FD 2003/577/JHA a questionnaire was prepared and sent to Judges, Public Prosecutors, Ministries of Justice and other relevant persons and institutions in Member States of the European Union and others closely linked to the Union (the questionnaire itself and a list of recipients are attached at Annex 2). The answers received show some common problems, to which recommendations and good practice are proposed below.

### **1. Insufficient knowledge of FD 2003/577/JHA and the relevant internally transposed laws**

In general, the answers provided to the questionnaire reveal a widespread lack of knowledge of this legislative instrument, as well as of the national laws relating to freezing orders.

Amongst others, the following results provide an indication of the above:

- (a) The large number of answers that do not reply specifically or claim a lack of sufficient knowledge or experience to provide a solution.
- (b) The frequency at which questions relating to objective issues (*e.g.* what are the competent judicial authorities in your country to recognise or execute a freezing order or in what language must a freezing order be sent to another Member State?) were incorrectly answered or not exactly according to the national legislation governing the issue.
- (c) The also high frequency at which the answer provided did not correctly relate to the context of the question.
- (d) The regularity at which there was an absence of a reply to certain questions requiring a personal opinion on the application of FD 2003/577/JHA and its practical deficiencies.

#### **Recommendations and good practice**

This lack of knowledge is not unknown to legal practitioners, which have in fact highlighted the need for more training and information on the measures that would enable a more effective implementation of FD 2003/577/JHA by Member States.

Training requires the programming of specific courses for legal practitioners on the principle of mutual recognition of judicial decisions, in general, and this instrument in particular, as well as the relevant internally transposed laws.

Following the example set by Finland, the preparation of a handbook will allow legal practitioners involved in freezing orders to firstly obtain the necessary information to apply them. The recommendation by Eurojust to prepare a specific Atlas for the instrument, similar to that of the EAW, would also substantially contribute to facilitating its implementation. In this regard, the EJN states that the Atlas is being developed and it is therefore foreseeable that it will be available in the near future.

## **2. Confusing of regulations or mechanisms provided under mutual recognition instruments, in particular with the European Arrest Warrant**

Answers provided in the questionnaire include references to solutions available under the European Arrest Warrant, which is almost the only legislative mutual recognition instrument to which reference is made. To determine the competent authority for executing a freezing order or securing evidence, the answer is often the EJM Atlas. What is worthy of mention, however, is that at the time the questionnaire was sent and completed, the Atlas available on the EJM network only referred to the competent authority for a EAW and it cannot be assumed at all that such authority is also competent to execute a freezing order. There is obviously a great deal of confusion between the tools available for both (EAW and FO).

It could also be true that such confusion exists not only in relation to the tools, but also the mechanism itself. Although the EAW and FO instruments apply the same principle (mutual recognition of judicial decisions), they are different in a number of practical aspects. For example, a characteristic of all mutual recognition instruments is the need to document them by means of a certificate that is predetermined by European legislation, as an annex to the framework decision or directive that proclaims the instrument. Nevertheless, when applying a European arrest warrant and European evidence warrant, it is only necessary to send the certificate. In all other cases, the certificate must be accompanied by the judicial decision subject to mutual recognition. It appears that these differences are only the result of technical legislative deficiencies at a Community level and not based on any particular logic, thus creating difficulties for legal practitioners, who are unable to use the same system for both instruments.

Another classic example is whether or not a judicial decision subject to mutual recognition needs to be translated when sent with the certificate. Translation is not required with an order to freeze property or secure evidence (although highly recommendable). However, other mutual recognition instruments, such as those relating to fines and confiscation provide for the suspension of execution of an order for the time required to obtain translation, the costs of which are assumed by the executing State and not reimbursable, given that Member States may renounce reciprocal claims for ordinary expenses resulting from the application of such legislation. The regulations governing mutual recognition of custodial sentences are different. Although the general system of translating the certificate is observed, upon adopting the framework decision, or at a later date, Member States may declare that, as an executing State, if the content of the certificate is considered insufficient to decide whether or not to execute the sentence, they may request that the judgment or fundamental content thereof be translated into the official language. The general rule in such cases is that the cost of translation is paid by the issuing State, although the possibility of the executing State deciding to meet the expense of translation, without reimbursement, is also possible.

### Recommendations

It would appear necessary that Community legislators ensure the coherence of all legislative instruments that apply the same principle: the principle of mutual recognition of judicial decisions, thus making the mechanisms similar as far as practical implementation is concerned, today possible under current legislation.



### **3. Non-independent nature of the freezing order and securing of evidence instrument: need for previous and subsequent instruments of judicial cooperation based on conventional mutual assistance**

Certain answers to the questionnaire revealed the fragmented nature of the system created for mutual recognition of freezing orders and securing of evidence, which is necessarily based on other instruments and does not cover the entire process necessary to locate property, confiscate or secure and transfer it.

Accordingly:

- Confiscation requires a previous financial investigation: only then can it be determined if the property exists, the exact nature thereof and where it is located. Therefore, the issuing of a certificate must be preceded by a request for conventional assistance to carry out an investigation and only when the results are available, can the issuing State send a confiscation order based on mutual recognition.
- Similarly, the securing of evidence requires knowing where it is located and even a report issued to confirm that it is the evidence to be secured (for example, a particular weapon located in State B which, before State requests that it be secured, must be subject to a ballistic examination to ensure that it is the weapon used to commit the crime investigated in State A). In such cases, different supplementary instruments must be used (either of a conventional nature or other mutual recognition instruments, such as the EEW).
- In addition, with regard to the transfer of evidence to the issuing state after it has been secured, a letter rogatory is required for mutual legal assistance based on a convention, even if the request for transfer was sent previously with a certificate.
- The transfer of frozen property takes for granted that it has to be confiscated, which could also be structured conventionally or by means of a mutual recognition system relating to confiscation orders; this issue despite is announced in the freezing order certificate, although carried out a later date.

This results in legal practitioners still preferring to use conventional channels of mutual legal assistance, given that in a single letter rogatory, they can request all of these steps consecutively, which means that the mechanism is simpler and facilitates the achieving of the intended purpose.

#### **Recommendations**

The different mutual recognition instruments must be integrated into one sole legislative instrument — Directive —, in such a way that they can be used jointly and not successively, thus allowing overall and not fragmented acts by the issuing and executing authorities.

### **4. Practical difficulties relating to the complex wording of the form appearing in the Annex to FD 2003/577/JHA, difficulties in completing it and doubts as to whether or not it is mandatory**

The lack of experience in applying instruments explains the fact that many States did not observe deficiencies in the form to be used to complete the certificate sent with a freezing order to the competent judicial authority of the executing Member State.

This, however, does not mean that they do not exist; quite the contrary. As mentioned, the 2010 Eurojust Report stated that the form was one of greatest practical obstacles to the application of FD 2003/577/JHA, given the unnecessary complexity of the wording and subsequent difficulties involved in completing the form, as compared to other requests for MLA.

In this regard, the following should be highlighted:

(a) some of the information required in the form is irrelevant — or, at least, not essential — for the executing State to reach a decision on recognition and execution. Such is the case, for example, of information relating to the competent authority to execute a freezing order in the issuing State.

(b) the way in which certain fields are worded leads to confusion.

(c) with certain exceptions, the form does not indicate what sections exclude others, or are mandatory or optional. For example, in the case that the issuing State is either the United Kingdom or Ireland, the doubt could also arise as to whether the fields relating to the issuing judicial authority of the freezing order must/may be completed, given that communications with such States must be through a central authority.

(d) The form is not available to Member States in a multilingual format, which thus increases the problems of translation. Neither does it help that in certain States, it is impossible to complete it online.

The EJM website is developing an electronic mechanism to enable the certificate to be completed online:

[http://www.ejm-crimjust.europa.eu/ejm/EJM\\_QuickLinks.aspx?id=23](http://www.ejm-crimjust.europa.eu/ejm/EJM_QuickLinks.aspx?id=23)

which, in addition to a multilingual version, would undoubtedly facilitate completion of the certificate substantially.

(e) The form is missing fields that could be of use. For example, a field relating to the receiving authority of the certificate. If, unlike what occurs with an EAW, a freezing order must be sent to the executing authority of a specific State because the property confiscated or evidence to be secured is located in such State, and this would recommend that the form contain a field to complete the information on the authority to which the certificate is being sent.

(f) The information required for the certificate is insufficient in certain specific cases. Section f) Part 2 requires the exact location of the property. It should indicate not only the location, but also the reasons or proof the issuing State possesses to believe the property is at such location. This is because particular measures to check whether or not the property can be found at the stated location may be necessary, depending on whether there is proof or a mere indication.

The same reason is applicable to the following section (Section f) Point 3). Not only is it necessary to indicate who has custody of the property or evidence, or the actual beneficiary thereof, as required according to the current wording of the form, but it is also considered essential that the issuing authority provide details on the relationship between such person and the person suspected or convicted of the offence. The legal consequences in the executing State will vary according to the type of relationship (front man, spouse) and the information is therefore relevant and should be included in the certificate.

These deficiencies, in addition to the reality - which the FD appears to admit – that Member States do not use the form, increase the risk of uncertainty as to whether it is mandatory or not and, in practice, lead precisely to the latter.

### Recommendations and good practice

In the training and information provided to legal practitioners, it should be made clear that it is mandatory to send the certificate appearing in the Annex to FD 2003/577/JHA together with the freezing order.

In the future, it would be advisable to re-draft the form, in order to: (1) eliminate the sections or information that are not essential in relation to the objectives pursued by the instrument; (2) include other sections in the certificate that may be of use, such as a field for the receiving authority; (3) provide greater clarity in certain sections, and; (4) include closed fields whenever necessary to indicate their optional/mandatory or consecutive/excluding nature.

The new form should also be available to Member States in a multilingual version and possible to complete and send online.

Until such time, States should complete the form with the information available and resort to EJM or Eurojust contact points to resolve any doubts that may arise.

## **5. Bilateral transfer of freezing orders and the securing of evidence: the absence of a sole European area to locate the property to be frozen or evidence to be secured**

The need to know the exact location of the property to be seized or evidence secured is a basic premise of a freezing order under the FD. However, the locating premise does not exist in other instruments of mutual recognition, particularly in the EAW, in which a warrant for arrest is issued for enforcement anywhere within the European Union.

It is obvious that in criminal proceedings, a vehicle could be the instrument used to commit a crime and therefore evidence to be secured, or the proceeds of the crime and therefore subject to seizure for subsequent confiscation. Perfectly identifiable by means of its registration plate and/or chassis number, the vehicle could be registered on the SIS, thereby activating the alert in the entire European area, even though its exact location is not known. At present, a freezing order can only be issued when the exact location of the vehicle is known, but is not possible until a specific receiving authority has been identified, even if generic (competent authority of the executing State in which the property is located) which, on the contrary, is possible under an EAW.

Accordingly, the current FD regulation of freezing orders, which only allows transfer on a bilateral basis, increases the fragmented nature of the instrument by making it necessary to resort to other means in order to be fully effective.

### Recommendations

Community legislation should consider the possibility of issuing a freezing order without a specific receiving authority, in order for it to be effective when the property is located in any State of the European Union.

## **6. The need to specify the property subject to a freezing order, without the possibility of seizing a determined amount of non-specified property**

Another of the deficiencies indicated by the answers to the questionnaire is that the excessive specification of the property to be seized can lead to the instrument being less effective, particularly when the aim is to seize the proceeds of a crime or the equivalent value. The situation could arise in which the specific property is not at the location indicated, however other property belonging to the accused is discovered and is enough to cover the amount to be frozen. Under the current regulations, the freezing of the other property is impossible and requires a new freezing order, which would take a minimum amount of time and enable the accused to dispose of the property or conceal it and thus frustrate the process.

### Recommendations

When dealing with the proceeds of crime or the equivalent value thereof, Community legislation should allow the seizure of a certain amount of non-specified property, therefore making the instrument much more flexible and efficient.

## **7. Difficulties arising when the possessor or beneficiary of the property subject to a freezing order is a third party**

Not only is it essential for the executing authority to know the relationship between a third party and the accused, the availability of other information that is legally relevant can also be decisive in the executing of a freezing order. Accordingly, the knowledge that the third-party possessor or co-owner of the property is the spouse of the accused and the type of matrimonial regime could be a determining factor. It should be recalled that the executing of the order takes place according to the legislation of the executing State and that it may therefore be necessary to adopt certain special measures, according to the type of matrimonial regime involved (for example, certified notice given to a non-accused spouse) or the freezing order being legally impossible. Other information is of equal importance, such as the type of legal person and liability of its shareholders, when the property is registered in the name of one of such shareholders.

### Recommendations

To make it mandatory to send supplementary factual as well as legal information, whenever foreseeable by the issuing authority that such information could be legally relevant in the executing State.

## **8. Difficulty in deciding on the recognition and execution of a freezing order in 24 hours: the possibility of extending the deadline to make it more realistic and include a section in the certificate to indicate that the measure is urgent**

Under the current regulations, the recognition and execution of a judicial decision to issue a freezing order and the securing of evidence is always urgent and must take place immediately, if possible, within 24 hours.

Many of the answers to the questionnaire stated that the deadline was not realistic, although in the majority of cases, details were provided as to how the respective national legislations had included urgent procedures to resolve the issue. It was extremely frequent that in such urgent cases, the deadlines were normally met.

Nevertheless, this should be considered in light of the obvious fact that the freezing order instrument is scarcely used in the European Union and that if the instrument were

widely implemented, it could be assumed that the deadlines imposed under national laws would not be met.

### Recommendations

It therefore appears necessary to extend deadlines and also consider the possibility, when necessary, for the issuing authority to state that a freezing order or securing of evidence is urgent and certain certificates be given preference over others, according to such a classification based on the specific circumstances of the case.

## **9. Absence of a filter of proportionality in the mutual recognition instrument of a freezing order and securing of evidence**

It is essential for processes of mutual recognition and execution of foreign criminal sentences to be subject to a decision based on proportionality by the issuing authority, before the order is sent, or a cause for refusal of execution be included, especially when it requires an urgent process and the immediate decision by the executing State, as mentioned above.

The process that begins with the issuing and sending of freezing order cannot be justified if the property located in the executing State is of an extremely low value, even if the crime committed is included in the 32 categories of article 3.2 FD and especially if it is not.

In relation to other mutual recognition instruments, especially those relating to financial penalties (FD 2005/214/JHA), a fine of lower than 70 Euros or an equivalent amount is grounds for refusal.

However, there is no reference to amount in the framework decision on freezing orders or confiscation, which could give rise to a situation in which the executing judicial authority is obliged to recognise and execute freezing and confiscation orders for trivial amounts, below 70 Euros.

### Recommendations

Community legislation should include a proportionality clause as grounds for refusal or an issuing requirement.

## **10. Recognising and executing authority of a freezing order when it relates to property located in different places in the executing State and is therefore subject to different "jurisdictions"**

This issue has only been dealt with by certain internal legislations that have transposed the FD. In the case of Romania, according to the answers to the questionnaire, its legislation has granted jurisdiction in such cases to the Public Prosecutor's Office or the Court of Bucharest (depending on the phase of proceedings). In Finland, all authorities that are competent because the property is located in their jurisdiction are also competent to seize such property outside their jurisdiction. Nevertheless, the issue has not been generally resolved in transposed legislation and will undoubtedly be a cause for delay in executing securing measures.

### Recommendations

National laws transposing the FD should expressly indicate the competent judicial authority when the aim is to seize or secure several assets located in different parts of the executing State's territory.

## **11. Competent judicial authority to recognise and execute a freezing order when it relates to different crimes and the competent authority in the executing State is determined according to the crime committed**

In the case of the United Kingdom, the legislation implementing the FD can only be applied when the property subject to the freezing order is related to terrorism, given that it has only been implemented for such crimes. In addition, there are certain special cases concerning the securing of evidence (which nevertheless has been implemented, irrespective of the crime committed). In such cases, this can hinder the identification of the authority to receive a freezing order and require greater knowledge of the legal system of the executing State, which is often not easy to obtain.

### Recommendations

Mechanisms should be provided, such as the EJM website, to enable all legal practitioners in the European Union to correctly identify the competent authority to recognise and execute a freezing order, even when such authority changes because the crime is different to that subject to the order. In this regard, it is essential to implement a specific atlas for freezing orders, similar to the EAW atlas.

## **12. Deficient regulation of the grounds for refusal of recognition and execution**

The grounds for refusal of recognition or execution of a freezing order and/or securing of evidence do not coincide with those applicable to other mutual recognition instruments. This is of special importance when a freezing order is related to a confiscation order. The statute of limitation of an offence does not affect the recognition of a freezing order, but is structured as grounds for refusal of confiscation. This means that, irrespective of the statute of limitation, a freezing order would have to be recognised and executed, even if the subsequent confiscation of the frozen property could be refused on such grounds.

### Recommendations

It is essential for Community legislation to coherently deal with the common issues that affect closely linked mutual recognition instruments, such as freezing orders and confiscation of property.

## **13. Seizing of property based on non-condemnatory judgments**

Some of the answers to the questionnaire referred to the problem of the procedure of freezing property subject to non-condemnatory judgments, such procedures being typical in common law legal systems. The doubts arise as to whether or not they are applicable under Community freezing order legislation.

The freezing of property based on a non-condemnatory judgment can be considered as a civil matter (*v.gr.*: when the purpose of such property is to compensate the victim). In such case, Council Regulation 44/2001, of 22 December 2000, relating to jurisdiction

on the recognition and enforcement of judgments in civil and commercial matters is applicable.

In addition, an order to freeze property based on a non-condemnatory judgment could involve final confiscation of the property (v.gr.: proceeds of the crime), allowing its consideration as a criminal resolution that may be structured under Council Framework Decision 2006/783/JHA, of 6 October 2006, relating to the application of the principle of mutual recognition of confiscation orders (it could eventually be necessary to previously use a freezing order in urgent cases, based on FD 2003/577/JHA).

Finally, an order based on non-condemnatory judgment may contain a payment order which, in such case, could imply application of Council Framework Decision 2005/214/JHA, of 24 February 2005, relating the application of the principle of mutual recognition to financial penalties.

### Recommendations

Community legislators should have contemplated the special nature of these proceedings and the EU legislation itself decided whether or not to admit them in relation to freezing order regulations.

## **14. Difficulties in distinguishing the measures involving the seizing property under national proceedings from others that may order recognition and execution in another Member State pursuant to the FD**

In many Member States, property that can be frozen is not only the proceeds of a crime, the equivalent value or the instrument or object of such crime, but also the property that can be used to compensate the victim for the damages incurred, under criminal proceedings (civil liability, which is the case in Spain and Sweden). However, the mutual recognition instrument consisting in a freezing order cannot be used in the case of civil liability, which must be structured in accordance with Council Regulation 44/2001 of 22 December 2000, relating to jurisdiction, recognition and enforcement of judgments in civil and commercial matters.

### Recommendations

Legislation transposing the FD must make it clear that a freezing order cannot be issued for such reason, as is not covered by Community regulations on the freezing of property and securing of evidence based on mutual recognition.

## **15. What judicial authority must be notified in the event an appeal is filed in the executing State? Does it make sense for the issuing State – what authority? – to be able to file pleadings relating to the appeal when it cannot review to the substance of the matter?**

With respect to appeals, it should be pointed out that some of the answers to the questionnaire stated that the substance of the matter, in other words, the reasons for the issue of a freezing order or the securing of evidence by the issuing authority could also be questioned in the executing State (such is the case in Germany, the United Kingdom and Portugal, for example, in spite of the fact that the wording of the FD clearly limits

the possibility of filing an appeal in the issuing State). In light of such transposed laws, it is important for the executing State to notify the issuing State when an appeal is filed, in order for it to submit allegations. Notice should be given to the issuing authority, notwithstanding the fact that the internal law of its State will determine whether or not it is such authority or another that is entitled to submit the relevant allegations in the executing State.

### Recommendations

Transposed laws must refer in detail to the procedure of notifying the issuing authority and the procedure required to file allegations in the executing State. The issue has not been sufficiently covered in the laws transposing the FD.

## **16. Consistency of the solution provided in cases in which a certificate or translation has not been sent, or the information provided by the issuing State is not sufficient: suitability of allowing a "remedy" in all cases and establishing a reasonable period of time for such remedy to be carried out**

With respect to the certificate, the provisions of the FD are contradictory, given that they either consider it essential or make no reference whatsoever to it.

On the one hand, the certificate is considered as an essential document, given that an incomplete certificate constitutes grounds for refusal of recognition, with the option granted of a period to remedy the defect, even though the grounds for refusal are optional. Other optional grounds for refusal of a certificate are that it manifestly does not correspond to the freezing or securing order, by placing more importance on the certificate than the order itself.

However the possibility is also contemplated of a certificate being missing, in which case a period of time may be granted to remedy the situation or the executing authority accept an equivalent document, or even waive submission of the certificate, if it possesses sufficient information, thus placing more importance on the judicial decision resulting in the freezing order or securing of evidence than to the certificate itself.

This range of possibilities under the Framework Decision may not be contradictory upon implementation, as it opens up the possibility for each Member State to adopt a particular system. However, even in light of this possibility, the system can be criticised in that it causes serious complications for legal practitioners attempting to determine the option chosen in each of the 27 national legislations that transpose the FD into their own legal systems.

### Recommendations

It would have been much better for Community legislators to have been much more decisive in placing more importance on the order or certificate and, in any event, have made a remedy compulsory with a predetermined deadline that is coherent with the limited period of time available to the executing authority to decide with respect to recognition and execution.

## **17. The effect of *lis pendens* on recognition and execution of freezing orders**



Although the principle of *ne bis in idem* is regulated by the FD as grounds for refusal of recognition and execution, there is no reference made to *lis pendens*, in other words, when the executing State discovers upon receiving a freezing order that several Member States (be they issuing or executing or other States) are conducting criminal proceedings in relation to the same facts and that more than one State wishes to freeze or secure particular property. Community legislation does not determine what order should be given preference, if neither has been executed, which may give rise to different criteria (*v.gr.*: the first order issued or received by the executing State, or the issuing State in the best position to conclude the criminal proceedings), nor to whether or not the executing State should suspend recognition and execution of both or one of the orders until the conflict of jurisdiction has been resolved.

#### Recommendations

Community legislation should regulate the effects of *lis pendens* on the recognition and execution of freezing orders and, as the case may be, expressly refer the parties to Council Framework Decision 2009/948/JHA of 30 November 2009, on prevention and settlement of conflicts of exercise of jurisdiction in criminal proceedings and determine what measures should be taken meanwhile by the executing State to ensure the effectiveness of the order or securing of evidence until the conflict is resolved.

### **18. Competent authority to recognise and execute a freezing order when it relates to property already subject to a freezing measure in other criminal proceedings**

Several freezing orders may have been issued in relation to the same property under criminal proceedings dealing with different subject matters. In such case, once a freezing order has been executed, the second should be suspended until the first order is lifted (art. 8.1.c) FD). The problem arises when two different executing authorities receive freezing orders, given that the lifting of the first measure will be ordered by one executing authority — the competent authority for the first freezing order -, but would not be known to the second authority – the one which effectively suspended the second freezing order -.

#### Recommendations

National legislations must contain a basic jurisdiction rule to determine the executing authority of a freezing order, so that when an order is issued in relation to specific property, all subsequent orders to freeze or secure the same property are under the jurisdiction of the same executing authority, meaning that such authority may carry out second or successive orders, depending on the final result of the former.

### **19. Absence of a procedure for claiming reimbursement of the amounts paid by the executing State in damages**

None of the answers provided to the questionnaire gave details on the procedure to be followed by the executing State to claim the amounts paid in damages from the issuing State as a result of the execution of a freezing order received from such issuing State.

#### Recommendations

All transposing laws should have regulated this procedure, both from the perspective of the executing State recovering amounts paid from the issuing State, as well as from the perspective of the State issuing a freezing order. Community legislation should also

contemplate the possibility of a conflict existing between such States in relation to the amount to be paid and provide for a mechanism to resolve such conflicts accordingly.

## **20. Cases in which a freezing order involves the freezing of property that cannot be seized or is subject to conditions under the internal law of the executing State**

Although the FD includes grounds for refusal consisting in the fact that under the law of the executing State there exists immunity or privilege, preventing the execution of a freezing order or for securing of evidence, the doubt that may arise is whether or not this category should include cases in which property cannot be seized, under the internal law of the executing State.

### Recommendations

Community legislation governing freezing orders should have defined what is understood, from a Community perspective, as immunity and if the category should include cases of property that cannot be seized under the law of the executing State.

## **21. Lack of provision in certain legal systems (*v.gr.* Spain, in relation to measures ordered by a public prosecutor to secure evidence and the Czech Republic) for "appeals" against freezing order measures**

Since Community legislation clearly establishes that the grounds for the issue of a freezing order can only be challenged before the issuing authority, it is essential that such remedies be regulated by the internal legislation of the issuing State. However, in some cases, there is no provision.

### Recommendations

Transposing laws must ensure that remedies exist in their legal systems for the accused or bona fide third parties to be able to challenge the grounds for an issuing authority ordering a freezing order or the securing of evidence.

## **22. Reluctance of certain Member States to send/receive freezing orders directly to the competent judicial authorities and related problems (*v.gr.*: added difficulties in completing the certificate)**

The difficulties in identifying the competent judicial authority have led to many legal practitioners considering it more advisable for a central authority to exist, receive the order and forward to the competent authority. It also means that other ways of sending the order that are not provided for in legislation may be used (as suggested by the Spanish answer to the questionnaire, relating to the frequency with which each Member State uses its national Eurojust office).

### Recommendations

Community legislation relating to the principle of mutual recognition must clearly determine how it would be affected by the existence of central authorities. It does not appear that the principle would be undermined by the existence of a central authority in each Member State, whose sole purpose is to receive or forward a freezing order to another State, thus ensuring the security of the transfer and authenticity of the order. However, it does undermine the principle of mutual recognition when such central authorities play a decisive role in the issue and executing of freezing orders, given that

such roles must be exclusively played by judicial authorities. A clear explanation of this distinction in Community legislation would be an incentive to Member States to grant uniform powers to their respective central authorities, thereby to a certain extent unifying the concept which, with respect to content, varies considerably from one Member State to another.

### **23. Consistency with respect to the channels used to send/receive a freezing order certificate: security versus speed**

The flexible formula set forth in the FD with respect to the channels used to send and receive a certificate and freezing order has given rise to a wide range of different situations: some States treat receiving and sending channels with certain flexibility, whereas others opt exclusively for one single channel. This results in further difficulty for the issuing authority, which must refer to the specific provisions set forth in the legislation of the executing State.

#### **Recommendations**

As a single area of freedom, security and justice, the European Union must opt for a single channel for judicial authorities to communicate amongst themselves and the choice must be based on modern technology, in order to combine the necessary security and speed of communications required to effectively transfer and execute freezing orders.

## **ANNEX 1: EXPLANATORY TABLES REGARDING THE IMPLEMENTATION OF THE FRAMEWORK DECISION BY NATIONAL LEGISLATIONS**

## ANNEX 1

### EXPLANATORY TABLES REGARDING THE IMPLEMENTATION OF THE FD BY NATIONAL LEGISLATIONS

#### 1. AUSTRIA

##### General state of implementation (Legislation; entry into force date):

- Implemented by means of the Federal Act on judicial co-operation with EU Member States in criminal matters (*Bundesgesetz über die justizielle Zusammenarbeit in Strafsachen mit den Mitgliedstaaten der Europäischen Union*; known as 'EU-JZG')
- Entry into force: 2 August 2005

##### Competent authority to receive the freezing orders:

Regional Court of First Instance (*Landesgericht erster Instanz*) with jurisdiction where the property or evidence is situated. A detailed list of the Austrian competent authorities is set out in 16187/06 COPEN 123 EJM 27 EUROJUST 54.

##### Languages accepted for certificates pursuant to art. 9(3):

- German
- Other languages are also accepted on the basis of reciprocity, ie, on condition that the Member State in question, as the executing State, also accepts certificates in German.

##### Links:

<http://www.ris.bka.gv.at/Bundesrecht/>

[http://www.consilium.europa.eu/ueDocs/cms\\_Data/docs/polju/en/EJM700.pdf](http://www.consilium.europa.eu/ueDocs/cms_Data/docs/polju/en/EJM700.pdf)

<http://www.ejm-crimjust.europa.eu/ejm/libdocumentproperties.aspx?Id=106>

##### Implementation of particular provisions of the FD 2003/577:

<i>Article in the Framework Decision</i>	<i>Implementation</i>
Article 1 (Scope)	No explicit implementation. See, however, S. 1(1)1. EU-JZG
2(a) [Definition of 'issuing State']	S. 2(6) EU-JZG
2(b) [Definition of 'executing State']	S. 2(7)(b) EU-JZG
2(c) [Definition of 'freezing order']	S. 2(2) EU-JZG.
2(d) [Definition of 'property']	Implementation not necessary. Follows on from the Code of Criminal Procedure. <sup>2</sup>

<sup>2</sup> Information provided by Austria to the GSC.

2(e) [Definition of ‘evidence’]	Implementation not necessary. Follows on from the Code of Criminal Procedure. <sup>3</sup>
3(1)(a) [Freezing orders securing evidence]	S. 45(1) EU-JZG
3(1)(b) [Freezing orders for subsequent confiscation of property]	S. 45(2) EU-JZG
3(2) [List of offences to which the double criminality test does not apply]	S. 45(3) EU-JZG
3(3) [Council’s authority for future amendments or extensions of the previous list]	No implementation needed.
3(4) [Other offences]	S. 45(1) and (2) EU-JZG
4(1) [Direct transmission of the order to the competent authority for recognition/execution in the executing State]	S. 51(1) in conjunction with s. 14(1) and s. 14(3) EU-JZG
4(2) [Transmission through a central authority of orders sent to the UK or Ireland]	Not relevant to Austria
4(3) [Inquiries to find out what the competent authority for execution is]	S. 14(4) EU-JZG
4(4) [Re-direction of an order to the competent authority for execution within the executing State]	S. 14(6) EU-JZG
5(1), paragraph 1 [Immediate recognition and enforcement of the order is due, unless grounds for refusal or postponement]	S. 46(1) EU-JZG
5(1), paragraph 2 [Execution of the order with formalities indicated by the issuing State]	S. 46(2) EU-JZG
5(1), paragraph 3 [Report on the execution sent to the issuing State]	S. 46(3) EU-JZG
5(2) [Law of the executing State applicable to execution]	S. 46(2) EU-JZG
5(3) [Communication to the issuing State within 24 hours]	S. 46(3) EU-JZG
6(1) [Freezing remains until requests from the issuing State have been responded]	S. 49 EU-JZG

<sup>3</sup> Information provided by Austria to the GSC.

6(2) [Possibility to limit the period of the freezing]	Last sentence of s. 49 EU-JZG
6(3) [Duty to communicate the lifting of the order to the executing State]	Not implemented, although Austria considers that explicit implementation is unnecessary for this provision of the FD to be complied with when necessary.
7(1)(a) [Grounds for non-recognition or non-execution: problems with certificate]	S. 47(1)(1) EU-JZG
7(1)(b) [Grounds for non-recognition or non-execution: immunity or privilege]	S. 47(1)(2) EU-JZG
7(1)(c) [Grounds for non-recognition or non-execution: <i>ne bis in idem</i> ]	S. 47(1)(3) EU-JZG
7(1)(d) [Grounds for non-recognition or non-execution: double criminality test]	S. 47(2) EU-JZG
7(2)(a) [Deadline to complete a proper certificate before refusal]	Second sentence of s. 45(4) EU-JZG
7(2)(b) [Possibility to accept an 'equivalent document' instead of a proper certificate before refusal]	Not implemented.
7(2)(c) [Possibility to accept recognition/execution the order despite the lack of a proper certificate when sufficient information has been provided]	Final half-sentence of s. 45(4) EU-JZG
7(3) [Due notification of refusal to the issuing State]	S. 50 in conjunction with s. 14(3) EU-JZG
7(4) [Practical impossibility to execute the order; due notification to the issuing State]	S. 50 EU-JZG
8(1)(a) [Grounds for postponement: risks to an ongoing criminal investigation]	S. 48(3) EU-JZG
8(1)(b) [Grounds for postponement: evidence or property already frozen within criminal proceedings]	S. 48(1) EU-JZG
8(1)(c) [Grounds for postponement: property already frozen according to an order given within any non-criminal proceedings in the executing State, as long as, under national law, this order has priority over subsequent national freezing orders given within criminal proceedings]	S. 48(1) EU-JZG

8(2) [Due notification of postponement to the issuing State]	S. 50 in conjunction with s. 14(3) EU-JZG
8(3) [Immediate execution once the ground for postponement has ceased; due notification to the issuing State]	S. 48(2) and final half-sentence of (3) EU-JZG
8(4) Information to the issuing State about any other restraint measures to which the property is subjected	Implementation not necessary, because according to Austrian Criminal Procedure there are no other restraint measures in place which the issuing State should be informed about. <sup>4</sup>
9(1) Necessary certificate with standard form is to accompany the order when it is transmitted to the executing State (Annex)	First sentence of s. 45(4) EU-JZG; the requirement that the certificate should be signed by the competent judicial authorities of the issuing State and its contents certified as accurate also follows on from the certificate attached to EU-JZG under Annex III.
9(2) Need to translate the certificate into one of the official languages of the executing State	S. 51(2) EU-JZG
9(3) Possibility to accept a translation in other languages (as long as they are official languages of the EU institutions)	S. 51(2) EU-JZG
10(1)(a) Possible request for the evidence to be transferred to the issuing State when transmitting the order & certificate	First half-sentence of s. 49 EU-JZG (conversely); also follows on from box h) of the certificate attached to EU-JZG under Annex III.
10(1)(b) Possible request for confiscation to be transferred to the issuing State when transmitting the order & certificate	First half-sentence of s. 49 EU-JZG (conversely); also follows on from box h) of the certificate attached to EU-JZG under Annex III.
10(1)(c) Instruction in the certificate asking the executing State to maintain the freezing pending a subsequent request for transferring the evidence or for confiscation of the property	Follows on from box h) of the certificate attached to EU-JZG under Annex III.
10(2) Submission and processing of requests for transferring the evidence or for confiscation of the property: governed by rules applicable to mutual assistance in criminal matters and to international cooperation relating to confiscation	Follows on from the European Convention on Mutual Assistance in Criminal Matters of 20.4.1959. <sup>5</sup>

<sup>4</sup> Information provided by Austria to the GSC.

<sup>5</sup> Information provided by Austria to the GSC.



10(3) Requests for transferring evidence may not be refused on grounds double criminality where the request concerns an offence listed in article 3(2)	S. 45(3) EU-JZG, a provision which applies pursuant to s. 45(2) EU-JZG to assets subject to subsequent confiscation, levies on unjust enrichment or forfeiture.
11(1) Legal remedies without suspensive effect not only in the issuing State but also in the executing State	S. 46(1) EU-JZG
11(2) Actions based on substantive reasons against the freezing order may only be brought in the issuing State	S. 46(1) EU-JZG (conversely, because in this case there is only a legal remedy against the <u>decision to execute</u> a freezing order).
11(3) Actions brought in the executing State (based on procedural grounds only): due information to the issuing State and its right to submit arguments	Final sentence of s. 46(1) and second sentence of s. 50 EU-JZG
11(4) States' duty to take measures to provide information about legal remedies	Is guaranteed by publication of the EU-JZG text in the Federal Law Gazette (Bundesgesetzblatt).
11(5) Time-limits for bringing an action against the freezing order shall guarantee the possibility of an effective legal remedy	S. 46(1) EU-JZG
12(1) The issuing State shall reimburse to the executing State any sums paid in damages caused by the execution of the order, unless injury is exclusively due to the executing State's conduct.	Austria holds that no separate implementation necessary, since general regulations on liability follows on from the laws relating to damages.
12(2) National laws about compensation of damage will always apply	Austria holds that no separate implementation necessary, since general regulations on liability follows on from the laws relating to damages.
13 Application to Gibraltar	No implementation needed
14(1) National measures for implementation of the FD	Article III(3)(b) of the 2005 amending law on criminal procedure, Federal Law Gazette (Bundesgesetzblatt) I No. 164/2004.
14(2) Duty to communicate measures for implementation to the GSC and the Commission; reports thereof; Council's assessment thereof	No implementation needed.
14(3) Duty of the GSC to notify Member States and the Commission of declarations made under article 9(3)	No implementation needed.

15 Entry into force of the FD	No implementation needed.
Annex: Certificate provided for in art. 9	Annex III EU-JZG

### Comments about implementation

A court order is necessary for recognition/execution for the purpose of examining grounds for refusal or postponement: S. 46(1) EU-JZG: “The court of first instance in whose district the property or evidence is located shall decide on the execution of a freezing order issued by another Member State”.

Definition of ‘freezing order’ [S. 2(2) EU-JZG]: a ‘freezing order’ is regarded as a *procedural* measure in a criminal case; it may have three different purposes: not only (i) securing evidence and (ii) securing property for subsequent confiscation, but also (iii) ‘securing an order for levies on unjust enrichment’.

## 2. BELGIUM

### General state of implementation (Legislation; entry into force date):

- Implemented by means of the Act relating to the application of the principle of mutual recognition of judicial decisions in criminal matters within the European Union (*Loi relative à l'application du principe de reconnaissance mutuelle des décisions judiciaires en matière pénale entre les Etats membres de l'Union européenne*), dated on 5 August 2006.
- Entry into force: 17 September 2006

### Competent authority to receive the freezing orders:

- Public Prosecutor of the Courts of First Instance with jurisdiction where the property or evidence is situated (Parquets auprès des tribunaux de première instance).
- Once the order is received, the Prosecutor should transfer it to the 'investigating judge' (juge d'instruction), who is the true Belgian 'executing authority'.
- When the issuing State has doubts, the Central Authority for Seizure and Confiscation (Organe Central des saisies et confiscation) may be consulted.
- A detailed list of the competent authorities is set out in 14288/06 COPEN 109 EJM 25 EUROJUST 49.

### Languages accepted for certificates pursuant to art. 9(3):

- French
- Dutch
- German
- English

### Links:

<http://www.ejustice.just.fgov.be/loi/loi.htm>

[http://www.consilium.europa.eu/ueDocs/cms\\_Data/docs/polju/FR/EJM691.pdf](http://www.consilium.europa.eu/ueDocs/cms_Data/docs/polju/FR/EJM691.pdf)

<http://www.ejm-crimjust.europa.eu/ejm/libdocumentproperties.aspx?Id=97>

### Implementation of particular provisions of the FD 2003/577:

<i>Article in the Framework Decision</i>	<i>Implementation</i>
Article 1 (Scope)	Article 2, §1, Article 7 §1, 3°
2(a) [Definition of 'issuing State']	Article 2 §2,
2(b) [Definition of 'executing State']	Article 2 §2, in fine
2(c) [Definition of 'freezing order']	Article 9 The implementing Act uses the notion of 'seizure' ( <i>saisie</i> ), rather than 'freeze' ( <i>gel</i> ), since 'seizure' is the term commonly used under Belgium law.
2(d) [Definition of 'property']	See. art. 35 and 89 of the <i>code d'instruction criminelle</i>

2(e) [Definition of ‘evidence’]	See. art. 35 and 89 of the <i>code d’instruction criminelle</i>
3(1)(a) [Freezing orders securing evidence]	See. art. 35 and 89 of the <i>code d’instruction criminelle</i>
3(1)(b) [Freezing orders for subsequent confiscation of property]	See. art. 35 and 89 of the <i>code d’instruction criminelle</i>
3(2) [List of offences to which the double criminality test does not apply]	Article 6 §2
3(3) [Council’s authority for future amendments or extensions of the previous list]	No implementation needed.
3(4) [Other offences]	Article 6 §1, Article 11
4(1) [Direct transmission of the order to the competent authority for recognition/execution in the executing State]	Article 3 §1
4(2) [Transmission through a central authority of orders sent to the UK or Ireland]	Not relevant to Belgium.
4(3) [Inquiries to find out what the competent authority for execution is]	Article 3 §2, paragraph 2
4(4) [Re-direction of an order to the competent authority for execution within the executing State]	Article 3 §3, paragraph 2
5(1), paragraph 1 [Immediate recognition and enforcement of the order is due, unless grounds for refusal or postponement]	Article 4 §1 and § 2
5(1), paragraph 2 [Execution of the order with formalities indicated by the issuing State]	Article 4 §2 paragraph 2
5(1), paragraph 3 [Report on the execution sent to the issuing State]	Article 14 §1
5(2) [Law of the executing State applicable to execution]	Article 4 §2
5(3) [Communication to the issuing State within 24 hours]	Article 12 §1
6(1) [Freezing remains until requests from the issuing State have been responded]	Article 16 §1,3°
6(2) [Possibility to limit the period of the freezing]	Article 16 §1,1° and §2 and §3

6(3) [Duty to communicate the lifting of the order to the executing State]	Article 16 §1,2° and article 18 §3
7(1)(a) [Grounds for non-recognition or non-execution: problems with certificate]	Article 7 §2
7(1)(b) [Grounds for non-recognition or non-execution: immunity or privilege]	Article 7 §1,1°
7(1)(c) [Grounds for non-recognition or non-execution: <i>ne bis in idem</i> ]	Article 7 §1,2°
7(1)(d) [Grounds for non-recognition or non-execution: double criminality test]	Article 6 §3
7(2)(a) [Deadline to complete a proper certificate before refusal]	Article 7 §2
7(2)(b) [Possibility to accept an ‘equivalent document’ instead of a proper certificate before refusal]	Article 7 §2
7(2)(c) [Possibility to accept recognition/execution the order despite the lack of a proper certificate when sufficient information has been provided]	Article 7 §2
7(3) [Due notification of refusal to the issuing State]	Article 14 §1 et §5
7(4) [Practical impossibility to execute the order; due notification to the issuing State]	Article 14 §3
8(1)(a) [Grounds for postponement: risks to an ongoing criminal investigation]	Article 13,1°
8(1)(b) [Grounds for postponement: evidence or property already frozen within criminal proceedings]	Article 13, 2°
8(1)(c) [Grounds for postponement: property already frozen according to an order given within any non-criminal proceedings in the executing State, as long as, under national law, this order has priority over subsequent national freezing orders given within criminal proceedings]	Not implemented.
8(2) [Due notification of postponement to the issuing State]	Article 14 §1 and article 14 §5

8(3) [Immediate execution once the ground for postponement has ceased; due notification to the issuing State]	Article 14 §2 and article 14 §5
8(4) Information to the issuing State about any other restraint measures to which the property is subjected	Article 14 §4
9(1) Necessary certificate with standard form is to accompany the order when it is transmitted to the executing State (Annex)	Article 3 §1
9(2) Need to translate the certificate into one of the official languages of the executing State	Article 3 §2, paragraph 1, and §3
9(3) Possibility to accept a translation in other languages (as long as they are official languages of the EU institutions)	Article 3 §3
10(1)(a) Possible request for the evidence to be transferred to the issuing State when transmitting the order & certificate	Article 18 §2
10(1)(b) Possible request for confiscation to be transferred to the issuing State when transmitting the order & certificate	Article 18 §2
10(1)(c) Instruction in the certificate asking the executing State to maintain the freezing pending a subsequent request for transferring the evidence or for confiscation of the property	Article 18 §2
10(2) Submission and processing of requests for transferring the evidence or for confiscation of the property: governed by rules applicable to mutual assistance in criminal matters and to international cooperation relating to confiscation	Article 17 §1
10(3) Requests for transferring evidence may not be refused on grounds double criminality where the request concerns an offence listed in article 3(2)	Article 17 §2
11(1) Legal remedies without suspensive effect not only in the issuing State but also in the executing State	Article 15 §1
11(2) Actions based on substantive reasons against the freezing order may only be brought in the issuing State	Article 15 §2

11(3) Actions brought in the executing State (based on procedural grounds only): due information to the issuing State and its right to submit arguments	Article 15 §1, paragraph 1
11(4) States' duty to take measures to provide information about legal remedies	Not implemented
11(5) Time-limits for bringing an action against the freezing order shall guarantee the possibility of an effective legal remedy	No explicit implementation. Under article 15, it seems as though an action for the lifting of the order may be brought at any moment within the proceedings.
12(1) The issuing State shall reimburse to the executing State any sums paid in damages caused by the execution of the order, unless injury is exclusively due to the executing State's conduct.	Not implemented.
12(2) National laws about compensation of damage will always apply	Not implemented.
13 Application to Gibraltar	No implementation needed
14(1) National measures for implementation of the FD	No implementation needed
14(2) Duty to communicate measures for implementation to the GSC and the Commission; reports thereof; Council's assessment thereof	No implementation needed
14(3) Duty of the GSC to notify Member States and the Commission of declarations made under article 9(3)	No implementation needed
15 Entry into force of the FD	No implementation needed
Annex: Certificate provided for in art. 9	Annex: Certificate provided for in art. 3§1

### Comments about implementation

About art. 7(1)(a) of the FD [Grounds for non-recognition or non-execution: problems with certificate], implemented by Article 7 §2, Belgium informs the GSC: "The willingness of the designers of the Framework Decision was to allow some flexibility in the use of the certificate, see Article 4. The text of the bill differs from the framework decision to align with the draft Framework Decision on confiscation" ("La volonté des concepteurs de la décision-cadre était de laisser une certaine flexibilité dans l'utilisation du certificat, voyez article 4 §1. Le texte du projet de loi s'écarte de la décision-cadre afin de s'aligner sur le projet de décision-cadre confiscation").

About art. 8(1)(c) of the FD [Grounds for postponement: property already frozen according to an order given within any non-criminal proceedings in the executing State, as long as, under national law, this order has priority over subsequent national freezing orders given within criminal proceedings], Belgium informs the GSC that it has not been implemented, because, “given the uncertainty about the scope of this provision, the judicial authorities consulted on the project have suggested not to implement it” (“*Vu l’incertitude sur la portée de cette disposition, les autorités judiciaires consultés sur le projet ont suggéré de ne pas la transposer*”).

About art. 11(4) of the FD [States’ duty to take measures to provide information about legal remedies], Belgium informs the GSC that it has not been implemented, because: “This obligation to provide information exists under Belgian law on confiscation but not on seizure. The provision here would discriminate against domestic situations. To ensure the implementation of this provision, the Code of Criminal Procedure should be revised accordingly” (“*Cette obligation d’information existe en droit belge en matière de confiscation mais pas en matière de saisie. La prévoir ici créerait une discrimination par rapport aux situations internes. Pour assurer la transposition de cette disposition, le code d’instruction criminelle devra être révisé en conséquence*”).

11(5) Time-limits for bringing an action against the freezing order shall guarantee the possibility of an effective legal remedy: No explicit implementation. It seems as though an action for the lifting of the order may be brought at any moment within the proceedings (Article 15)

About art. 12 of the FD [The issuing State shall reimburse to the executing State any sums paid in damages caused by the execution of the order, unless injury is exclusively due to the executing State’s conduct; National laws about compensation of damage will always apply], Belgium informs the GSC that it has not been implemented, because “this provision is exclusively addressed to the Belgian government, which is directly bound by the framework decision, and does not require implementation” (“*Cette disposition s’adresse exclusivement au gouvernement belge qui est directement lié par la décision-cadre et ne nécessite pas de transposition*”).



### 3. BULGARIA

#### General state of implementation (Legislation; entry into force date):

- Implemented by means of the Act on recognizing, executing and making orders for freezing property or evidence (Prom. SG. 59/21 Jul 2006)
- Entry into force: on the date of entry into force of Bulgaria's EU Accession Treaty (01/01/2007)

#### Competent authority to receive the freezing orders:

Sofia City Court.

A mandatory hearing is to be held before this Court in order to decide whether the order is recognized, refused or postponed (arts. 6 and 8 of the Act).

If recognition is granted, then execution of the order is to be carried out by "the respective competent authority in accordance with the procedure set forth in the Civil Procedure Code" (art. 11 of the Act).

After execution, Sofia City Court must also rule on requests made under art 10(1) of the FD (art. 16 of the Act).

#### Languages accepted for certificates pursuant to art. 9(3):

Bulgarian

#### Links:

Code of criminal procedure:

[http://www.mjeli.government.bg/Npk/docs/CRIMINAL\\_PROCEDURE\\_CODE.pdf](http://www.mjeli.government.bg/Npk/docs/CRIMINAL_PROCEDURE_CODE.pdf)

Code of civil procedure: <http://archive.bild.net/legislation/docs/4/ccp.html>

#### Implementation of particular provisions of the FD 2003/577:

<i>Article in the Framework Decision</i>	<i>Implementation</i>
Article 1 (Scope)	Article 1
2(a) [Definition of 'issuing State']	Additional Provision §1.1
2(b) [Definition of 'executing State']	Additional Provision §1.2
2(c) [Definition of 'freezing order']	Article 2
2(d) [Definition of 'property']	Additional Provision §1.3
2(e) [Definition of 'evidence']	Additional Provision §1.4
3(1)(a) [Freezing orders securing evidence]	Art. 1
3(1)(b) [Freezing orders for subsequent confiscation of property]	Art. 1
3(2) [List of offences to which the double criminality test does not apply]	Art. 5(2)

3(3) [Council's authority for future amendments or extensions of the previous list]	No implementation needed.
3(4) [Other offences]	Art. 5(1)
4(1) [Direct transmission of the order to the competent authority for recognition/execution in the executing State]	Art. 6, art. 7, art. 21(2)
4(2) [Transmission through a central authority of orders sent to the UK or Ireland]	Not relevant.
4(3) [Inquiries to find out what the competent authority for execution is]	Not implemented.
4(4) [Re-direction of an order to the competent authority for execution within the executing State]	Not implemented.
5(1), paragraph 1 [Immediate recognition and enforcement of the order is due, unless grounds for refusal or postponement]	Arts. 8(1), 8(3)
5(1), paragraph 2 [Execution of the order with formalities indicated by the issuing State]	Art. 12(2); art. 20
5(1), paragraph 3 [Report on the execution sent to the issuing State]	Art. 8(4)
5(2) [Law of the executing State applicable to execution]	Arts. 12(1), 13
5(3) [Communication to the issuing State within 24 hours]	Art. 8(4), but no deadline applicable. Art. 14
6(1) [Freezing remains until requests from the issuing State have been responded]	Art. 15(1)
6(2) [Possibility to limit the period of the freezing]	Art. 15(2)
6(3) [Duty to communicate the lifting of the order to the executing State]	Art. 15(3) and art. 22
7(1)(a) [Grounds for non-recognition or non-execution: problems with certificate]	Art. 9(1)-1
7(1)(b) [Grounds for non-recognition or non-execution: immunity or privilege]	Art. 9(1)-2
7(1)(c) [Grounds for non-recognition or non-execution: <i>ne bis in idem</i> ]	Art. 9(1)-3

7(1)(d) [Grounds for non-recognition or non-execution: double criminality test]	Art. 5(3), art. 9(1)-4
7(2)(a) [Deadline to complete a proper certificate before refusal]	Art. 8(2), art. 9(2)-1
7(2)(b) [Possibility to accept an ‘equivalent document’ instead of a proper certificate before refusal]	Art. 8(2), art. 9(2)-2
7(2)(c) [Possibility to accept recognition/execution the order despite the lack of a proper certificate when sufficient information has been provided]	Art. 8(2), art. 9(2)-3
7(3) [Due notification of refusal to the issuing State]	Art. 8(4)
7(4) [Practical impossibility to execute the order; due notification to the issuing State]	Art. 9(3)
8(1)(a) [Grounds for postponement: risks to an ongoing criminal investigation]	Art. 10(1)-1
8(1)(b) [Grounds for postponement: evidence or property already frozen within criminal proceedings]	Art. 10(1)-2
8(1)(c) [Grounds for postponement: property already frozen according to an order given within any non-criminal proceedings in the executing State, as long as, under national law, this order has priority over subsequent national freezing orders given within criminal proceedings]	Art. 10(1)-3
8(2) [Due notification of postponement to the issuing State]	Arts. 8(4), 8(5), 10(2)
8(3) [Immediate execution once the ground for postponement has ceased; due notification to the issuing State]	Art. 10(3)
8(4) Information to the issuing State about any other restraint measures to which the property is subjected	Art. 8(5)
9(1) Necessary certificate with standard form is to accompany the order when it is transmitted to the executing State (Annex)	Art. 3(1)

9(2) Need to translate the certificate into one of the official languages of the executing State	Art. 3(2) and (3)
9(3) Possibility to accept a translation in other languages (as long as they are official languages of the EU institutions)	Not foreseen
10(1)(a) Possible request for the evidence to be transferred to the issuing State when transmitting the order & certificate	Art. 4(1),2
10(1)(b) Possible request for confiscation to be transferred to the issuing State when transmitting the order & certificate	Art. 4(1),1
10(1)(c) Instruction in the certificate asking the executing State to maintain the freezing pending a subsequent request for transferring the evidence or for confiscation of the property	Art. 4(2)
10(2) Submission and processing of requests for transferring the evidence or for confiscation of the property: governed by rules applicable to mutual assistance in criminal matters and to international cooperation relating to confiscation	Art. 16(2), 16(3)
10(3) Requests for transferring evidence may not be refused on grounds double criminality where the request concerns an offence listed in article 3(2)	Art. 16(4)
11(1) Legal remedies without suspensive effect not only in the issuing State but also in the executing State	Art. 17(1); 17(5); 23(1); 23(2)
11(2) Actions based on substantive reasons against the freezing order may only be brought in the issuing State	Art. 17(2)
11(3) Actions brought in the executing State (based on procedural grounds only): due information to the issuing State and its right to submit arguments	Art. 17(3); 23(3)
11(4) States' duty to take measures to provide information about legal remedies	Art. 17(4); 23(4)
11(5) Time-limits for bringing an action against the freezing order shall guarantee the possibility of an effective legal remedy	Art. 17(1) -14 days-

12(1) The issuing State shall reimburse to the executing State any sums paid in damages caused by the execution of the order, unless injury is exclusively due to the executing State's conduct.	Art. 18
12(2) National laws about compensation of damage will always apply	Art. 18
13 Application to Gibraltar	No implementation needed.
14(1) National measures for implementation of the FD	No implementation needed.
14(2) Duty to communicate measures for implementation to the GSC and the Commission; reports thereof; Council's assessment thereof	No implementation needed.
14(3) Duty of the GSC to notify Member States and the Commission of declarations made under article 9(3)	No implementation needed.
15 Entry into force of the FD	No implementation needed.
Annex: Certificate provided for in art. 9	Certificate (included at the end of the Act's text)

### **Comments about implementation**

4(1) [Direct transmission of the order to the competent authority for execution in the executing State], implemented by arts 6 and 7: email and fax are valid for transferring, but, after a fax or email, the Sofia City Court (the executing authority, when Bulgaria acts as executing State) may demand original documents via express post.

#### **Procedure:**

1) Mandatory hearing for recognition before Sofia City Court: Art. 8. (1) of the Act: "Upon receiving the freezing order and the certificate, Sofia City Court shall institute proceedings and shall forthwith assign the hearing of the case. The Court shall hear the case in a closed session in a panel of one judge."

2) If recognition is granted, then execution of the order is to be carried out by "the respective competent authority in accordance with the procedure set forth in the Civil Procedure Code" (art. 11 of the Act).

3) After execution, Sofia City Court must also rule on requests made under art 10(1) of the FD (art. 16 of the Act).

Definition of "seizure".- The Act (Additional provision §1.5) includes a definition of the term "seizure", which "shall mean the confiscation of property or its seizure in favour of the State in connection with a crime referred to in Art. 5."

Expenses connected with execution.- Concluding provision §2 specifically states that “the expenses connected with the execution of the freezing order inside the territory of the Republic of Bulgaria as an executing State shall be borne by the Republic of Bulgaria”.

## 4. CYPRUS

### General state of implementation (Legislation; entry into force date):

- Partially implemented by means of the “Prevention and Suppression of Money Laundering Activities Law [Law No. 188(I)/2007]”, known as the Anti- Money Laundering Legislation (AML).
- Entry into force: 01.01.2008. Prior to this date, provisions of the FD on the execution of orders freezing *property* (not evidence) were covered by already existing national legislation (the “Prevention and Suppression of Money Laundering Activities Laws of 1996 – 2004”).
- No further information on implementation has been provided by the Government of Cyprus.

### Competent authorities to receive the freezing orders:

(a) Ministry of Justice and Public Order.

(b) Unit for Combating Money Laundering (MOKAS), Attorney General’s Office.

Once the order is received, if requirements are met, it will be submitted to the District Court of Nicosia for “registration” and enforcement (arts. 43.C.1 and 43.C.4, in relation to art. 43.A, paragraph 5 AML).

### Languages accepted for certificates pursuant to art. 9(3):

Greek and English

### Links:

[http://www.cysec.gov.cy/Downloads/LawsRegulations/N188\(I\)-2007\\_EN.pdf](http://www.cysec.gov.cy/Downloads/LawsRegulations/N188(I)-2007_EN.pdf)

[http://www.law.gov.cy/law/lawoffice.nsf/dmlindex\\_en/dmlindex\\_en?OpenDocument](http://www.law.gov.cy/law/lawoffice.nsf/dmlindex_en/dmlindex_en?OpenDocument)

### Implementation of particular provisions of the FD 2003/577:

<i>Article in the Framework Decision</i>	<i>Implementation</i>
Article 1 (Scope)	Not implemented
2(a) [Definition of ‘issuing State’]	Art. 43.A, paragraph 8 AML
2(b) [Definition of ‘executing State’]	Not implemented
2(c) [Definition of ‘freezing order’]	Art. 43.A, paragraph 7 AML
2(d) [Definition of ‘property’]	Art. 43.A, paragraph 10 AML
2(e) [Definition of ‘evidence’]	Art. 43.A, paragraph 6 AML
3(1)(a) [Freezing orders securing evidence]	Not implemented
3(1)(b) [Freezing orders for subsequent confiscation of property]	Not implemented
3(2) [List of offences to which the double criminality test does not apply]	Not implemented

3(3) [Council's authority for future amendments or extensions of the previous list]	No implementation needed.
3(4) [Other offences]	Not implemented
4(1) [Direct transmission of the order to the competent authority for recognition/execution in the executing State]	Art. 43.B and art. 43.C(1) AML.
4(2) [Transmission through a central authority of orders sent to the UK or Ireland]	Not relevant.
4(3) [Inquiries to find out what the competent authority for execution is]	Not implemented
4(4) [Re-direction of an order to the competent authority for execution within the executing State]	Not implemented
5(1), paragraph 1 [Immediate recognition and enforcement of the order is due, unless grounds for refusal or postponement]	Art. 43.H.A.(1) AML ("Registration" by the District Court of Nicosia is required, though); see also art. 43.H.D.
5(1), paragraph 2 [Execution of the order with formalities indicated by the issuing State]	Art. 43.H.C (b) AML allows compliance with the order "in any other way that may be provided for under the legislation of the issuing state".
5(1), paragraph 3 [Report on the execution sent to the issuing State]	Art. 43.H.A.(2) AML
5(2) [Law of the executing State applicable to execution]	Art. 43.H.F(1) AML
5(3) [Decision and communication to the issuing State within 24 hours]	Not implemented. Art. 43.H.A.(2) AML provides for a 'notification' 'without delay', though.
6(1) [Freezing remains until requests from the issuing State have been responded]	Art. 43.H.A.(3) AML. This article refers to orders freezing <i>evidence</i> only. Nothing is said regarding orders freezing <i>property</i> .
6(2) [Possibility to limit the period of the freezing]	Not implemented
6(3) [Duty to communicate the lifting of the order to the executing State]	Not implemented
7(1)(a) [Grounds for non-recognition or non-execution: problems with certificate]	Art. 43.E(a) AML



7(1)(b) [Grounds for non-recognition or non-execution: immunity or privilege]	Art. 43.E(b) AML
7(1)(c) [Grounds for non-recognition or non-execution: <i>ne bis in idem</i> ]	Art. 43.E(c) AML
7(1)(d) [Grounds for non-recognition or non-execution: double criminality test]	Art. 43.E(d) AML; despite the double criminality requirement is met, the order will not be recognized/executed if the offence does not “permit freezing” under the law of Cyprus.
7(2)(a) [Deadline to complete a proper certificate before refusal]	Art. 43.G AML
7(2)(b) [Possibility to accept an ‘equivalent document’ instead of a proper certificate before refusal]	Not implemented
7(2)(c) [Possibility to accept recognition/execution the order despite the lack of a proper certificate when sufficient information has been provided]	Not implemented
7(3) [Due notification of refusal to the issuing State]	Art. 43.H(1) AML
7(4) [Practical impossibility to execute the order; due notification to the issuing State]	Art. 43.H(2) AML
8(1)(a) [Grounds for postponement: risks to an ongoing criminal investigation]	Art. 43.I.(1)(a) AML
8(1)(b) [Grounds for postponement: evidence or property already frozen within criminal proceedings]	Art. 43.I.(1)(b) and (c) AML
8(1)(c) [Grounds for postponement: property already frozen according to an order given within any non-criminal proceedings in the executing State, as long as, under national law, this order has priority over subsequent national freezing orders given within criminal proceedings]	Not implemented
8(2) [Due notification of postponement to the issuing State]	Art. 43.I.(2) AML
8(3) [Immediate execution once the ground for postponement has ceased; due notification to the issuing State]	Art. 43.I.(3) AML

8(4) Information to the issuing State about any other restraint measures to which the property is subjected	Not implemented
9(1) Necessary certificate with standard form is to accompany the order when it is transmitted to the executing State (Annex)	Certificate of FD text applicable under art. 43.A, paragraph 1 AML
9(2) Need to translate the certificate into one of the official languages of the executing State	Art. 43.C(3) AML (Greek)
9(3) Possibility to accept a translation in other languages (as long as they are official languages of the EU institutions)	Art. 43.C(3) AML (English)
10(1)(a) Possible request for the evidence to be transferred to the issuing State when transmitting the order & certificate	Art. 43.H.A.(3) AML
10(1)(b) Possible request for confiscation to be transferred to the issuing State when transmitting the order & certificate	No explicit implementation; see art. 43.H.A.(4) AML, though.
10(1)(c) Instruction in the certificate asking the executing State to maintain the freezing pending a subsequent request for transferring the evidence or for confiscation of the property	No explicit implementation; see art. 43.H.A.(3) and (4) AML, though.
10(2) Submission and processing of requests for transferring the evidence or for confiscation of the property: governed by rules applicable to mutual assistance in criminal matters and to international cooperation relating to confiscation	Not implemented
10(3) Requests for transferring evidence may not be refused on grounds double criminality where the request concerns an offence listed in article 3(2)	Not implemented
11(1) Legal remedies without suspensive effect not only in the issuing State but also in the executing State	Not implemented
11(2) Actions based on substantive reasons against the freezing order may only be brought in the issuing State	Not implemented

11(3) Actions brought in the executing State (based on procedural grounds only): due information to the issuing State and its right to submit arguments	Not implemented
11(4) States' duty to take measures to provide information about legal remedies	Not implemented
11(5) Time-limits for bringing an action against the freezing order shall guarantee the possibility of an effective legal remedy	Not implemented
12(1) The issuing State shall reimburse to the executing State any sums paid in damages caused by the execution of the order, unless injury is exclusively due to the executing State's conduct.	Art. 43.H.G AML
12(2) National laws about compensation of damage will always apply	Not explicitly implemented.
13 Application to Gibraltar	No implementation needed.
14(1) National measures for implementation of the FD	Not implemented
14(2) Duty to communicate measures for implementation to the GSC and the Commission; reports thereof; Council's assessment thereof	No implementation needed.
14(3) Duty of the GSC to notify Member States and the Commission of declarations made under article 9(3)	No implementation needed.
15 Entry into force of the FD	No implementation needed.
Annex: Certificate provided for in art. 9	Certificate of FD text applicable under art. 43.A, paragraph 1 AML

### Comments about implementation

Arts. 43A to 43H of the AML 2007 implement FD 2003/577/JHA together with FD 2006/783/JHA, ie, regulate both *freezing* and *confiscation* orders.

Under art. 1.3, AML 2007 is only applicable to the 'prescribed offences' described in arts. 4 and 5. Therefore, many offences seem to have been left out of the implementation of the FD; in other words, arts 3.2 and 3.4 of the have not been duly implemented.

Since AML 2007 has not implemented art. 3.2 of the FD, it seems as though the double criminality test will always apply. This conclusion may be also based on what art. 43.E(d) AML says.

**Procedure:**

As a rule, the order is to be received by the “Unit” (ie, Unit for Combating Money Laundering -MOKAS-).

Once the order is received, if requirements are met and provided that “the order is in force and enforceable and no appeal is pending against the order” (art. 43.C.2), it will be submitted to the District Court of Nicosia for “registration” and enforcement (arts. 43.C.1 and 43.C.4, in relation to art. 43.A, paragraph 5 AML).

When the double criminality test applies it is also required that the offence “permits freezing” under the law of Cyprus; Art. 43.E(d) AML.

“Currency of freezing order or confiscation order. Art. 43. H. E. Where in the freezing order or confiscation order there is a reference to a sum of money to be received in the currency of another country, this amount shall be converted into the currency of the Republic at the rate of exchange ruling at the time the request for registration was made.”

## 5. CZECH REPUBLIC

### General state of implementation (Legislation; entry into force date):

- Implemented by means of the amendments introduced by Act No 253/2006 mainly in the Code of Criminal Procedure (CCP; Act No 141/1961).
- Also implemented by Decree No 258/2006 (which lays down a model certificate in accordance with Article 9 of the FD).
- The said Act No. 253/2006 also introduced some minor amendments in the Criminal Code and the Act of the Judiciary in juvenile cases, in order to implement in these pieces of legislation the definitions of 'property' and 'freezing order' laid down in the art. 2 of the FD. Since those definitions are duly implemented in the CCP, no reference to the Criminal Code nor the Act of the Judiciary in juvenile cases will be made below.
- Entry into force: 01.07.2006

### Competent authority to receive the freezing orders:

The Prosecutor of the Regional Prosecutor's office within which region is the property/evidence concerned by the freezing order situated.

See a detailed list of competent authorities in 11811/06 COPEN 83  
[http://www.consilium.europa.eu/ueDocs/cms\\_Data/docs/polju/en/EJN692.pdf](http://www.consilium.europa.eu/ueDocs/cms_Data/docs/polju/en/EJN692.pdf)  
<http://www.ejn-crimjust.europa.eu/ejn/libdocumentproperties.aspx?Id=107>

### Languages accepted for certificates pursuant to art. 9(3):

Czech

Provided that reciprocity is granted, Certificates from Slovakia in Slovak and from Austria in German are also valid.

### Links:

[http://www.consilium.europa.eu/ueDocs/cms\\_Data/docs/polju/en/EJN692.pdf](http://www.consilium.europa.eu/ueDocs/cms_Data/docs/polju/en/EJN692.pdf)  
<http://www.ejn-crimjust.europa.eu/ejn/libdocumentproperties.aspx?Id=107>  
[http://portal.gov.cz/wps/portal/\\_s.155/701?kam=zakon&c=141/1961](http://portal.gov.cz/wps/portal/_s.155/701?kam=zakon&c=141/1961)  
[http://portal.gov.cz/wps/portal/\\_s.155/701?number1=258%2F2006&number2=&name=&text=](http://portal.gov.cz/wps/portal/_s.155/701?number1=258%2F2006&number2=&name=&text=)

### Implementation of particular provisions of the FD 2003/577:

<i>Article in the Framework Decision</i>	<i>Implementation</i>
Article 1 (Scope)	Section 460a CCP
2(a) [Definition of 'issuing State']	Section 460a(2) CCP
2(b) [Definition of 'executing State']	Not explicitly implemented
2(c) [Definition of 'freezing order']	Section 460a(2) CCP
2(d) [Definition of 'property']	Sections 79d, 79e, 79f and 460a(1)(a) CCP

2(e) [Definition of ‘evidence’]	Sections 460a(1)(b) and 112 CCP; see also Section 79e of the Code of Criminal Procedure, which allows the freezing of ‘other assets’ different from ‘property’.
3(1)(a) [Freezing orders securing evidence]	Section 460a(1) CCP; see also Section 79e, which allows the freezing of ‘other assets’ different from ‘property’.
3(1)(b) [Freezing orders for subsequent confiscation of property]	Sections 460a(1), 79d, 79e and 79f CCP
3(2) [List of offences to which the double criminality test does not apply]	Sections 460f(2)(b), 460i(2) and 412 CCP
3(3) [Council’s authority for future amendments or extensions of the previous list]	No implementation needed.
3(4) [Other offences]	Implicitly implemented by Sections 460f(2)(b), 460i(2) and 412 CCP ( <i>sensu contrario</i> )
4(1) [Direct transmission of the order to the competent authority for recognition/execution in the executing State]	Sections 460c and 460e(1) CCP
4(2) [Transmission through a central authority of orders sent to the UK or Ireland]	Not relevant.
4(3) [Inquiries to find out what the competent authority for execution is]	See section 460c CCP
4(4) [Re-direction of an order to the competent authority for execution within the executing State]	Section 460e(2) CCP
5(1), paragraph 1 [Immediate recognition and enforcement of the order is due, unless grounds for refusal or postponement]	Sections 460f(1) and 460i(1) CCP
5(1), paragraph 2 [Execution of the order with formalities indicated by the issuing State]	Section 460b(4) and 460i(3) CCP
5(1), paragraph 3 [Report on the execution sent to the issuing State]	Not explicitly implemented
5(2) [Law of the executing State applicable to execution]	Sections 460a(3), 460i(1) (last sentence), 460i(2) CCP; see also Section 460e(3)
5(3) [Decision and communication to the issuing State within 24 hours]	Section 460f(1) and (4) CCP

6(1) [Freezing remains until requests from the issuing State have been responded]	Section 460h(1) and 460L(1)CCP
6(2) [Possibility to limit the period of the freezing]	Not explicitly implemented; however, see Sections 460a(3) and 460e(3) CCP (in relation to art. 5(2) of the FD)
6(3) [Duty to communicate the lifting of the order to the executing State]	Sections 460d, 460h and 460L CCP
7(1)(a) [Grounds for non-recognition or non-execution: problems with certificate]	Section 460f(2)(a) CCP; also Section 460i(4) CCP
7(1)(b) [Grounds for non-recognition or non-execution: immunity or privilege]	Section 460f(2)(d) CCP
7(1)(c) [Grounds for non-recognition or non-execution: <i>ne bis in idem</i> ]	Section 460f(2)(c) CCP
7(1)(d) [Grounds for non-recognition or non-execution: double criminality test]	Section 460f(2)(b) CCP
7(2)(a) [Deadline to complete a proper certificate before refusal]	Section 460f(2)(a) and (3) CCP; also Section 460i(4) CCP
7(2)(b) [Possibility to accept an 'equivalent document' instead of a proper certificate before refusal]	See section 460f(1), (2)(a) and (3) CCP; also Section 460i(4) CCP
7(2)(c) [Possibility to accept recognition/execution the order despite the lack of a proper certificate when sufficient information has been provided]	Section 460f(1), (2)(a) and (3) CCP; also Section 460i(4) CCP
7(3) [Due notification of refusal to the issuing State]	Sections 460f(4) and 460i(4) CCP
7(4) [Practical impossibility to execute the order; due notification to the issuing State]	Sections 460f(4) and 460i(4) CCP
8(1)(a) [Grounds for postponement: risks to an ongoing criminal investigation]	Section 460g(1)(a) and 460k(1)(a)CCP
8(1)(b) [Grounds for postponement: evidence or property already frozen within criminal proceedings]	Section 460g(1)(b) and 460k(1)(b)CCP

8(1)(c) [Grounds for postponement: property already frozen according to an order given within any non-criminal proceedings in the executing State, as long as, under national law, this order has priority over subsequent national freezing orders given within criminal proceedings]	Not implemented
8(2) [Due notification of postponement to the issuing State]	Section 460g(2) and 460k(2)CCP
8(3) [Immediate execution once the ground for postponement has ceased; due notification to the issuing State]	Section 460g(3) and 460k(3)CCP
8(4) Information to the issuing State about any other restraint measures to which the property is subjected	Section 460g(2) CCP
9(1) Necessary certificate with standard form is to accompany the order when it is transmitted to the executing State (Annex)	Section 460b(1) and (2) CCP; also Decree No 258/2006
9(2) Need to translate the certificate into one of the official languages of the executing State	Section 460b (2) CCP
9(3) Possibility to accept a translation in other languages (as long as they are official languages of the EU institutions)	Provided that reciprocity is granted, Certificates from Slovakia in Slovak and from Austria in German are also valid: <a href="http://www.consilium.europa.eu/ueDocs/cms_Data/docs/polju/en/EJN692.pdf">http://www.consilium.europa.eu/ueDocs/cms_Data/docs/polju/en/EJN692.pdf</a>
10(1)(a) Possible request for the evidence to be transferred to the issuing State when transmitting the order & certificate	Sections 460b(3) and 460j(1) CCP
10(1)(b) Possible request for confiscation to be transferred to the issuing State when transmitting the order & certificate	Section 460b(3) CCP
10(1)(c) Instruction in the certificate asking the executing State to maintain the freezing pending a subsequent request for transferring the evidence or for confiscation of the property	Section 460b(5) CCP
10(2) Submission and processing of requests for transferring the evidence or for confiscation of the property: governed by rules applicable to mutual assistance in criminal matters and to international cooperation relating to confiscation	Section 460j CCP (see comments below)



10(3) Requests for transferring evidence may not be refused on grounds double criminality where the request concerns an offence listed in article 3(2)	Not explicitly implemented
11(1) Legal remedies without suspensive effect not only in the issuing State but also in the executing State	A ‘complaint’ may be filed against an order given in the Czech Republic: Sections 460b(6) and 460f(5) CCP; see also Sections 79d (last sentence) and 79e (last sentence); and also Section 156a(1), subparagraphs d), e), f) and g).
11(2) Actions based on substantive reasons against the freezing order may only be brought in the issuing State	Section 460f(5) CCP
11(3) Actions brought in the executing State (based on procedural grounds only): due information to the issuing State and its right to submit arguments	Section 460f(5) CCP
11(4) States’ duty to take measures to provide information about legal remedies	Not implemented
11(5) Time-limits for bringing an action against the freezing order shall guarantee the possibility of an effective legal remedy	Not implemented
12(1) The issuing State shall reimburse to the executing State any sums paid in damages caused by the execution of the order, unless injury is exclusively due to the executing State’s conduct.	Sections 460m and 460n CCP
12(2) National laws about compensation of damage will always apply	Not explicitly implemented
13 Application to Gibraltar	No implementation needed.
14(1) National measures for implementation of the FD	No implementation needed.
14(2) Duty to communicate measures for implementation to the GSC and the Commission; reports thereof; Council’s assessment thereof	No implementation needed.
14(3) Duty of the GSC to notify Member States and the Commission of declarations made under article 9(3)	No implementation needed.

15 Entry into force of the FD	No implementation needed.
Annex: Certificate provided for in art. 9	Decree No 258/2006

### Comments about implementation

Additional grounds for refusal have been introduced:

Section 460f(2) CCP:

[...]

d) the assets referred to in the order cannot be the subject of freezing under a separate legal provision,

e) the order is not issued within the scope of criminal proceedings in the issuing State, or

f) the order contravenes the interests of the Czech Republic protected under Section 377.

If the freezing order is cancelled or restricted in the issuing State, the executing State (Czech Republic) will cancel or restrict the freezing. In that case, an appeal is possible in the executing State based on procedural grounds only: see Section 460h(3), *in fine* CCP: “A complaint, with suspensory effect, may be filed against decisions under paragraphs (2) and (3). A complaint cannot be used to contest the grounds on which the scope of the freezing of assets in the issuing State is restricted or cancelled.”

Execution with formalities indicated by the issuing State [see art. 5(1), paragraph 2 of the FD] may be refused not only when it violates fundamental principles of Czech law but also when it contravenes “the interests of the Czech Republic referred to in Section 377” [Section 460i(3) CCP]

Requests for transferring evidence from the Czech Republic must make clear for which particular criminal case the evidence to be transferred is needed; the use of the transferred evidence in *different* criminal cases prosecuted in the issuing State is forbidden unless Czech authorities grant their permission [Section 460j(3) CCP].

When transferring evidence to the issuing State, the Czech authorities will ask for the evidence to be returned once it has been duly used. However, Czech authorities may waive this ‘right’ of returning the evidence [Section 460j(1) CCP]. A time-limit for returning may be set out in case the evidence is needed for criminal proceedings that are being carried out in the Czech Republic or Czech law so states [Section 460j(2) CCP].

## 6. DENMARK

### General state of implementation (Legislation; entry into force date):

- Implemented by means of Act No 1434 of 22 December 2004 on the execution of certain decisions in the field of criminal law in the European Union
- Entry into force: 01.01.2005

### Competent authority to receive the freezing orders:

Local Prosecutor

However, “The decision on the execution of freezing orders governed by this Law shall be adopted by the courts on the application of a public prosecutor unless the public prosecutor finds that execution should be refused. In that case the decision whether or not to refuse execution shall be taken by the Minister of Justice, or a person duly authorised by the Minister” [§49(1)]. “When a final decision on the execution of a freezing order has been adopted, the execution shall be effected by the police” [§52].

### Languages accepted for certificates pursuant to § 9(3):

Danish.

### Links:

<https://www.retsinformation.dk/Forms/R0710.aspx?id=1957>

<https://www.retsinformation.dk/Forms/R0710.aspx?id=133530>

<https://www.retsinformation.dk/Forms/R0710.aspx?id=133272&#P329>

### Implementation of particular provisions of the FD 2003/577:

<i>Article in the Framework Decision</i>	<i>Implementation</i>
Article 1 (Scope)	§ 1(1)
2(a) [Definition of ‘issuing State’]	§ 2(1)
2(b) [Definition of ‘executing State’]	§ 2(2)
2(c) [Definition of ‘freezing order’]	§ 3
2(d) [Definition of ‘property’]	Not explicitly implemented
2(e) [Definition of ‘evidence’]	Not explicitly implemented
3(1)(a) [Freezing orders securing evidence]	§ 4(1)
3(1)(b) [Freezing orders for subsequent confiscation of property]	§ 4(2)
3(2) [List of offences to which the double criminality test does not apply]	§ 6(1)
3(3) [Council’s authority for future amendments or extensions of the previous list]	No implementation needed.

3(4) [Other offences]	§6(2)
4(1) [Direct transmission of the order to the competent authority for recognition/execution in the executing State]	Not implemented
4(2) [Transmission through a central authority of orders sent to the UK or Ireland]	Not relevant.
4(3) [Inquiries to find out what the competent authority for execution is]	Not implemented
4(4) [Re-direction of an order to the competent authority for execution within the executing State]	Not implemented
5(1), paragraph 1 [Immediate recognition and enforcement of the order is due, unless grounds for refusal or postponement]	§ 5
5(1), paragraph 2 [Execution of the order with formalities indicated by the issuing State]	§53(1)
5(1), paragraph 3 [Report on the execution sent to the issuing State]	§10(6)
5(2) [Law of the executing State applicable to execution]	§53(2)
5(3) [Decision and communication to the issuing State within 24 hours]	§10(6) and §50(1)
6(1) [Freezing remains until requests from the issuing State have been responded]	§11(1)
6(2) [Possibility to limit the period of the freezing]	§11(2)
6(3) [Duty to communicate the lifting of the order to the executing State]	§11(2) and §12
7(1)(a) [Grounds for non-recognition or non-execution: problems with certificate]	§ 7(1)
7(1)(b) [Grounds for non-recognition or non-execution: immunity or privilege]	§ 7(3)
7(1)(c) [Grounds for non-recognition or non-execution: <i>ne bis in idem</i> ]	§7(2) and §8
7(1)(d) [Grounds for non-recognition or non-execution: double criminality test]	§ 6(2)

7(2)(a) [Deadline to complete a proper certificate before refusal]	Not implemented
7(2)(b) [Possibility to accept an ‘equivalent document’ instead of a proper certificate before refusal]	Not implemented
7(2)(c) [Possibility to accept recognition/execution the order despite the lack of a proper certificate when sufficient information has been provided]	Not implemented
7(3) [Due notification of refusal to the issuing State]	§10(1)
7(4) [Practical impossibility to execute the order; due notification to the issuing State]	§10(2)
8(1)(a) [Grounds for postponement: risks to an ongoing criminal investigation]	§9(1)
8(1)(b) [Grounds for postponement: evidence or property already frozen within criminal proceedings]	Not implemented
8(1)(c) [Grounds for postponement: property already frozen according to an order given within any non-criminal proceedings in the executing State, as long as, under national law, this order has priority over subsequent national freezing orders given within criminal proceedings]	Not implemented
8(2) [Due notification of postponement to the issuing State]	§10(3)
8(3) [Immediate execution once the ground for postponement has ceased; due notification to the issuing State]	§9(2) and §10(4)
8(4) Information to the issuing State about any other restraint measures to which the property is subjected	§10(5)
9(1) Necessary certificate with standard form is to accompany the order when it is transmitted to the executing State (Annex)	§48(1)
9(2) Need to translate the certificate into one of the official languages of the executing State	Not explicitly implemented; see §48(2), though

9(3) Possibility to accept a translation in other languages (as long as they are official languages of the EU institutions)	Not implemented
10(1)(a) Possible request for the evidence to be transferred to the issuing State when transmitting the order & certificate	§13(1)(1)
10(1)(b) Possible request for confiscation to be transferred to the issuing State when transmitting the order & certificate	§13(1)(2)
10(1)(c) Instruction in the certificate asking the executing State to maintain the freezing pending a subsequent request for transferring the evidence or for confiscation of the property	§13(1)(3)
10(2) Submission and processing of requests for transferring the evidence or for confiscation of the property: governed by rules applicable to mutual assistance in criminal matters and to international cooperation relating to confiscation	§13(2)
10(3) Requests for transferring evidence may not be refused on grounds double criminality where the request concerns an offence listed in article 3(2)	§13(2)
11(1) Legal remedies without suspensive effect not only in the issuing State but also in the executing State	§60
11(2) Actions based on substantive reasons against the freezing order may only be brought in the issuing State	Not implemented
11(3) Actions brought in the executing State (based on procedural grounds only): due information to the issuing State and its right to submit arguments	§51
11(4) States' duty to take measures to provide information about legal remedies	Not explicitly implemented
11(5) Time-limits for bringing an action against the freezing order shall guarantee the possibility of an effective legal remedy	§60 (even when, under the Code of Civil Procedure, the deadline for appeal has expired, the appeal is admissible)

12(1) The issuing State shall reimburse to the executing State any sums paid in damages caused by the execution of the order, unless injury is exclusively due to the executing State's conduct.	§14 and §15
12(2) National laws about compensation of damage will always apply	§14
13 Application to Gibraltar	No implementation needed.
14(1) National measures for implementation of the FD	No implementation needed.
14(2) Duty to communicate measures for implementation to the GSC and the Commission; reports thereof; Council's assessment thereof	No implementation needed.
14(3) Duty of the GSC to notify Member States and the Commission of declarations made under article 9(3)	No implementation needed.
15 Entry into force of the FD	No implementation needed.
Annex: Certificate provided for in § 9	See §48(1)

### Comments about implementation

Recognition/execution of an order may be refused if 'the order concerns materials covered by Section 802(4) or 803(2) of the Code of Civil Procedure (*Retsplejelovens*), ie, materials of person who may not testify in court (such as priests, defense lawyers, court mediators, editors and editorial staff) [§7(1)(2)]

Another ground for refusal in §7(3): 'The execution of a freezing order shall be refused if there are grounds to believe that the order was issued with a view to prosecuting or punishing a person by reason of that person's gender, race, religion, ethnic background, nationality, language, political opinions or sexual orientation.'

### *Procedure concerning applications for the execution of freezing decisions in criminal cases:*

**§49.**(1) The decision on the execution of freezing orders governed by this Law shall be adopted by the courts on the application of a public prosecutor unless the public prosecutor finds that execution should be refused. In that case the decision whether or not to refuse execution shall be taken by the Minister of Justice, or a person duly authorised by the Minister.

(2) The case shall be initiated by the public prosecutor before the municipal court of the area with which the case is connected.

**§50.**(1) The case shall be brought before the court as quickly as possible and if possible within 24 hours of the public prosecutor's receipt of the application.

(2) The procedure in the case shall be governed by Sections 806(2), (3), (5) and (7) and 807c and Chapter 85 on appeals shall apply, *mutatis mutandis*.

(3) Defence counsel may be appointed if there would be grounds to appoint counsel under Sections 730-732 of the Code of Civil Procedure. Defence counsel shall have the same powers as counsel in a Danish criminal case. The rules applicable to counsel appointed by the court (see Section 741 of the Code of Civil Procedure) shall apply to fees and reimbursement of outlays.

(4) The decision of the court shall be adopted so far as possible within the time-limit specified in paragraph 1.

**§51.** If the municipal court's decision is appealed, or if a petition under Section 807c of the Code of Civil Procedure is lodged, the public prosecutor shall notify the competent authority in the issuing State, providing details of the basis for the application, so that that authority can make known its views. The public prosecutor shall also inform the competent authority of the outcome of the appeal.

**§52.** When a final decision on the execution of a freezing order has been adopted, the execution shall be effected by the police in accordance with Section 807 of the Code of Civil Procedure. Sections 807b and 807d of the Code shall apply, *mutatis mutandis*.

**§53.**(1) An application by the competent judicial authority of the issuing Member State that special formal requirements be met or a special procedure be followed shall be granted if this is a necessary condition for the evidence compiled to be used as proof in the Member State insofar as the requirements and procedures are not contrary to the basic principles of Danish law.

(2) The procedures in Chapter 72 on strip searches and intimate searches, Chapter 73 on searches of vehicles, premises and the provisions of Chapter 74 concerning discovery shall be applicable insofar as the offence forming the subject-matter of the order meets the conditions for execution in Section 6 and the procedures are necessary for the execution of the freezing order.



## 7. ESTONIA

### General state of implementation (Legislation; entry into force date):

- Implemented by means of the Act of 16 April 2008, amending the Estonian Code of Criminal Procedure.
- Entry into force: 23 May 2008

### Competent authority to receive the freezing orders:

- The Public Prosecutor's Office

### Languages accepted for certificates pursuant to art. 9(3):

- Estonian
- English

### Links:

- <http://www.legaltext.ee/en/andmebaas/ava.asp?m=022>

### Implementation of particular provisions of the FD 2003/577:

<i>Article in the Framework Decision</i>	<i>Implementation</i>
Article 1 (Scope)	
2(a) [Definition of 'issuing State']	
2(b) [Definition of 'executing State']	
2(c) [Definition of 'freezing order']	§ 508 <sup>1</sup> (1)
2(d) [Definition of 'property']	§ 508 <sup>1</sup> (2)
2(e) [Definition of 'evidence']	§ 508 <sup>1</sup> (2)
3(1)(a) [Freezing orders securing evidence]	
3(1)(b) [Freezing orders for subsequent confiscation of property]	
3(2) [List of offences to which the double criminality test does not apply]	§ 508 <sup>3</sup> (2)
3(3) [Council's authority for future amendments or extensions of the previous list]	No implementation needed.
3(4) [Other offences]	
4(1) [Direct transmission of the order to the competent authority for recognition/execution in the executing State]	§§ 508 <sup>11</sup> (2) and 508 <sup>12</sup> (3)
4(2) [Transmission through a central authority of orders sent to the UK or Ireland]	Not relevant.

4(3) [Inquiries to find out what the competent authority for execution is]	
4(4) [Re-direction of an order to the competent authority for execution within the executing State]	
5(1), paragraph 1 [Immediate recognition and enforcement of the order is due, unless grounds for refusal or postponement]	§ 508 <sup>8</sup> (1)
5(1), paragraph 2 [Execution of the order with formalities indicated by the issuing State]	
5(1), paragraph 3 [Report on the execution sent to the issuing State]	
5(2) [Law of the executing State applicable to execution]	§ 508 <sup>8</sup>
5(3) [Communication to the issuing State within 24 hours]	§§ 508 <sup>5</sup> and 508 <sup>7</sup>
6(1) [Freezing remains until requests from the issuing State have been responded]	§ 508 <sup>8</sup> (5)
6(2) [Possibility to limit the period of the freezing]	
6(3) [Duty to communicate the lifting of the order to the executing State]	§ 508 <sup>11</sup> (3)
7(1)(a) [Grounds for non-recognition or non-execution: problems with certificate]	§ 508 <sup>3</sup> (1)(4)
7(1)(b) [Grounds for non-recognition or non-execution: immunity or privilege]	§ 508 <sup>3</sup> (1)(2)
7(1)(c) [Grounds for non-recognition or non-execution: <i>ne bis in idem</i> ]	§ 508 <sup>3</sup> (1)(3)
7(1)(d) [Grounds for non-recognition or non-execution: double criminality test]	§ 508 <sup>3</sup> (1)(1)
7(2)(a) [Deadline to complete a proper certificate before refusal]	§ 508 <sup>3</sup> (4)
7(2)(b) [Possibility to accept an 'equivalent document' instead of a proper certificate before refusal]	

7(2)(c) [Possibility to accept recognition/execution the order despite the lack of a proper certificate when sufficient information has been provided]	
7(3) [Due notification of refusal to the issuing State]	§ 508 <sup>3</sup> (3)
7(4) [Practical impossibility to execute the order; due notification to the issuing State]	§ 508 <sup>8</sup> (7)
8(1)(a) [Grounds for postponement: risks to an ongoing criminal investigation]	§ 508 <sup>9</sup> (1)(1)
8(1)(b) [Grounds for postponement: evidence or property already frozen within criminal proceedings]	§ 508 <sup>9</sup> (1)(2)
8(1)(c) [Grounds for postponement: property already frozen according to an order given within any non-criminal proceedings in the executing State, as long as, under national law, this order has priority over subsequent national freezing orders given within criminal proceedings]	
8(2) [Due notification of postponement to the issuing State]	§ 508 <sup>9</sup> (2)
8(3) [Immediate execution once the ground for postponement has ceased; due notification to the issuing State]	§ 508 <sup>9</sup> (3)
8(4) Information to the issuing State about any other restraint measures to which the property is subjected	
9(1) Necessary certificate with standard form is to accompany the order when it is transmitted to the executing State (Annex)	§ 508 <sup>1</sup> (3) and (4)
9(2) Need to translate the certificate into one of the official languages of the executing State	
9(3) Possibility to accept a translation in other languages (as long as they are official languages of the EU institutions)	
10(1)(a) Possible request for the evidence to be transferred to the issuing State when transmitting the order & certificate	§ 508 <sup>2</sup> (1)(1)

10(1)(b) Possible request for confiscation to be transferred to the issuing State when transmitting the order & certificate	§ 508 <sup>2</sup> (1)(2)
10(1)(c) Instruction in the certificate asking the executing State to maintain the freezing pending a subsequent request for transferring the evidence or for confiscation of the property	§ 508 <sup>2</sup> (1)(3)
10(2) Submission and processing of requests for transferring the evidence or for confiscation of the property: governed by rules applicable to mutual assistance in criminal matters and to international cooperation relating to confiscation	§ 508 <sup>2</sup> (2)
10(3) Requests for transferring evidence may not be refused on grounds double criminality where the request concerns an offence listed in article 3(2)	§ 508 <sup>2</sup> (3)
11(1) Legal remedies without suspensive effect not only in the issuing State but also in the executing State	§ 508 <sup>10</sup> (1) and (3)
11(2) Actions based on substantive reasons against the freezing order may only be brought in the issuing State	§ 508 <sup>10</sup> (2)
11(3) Actions brought in the executing State (based on procedural grounds only): due information to the issuing State and its right to submit arguments	§ 508 <sup>10</sup> (4)
11(4) States' duty to take measures to provide information about legal remedies	
11(5) Time-limits for bringing an action against the freezing order shall guarantee the possibility of an effective legal remedy	
12(1) The issuing State shall reimburse to the executing State any sums paid in damages caused by the execution of the order, unless injury is exclusively due to the executing State's conduct.	§ 508 <sup>4</sup>
12(2) National laws about compensation of damage will always apply	
13 Application to Gibraltar	No implementation needed.

14(1) National measures for implementation of the FD	
14(2) Duty to communicate measures for implementation to the GSC and the Commission; reports thereof; Council's assessment thereof	No implementation needed.
14(3) Duty of the GSC to notify Member States and the Commission of declarations made under article 9(3)	No implementation needed.
15 Entry into force of the FD	No implementation needed.
Annex: Certificate provided for in art. 9	

## **8. FINLAND**

### **General state of implementation (Legislation; entry into force date):**

- Implemented by means of the Act on the execution in the European Union of orders freezing property or evidence (540/2005), adopted on 15 July 2005; and also by Act amending the Coercive Measures Act (541/2005), Act amending section 13 of the Act on International Co-operation in the Enforcement of Certain Penal Sanctions (542/2005), Act amending sections 24 and 27 of the Act on Nordic Co-operation in Criminal Matters (543/2005) and Enforcement Act (37/195) (all of them also adopted on 15 July 2005).
- Entry into force: 2 August 2005

### **Competent authority to receive the freezing orders:**

- Public prosecutors

<http://www.ejn-crimjust.europa.eu/ejn/libdocumentproperties.aspx?Id=115>

1) the public prosecutor attached to the Helsinki District Court if the property or evidence mentioned in the freezing order is located within the jurisdiction of the Court of Appeal of Helsinki or Kouvola:

#### **The Prosecutors of the Helsinki Judicial District**

The Prosecutor's Office of the Helsinki District

P.O. Box 318  
FIN-00181 HELSINKI  
Finland

Tel. +358 10 362 2100  
Fax +358 10 362 2203  
E-mail: helsinki.sy@om.fi

On call 24 hours during weekends: Tel. +358 10 362 2485

2) the public prosecutor attached to the Kuopio District Court if the property or evidence mentioned in the freezing order is located within the jurisdiction of the Court of Appeal of Eastern Finland:

#### **The Prosecutors of the Kuopio Judicial District**

The Prosecutor's Office of the Kuopio District

P.O. Box 224  
FIN-70101 KUOPIO  
Finland

Tel. +358 10 362 7800  
Fax +358 10 362 7829  
E-mail: kuopio.sy@om.fi

The Prosecutor's Office of the Varkaus District

P.O. Box 192  
FIN-78201 VARKAUS  
Finland

Tel. +358 10 362 7303  
Fax +358 10 362 7304  
E-mail: varkus.sy@om.fi

The Prosecutor's Office of the Upper Savo District

P.O. Box 24  
FIN-74101 IISALMI  
Finland

Tel. +358 10 362 7380  
Fax +358 10 362 7399  
E-mail: yla-savo.sy@om.fi

The Prosecutor's Office of the Kuopio District

P.O. Box 224  
FIN-70101 KUOPIO  
Finland

Tel. +358 10 362 7800  
Fax +358 10 362 7829  
E-mail: kuopio.sy@om.fi

On call 24 hours during weekends: Tel. +358 10 366 2090

3) the public prosecutor attached to the Oulu District Court if the property or evidence mentioned in the freezing order is located within the jurisdiction of the Court of Appeal of Rovaniemi:

**The Prosecutors of the Oulu Judicial District**

The Prosecutor's Office of the Oulu District

P.O. Box 225  
FIN-90101 OULU  
Finland

Tel. +358 10 362 9000  
Fax +358 10 362 9001  
E-mail: oulu.sy@om.fi

On call 24 hours during weekends: Tel. +358 10 366 2090

4) the public prosecutor attached to the Tampere District Court if the property or evidence mentioned in the freezing order is located within the jurisdiction of the Court of Appeal of Turku or Vaasa:

### **The Prosecutors of the Tampere Judicial District**

The Prosecutor's Office of the Tampere District

P.O. Box 503  
FIN-33101 TAMPERE  
Finland

Tel. +358 10 362 4600  
Fax +358 10 362 4624  
E-mail: tampere.sy@om.fi

The Prosecutor's Office of the Ikaalinen District

P.O. Box 48  
FIN-39501 IKAALINEN  
Finland

Tel. +358 10 362 3935  
Fax +358 10 362 3931  
E-mail: ikaalinen.sy@om.fi

The Prosecutor's Office of the Valkeakoski District

P.O. Box 38  
FIN-37601 VALKEAKOSKI  
Finland

Tel. +358 10 362 3632  
Fax +358 10 362 3639  
E-mail: valkeakoski.sy@om.fi

On call 24 hours during weekends: Tel. +358 10 362 2485

If the property or evidence is located within the jurisdiction of several of the Courts of Appeal referred to, their location is unclear or other special reasons exist for doing so, the public prosecutor of Helsinki is the



competent authority regardless of which Court of Appeal's jurisdiction the property or evidence referred to is located in.

**Languages accepted for certificates pursuant to art. 9(3):**

The certificate must be sent either in Finnish, Swedish or English or a translation of the certificate into one of these languages must be attached to it. The competent prosecutor may also approve a certificate in some language other than Finnish, Swedish or English if no obstacles to its being approved exist.

**Links:**

<http://www.ejn-crimjust.europa.eu/ejn/libdocumentproperties.aspx?Id=115>

**Implementation of particular provisions of the FD 2003/577:**

<i>Article in the Framework Decision</i>	<i>Implementation</i>
Article 1 (Scope)	Section 1
2(a) [Definition of 'issuing State']	
2(b) [Definition of 'executing State']	
2(c) [Definition of 'freezing order']	Section 2
2(d) [Definition of 'property']	
2(e) [Definition of 'evidence']	
3(1)(a) [Freezing orders securing evidence]	Section 2
3(1)(b) [Freezing orders for subsequent confiscation of property]	Section 2
3(2) [List of offences to which the double criminality test does not apply]	Section 3
3(3) [Council's authority for future amendments or extensions of the previous list]	No implementation needed.
3(4) [Other offences]	
4(1) [Direct transmission of the order to the competent authority for recognition/execution in the executing State]	Section 20

4(2) [Transmission through a central authority of orders sent to the UK or Ireland]	Not relevant.
4(3) [Inquiries to find out what the competent authority for execution is]	
4(4) [Re-direction of an order to the competent authority for execution within the executing State]	Section 6
5(1), paragraph 1 [Immediate recognition and enforcement of the order is due, unless grounds for refusal or postponement]	Section 9
5(1), paragraph 2 [Execution of the order with formalities indicated by the issuing State]	Section 10
5(1), paragraph 3 [Report on the execution sent to the issuing State]	Section 11
5(2) [Law of the executing State applicable to execution]	Section 10
5(3) [Communication to the issuing State within 24 hours]	Section 9
6(1) [Freezing remains until requests from the issuing State have been responded]	Section 12
6(2) [Possibility to limit the period of the freezing]	Sections 12 and 14(3)
6(3) [Duty to communicate the lifting of the order to the executing State]	Sections 14(4) and 23
7(1)(a) [Grounds for non-recognition or non-execution: problems with certificate]	Section 4(1)
7(1)(b) [Grounds for non-recognition or non-execution: immunity or privilege]	Section 4(2)
7(1)(c) [Grounds for non-recognition or non-execution: <i>ne bis in idem</i> ]	Section 4(3)
7(1)(d) [Grounds for non-recognition or non-execution: double criminality test]	
7(2)(a) [Deadline to complete a proper certificate before refusal]	Section 4

7(2)(b) [Possibility to accept an ‘equivalent document’ instead of a proper certificate before refusal]	
7(2)(c) [Possibility to accept recognition/execution the order despite the lack of a proper certificate when sufficient information has been provided]	
7(3) [Due notification of refusal to the issuing State]	Section 9
7(4) [Practical impossibility to execute the order; due notification to the issuing State]	Section 14(1) and (2)
8(1)(a) [Grounds for postponement: risks to an ongoing criminal investigation]	Section 13
8(1)(b) [Grounds for postponement: evidence or property already frozen within criminal proceedings]	
8(1)(c) [Grounds for postponement: property already frozen according to an order given within any non-criminal proceedings in the executing State, as long as, under national law, this order has priority over subsequent national freezing orders given within criminal proceedings]	
8(2) [Due notification of postponement to the issuing State]	Section 13
8(3) [Immediate execution once the ground for postponement has ceased; due notification to the issuing State]	
8(4) Information to the issuing State about any other restraint measures to which the property is subjected	Section 13
9(1) Necessary certificate with standard form is to accompany the order when it is transmitted to the executing State (Annex)	Section 6
9(2) Need to translate the certificate into one of the official languages of the executing State	Sections 7 and 21
9(3) Possibility to accept a translation in other languages (as long as they are official languages of the EU institutions)	Section 7

10(1)(a) Possible request for the evidence to be transferred to the issuing State when transmitting the order & certificate	Section 8(1)
10(1)(b) Possible request for confiscation to be transferred to the issuing State when transmitting the order & certificate	Section 8(2)
10(1)(c) Instruction in the certificate asking the executing State to maintain the freezing pending a subsequent request for transferring the evidence or for confiscation of the property	Section 8(3)
10(2) Submission and processing of requests for transferring the evidence or for confiscation of the property: governed by rules applicable to mutual assistance in criminal matters and to international cooperation relating to confiscation	
10(3) Requests for transferring evidence may not be refused on grounds double criminality where the request concerns an offence listed in article 3(2)	
11(1) Legal remedies without suspensive effect not only in the issuing State but also in the executing State	Section 16
11(2) Actions based on substantive reasons against the freezing order may only be brought in the issuing State	Section 17
11(3) Actions brought in the executing State (based on procedural grounds only): due information to the issuing State and its right to submit arguments	Section 18
11(4) States' duty to take measures to provide information about legal remedies	Section 17
11(5) Time-limits for bringing an action against the freezing order shall guarantee the possibility of an effective legal remedy	
12(1) The issuing State shall reimburse to the executing State any sums paid in damages caused by the execution of the order, unless injury is exclusively due to the executing State's conduct.	Sections 24 and 25

12(2) National laws about compensation of damage will always apply	
13 Application to Gibraltar	No implementation needed.
14(1) National measures for implementation of the FD	Section 28(1)
14(2) Duty to communicate measures for implementation to the GSC and the Commission; reports thereof; Council's assessment thereof	No implementation needed.
14(3) Duty of the GSC to notify Member States and the Commission of declarations made under article 9(3)	No implementation needed.
15 Entry into force of the FD	No implementation needed.
Annex: Certificate provided for in art. 9	

### **Comments about implementation**

Section 4(4) has introduced a ground for refusal not foreseen by the FD:

«4) the seizure of a document, postal item or telegram is not allowed under Chapter 4, sections 2 or 3 of the Coercive Measures Act.»

## 9. FRANCE

### General state of implementation (Legislation; entry into force date):

- Implemented by means of the Act n° 2005-750 of 4 July 2005 (*Loi n° 2005-750 du 4 juillet 2005 portant diverses dispositions d'adaptation au droit communautaire dans le domaine de la justice*). This Act amends the French Code of Criminal Procedure introducing a new Section devoted to the implementation of the FD (new articles 695-9-1 to 695-9-30). This Section of the Code of Criminal Procedure has been amended by means of the Act n° 2010-768 of 9 July 2010 (*Loi n° 2010-768 du 9 juillet 2010 visant à faciliter la saisie et la confiscation en matière pénale*).
- Entry into force: 6 July 2005 (first version); 24 May 2011 (last version)

### Competent authority to receive the freezing orders:

- Investigating judge (*Juge d'instruction*) of the location of any of the assets or pieces of evidence which are the object of the freezing request or, if that location is not defined, the investigating judge of Paris.
- The freezing decision and the certificate issued by the judicial authority of the issuing state may also be transmitted to the investigating judge through the intermediary of the district prosecutor or the prosecutor general.

### Languages accepted for certificates pursuant to art. 9(3):

- French

### Links:

- <http://www.legifrance.gouv.fr/affichCode.do?idArticle=LEGIARTI000006577316&idSectionTA=LEGISCTA000006182913&cidTexte=LEGITEXT000006071154&dateTexte=20110524>

### Implementation of particular provisions of the FD 2003/577:

<i>Article in the Framework Decision</i>	<i>Implementation</i>
Article 1 (Scope)	No implementation needed
2(a) [Definition of 'issuing State']	Art. 695-9-1
2(b) [Definition of 'executing State']	Art. 695-9-1
2(c) [Definition of 'freezing order']	Art. 695-9-1
2(d) [Definition of 'property']	Art. 695-9-2
2(e) [Definition of 'evidence']	Art. 695-9-2
3(1)(a) [Freezing orders securing evidence]	No implementation needed
3(1)(b) [Freezing orders for subsequent confiscation of property]	No implementation needed

3(2) [List of offences to which the double criminality test does not apply]	Arts. 695-9-17, 695-9-18 and 695-23
3(3) [Council's authority for future amendments or extensions of the previous list]	No implementation needed.
3(4) [Other offences]	Art. 695-9-17
4(1) [Direct transmission of the order to the competent authority for recognition/execution in the executing State]	Arts. 695-9-6 and 695-9-8
4(2) [Transmission through a central authority of orders sent to the UK or Ireland]	Art. 695-9-6
4(3) [Inquiries to find out what the competent authority for execution is]	Not expressly implemented
4(4) [Re-direction of an order to the competent authority for execution within the executing State]	Art. 695-9-11
5(1), paragraph 1 [Immediate recognition and enforcement of the order is due, unless grounds for refusal or postponement]	Art. 695-9-13
5(1), paragraph 2 [Execution of the order with formalities indicated by the issuing State]	Art. 695-9-14
5(1), paragraph 3 [Report on the execution sent to the issuing State]	Art. 695-9-13
5(2) [Law of the executing State applicable to execution]	Arts. 695-9-14 and 695-9-15
5(3) [Communication to the issuing State within 24 hours]	Art. 695-9-13
6(1) [Freezing remains until requests from the issuing State have been responded]	Art. 695-9-27
6(2) [Possibility to limit the period of the freezing]	Art. 695-9-27
6(3) [Duty to communicate the lifting of the order to the executing State]	Art. 695-9-9
7(1)(a) [Grounds for non-recognition or non-execution: problems with certificate]	Art. 695-9-16
7(1)(b) [Grounds for non-recognition or non-execution: immunity or privilege]	Art. 695-9-17

7(1)(c) [Grounds for non-recognition or non-execution: <i>ne bis in idem</i> ]	Art. 695-9-17
7(1)(d) [Grounds for non-recognition or non-execution: double criminality test]	Art. 695-9-17
7(2)(a) [Deadline to complete a proper certificate before refusal]	Art. 695-9-16
7(2)(b) [Possibility to accept an 'equivalent document' instead of a proper certificate before refusal]	Art. 695-9-16
7(2)(c) [Possibility to accept recognition/execution the order despite the lack of a proper certificate when sufficient information has been provided]	Art. 695-9-16
7(3) [Due notification of refusal to the issuing State]	Art. 695-9-19
7(4) [Practical impossibility to execute the order; due notification to the issuing State]	Art. 695-9-19
8(1)(a) [Grounds for postponement: risks to an ongoing criminal investigation]	Art. 695-9-20
8(1)(b) [Grounds for postponement: evidence or property already frozen within criminal proceedings]	Art. 695-9-20
8(1)(c) [Grounds for postponement: property already frozen according to an order given within any non-criminal proceedings in the executing State, as long as, under national law, this order has priority over subsequent national freezing orders given within criminal proceedings]	Art. 695-9-20
8(2) [Due notification of postponement to the issuing State]	Art. 695-9-20
8(3) [Immediate execution once the ground for postponement has ceased; due notification to the issuing State]	Art. 695-9-21
8(4) Information to the issuing State about any other restraint measures to which the property is subjected	Art. 695-9-29



9(1) Necessary certificate with standard form is to accompany the order when it is transmitted to the executing State (Annex)	Art. 695-9-3
9(2) Need to translate the certificate into one of the official languages of the executing State	Art. 695-9-5
9(3) Possibility to accept a translation in other languages (as long as they are official languages of the EU institutions)	Not implemented
10(1)(a) Possible request for the evidence to be transferred to the issuing State when transmitting the order & certificate	Art. 695-9-4
10(1)(b) Possible request for confiscation to be transferred to the issuing State when transmitting the order & certificate	Art. 695-9-4
10(1)(c) Instruction in the certificate asking the executing State to maintain the freezing pending a subsequent request for transferring the evidence or for confiscation of the property	Art. 695-9-4
10(2) Submission and processing of requests for transferring the evidence or for confiscation of the property: governed by rules applicable to mutual assistance in criminal matters and to international cooperation relating to confiscation	Art. 695-9-4
10(3) Requests for transferring evidence may not be refused on grounds double criminality where the request concerns an offence listed in article 3(2)	Art. 695-9-17
11(1) Legal remedies without suspensive effect not only in the issuing State but also in the executing State	Arts. 695-9-22 and 695-9-30
11(2) Actions based on substantive reasons against the freezing order may only be brought in the issuing State	Art. 695-9-22
11(3) Actions brought in the executing State (based on procedural grounds only): due information to the issuing State and its right to submit arguments	Arts. 695-9-22 and. 695-9-25
11(4) States' duty to take measures to provide information about legal remedies	Art. 695-9-24

11(5) Time-limits for bringing an action against the freezing order shall guarantee the possibility of an effective legal remedy	Art. 695-9-22
12(1) The issuing State shall reimburse to the executing State any sums paid in damages caused by the execution of the order, unless injury is exclusively due to the executing State's conduct.	Not implemented
12(2) National laws about compensation of damage will always apply	Not implemented
13 Application to Gibraltar	No implementation needed.
14(1) National measures for implementation of the FD	
14(2) Duty to communicate measures for implementation to the GSC and the Commission; reports thereof; Council's assessment thereof	No implementation needed.
14(3) Duty of the GSC to notify Member States and the Commission of declarations made under article 9(3)	No implementation needed.
15 Entry into force of the FD	No implementation needed.
Annex: Certificate provided for in art. 9	

### **Comments about implementation**

Article 695-9-17 has introduced a ground for refusal not foreseen by the FD:

«3° If it is established that the freezing decision was taken with the purpose of prosecuting or convicting a person because of his gender, race, religion, ethnic origin, nationality, language, political opinions or sexual preferences, or that the execution of the said decision could affect the situation of this person for one of these reasons»

Article 695-9-20 has introduced a ground for postponement not foreseen by the FD:

«4° When any one of the assets or pieces of evidence concerned is a protected document or medium in respect of national defence, as long as the decision to declassify it has not been notified by the competent administrative authority to the investigating judge in charge of the execution of the freezing decision.»

## 10. GERMANY

### General state of implementation (Legislation; entry into force date):

- Implemented by means of the Act of June 2008 transposing the Council Framework Decision of 22 July 2003 on the execution in the European Union of orders freezing property or evidence (*Gesetz zur Umsetzung des Rahmenbeschlusses des Rates vom 22. Juli 2003 über die Vollstreckung von Entscheidungen über die Sicherstellung von Vermögensgegenständen oder Beweismitteln in der Europäischen Union*), amending the International Judicial Assistance in Criminal Matters Act of 27 June 1994 (*Gesetz über die internationale Rechtshilfe in Strafsachen*)
- Entry into force: 30 June 2008

### Competent authority to receive the freezing orders:

- State prosecutors (*Staatsanwaltschaften der Länder*)

### Languages accepted for certificates pursuant to art. 9(3):

- German
- Official language of other Member States which accept freezing orders issued in German by German judicial authorities

**Links:** <http://www.gesetze-im-internet.de/irg/index.html>

### Implementation of particular provisions of the FD 2003/577:

<i>Article in the Framework Decision</i>	<i>Implementation</i>
Article 1 (Scope)	No implementation needed
2(a) [Definition of ‘issuing State’]	No implementation needed
2(b) [Definition of ‘executing State’]	No implementation needed
2(c) [Definition of ‘freezing order’]	No implementation needed
2(d) [Definition of ‘property’]	No implementation needed
2(e) [Definition of ‘evidence’]	No implementation needed
3(1)(a) [Freezing orders securing evidence]	No implementation needed
3(1)(b) [Freezing orders for subsequent confiscation of property]	No implementation needed
3(2) [List of offences to which the double criminality test does not apply]	§ 94 (1)
3(3) [Council’s authority for future amendments or extensions of the previous list]	No implementation needed.
3(4) [Other offences]	Not implemented

4(1) [Direct transmission of the order to the competent authority for recognition/execution in the executing State]	General rules of the International Judicial Assistance in Criminal Matters Act [§ 91(1)]
4(2) [Transmission through a central authority of orders sent to the UK or Ireland]	Not relevant.
4(3) [Inquiries to find out what the competent authority for execution is]	General rules of the International Judicial Assistance in Criminal Matters Act [§ 91(1)]
4(4) [Re-direction of an order to the competent authority for execution within the executing State]	General rules of the International Judicial Assistance in Criminal Matters Act [§ 91(1)]
5(1), paragraph 1 [Immediate recognition and enforcement of the order is due, unless grounds for refusal or postponement]	§ 96
5(1), paragraph 2 [Execution of the order with formalities indicated by the issuing State]	General rules of the International Judicial Assistance in Criminal Matters Act [§ 91(1)]
5(1), paragraph 3 [Report on the execution sent to the issuing State]	General rules of the International Judicial Assistance in Criminal Matters Act [§ 91(1)]
5(2) [Law of the executing State applicable to execution]	General rules of the International Judicial Assistance in Criminal Matters Act [§ 91(1)]
5(3) [Communication to the issuing State within 24 hours]	Not expressly implemented
6(1) [Freezing remains until requests from the issuing State have been responded]	Not expressly implemented
6(2) [Possibility to limit the period of the freezing]	Not implemented
6(3) [Duty to communicate the lifting of the order to the executing State]	General rules of the International Judicial Assistance in Criminal Matters Act [§ 91(1)]
7(1)(a) [Grounds for non-recognition or non-execution: problems with certificate]	Not implemented
7(1)(b) [Grounds for non-recognition or non-execution: immunity or privilege]	§ 94(2)1
7(1)(c) [Grounds for non-recognition or non-execution: <i>ne bis in idem</i> ]	§ 94(2)2
7(1)(d) [Grounds for non-recognition or non-execution: double criminality test]	General rules of the International Judicial Assistance in Criminal Matters Act [§ 91(1)]

7(2)(a) [Deadline to complete a proper certificate before refusal]	§ 95(2)
7(2)(b) [Possibility to accept an ‘equivalent document’ instead of a proper certificate before refusal]	Not implemented
7(2)(c) [Possibility to accept recognition/execution the order despite the lack of a proper certificate when sufficient information has been provided]	§ 95(2)
7(3) [Due notification of refusal to the issuing State]	General rules of the International Judicial Assistance in Criminal Matters Act [§ 91(1)]
7(4) [Practical impossibility to execute the order; due notification to the issuing State]	General rules of the International Judicial Assistance in Criminal Matters Act [§ 91(1)]
8(1)(a) [Grounds for postponement: risks to an ongoing criminal investigation]	§ 94(3)1
8(1)(b) [Grounds for postponement: evidence or property already frozen within criminal proceedings]	§ 94(3)2
8(1)(c) [Grounds for postponement: property already frozen according to an order given within any non-criminal proceedings in the executing State, as long as, under national law, this order has priority over subsequent national freezing orders given within criminal proceedings]	Not implemented
8(2) [Due notification of postponement to the issuing State]	General rules of the International Judicial Assistance in Criminal Matters Act [§ 91(1)]
8(3) [Immediate execution once the ground for postponement has ceased; due notification to the issuing State]	General rules of the International Judicial Assistance in Criminal Matters Act [§ 91(1)]
8(4) Information to the issuing State about any other restraint measures to which the property is subjected	Not implemented
9(1) Necessary certificate with standard form is to accompany the order when it is transmitted to the executing State (Annex)	§ 95(1)
9(2) Need to translate the certificate into one of the official languages of the executing State	General rules of the International Judicial Assistance in Criminal Matters Act [§ 91(1)]

9(3) Possibility to accept a translation in other languages (as long as they are official languages of the EU institutions)	Not implemented
10(1)(a) Possible request for the evidence to be transferred to the issuing State when transmitting the order & certificate	General rules of the International Judicial Assistance in Criminal Matters Act [§ 91(1)]
10(1)(b) Possible request for confiscation to be transferred to the issuing State when transmitting the order & certificate	General rules of the International Judicial Assistance in Criminal Matters Act [§ 91(1)]
10(1)(c) Instruction in the certificate asking the executing State to maintain the freezing pending a subsequent request for transferring the evidence or for confiscation of the property	General rules of the International Judicial Assistance in Criminal Matters Act [§ 91(1)]
10(2) Submission and processing of requests for transferring the evidence or for confiscation of the property: governed by rules applicable to mutual assistance in criminal matters and to international cooperation relating to confiscation	General rules of the International Judicial Assistance in Criminal Matters Act [§ 91(1)]
10(3) Requests for transferring evidence may not be refused on grounds double criminality where the request concerns an offence listed in article 3(2)	General rules of the International Judicial Assistance in Criminal Matters Act [§ 91(1)]
11(1) Legal remedies without suspensive effect not only in the issuing State but also in the executing State	General rules of the International Judicial Assistance in Criminal Matters Act [§ 91(1)]
11(2) Actions based on substantive reasons against the freezing order may only be brought in the issuing State	General rules of the International Judicial Assistance in Criminal Matters Act [§ 91(1)]
11(3) Actions brought in the executing State (based on procedural grounds only): due information to the issuing State and its right to submit arguments	General rules of the International Judicial Assistance in Criminal Matters Act [§ 91(1)]
11(4) States' duty to take measures to provide information about legal remedies	General rules of the International Judicial Assistance in Criminal Matters Act [§ 91(1)]
11(5) Time-limits for bringing an action against the freezing order shall guarantee the possibility of an effective legal remedy	General rules of the International Judicial Assistance in Criminal Matters Act [§ 91(1)]

12(1) The issuing State shall reimburse to the executing State any sums paid in damages caused by the execution of the order, unless injury is exclusively due to the executing State's conduct.	General rules of the International Judicial Assistance in Criminal Matters Act [§ 91(1)]
12(2) National laws about compensation of damage will always apply	General rules of the International Judicial Assistance in Criminal Matters Act [§ 91(1)]
13 Application to Gibraltar	No implementation needed.
14(1) National measures for implementation of the FD	
14(2) Duty to communicate measures for implementation to the GSC and the Commission; reports thereof; Council's assessment thereof	No implementation needed.
14(3) Duty of the GSC to notify Member States and the Commission of declarations made under article 9(3)	No implementation needed.
15 Entry into force of the FD	No implementation needed.
Annex: Certificate provided for in art. 9	

## **11. GREECE**

The Framework Decision has not been yet implemented.



## 12. HUNGARY

### General state of implementation (Legislation; entry into force date):

- Implemented by means of the Act CXXX of 2003 on Cooperation with the Member States of the European Union in Criminal Matters ('Begytv.');
- Article 8 of Annex 1 to Act CX of 2005 on Amendments to Act CXXX of 2003 on Cooperation with the Member States of the European Union in Criminal Matters; Act XIX of 1998 on Criminal Procedure ('Be.'), especially Articles 151 to 160, 195, and 207; Articles 77 and 77/B of Act IV of 1978 on the Criminal Code ('Btk.');
- Article 349 of Act IV of 1959 on the Civil Code
- Entry into force: 5 November 2005

### Competent authority to receive the freezing orders:

- Ministry of Public Administration and Justice  
Address: Kossuth tér 4., 1055  
Budapest  
Tel.: +36 (1) 795 5823  
Fax: +36 (1) 795 0552; +36 (1) 795 0554  
e-mail: [nemzb@kim.gov.hu](mailto:nemzb@kim.gov.hu)
- Office of the Prosecutor's General  
Address: Markó u. 16., 1055  
Budapest  
Tel.: +36 (1) 354 5545  
Fax: +36 (1) 269 2662  
e-mail: [IntlEU@mku.hu](mailto:IntlEU@mku.hu)
- A detailed list of the competent authorities is set out in 11960/05 COPEN 135 EJM 53 EUROJUST 60

### Languages accepted for certificates pursuant to art. 9(3):

- Hungarian

**Links:** <http://www.lexadin.nl/wlg/legis/nofr/eur/lxwehun.htm>

### Implementation of particular provisions of the FD 2003/577:

<i>Article in the Framework Decision</i>	<i>Implementation</i>
Article 1 (Scope)	No implementation needed
2(a) [Definition of 'issuing State']	Articles 67/A (1), 67/I (1) of the Begytv. [background regulations: Articles 77 and 77/B of the Btk; Articles 76, 78, 151, 158/A (2), and 159 (2) of the Be.]

2(b) [Definition of ‘executing State’]	Articles 67/A (1), 67/I (1) of the Begytv. [background regulations: Articles 77 and 77/B of the Btk; Articles 76, 78, 151, 158/A (2), and 159 (2) of the Be.]
2(c) [Definition of ‘freezing order’]	Articles 67/A (1), 67/I (1) of the Begytv. [background regulations: Articles 77 and 77/B of the Btk; Articles 76, 78, 151, 158/A (2), and 159 (2) of the Be.]
2(d) [Definition of ‘property’]	Articles 67/A (1), 67/I (1) of the Begytv. [background regulations: Articles 77 and 77/B of the Btk; Articles 76, 78, 151, 158/A (2), and 159 (2) of the Be.]
2(e) [Definition of ‘evidence’]	Articles 67/A (1), 67/I (1) of the Begytv. [background regulations: Articles 77 and 77/B of the Btk; Articles 76, 78, 151, 158/A (2), and 159 (2) of the Be.]
3(1)(a) [Freezing orders securing evidence]	No implementation needed
3(1)(b) [Freezing orders for subsequent confiscation of property]	No implementation needed
3(2) [List of offences to which the double criminality test does not apply]	Article 67/B of the Begytv.; Annex 1 to the Begytv.
3(3) [Council’s authority for future amendments or extensions of the previous list]	No implementation needed.
3(4) [Other offences]	Article 67/B (2)-(3) of the Begytv.
4(1) [Direct transmission of the order to the competent authority for recognition/execution in the executing State]	Articles 67/A (2), (4) and 67/I of the Begytv.
4(2) [Transmission through a central authority of orders sent to the UK or Ireland]	Not relevant.
4(3) [Inquiries to find out what the competent authority for execution is]	Article 67/K (2) of the Begytv.
4(4) [Re-direction of an order to the competent authority for execution within the executing State]	Article 67/A (5) of the Begytv.
5(1), paragraph 1 [Immediate recognition and enforcement of the order is due, unless grounds for refusal or postponement]	Articles 67/D and 67/G (1)-(2) of the Begytv.

5(1), paragraph 2 [Execution of the order with formalities indicated by the issuing State]	Articles 67/D and 67/G) (1)-(2) of the Begytv.
5(1), paragraph 3 [Report on the execution sent to the issuing State]	Articles 67/D and 67/G) (1)-(2) of the Begytv.
5(2) [Law of the executing State applicable to execution]	Article 67/G (3) of the Begytv.
5(3) [Communication to the issuing State within 24 hours]	Articles 67/E (2) and 67/H (2) of the Begytv.
6(1) [Freezing remains until requests from the issuing State have been responded]	The general provisions of the Be. as background regulations; Article 67 / H of the Begytv.
6(2) [Possibility to limit the period of the freezing]	The general provisions of the Be. as background regulations; Article 67 / H of the Begytv.
6(3) [Duty to communicate the lifting of the order to the executing State]	The general provisions of the Be. as background regulations, especially Articles 159 (4), 155, 157 (2), 158/A (8), 160 (7) of the Be; Articles 67/H and 67/K (3) of the Begytv.
7(1)(a) [Grounds for non-recognition or non-execution: problems with certificate]	Article 67/C of the Begytv.
7(1)(b) [Grounds for non-recognition or non-execution: immunity or privilege]	Article 67/C of the Begytv.
7(1)(c) [Grounds for non-recognition or non-execution: <i>ne bis in idem</i> ]	Article 67/C of the Begytv.
7(1)(d) [Grounds for non-recognition or non-execution: double criminality test]	Article 67/C of the Begytv.
7(2)(a) [Deadline to complete a proper certificate before refusal]	Article 67/D (2)-(4) of the Begytv.
7(2)(b) [Possibility to accept an 'equivalent document' instead of a proper certificate before refusal]	Article 67/D (2)-(4) of the Begytv.
7(2)(c) [Possibility to accept recognition/execution the order despite the lack of a proper certificate when sufficient information has been provided]	Article 67/D (2)-(4) of the Begytv.
7(3) [Due notification of refusal to the issuing State]	Article 67/E (1) of the Begytv.

7(4) [Practical impossibility to execute the order; due notification to the issuing State]	Article 67/E (2) of the Begytv.
8(1)(a) [Grounds for postponement: risks to an ongoing criminal investigation]	Article 67/F (1)-(4) of the Begytv.
8(1)(b) [Grounds for postponement: evidence or property already frozen within criminal proceedings]	Article 67/F (1)-(4) of the Begytv.
8(1)(c) [Grounds for postponement: property already frozen according to an order given within any non-criminal proceedings in the executing State, as long as, under national law, this order has priority over subsequent national freezing orders given within criminal proceedings]	Article 67/F (1)-(4) of the Begytv.
8(2) [Due notification of postponement to the issuing State]	Article 67/F (5) of the Begytv.
8(3) [Immediate execution once the ground for postponement has ceased; due notification to the issuing State]	Article 67/F (6) of the Begytv.
8(4) Information to the issuing State about any other restraint measures to which the property is subjected	Article 67/E of the Begytv.
9(1) Necessary certificate with standard form is to accompany the order when it is transmitted to the executing State (Annex)	Article 67/I (1)-(2) of the Begytv.
9(2) Need to translate the certificate into one of the official languages of the executing State	Article 67/I (1)-(2) of the Begytv.
9(3) Possibility to accept a translation in other languages (as long as they are official languages of the EU institutions)	Not implemented
10(1)(a) Possible request for the evidence to be transferred to the issuing State when transmitting the order & certificate	Article 67/I (3) of the Begytv. Article 67/B of the Begytv.
10(1)(b) Possible request for confiscation to be transferred to the issuing State when transmitting the order & certificate	Article 67/I (3) of the Begytv. Article 67/B of the Begytv.

10(1)(c) Instruction in the certificate asking the executing State to maintain the freezing pending a subsequent request for transferring the evidence or for confiscation of the property	Article 67/I (3) of the Begytv. Article 67/B of the Begytv.
10(2) Submission and processing of requests for transferring the evidence or for confiscation of the property: governed by rules applicable to mutual assistance in criminal matters and to international cooperation relating to confiscation	Article 67/I (3) of the Begytv. Article 67/B of the Begytv.
10(3) Requests for transferring evidence may not be refused on grounds double criminality where the request concerns an offence listed in article 3(2)	Article 67/I (3) of the Begytv. Article 67/B of the Begytv.
11(1) Legal remedies without suspensive effect not only in the issuing State but also in the executing State	The Be. as a background regulation, especially Articles 195 and 207 thereof.
11(2) Actions based on substantive reasons against the freezing order may only be brought in the issuing State	No regulation is required at the statutory level
11(3) Actions brought in the executing State (based on procedural grounds only): due information to the issuing State and its right to submit arguments	No regulation is required at the statutory level
11(4) States' duty to take measures to provide information about legal remedies	No regulation is required at the statutory level
11(5) Time-limits for bringing an action against the freezing order shall guarantee the possibility of an effective legal remedy	No regulation is required at the statutory level
12(1) The issuing State shall reimburse to the executing State any sums paid in damages caused by the execution of the order, unless injury is exclusively due to the executing State's conduct.	Provisions of the Ptk. related to injuries caused by public administration proceedings (Article 349 of the Ptk.); Article 155 (7) of the Be.
12(2) National laws about compensation of damage will always apply	Provisions of the Ptk. related to injuries caused by public administration proceedings (Article 349 of the Ptk.); Article 155 (7) of the Be.
13 Application to Gibraltar	No implementation needed.
14(1) National measures for implementation of the FD	No implementation needed.

14(2) Duty to communicate measures for implementation to the GSC and the Commission; reports thereof; Council's assessment thereof	No implementation needed.
14(3) Duty of the GSC to notify Member States and the Commission of declarations made under article 9(3)	No implementation needed.
15 Entry into force of the FD	No implementation needed.
Annex: Certificate provided for in art. 9	Annex 2 to the Begytv

## 13. IRELAND

### General state of implementation (Legislation; entry into force date):

- Implemented by means of the Criminal Justice (Mutual Assistance) Act 2008
- Entry into force: 1<sup>st</sup> September 2008

### Competent authority to receive the freezing orders:

- Central Authority: Minister for Justice, Equality and Law Reform  
Mutual Assistance and Extradition Division, Department of Justice, Equality and Law Reform,  
Pinebrook House, 71-74 Harcourt Street. Dublin 2, Ireland.  
Tel :- + 353 1 6028589, 6028535, 6028605  
Fax No:- + 353 1 6028606

### Languages accepted for certificates pursuant to art. 9(3):

- Irish
- English

### Links:

<http://www.oireachtas.ie/documents/bills28/acts/2008/a0708.pdf>  
[http://www.consilium.europa.eu/ueDocs/cms\\_Data/docs/polju/en/EJN759.pdf](http://www.consilium.europa.eu/ueDocs/cms_Data/docs/polju/en/EJN759.pdf)  
<http://www.ejn-crimjust.europa.eu/ejn/libdocumentproperties.aspx?Id=103>

### Implementation of particular provisions of the FD 2003/577:

<i>Article in the Framework Decision</i>	<i>Implementation</i>
Article 1 (Scope)	No implementation needed
2(a) [Definition of ‘issuing State’]	Section 31
2(b) [Definition of ‘executing State’]	No implementation needed
2(c) [Definition of ‘freezing order’]	Section 31
2(d) [Definition of ‘property’]	Section 31
2(e) [Definition of ‘evidence’]	No implementation needed
3(1)(a) [Freezing orders securing evidence]	No implementation needed
3(1)(b) [Freezing orders for subsequent confiscation of property]	No implementation needed
3(2) [List of offences to which the double criminality test does not apply]	Section 35(6)
3(3) [Council’s authority for future amendments or extensions of the previous list]	No implementation needed.
3(4) [Other offences]	Section 35(6), Section 46(1)(a)

4(1) [Direct transmission of the order to the competent authority for recognition/execution in the executing State]	Not applicable
4(2) [Transmission through a central authority of orders sent to the UK or Ireland]	Section 8, Section 33(4) and (5), Section 34 (1)
4(3) [Inquiries to find out what the competent authority for execution is]	Not implemented
4(4) [Re-direction of an order to the competent authority for execution within the executing State]	Not implemented
5(1), paragraph 1 [Immediate recognition and enforcement of the order is due, unless grounds for refusal or postponement]	Section 35(1)
5(1), paragraph 2 [Execution of the order with formalities indicated by the issuing State]	Sections 33(3) and 35(7)
5(1), paragraph 3 [Report on the execution sent to the issuing State]	Not implemented
5(2) [Law of the executing State applicable to execution]	Sections 36 to 43
5(3) [Communication to the issuing State within 24 hours]	Section 35(3)
6(1) [Freezing remains until requests from the issuing State have been responded]	Section 44
6(2) [Possibility to limit the period of the freezing]	Not implemented
6(3) [Duty to communicate the lifting of the order to the executing State]	Section 32(6)
7(1)(a) [Grounds for non-recognition or non-execution: problems with certificate]	Section 46(1)(b)
7(1)(b) [Grounds for non-recognition or non-execution: immunity or privilege]	Section 46(1)(c)
7(1)(c) [Grounds for non-recognition or non-execution: <i>ne bis in idem</i> ]	Section 46(1)(d)
7(1)(d) [Grounds for non-recognition or non-execution: double criminality test]	Section 46(1)(a)



7(2)(a) [Deadline to complete a proper certificate before refusal]	Section 46(2)(a)
7(2)(b) [Possibility to accept an ‘equivalent document’ instead of a proper certificate before refusal]	Section 46(2)(b)
7(2)(c) [Possibility to accept recognition/execution the order despite the lack of a proper certificate when sufficient information has been provided]	Section 46(2)(c)
7(3) [Due notification of refusal to the issuing State]	Section 46(3)(a)
7(4) [Practical impossibility to execute the order; due notification to the issuing State]	Section 46(3)(b)
8(1)(a) [Grounds for postponement: risks to an ongoing criminal investigation]	Section 47(1)(a)
8(1)(b) [Grounds for postponement: evidence or property already frozen within criminal proceedings]	Section 47(1)(b)
8(1)(c) [Grounds for postponement: property already frozen according to an order given within any non-criminal proceedings in the executing State, as long as, under national law, this order has priority over subsequent national freezing orders given within criminal proceedings]	Sections 47(1)(b) and 47(2)
8(2) [Due notification of postponement to the issuing State]	Section 47(4)(a)
8(3) [Immediate execution once the ground for postponement has ceased; due notification to the issuing State]	Sections 47(3) and 47(4)(b)
8(4) Information to the issuing State about any other restraint measures to which the property is subjected	Section 47(4)(c)
9(1) Necessary certificate with standard form is to accompany the order when it is transmitted to the executing State (Annex)	Section 33(1) and (2), Section 34
9(2) Need to translate the certificate into one of the official languages of the executing State	Not implemented

9(3) Possibility to accept a translation in other languages (as long as they are official languages of the EU institutions)	Not implemented
10(1)(a) Possible request for the evidence to be transferred to the issuing State when transmitting the order & certificate	Sections 7, 34(1) and 48(1)
10(1)(b) Possible request for confiscation to be transferred to the issuing State when transmitting the order & certificate	Sections 34(1) and 48(2)
10(1)(c) Instruction in the certificate asking the executing State to maintain the freezing pending a subsequent request for transferring the evidence or for confiscation of the property	Not implemented
10(2) Submission and processing of requests for transferring the evidence or for confiscation of the property: governed by rules applicable to mutual assistance in criminal matters and to international cooperation relating to confiscation	Not implemented
10(3) Requests for transferring evidence may not be refused on grounds double criminality where the request concerns an offence listed in article 3(2)	Section 48(3)
11(1) Legal remedies without suspensive effect not only in the issuing State but also in the executing State	Sections 45(1) and (3)
11(2) Actions based on substantive reasons against the freezing order may only be brought in the issuing State	Section 45(4)
11(3) Actions brought in the executing State (based on procedural grounds only): due information to the issuing State and its right to submit arguments	Sections 45(2) and (5)
11(4) States' duty to take measures to provide information about legal remedies	Section 35(8)
11(5) Time-limits for bringing an action against the freezing order shall guarantee the possibility of an effective legal remedy	Not implemented

12(1) The issuing State shall reimburse to the executing State any sums paid in damages caused by the execution of the order, unless injury is exclusively due to the executing State's conduct.	Not implemented
12(2) National laws about compensation of damage will always apply	Not implemented
13 Application to Gibraltar	No implementation needed.
14(1) National measures for implementation of the FD	No implementation needed.
14(2) Duty to communicate measures for implementation to the GSC and the Commission; reports thereof; Council's assessment thereof	No implementation needed.
14(3) Duty of the GSC to notify Member States and the Commission of declarations made under article 9(3)	No implementation needed.
15 Entry into force of the FD	No implementation needed.
Annex: Certificate provided for in art. 9	

## Comments about implementation

Article 7(1): Grounds for non-recognition:

Reference to section 3 of the Act implies a wider range of grounds, as well as the list set in section 46(1), including grounds not foreseen in the FD:

**3.—(1) Assistance shall be refused—**

*(a) if the Minister considers that providing assistance would be likely to prejudice the sovereignty, security or other essential interests of the State or would be contrary to public policy (ordre public),*

*(b) if there are reasonable grounds for believing—*

*(i) that the request concerned was made for the purpose of prosecuting or punishing a person on account of his or her sex, race, religion, ethnic origin, nationality, language, political opinion or sexual orientation,*

*(ii) that providing assistance—*

*(I) may prejudice a person's position for any of those reasons, or*

*(II) may result in the person being subjected to torture or to any other contravention of the European Convention on Human Rights,*

*(c) if the request is not in accordance with the relevant international instrument, or*

*(d) if, and for as long as, the provision of assistance would prejudice a criminal investigation, or criminal proceedings, in the State, and may be refused on any other ground of refusal of assistance specified in the relevant international instrument.*

(2) In this section, “torture” has the meaning given to it by the Criminal Justice (United Nations Convention against Torture) Act 2000.

**46.**—(1) Without prejudice to section 3, the High Court may refuse to make a freezing co-operation order only if—

(a) the offence to which the external freezing order relates is not an offence to which the relevant international instrument relates,

(b) where the external freezing order was made in a member state, the certificate is not produced, is incomplete or manifestly does not correspond to the external freezing order,

(c) there is an immunity or privilege under the law of the State which makes it impossible to make a freezing co-operation order,

(d) it is immediately clear from the information provided in a certificate that compliance with a request for the transfer of evidence or confiscation of property in relation to the offence in respect of which the external freezing order has been made would infringe the ne bis in idem principle,

or

(e) *in the case of an external freezing order from a designated state (other than a member state), there is not a reasonable basis for believing—*

*(i) that there are sufficient grounds for making the order, or*

*(ii) that the property will be subject to an external confiscation order.*

## **14. ITALY**

Italy has not implemented yet the Framework Decision

## 15. LATVIA

### General state of implementation (Legislation; entry into force date):

- Implemented by means of the Act amending the Latvian Code of Criminal Procedure
- Entry into force: 1 January 2008

### Competent authority to receive the freezing orders:

- Procurator General's Office (Ģenerālprokuratūra)  
Kalpaka bulvāris 6, Rīga,  
LV-1801  
Latvia  
Tel.: +371 67044400  
Fax: +371 67044449  
e-mail: gen@lrp.gov.l

### Languages accepted for certificates pursuant to art. 9(3):

- Latvian
- English

### Links:

- <http://www.lexadin.nl/wlg/legis/nofr/oeur/lxwelat.htm>
- [http://www.consilium.europa.eu/ueDocs/cms\\_Data/docs/polju/en/EJN746.pdf](http://www.consilium.europa.eu/ueDocs/cms_Data/docs/polju/en/EJN746.pdf)
- <http://www.ejn-crimjust.europa.eu/ejn/libdocumentproperties.aspx?Id=114>

### Implementation of particular provisions of the FD 2003/577:

<i>Article in the Framework Decision</i>	<i>Implementation</i>
Article 1 (Scope)	Not implemented
2(a) [Definition of 'issuing State']	Not implemented
2(b) [Definition of 'executing State']	Not implemented
2(c) [Definition of 'freezing order']	Not implemented
2(d) [Definition of 'property']	Not implemented
2(e) [Definition of 'evidence']	Not implemented
3(1)(a) [Freezing orders securing evidence]	Not implemented
3(1)(b) [Freezing orders for subsequent confiscation of property]	Not implemented
3(2) [List of offences to which the double criminality test does not apply]	Section 825 <sup>1</sup> (6) and 825 <sup>5</sup> (3) Annex 2

3(3) [Council's authority for future amendments or extensions of the previous list]	No implementation needed.
3(4) [Other offences]	Not implemented
4(1) [Direct transmission of the order to the competent authority for recognition/execution in the executing State]	Section 829 <sup>1</sup> (5)
4(2) [Transmission through a central authority of orders sent to the UK or Ireland]	Not relevant.
4(3) [Inquiries to find out what the competent authority for execution is]	Not implemented
4(4) [Re-direction of an order to the competent authority for execution within the executing State]	Not implemented
5(1), paragraph 1 [Immediate recognition and enforcement of the order is due, unless grounds for refusal or postponement]	Section 825 <sup>1</sup> (2)
5(1), paragraph 2 [Execution of the order with formalities indicated by the issuing State]	Section 825 <sup>1</sup> (4)
5(1), paragraph 3 [Report on the execution sent to the issuing State]	Not implemented
5(2) [Law of the executing State applicable to execution]	Sections 825 <sup>1</sup> (3) and 825 <sup>1</sup> (5)
5(3) [Communication to the issuing State within 24 hours]	Section 825 <sup>1</sup> (2)
6(1) [Freezing remains until requests from the issuing State have been responded]	Section 825 <sup>4</sup> (1)
6(2) [Possibility to limit the period of the freezing]	Section 825 <sup>4</sup> (2)
6(3) [Duty to communicate the lifting of the order to the executing State]	Section 825 <sup>4</sup> (3)
7(1)(a) [Grounds for non-recognition or non-execution: problems with certificate]	Section 825 <sup>2</sup> (1)(1)
7(1)(b) [Grounds for non-recognition or non-execution: immunity or privilege]	Section 825 <sup>2</sup> (1)(2)
7(1)(c) [Grounds for non-recognition or non-execution: <i>ne bis in idem</i> ]	Section 825 <sup>2</sup> (1)(3)

7(1)(d) [Grounds for non-recognition or non-execution: double criminality test]	Section 825 <sup>2</sup> (1)(4)
7(2)(a) [Deadline to complete a proper certificate before refusal]	Section 825 <sup>2</sup> (2)(1)
7(2)(b) [Possibility to accept an ‘equivalent document’ instead of a proper certificate before refusal]	Section 825 <sup>2</sup> (2)(2)
7(2)(c) [Possibility to accept recognition/execution the order despite the lack of a proper certificate when sufficient information has been provided]	Section 825 <sup>2</sup> (2)(3)
7(3) [Due notification of refusal to the issuing State]	Section 825 <sup>1</sup> (2)
7(4) [Practical impossibility to execute the order; due notification to the issuing State]	Section 825 <sup>2</sup> (3)
8(1)(a) [Grounds for postponement: risks to an ongoing criminal investigation]	Section 825 <sup>3</sup> (1)(1)
8(1)(b) [Grounds for postponement: evidence or property already frozen within criminal proceedings]	Sections 825 <sup>3</sup> (1)(2) and 825 <sup>3</sup> (1)(3)
8(1)(c) [Grounds for postponement: property already frozen according to an order given within any non-criminal proceedings in the executing State, as long as, under national law, this order has priority over subsequent national freezing orders given within criminal proceedings]	Sections 825 <sup>3</sup> (1)(2) and 825 <sup>3</sup> (1)(3)
8(2) [Due notification of postponement to the issuing State]	Section 825 <sup>3</sup> (2)
8(3) [Immediate execution once the ground for postponement has ceased; due notification to the issuing State]	Section 825 <sup>3</sup> (3)
8(4) Information to the issuing State about any other restraint measures to which the property is subjected	Section 825 <sup>3</sup> (4)
9(1) Necessary certificate with standard form is to accompany the order when it is transmitted to the executing State (Annex)	Sections 825 <sup>1</sup> (1) and 829 <sup>1</sup> (4)



9(2) Need to translate the certificate into one of the official languages of the executing State	Section 829 <sup>1</sup> (3)
9(3) Possibility to accept a translation in other languages (as long as they are official languages of the EU institutions)	Not implemented
10(1)(a) Possible request for the evidence to be transferred to the issuing State when transmitting the order & certificate	Sections 825 <sup>5</sup> (1) and 829 <sup>2</sup> (1)
10(1)(b) Possible request for confiscation to be transferred to the issuing State when transmitting the order & certificate	Sections 825 <sup>5</sup> (1) and 829 <sup>2</sup> (1)
10(1)(c) Instruction in the certificate asking the executing State to maintain the freezing pending a subsequent request for transferring the evidence or for confiscation of the property	Section 825 <sup>5</sup> (1)
10(2) Submission and processing of requests for transferring the evidence or for confiscation of the property: governed by rules applicable to mutual assistance in criminal matters and to international cooperation relating to confiscation	Section 825 <sup>5</sup> (2)
10(3) Requests for transferring evidence may not be refused on grounds double criminality where the request concerns an offence listed in article 3(2)	Not implemented
11(1) Legal remedies without suspensive effect not only in the issuing State but also in the executing State	Sections 825 <sup>6</sup> (1) and (2), Section 829 <sup>3</sup> (2)
11(2) Actions based on substantive reasons against the freezing order may only be brought in the issuing State	Section 825 <sup>6</sup> (3)
11(3) Actions brought in the executing State (based on procedural grounds only): due information to the issuing State and its right to submit arguments	Sections 825 <sup>6</sup> (4) and 829 <sup>3</sup> (1)
11(4) States' duty to take measures to provide information about legal remedies	Not implemented
11(5) Time-limits for bringing an action against the freezing order shall guarantee the possibility of an effective legal remedy	Not implemented

12(1) The issuing State shall reimburse to the executing State any sums paid in damages caused by the execution of the order, unless injury is exclusively due to the executing State's conduct.	Not implemented
12(2) National laws about compensation of damage will always apply	Not implemented
13 Application to Gibraltar	No implementation needed.
14(1) National measures for implementation of the FD	No implementation needed.
14(2) Duty to communicate measures for implementation to the GSC and the Commission; reports thereof; Council's assessment thereof	No implementation needed.
14(3) Duty of the GSC to notify Member States and the Commission of declarations made under article 9(3)	No implementation needed.
15 Entry into force of the FD	No implementation needed.
Annex: Certificate provided for in art. 9	

## 16. LITHUANIA

### **General state of implementation (Legislation; entry into force date):**

- Implemented by means of an Act (Law No X-1236) amending the Lithuanian Code of Criminal Procedure, adopted on 28 June 2007.
- Entry into force: 21 July 2007

### **Competent authority to receive the freezing orders:**

- General Prosecutor's Office [located at A. Smetonos g. 4, 01515 Vilnius, Lithuania; tel. (370) 5266 2305, fax. (370) 5266 2317]

### **Languages accepted for certificates pursuant to art. 9(3):**

- Lithuanian
- English

### **Links:**

- 8548/08 COPEN 79 EJM 32 EUROJUST 38
- <http://www.wipo.int/wipolex/en/details.jsp?id=8195>

### **Implementation of particular provisions of the FD 2003/577:**

<i>Article in the Framework Decision</i>	<i>Implementation</i>
Article 1 (Scope)	Section 77-2 (3)(1)
2(a) [Definition of 'issuing State']	Not implemented
2(b) [Definition of 'executing State']	Not implemented
2(c) [Definition of 'freezing order']	Section 44-1
2(d) [Definition of 'property']	Section 72 (2) to (5) of the Lithuanian Criminal Code
2(e) [Definition of 'evidence']	Not implemented
3(1)(a) [Freezing orders securing evidence]	Not implemented
3(1)(b) [Freezing orders for subsequent confiscation of property]	Not implemented
3(2) [List of offences to which the double criminality test does not apply]	Section 77-2 (3)(4)
3(3) [Council's authority for future amendments or extensions of the previous list]	No implementation needed.
3(4) [Other offences]	Section 77-2 (3)(4)

4(1) [Direct transmission of the order to the competent authority for recognition/execution in the executing State]	Not implemented
4(2) [Transmission through a central authority of orders sent to the UK or Ireland]	Not relevant.
4(3) [Inquiries to find out what the competent authority for execution is]	Not implemented
4(4) [Re-direction of an order to the competent authority for execution within the executing State]	Not implemented
5(1), paragraph 1 [Immediate recognition and enforcement of the order is due, unless grounds for refusal or postponement]	Sections 77-2 (2) and 77-2 (7)
5(1), paragraph 2 [Execution of the order with formalities indicated by the issuing State]	Sections 67 (1) and 77-2 (7)
5(1), paragraph 3 [Report on the execution sent to the issuing State]	Section 77-2 (6)
5(2) [Law of the executing State applicable to execution]	Section 77-2 (7)
5(3) [Communication to the issuing State within 24 hours]	Section 77-2 (6)
6(1) [Freezing remains until requests from the issuing State have been responded]	Section 77-2 (10)
6(2) [Possibility to limit the period of the freezing]	Section 77-2 (10)
6(3) [Duty to communicate the lifting of the order to the executing State]	Not implemented
7(1)(a) [Grounds for non-recognition or non-execution: problems with certificate]	Section 77-2 (4)
7(1)(b) [Grounds for non-recognition or non-execution: immunity or privilege]	Section 77-2 (3)(3)
7(1)(c) [Grounds for non-recognition or non-execution: <i>ne bis in idem</i> ]	Section 77-2 (3)(2)
7(1)(d) [Grounds for non-recognition or non-execution: double criminality test]	Section 77-2 (3)(4)

7(2)(a) [Deadline to complete a proper certificate before refusal]	Section 77-2 (4)
7(2)(b) [Possibility to accept an ‘equivalent document’ instead of a proper certificate before refusal]	Section 77-2 (4)
7(2)(c) [Possibility to accept recognition/execution the order despite the lack of a proper certificate when sufficient information has been provided]	Section 77-2 (4)
7(3) [Due notification of refusal to the issuing State]	Section 77-2 (6)
7(4) [Practical impossibility to execute the order; due notification to the issuing State]	Section 77-2 (7)
8(1)(a) [Grounds for postponement: risks to an ongoing criminal investigation]	Section 77-2 (5)(1)
8(1)(b) [Grounds for postponement: evidence or property already frozen within criminal proceedings]	Section 77-2 (5)(2)
8(1)(c) [Grounds for postponement: property already frozen according to an order given within any non-criminal proceedings in the executing State, as long as, under national law, this order has priority over subsequent national freezing orders given within criminal proceedings]	Section 77-2 (5)(2)
8(2) [Due notification of postponement to the issuing State]	Section 77-2 (6)
8(3) [Immediate execution once the ground for postponement has ceased; due notification to the issuing State]	Section 77-2 (6)
8(4) Information to the issuing State about any other restraint measures to which the property is subjected	Not implemented
9(1) Necessary certificate with standard form is to accompany the order when it is transmitted to the executing State (Annex)	Not implemented
9(2) Need to translate the certificate into one of the official languages of the executing State	Not implemented

9(3) Possibility to accept a translation in other languages (as long as they are official languages of the EU institutions)	Not implemented
10(1)(a) Possible request for the evidence to be transferred to the issuing State when transmitting the order & certificate	Section 77-2 (9)
10(1)(b) Possible request for confiscation to be transferred to the issuing State when transmitting the order & certificate	Section 77-2 (9)
10(1)(c) Instruction in the certificate asking the executing State to maintain the freezing pending a subsequent request for transferring the evidence or for confiscation of the property	Section 77-2 (9)
10(2) Submission and processing of requests for transferring the evidence or for confiscation of the property: governed by rules applicable to mutual assistance in criminal matters and to international cooperation relating to confiscation	Section 77-2 (9)
10(3) Requests for transferring evidence may not be refused on grounds double criminality where the request concerns an offence listed in article 3(2)	Section 77-2 (3)(4)
11(1) Legal remedies without suspensive effect not only in the issuing State but also in the executing State	Section 77-2 (8)
11(2) Actions based on substantive reasons against the freezing order may only be brought in the issuing State	Not implemented
11(3) Actions brought in the executing State (based on procedural grounds only): due information to the issuing State and its right to submit arguments	Section 77-2 (8)
11(4) States' duty to take measures to provide information about legal remedies	Not implemented
11(5) Time-limits for bringing an action against the freezing order shall guarantee the possibility of an effective legal remedy	Not implemented

12(1) The issuing State shall reimburse to the executing State any sums paid in damages caused by the execution of the order, unless injury is exclusively due to the executing State's conduct.	Not implemented
12(2) National laws about compensation of damage will always apply	Not implemented
13 Application to Gibraltar	No implementation needed.
14(1) National measures for implementation of the FD	No implementation needed.
14(2) Duty to communicate measures for implementation to the GSC and the Commission; reports thereof; Council's assessment thereof	No implementation needed.
14(3) Duty of the GSC to notify Member States and the Commission of declarations made under article 9(3)	No implementation needed.
15 Entry into force of the FD	No implementation needed.
Annex: Certificate provided for in art. 9	

### **Comments about implementation**

Article 12 [Reimbursement]: These provisions will be dealt with by means of an agreement between the Office of the Lithuanian Prosecutor-General and the appropriate competent authorities of the EU Member State.

## 17. LUXEMBOURG

### General state of implementation (Legislation; entry into force date):

- FD has not been yet implemented. There is a Draft Bill at the moment (20 May 2011) which is up to be approved by the Parliament (*Projet de Loi relative à l'application du principe de reconnaissance mutuelle aux décisions de gel de biens ou d'éléments de preuve et portant modification du Code d'instruction criminelle*)
- Entry into force: \*\*\*\*

### Competent authority to receive the freezing orders:

### Languages accepted for certificates pursuant to art. 9(3):

### Links:

- [http://www.legilux.public.lu/ldp/2011/20110033\\_I.pdf](http://www.legilux.public.lu/ldp/2011/20110033_I.pdf) (Draft Bill)



## 18. MALTA

### **General state of implementation (Legislation; entry into force date):**

- Implemented by means of the “Freezing orders (execution in the European Union) Regulations”, enacted on 7<sup>th</sup> December 2007
- Entry into force: not specified

### **Competent authority to receive the freezing orders:**

- Attorney General’s Office
- Execution of the freezing order will be carried out by a police officer not below the rank of Inspector (following the Attorney General instructions)

### **Languages accepted for certificates pursuant to art. 9(3):**

- Maltese
- English

### **Links:**

<http://www.mjha.gov.mt/DownloadDocument.aspx?app=lom&itemid=8984&l=1>

### **Implementation of particular provisions of the FD 2003/577:**

<i>Article in the Framework Decision</i>	<i>Implementation</i>
Article 1 (Scope)	Reg. 3
2(a) [Definition of ‘issuing State’]	Reg. 2
2(b) [Definition of ‘executing State’]	Reg. 2
2(c) [Definition of ‘freezing order’]	Reg. 2
2(d) [Definition of ‘property’]	Reg. 2
2(e) [Definition of ‘evidence’]	Reg. 2
3(1)(a) [Freezing orders securing evidence]	Reg. 6 (3)(a)
3(1)(b) [Freezing orders for subsequent confiscation of property]	Reg. 6 (3)(b)
3(2) [List of offences to which the double criminality test does not apply]	Reg. 6 (1)(a) – Schedule 1
3(3) [Council’s authority for future amendments or extensions of the previous list]	No implementation needed.
3(4) [Other offences]	Reg. 6 (1)(b)
4(1) [Direct transmission of the order to the competent authority for recognition/execution in the executing State]	Not implemented

4(2) [Transmission through a central authority of orders sent to the UK or Ireland]	Not relevant.
4(3) [Inquiries to find out what the competent authority for execution is]	Not implemented
4(4) [Re-direction of an order to the competent authority for execution within the executing State]	Not implemented
5(1), paragraph 1 [Immediate recognition and enforcement of the order is due, unless grounds for refusal or postponement]	Reg. 7 (1), Reg. 7 (3)
5(1), paragraph 2 [Execution of the order with formalities indicated by the issuing State]	Reg. 10 (2)
5(1), paragraph 3 [Report on the execution sent to the issuing State]	Not implemented
5(2) [Law of the executing State applicable to execution]	Reg. 10, Reg. 11
5(3) [Communication to the issuing State within 24 hours]	Not implemented
6(1) [Freezing remains until requests from the issuing State have been responded]	Not implemented
6(2) [Possibility to limit the period of the freezing]	Not implemented
6(3) [Duty to communicate the lifting of the order to the executing State]	Not implemented
7(1)(a) [Grounds for non-recognition or non-execution: problems with certificate]	Reg. 8 (1)(a)
7(1)(b) [Grounds for non-recognition or non-execution: immunity or privilege]	Reg. 8 (1)(b)
7(1)(c) [Grounds for non-recognition or non-execution: <i>ne bis in idem</i> ]	Reg. 8 (1)(c)
7(1)(d) [Grounds for non-recognition or non-execution: double criminality test]	Reg. 6 (1)(b), Reg. 8 (1)(d)
7(2)(a) [Deadline to complete a proper certificate before refusal]	Reg. 8 (4)(c)

7(2)(b) [Possibility to accept an ‘equivalent document’ instead of a proper certificate before refusal]	Reg. 8 (4)(a)
7(2)(c) [Possibility to accept recognition/execution the order despite the lack of a proper certificate when sufficient information has been provided]	Reg. 8 (4)(b)
7(3) [Due notification of refusal to the issuing State]	Reg. 8 (2)
7(4) [Practical impossibility to execute the order; due notification to the issuing State]	Reg. 8 (3)
8(1)(a) [Grounds for postponement: risks to an ongoing criminal investigation]	Reg. 9 (1)(a)
8(1)(b) [Grounds for postponement: evidence or property already frozen within criminal proceedings]	Reg. 9 (1)(b)
8(1)(c) [Grounds for postponement: property already frozen according to an order given within any non-criminal proceedings in the executing State, as long as, under national law, this order has priority over subsequent national freezing orders given within criminal proceedings]	Reg. 9 (1)(c)
8(2) [Due notification of postponement to the issuing State]	Reg. 9 (2)
8(3) [Immediate execution once the ground for postponement has ceased; due notification to the issuing State]	Reg. 9 (3)
8(4) Information to the issuing State about any other restraint measures to which the property is subjected	Not implemented
9(1) Necessary certificate with standard form is to accompany the order when it is transmitted to the executing State (Annex)	Reg. 5 (1)
9(2) Need to translate the certificate into one of the official languages of the executing State	Reg. 5 (2)
9(3) Possibility to accept a translation in other languages (as long as they are official languages of the EU institutions)	Not implemented

10(1)(a) Possible request for the evidence to be transferred to the issuing State when transmitting the order & certificate	Reg. 6 (4)(a), Reg. 13 (1)(a)
10(1)(b) Possible request for confiscation to be transferred to the issuing State when transmitting the order & certificate	Reg. 6 (4)(b), Reg. 13 (1)(b)
10(1)(c) Instruction in the certificate asking the executing State to maintain the freezing pending a subsequent request for transferring the evidence or for confiscation of the property	Reg. 6 (4)(c), Reg. 13 (1)(c)
10(2) Submission and processing of requests for transferring the evidence or for confiscation of the property: governed by rules applicable to mutual assistance in criminal matters and to international cooperation relating to confiscation	Reg. 6 (5)
10(3) Requests for transferring evidence may not be refused on grounds double criminality where the request concerns an offence listed in article 3(2)	Not implemented
11(1) Legal remedies without suspensive effect not only in the issuing State but also in the executing State	Not implemented
11(2) Actions based on substantive reasons against the freezing order may only be brought in the issuing State	Not implemented
11(3) Actions brought in the executing State (based on procedural grounds only): due information to the issuing State and its right to submit arguments	Not implemented
11(4) States' duty to take measures to provide information about legal remedies	Not implemented
11(5) Time-limits for bringing an action against the freezing order shall guarantee the possibility of an effective legal remedy	Not implemented
12(1) The issuing State shall reimburse to the executing State any sums paid in damages caused by the execution of the order, unless injury is exclusively due to the executing State's conduct.	Not implemented

12(2) National laws about compensation of damage will always apply	Not implemented
13 Application to Gibraltar	No implementation needed.
14(1) National measures for implementation of the FD	No implementation needed.
14(2) Duty to communicate measures for implementation to the GSC and the Commission; reports thereof; Council's assessment thereof	No implementation needed.
14(3) Duty of the GSC to notify Member States and the Commission of declarations made under article 9(3)	No implementation needed.
15 Entry into force of the FD	No implementation needed.
Annex: Certificate provided for in art. 9	Schedule 2

## 19. THE NETHERLANDS

### General state of implementation (Legislation; entry into force date):

- Implemented by means of the Act of 16 June 2005 implementing Council Framework Decision 2003/577/JHA of 22 July 2003 on the execution in the European Union of orders freezing property or evidence (OJ L 196), which was published in the *Staatsblad* (Bulletin of Acts, Orders and Decrees) 310, and by the Implementing Decree on mutual recognition, published in the *Staatsblad* 353. The Act amended the Code of Criminal Procedure (*Wetboek van Strafvordering*).
- Entry into force: 1 August 2005

### Competent authority to receive the freezing orders:

- Investigating judges
- Prosecutors

### Languages accepted for certificates pursuant to art. 9(3):

- Dutch
- English
- In addition to certificates drawn up in Dutch or English, certificates in another official language of the Member States of the European Union will be accepted on condition that they are accompanied by a translation into English.

### Links:

Code of criminal procedure: <http://www.wetboek-online.nl/wet/Sv.html>

Criminal code: <http://www.wetboek-online.nl/wet/Sr.html>

- [http://www.consilium.europa.eu/ueDocs/cms\\_Data/docs/polju/en/EJN679.pdf](http://www.consilium.europa.eu/ueDocs/cms_Data/docs/polju/en/EJN679.pdf)
- <http://www.ejn-crimjust.europa.eu/ejn/libdocumentproperties.aspx?Id=116>
- <http://www.ejn-crimjust.europa.eu/ejn/libdocumentproperties.aspx?Id=104>

### Implementation of particular provisions of the FD 2003/577:

Sv = Wetboek van Strafvordering (Code of Criminal Procedure).

Sr = Wetboek van Strafrecht (Criminal Code).

#### Article in Framework Decision

#### Implementation

Article 1(Scope)

Article 2(a) [Definition of ‘issuing State’]

Articles 552jj(1) and 552rr Sv

Article 2(b) [Definition of ‘executing State’]

Articles 552jj(2) and 552rr Sv

Article 2(c) [Definition of ‘freezing order’]

Article 134(1) Sv and 552jj(2) Sv

Article 2(d) [Definition of ‘property’]

Article 94(2) Sv in conjunction with Articles 33a and 36c Sr  
Article 94a Sv

Article 2(e) [Definition of ‘evidence’]	Article 94(1)
Article 3(1)(a) [Freezing orders securing evidence]	Article 552jj(2)(a)
Article 3(1)(b) [Freezing orders for subsequent confiscation of property]	Article 552jj(2)(b) and (c)
Article 3(2) [List of offences to which the double criminality test does not apply]	Article 552ll(3) Sv in conjunction with Article 3 of the Implementing Decree on mutual recognition
Article 3(3) [Council’s authority for future amendments or extensions of the previous list]	No implementation needed
Article 3(4) [Other offences]	Article 552ll(2)(d)
Article 4(1) [Direct transmission of the order to the competent authority for recognition/execution in the executing State]	Articles 552ss(1) and 552tt(1) and (3) Sv
Article 4(2) [Transmission through a central authority of orders sent to the UK or Ireland]	No implementation needed
Article 4(3) [Inquiries to find out what the competent authority for execution is]	Article 552tt(2) Sv
Article 4(4) [Re-direction of an order to the competent authority for execution within the executing State]	Article 552kk(5) Sv
Article 5(1), first paragraph[Immediate recognition and enforcement of the order is due, unless grounds for refusal or postponement]	Articles 552ll(1) and 552nn(1) Sv
Article 5(1), second paragraph[Execution of the order with formalities indicated by the issuing State]	Article 552nn(2) Sv
Article 5(1), third paragraph[Report on the execution sent to the issuing State]	Article 552nn(6)(a)
Article 5(2) [Law of the executing State applicable to execution]	Article 552nn(4) and (6)(b) Sv
Article 5(3) [Communication to the issuing State within 24 hours]	Article 552ll(4) Sv
Article 6(1) [Freezing remains until requests from the issuing State have been responded]	Article 552pp(1) Sv
Article 6(2) [Possibility to limit the period of the freezing]	Article 552pp(3) Sv

Article 6(3) [Duty to communicate the lifting of the order to the executing State]	Article 552vv Sv Article 552pp(1)(b) and (2) Sv
Article 7(1)(a) [Grounds for non-recognition or non-execution: problems with certificate]	Article 552ll(2)(a)
Article 7(1)(b) [Grounds for non-recognition or non-execution: immunity or privilege]	Article 552ll(2)(b)
Article 7(1)(c) [Grounds for non-recognition or non-execution: <i>ne bis in idem</i> ]	Article 552ll(2)(c)
Article 7(1)(d) [Grounds for non-recognition or non-execution: double criminality test]	Article 552ll(2)(d)
Article 7(2)(a), (b) and (c) [Deadline to complete a proper certificate before refusal] [Possibility to accept an 'equivalent document' instead of a proper certificate before refusal] [Possibility to accept recognition/execution the order despite the lack of a proper certificate when sufficient information has been provided]	Article 552kk(4) Sv
Article 7(3) [Due notification of refusal to the issuing State]	Article 552ll(4) Sv
Article 7(4) [Practical impossibility to execute the order; due notification to the issuing State]	Article 552nn(3) and 552nn(6)(c) Sv
Article 8(1)(a) [Grounds for postponement: risks to an ongoing criminal investigation]	Article 552mm(1)(a) Sv
Article 8(1)(b) [Grounds for postponement: evidence or property already frozen within criminal proceedings]	Article 552mm(1)(b) Sv
Article 8(1)(c) [Grounds for postponement: property already frozen according to an order given within any non-criminal proceedings in the executing State, as long as, under national law, this order has priority over subsequent national freezing orders given within criminal proceedings]	Article 552mm(1)(c) Sv
Article 8(2) [Due notification of postponement to the issuing State]	Article 552mm(2)
Article 8(3) [Immediate execution once the ground for postponement has ceased; due notification to the issuing State]	Article 552mm(3)



Article 8(4) Information to the issuing State about any other restraint measures to which the property is subjected	Article 552mm(4)
Article 9(1) Necessary certificate with standard form is to accompany the order when it is transmitted to the executing State (Annex)	Article 1 Implementing Decree on mutual recognition
Article 9(2) Need to translate the certificate into one of the official languages of the executing State	Article 2 Implementing Decree on mutual recognition
Article 9(3) Possibility to accept a translation in other languages (as long as they are official languages of the EU institutions)	Article 2 Implementing Decree on mutual recognition
Article 10(1)(a) Possible request for the evidence to be transferred to the issuing State when transmitting the order & certificate	Article 552kk(2)(a) Sv and Article 552ss(3)(a) Sv
Article 10(1)(b) Possible request for confiscation to be transferred to the issuing State when transmitting the order & certificate	Article 552kk(2)(b) and (c) and Article 552ss(3)(b) and (c)
Article 10(1)(c) Instruction in the certificate asking the executing State to maintain the freezing pending a subsequent request for transferring the evidence or for confiscation of the property	Article 552kk(3) and Article 552ss(4)
Article 10(2) Submission and processing of requests for transferring the evidence or for confiscation of the property: governed by rules applicable to mutual assistance in criminal matters and to international cooperation relating to confiscation	Article 552qq (552x ff and Enforcement of Criminal Judgments (Transfer) Act)
Article 10(3) Requests for transferring evidence may not be refused on grounds double criminality where the request concerns an offence listed in article 3(2)	Article 552qq(1) second sentence
Article 11(1) Legal remedies without suspensive effect not only in the issuing State but also in the executing State	Article 552oo(1) in conjunction with Article 552a Sv
	Article 552uu Sv
Article 11(2) Actions based on substantive reasons against the freezing order may only be brought in the issuing State	Article 552oo(1) Sv

Article 11(3) Actions brought in the executing State (based on procedural grounds only): due information to the issuing State and its right to submit arguments	Article 552oo(2) Sv Article 552uu (2) Sv
Article 11(4) States' duty to take measures to provide information about legal remedies	Article 94(3) Sv Article 94b Sv Article 552ca Sv
Article 11(5) Time-limits for bringing an action against the freezing order shall guarantee the possibility of an effective legal remedy	Article 552a(3) and (4) Sv
12(1) The issuing State shall reimburse to the executing State any sums paid in damages caused by the execution of the order, unless injury is exclusively due to the executing State's conduct.	Article 552oo(1) Sv
12(2) National laws about compensation of damage will always apply	
13 Application to Gibraltar	
14(1) National measures for implementation of the FD	
14(2) Duty to communicate measures for implementation to the GSC and the Commission; reports thereof; Council's assessment thereof	
14(3) Duty of the GSC to notify Member States and the Commission of declarations made under article 9(3)	
15 Entry into force of the FD	
Annex: Certificate provided for in art. 9	

### **Comments about implementation**

Article 2(c) [Definition of 'freezing order']: Article 134(1) Sv gives a definition of seizure (= freezing). Article 94 Sv deals with the freezing of property that can serve as evidence. Article 94(a) deals with the freezing of property that can be confiscated.

Article 2(d) [Definition of 'property']: Article 94(2) Sv states that property may be seized that can be confiscated or withdrawn from circulation. Articles 33a and 36c Sr specify which property can be confiscated or withdrawn from circulation, respectively. Article 94a Sv further states that property may be seized that can serve to preserve the

right to recovery in connection with a confiscation decision to be imposed. Finally, Article 94a(3) Sv states that property means both objects and property rights (i.e. both corporeal and incorporeal goods as well as legal documents showing ownership or other rights in respect of goods).

Article 2(e) [Definition of ‘evidence’]: Article 94(1) Sv states that all property that can serve to uncover the truth (i.e. property that can serve as evidence) may be seized.

Article 3(1)(b) [Freezing orders for subsequent confiscation of property]: In Dutch legal terminology the collective term *confiscatie* covers three different types of action: confiscation (*verbeurdverklaring*), withdrawal from circulation and removal of property obtained illegally. Sections (b) and (c) of Article 552jj(2) Sv refer to these.

Article 3(3) [Council’s authority for future amendments or extensions of the previous list]: Because the list of offences under Dutch law is set out in an order in council (rather than in an act) it can, if necessary, easily be added to or amended.

Article 4(1) [Direct transmission of the order to the competent authority for recognition/execution in the executing State]: Article 552ss(1) states that the certificate must be sent with the order. Article 552tt(1) Sv states that the order + certificate must be sent directly to the competent authority. Article 552tt(3) Sv states that the order may be sent by various means, provided its authenticity can be established.

Article 5(1), first paragraph [Immediate recognition and enforcement of the order is due, unless grounds for refusal or postponement]: Article 552nn(1) Sv states that the order must be executed in accordance with section 3 of Title IV of Book I of the Code of Criminal Procedure. This section contains rules on seizure when carried out on the basis of a decision by the Dutch authorities.

Article 5(2) [Law of the executing State applicable to execution]: Under the Dutch procedural regulations, additional coercive measures (defined in Dutch legislation as “other powers under criminal procedure”) can only be applied on the basis of a request for assistance under Article 552o Sv (in the case of evidence) or Section 13a of the Enforcement of Criminal Judgments (Transfer) Act (in the case of confiscation). Article 552nn(6)(b) Sv states that in such a case the issuing state may be informed immediately so that any additional formalities can be completed.

Article 7(1)(c) [Grounds for non-recognition or non-execution: *ne bis in idem*]: The principle of *ne bis in idem* is enshrined in Article 68 of the Criminal Code and Article 255(1) of the Code of Criminal Procedure.

Article 7(4) [Practical impossibility to execute the order; due notification to the issuing State]: Article 552nn(3) Sv requires the public prosecutor to request information from the authority of the issuing state if the indication of the location of the property to be frozen is not sufficiently precise in the order. If, despite the information requested, it is still impossible to execute the order, the public prosecutor will then inform the authorities of the issuing state under Article 552nn(6)(c) Sv.

Article 9(3): In addition to certificates drawn up in Dutch or English, certificates in another official language of the Member States of the European Union will be accepted

on condition that they are accompanied by a translation into English. [11730/05 COPEN 127 EJM 46 EUROJUST 50]

Article 10(1)(a) Possible request for the evidence to be transferred to the issuing State when transmitting the order & certificate: Article 552kk(2) Sv states that the incoming freezing order must be accompanied by a request for assistance. Article 552ss(3) Sv states that outgoing Dutch orders must be accompanied by a Dutch request for assistance.

Article 10(1)(b) Possible request for confiscation to be transferred to the issuing State when transmitting the order & certificate: As noted earlier, in the Netherlands the term *confiscatie* covers three different measures: confiscation (*verbeurdverklaring*), withdrawal from circulation and removal of benefit obtained illegally. For technical reasons the first two have been included in part (b) and the third in part (c).

Article 10(2) Submission and processing of requests for transferring the evidence or for confiscation of the property: governed by rules applicable to mutual assistance in criminal matters and to international cooperation relating to confiscation: Article 552qq Sv contains the rules applicable to requests for the transfer of evidence. In the case of requests for confiscation, the rules on taking over the enforcement of a foreign confiscation decision will apply.

Article 10(3) Requests for transferring evidence may not be refused on grounds double criminality where the request concerns an offence listed in article 3(2): Article 552ll(3) states that the test of double criminality cannot be applied if the order relates to an offence that appears on the list and is punishable under the law of the issuing state by a prison term of at least 3 years. By declaring this provision to be applicable here, too, the legislation implements Article 10(3) of the Framework Decision.

Article 11(1) Legal remedies without suspensive effect not only in the issuing State but also in the executing State: Article 552oo Sv deals with the legal remedies for the Netherlands as executing state. Article 552a ff Sv provides for a generally applicable right to lodge a complaint (*beklag* - Dutch term for a legal remedy against a decision) against the seizure. The inclusion of a reference in Article 552oo(1) Sv to Article 552a and subsequent articles makes it clear that a complaint may also be lodged if the seizure takes place to enforce a foreign freezing order.

Article 552uu Sv deals with the legal remedies for the Netherlands as issuing state.

Article 11(2) Actions based on substantive reasons against the freezing order may only be brought in the issuing State: This article stipulates that the court will not embark on an investigation into the basis for the order. This is the Dutch legal way of saying that the substantive grounds cannot be contested in the executing state.

Article 11(3) Actions brought in the executing State (based on procedural grounds only): due information to the issuing State and its right to submit arguments: Article 552uu(2) Sv stipulates that the public prosecutor, as the competent authority in the issuing state, may make comments if he is informed of a legal remedy instituted in the executing state.

Article 11(4) States' duty to take measures to provide information about legal remedies: Article 94(3) Sv states that an individual from whom property is seized will be notified of the seizure. The notification will indicate where and how the person concerned can lodge a complaint against the seizure. Article 94b Sv lays down the duty to provide notification in particular kinds of seizure, such as attachment of claims or immovable property.

Article 552ca Sv requires the public prosecutor to carry out investigations if there is a suspicion that the property seized does not belong to the person from whom it was seized. This information also serves to enable the person concerned to seek redress.

Article 11(5) Time-limits for bringing an action against the freezing order shall guarantee the possibility of an effective legal remedy: This provision lays down the time limits for lodging a complaint. A complaint may be lodged up to three months after the end of the criminal case in which the seizure took place. If the seizure was not followed by a criminal case, a complaint relating to it may be lodged up to 2 years after the seizure. These time limits give the interested party the possibility of an effective legal remedy, as specified in Article 11(5) of the Framework Decision.

## 20. POLAND

### General state of implementation (Legislation; entry into force date):

- Implemented by means of the Act of 7 July 2005, amending the Code of Criminal Procedure and the Code of Procedure for Offences
- Entry into force: 2<sup>nd</sup> August 2005

### Competent authority to receive the freezing orders:

- At trial stage, the District Court (*sad rejonowy*)
- At pre-trial stage, the Circuit Prosecutor office (*prokuratura okregowa*)
- A detailed list of competent authorities is set out in 7199/06 COPEN 23 EJN 5 EUROJUST 10.
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### Languages accepted for certificates pursuant to art. 9(3):

Polish

**Links:** <http://www.legislationline.org/documents/section/criminal-codes/country/10>

<http://www.ejn-crimjust.europa.eu/ejn/libdocumentproperties.aspx?Id=112>

### Implementation of particular provisions of the FD 2003/577:

<i>Article in the Framework Decision</i>	<i>Implementation</i>
Article 1 (Scope)	Not implemented
2(a) [Definition of ‘issuing State’]	Not implemented
2(b) [Definition of ‘executing State’]	Not implemented
2(c) [Definition of ‘freezing order’]	Not implemented
2(d) [Definition of ‘property’]	Not implemented
2(e) [Definition of ‘evidence’]	Not implemented
3(1)(a) [Freezing orders securing evidence]	Article 589g § 1, Article 589l § 1
3(1)(b) [Freezing orders for subsequent confiscation of property]	Article 589g § 1, Article 589l § 1
3(2) [List of offences to which the double criminality test does not apply]	Article 589m § 1(1), § 2(1) Article 607w
3(3) [Council’s authority for future amendments or extensions of the previous list]	No implementation needed.
3(4) [Other offences]	Article 589m § 1(1), § 2(1) and §3

4(1) [Direct transmission of the order to the competent authority for recognition/execution in the executing State]	Article 589g §1 and §7
4(2) [Transmission through a central authority of orders sent to the UK or Ireland]	Not relevant.
4(3) [Inquiries to find out what the competent authority for execution is]	Article 589g §8
4(4) [Re-direction of an order to the competent authority for execution within the executing State]	Article 589l §2
5(1), paragraph 1 [Immediate recognition and enforcement of the order is due, unless grounds for refusal or postponement]	Article 589l §1
5(1), paragraph 2 [Execution of the order with formalities indicated by the issuing State]	Article 589r §1
5(1), paragraph 3 [Report on the execution sent to the issuing State]	Article 589n §2
5(2) [Law of the executing State applicable to execution]	Article 589l §3
5(3) [Communication to the issuing State within 24 hours]	Article 589n §1 Article 589p §1
6(1) [Freezing remains until requests from the issuing State have been responded]	Article 589s §1
6(2) [Possibility to limit the period of the freezing]	Article 589s §2 and §3
6(3) [Duty to communicate the lifting of the order to the executing State]	Article 589i Article 589s §1
7(1)(a) [Grounds for non-recognition or non-execution: problems with certificate]	Article 589m §1(3) and §2(2)
7(1)(b) [Grounds for non-recognition or non-execution: immunity or privilege]	Article 589m §1(5)
7(1)(c) [Grounds for non-recognition or non-execution: <i>ne bis in idem</i> ]	Article 589m §1(4) and §2(2)
7(1)(d) [Grounds for non-recognition or non-execution: double criminality test]	Article 589m §1(1) and §2(1)

7(2)(a) [Deadline to complete a proper certificate before refusal]	Article 589m § 5
7(2)(b) [Possibility to accept an ‘equivalent document’ instead of a proper certificate before refusal]	Not implemented
7(2)(c) [Possibility to accept recognition/execution the order despite the lack of a proper certificate when sufficient information has been provided]	Article 589m §6
7(3) [Due notification of refusal to the issuing State]	
7(4) [Practical impossibility to execute the order; due notification to the issuing State]	Article 589m §1(2), §2(2) and §4
8(1)(a) [Grounds for postponement: risks to an ongoing criminal investigation]	Article 589o (1)
8(1)(b) [Grounds for postponement: evidence or property already frozen within criminal proceedings]	Article 589o(2)
8(1)(c) [Grounds for postponement: property already frozen according to an order given within any non-criminal proceedings in the executing State, as long as, under national law, this order has priority over subsequent national freezing orders given within criminal proceedings]	Not implemented
8(2) [Due notification of postponement to the issuing State]	Article 589p §2
8(3) [Immediate execution once the ground for postponement has ceased; due notification to the issuing State]	Article 589o
8(4) Information to the issuing State about any other restraint measures to which the property is subjected	Article 589p §3
9(1) Necessary certificate with standard form is to accompany the order when it is transmitted to the executing State (Annex)	Article 589g §5
9(2) Need to translate the certificate into one of the official languages of the executing State	Article 589g §6



9(3) Possibility to accept a translation in other languages (as long as they are official languages of the EU institutions)	Article 589g §6
10(1)(a) Possible request for the evidence to be transferred to the issuing State when transmitting the order & certificate	Article 589g §2 Article 589r §2
10(1)(b) Possible request for confiscation to be transferred to the issuing State when transmitting the order & certificate	Article 589g §3
10(1)(c) Instruction in the certificate asking the executing State to maintain the freezing pending a subsequent request for transferring the evidence or for confiscation of the property	
10(2) Submission and processing of requests for transferring the evidence or for confiscation of the property: governed by rules applicable to mutual assistance in criminal matters and to international cooperation relating to confiscation	Article 589g §4 Article 589t §1
10(3) Requests for transferring evidence may not be refused on grounds double criminality where the request concerns an offence listed in article 3(2)	Article 589t §2
11(1) Legal remedies without suspensive effect not only in the issuing State but also in the executing State	Article 589j §1 Article 589n §3
11(2) Actions based on substantive reasons against the freezing order may only be brought in the issuing State	Article 589n §3
11(3) Actions brought in the executing State (based on procedural grounds only): due information to the issuing State and its right to submit arguments	Article 589n §4
11(4) States' duty to take measures to provide information about legal remedies	Article 589n §2 Article 16
11(5) Time-limits for bringing an action against the freezing order shall guarantee the possibility of an effective legal remedy	Not implemented

12(1) The issuing State shall reimburse to the executing State any sums paid in damages caused by the execution of the order, unless injury is exclusively due to the executing State's conduct.	Article 589k Article 589n
12(2) National laws about compensation of damage will always apply	No implementation needed
13 Application to Gibraltar	No implementation needed.
14(1) National measures for implementation of the FD	
14(2) Duty to communicate measures for implementation to the GSC and the Commission; reports thereof; Council's assessment thereof	No implementation needed.
14(3) Duty of the GSC to notify Member States and the Commission of declarations made under article 9(3)	No implementation needed.
15 Entry into force of the FD	No implementation needed.
Annex: Certificate provided for in art. 9	Article 589g §9

### **Comments about implementation**

Article 589h Evidence released shall be returned to the state responsible for executing the order immediately after it has been used if, when it was transmitted, it was stipulated that it had to be returned, or if it has to be returned to the injured party or to another authorised body in that state.

Article 589m § 1. Execution of the orders to seize evidence referred to in Article 589l § 1 may be refused if:

2) the evidence concerned by the order cannot be seized for practical reasons, in particular because it has been lost, destroyed or mislaid;

Article 589r

§ 2. The record of evidence seized or property distrained shall be transmitted immediately to the competent judicial authority of the country which issued the order. The second sentence of Article 589p paragraph 1 shall apply as appropriate.

## 21. PORTUGAL

### General state of implementation (Legislation; entry into force date):

- Implemented by means of the Law No 25/2009 of 5 June 2009 Establishing the legal rules for the issue and execution of orders freezing property or evidence within the European Union pursuant to Council Framework Decision 2003/577/JHA of 22 July 2003 (*Lei n.º 25/2009 de 5 de Junho Estabelece o regime jurídico da emissão e da execução de decisões de apreensão de bens ou elementos de prova na União Europeia, em cumprimento da Decisão Quadro n.º 2003/577/JAI, do Conselho, de 22 de Julho de 2003*)
- Entry into force: 5 July 2009

### Competent authority to receive the freezing orders:

- The Portuguese authority competent to issue orders freezing property or evidence located in another Member State shall be the Portuguese judicial authority competent to issue such orders against property located in Portugal
- Requests for the execution of freezing orders shall be presented to the Public Prosecutor's Office [*Ministério Público*].
- The competence to execute a freezing order in Portugal shall lie with the court which has jurisdiction to conduct criminal investigations in the area in which the property or evidence covered by the freezing order is located at the date on which the order was issued. Where the freezing order covers more than one item of property or piece of evidence, competence shall lie with the court for the area in which the largest number of items of property or pieces of evidence is located. Where it is not possible to determine the court within whose area the largest number of items of property or pieces of evidence is located, competence shall lie with the court which was first notified of the freezing order.

### Languages accepted for certificates pursuant to art. 9(3):

- Portuguese (Art. 14.2, assumed that Portugal has not made a declaration deposited with the GSC accepting documents in another official language of the institutions of the European Union)

**Links:** <http://dre.pt/pdf1sdip/2009/06/10900/0349703502.pdf>

### Implementation of particular provisions of the FD 2003/577:

<i>Article in the Framework Decision</i>	<i>Implementation</i>
Article 1 (Scope)	Arts. 1.1 and 1.2
2(a) [Definition of 'issuing State']	Art. 2 a)
2(b) [Definition of 'executing State']	Art. 2 b)
2(c) [Definition of 'freezing order']	Art. 2 c)
2(d) [Definition of 'property']	Art. 2 d)

2(e) [Definition of ‘evidence’]	Art. 2 e)
3(1)(a) [Freezing orders securing evidence]	Arts. 1.1 and 1.2
3(1)(b) [Freezing orders for subsequent confiscation of property]	Arts. 1.1 and 1.2
3(2) [List of offences to which the double criminality test does not apply]	Art. 3.1
3(3) [Council’s authority for future amendments or extensions of the previous list]	No implementation needed.
3(4) [Other offences]	Arts. 3.2, 3.3 and 8.4
4(1) [Direct transmission of the order to the competent authority for recognition/execution in the executing State]	Arts. 6.1 and 14.1
4(2) [Transmission through a central authority of orders sent to the UK or Ireland]	Art. 18
4(3) [Inquiries to find out what the competent authority for execution is]	Art. 6.2
4(4) [Re-direction of an order to the competent authority for execution within the executing State]	Art. 12.2
5(1), paragraph 1 [Immediate recognition and enforcement of the order is due, unless grounds for refusal or postponement]	Art. 12.3
5(1), paragraph 2 [Execution of the order with formalities indicated by the issuing State]	Art. 12.5
5(1), paragraph 3 [Report on the execution sent to the issuing State]	Art. 12.7
5(2) [Law of the executing State applicable to execution]	Art. 12.4
5(3) [Communication to the issuing State within 24 hours]	Art. 12.6
6(1) [Freezing remains until requests from the issuing State have been responded]	Art. 13.1
6(2) [Possibility to limit the period of the freezing]	Art. 13.2

6(3) [Duty to communicate the lifting of the order to the executing State]	Arts. 13.3 and 13.4
7(1)(a) [Grounds for non-recognition or non-execution: problems with certificate]	Art. 8.1 a)
7(1)(b) [Grounds for non-recognition or non-execution: immunity or privilege]	Art. 8.1 b)
7(1)(c) [Grounds for non-recognition or non-execution: <i>ne bis in idem</i> ]	Art. 8.1 c)
7(1)(d) [Grounds for non-recognition or non-execution: double criminality test]	Arts. 8.1 d), 8.2 and 8.4
7(2)(a) [Deadline to complete a proper certificate before refusal]	Art. 8.3 a)
7(2)(b) [Possibility to accept an ‘equivalent document’ instead of a proper certificate before refusal]	Art. 8.3 b)
7(2)(c) [Possibility to accept recognition/execution the order despite the lack of a proper certificate when sufficient information has been provided]	Art. 8.3 c)
7(3) [Due notification of refusal to the issuing State]	Art. 8.5
7(4) [Practical impossibility to execute the order; due notification to the issuing State]	Art. 10
8(1)(a) [Grounds for postponement: risks to an ongoing criminal investigation]	Art. 9.1 a)
8(1)(b) [Grounds for postponement: evidence or property already frozen within criminal proceedings]	Art. 9.1 b)
8(1)(c) [Grounds for postponement: property already frozen according to an order given within any non-criminal proceedings in the executing State, as long as, under national law, this order has priority over subsequent national freezing orders given within criminal proceedings]	Arts. 9.1.c) and 9.2
8(2) [Due notification of postponement to the issuing State]	Art. 9.3

8(3) [Immediate execution once the ground for postponement has ceased; due notification to the issuing State]	Art. 9.4
8(4) Information to the issuing State about any other restraint measures to which the property is subjected	Art. 9.5
9(1) Necessary certificate with standard form is to accompany the order when it is transmitted to the executing State (Annex)	Arts. 5.1, 5.3 and 5.4
9(2) Need to translate the certificate into one of the official languages of the executing State	Arts. 5.2 and 14.2
9(3) Possibility to accept a translation in other languages (as long as they are official languages of the EU institutions)	Art. 14.2
10(1)(a) Possible request for the evidence to be transferred to the issuing State when transmitting the order & certificate	Art. 7.1 a)
10(1)(b) Possible request for confiscation to be transferred to the issuing State when transmitting the order & certificate	Arts. 7.1 b) and 7.1 c)
10(1)(c) Instruction in the certificate asking the executing State to maintain the freezing pending a subsequent request for transferring the evidence or for confiscation of the property	Arts. 7.2 and 7.3
10(2) Submission and processing of requests for transferring the evidence or for confiscation of the property: governed by rules applicable to mutual assistance in criminal matters and to international cooperation relating to confiscation	Art. 7.4
10(3) Requests for transferring evidence may not be refused on grounds double criminality where the request concerns an offence listed in article 3(2)	Art. 7.5
11(1) Legal remedies without suspensive effect not only in the issuing State but also in the executing State	Arts. 11.1, 11.2, 11.4 and 11.7
11(2) Actions based on substantive reasons against the freezing order may only be brought in the issuing State	Art. 11.6

11(3) Actions brought in the executing State (based on procedural grounds only): due information to the issuing State and its right to submit arguments	Arts. 11.3 and 11.5
11(4) States' duty to take measures to provide information about legal remedies	Not expressly implemented
11(5) Time-limits for bringing an action against the freezing order shall guarantee the possibility of an effective legal remedy	Not expressly implemented
12(1) The issuing State shall reimburse to the executing State any sums paid in damages caused by the execution of the order, unless injury is exclusively due to the executing State's conduct.	Art. 17
12(2) National laws about compensation of damage will always apply	Not expressly implemented
13 Application to Gibraltar	No implementation needed.
14(1) National measures for implementation of the FD	No implementation needed
14(2) Duty to communicate measures for implementation to the GSC and the Commission; reports thereof; Council's assessment thereof	No implementation needed.
14(3) Duty of the GSC to notify Member States and the Commission of declarations made under article 9(3)	No implementation needed.
15 Entry into force of the FD	No implementation needed.
Annex: Certificate provided for in art. 9	Annex

## 22. ROMANIA

### General state of implementation (Legislation; entry into force date):

- Implemented by means of the Law no. 222 from 24 October 2008 for the amendment and supplemental of the Law no. 302/2004 on the international judicial cooperation in criminal matters
- Entry into force: 13 November 2008

### Competent authority to receive the freezing orders:

- Prosecution offices (at the prosecution stage) in the circumscription of which the property or the evidence for which the freezing orders was issued is found
- Courts (at the trial stage) in the circumscription of which the property or the evidence for which the freezing orders was issued is found
- When the freezing orders concerns more than one property or evidence and these are found in the circumscription of more than one judicial authority, the competence belongs to the Prosecution Office of the District Court of Bucharest or to the District Court of Bucharest, depending of the stage of the procedure
- A detailed list of competent authorities is set out in 16286/08 COPEN 238 EJN 79 EUROJUST 105

### Languages accepted for certificates pursuant to art. 9(3):

- Romanian

### Links:

- [http://www.consilium.europa.eu/ueDocs/cms\\_Data/docs/polju/en/EJN760.pdf](http://www.consilium.europa.eu/ueDocs/cms_Data/docs/polju/en/EJN760.pdf)
- <http://www.ejn-crimjust.europa.eu/ejn/libdocumentproperties.aspx?Id=105>

### Implementation of particular provisions of the FD 2003/577:

<i>Article in the Framework Decision</i>	<i>Implementation</i>
Article 1 (Scope)	Art. 187 <sup>21</sup>
2(a) [Definition of ‘issuing State’]	Art. 187 <sup>20</sup> (4)
2(b) [Definition of ‘executing State’]	Art. 187 <sup>20</sup> (5)
2(c) [Definition of ‘freezing order’]	Art. 187 <sup>20</sup> (1)
2(d) [Definition of ‘property’]	Art. 187 <sup>20</sup> (2)
2(e) [Definition of ‘evidence’]	Art. 187 <sup>20</sup> (3)
3(1)(a) [Freezing orders securing evidence]	Art. 187 <sup>21</sup>
3(1)(b) [Freezing orders for subsequent confiscation of property]	Art. 187 <sup>21</sup>
3(2) [List of offences to which the double criminality test does not apply]	Art. 187 <sup>24</sup> (1)



3(3) [Council's authority for future amendments or extensions of the previous list]	No implementation needed.
3(4) [Other offences]	Art. 187 <sup>24</sup> (2), (3) and (4)
4(1) [Direct transmission of the order to the competent authority for recognition/execution in the executing State]	Art. 187 <sup>25</sup> (2) and (3)
4(2) [Transmission through a central authority of orders sent to the UK or Ireland]	Art. 187 <sup>25</sup> (5)
4(3) [Inquiries to find out what the competent authority for execution is]	Art. 187 <sup>25</sup> (6)
4(4) [Re-direction of an order to the competent authority for execution within the executing State]	Art. 187 <sup>27</sup> (3)
5(1), paragraph 1 [Immediate recognition and enforcement of the order is due, unless grounds for refusal or postponement]	Art. 187 <sup>26</sup> (1)
5(1), paragraph 2 [Execution of the order with formalities indicated by the issuing State]	Art. 187 <sup>26</sup> (2)
5(1), paragraph 3 [Report on the execution sent to the issuing State]	Art. 187 <sup>26</sup> (3)
5(2) [Law of the executing State applicable to execution]	Art. 187 <sup>26</sup> (4)
5(3) [Communication to the issuing State within 24 hours]	Art. 187 <sup>26</sup> (3) –not correctly-
6(1) [Freezing remains until requests from the issuing State have been responded]	Art. 187 <sup>30</sup> (1)
6(2) [Possibility to limit the period of the freezing]	Art. 187 <sup>30</sup> (2)
6(3) [Duty to communicate the lifting of the order to the executing State]	Art. 187 <sup>25</sup> (7), Art. 187 <sup>30</sup> (3)
7(1)(a) [Grounds for non-recognition or non-execution: problems with certificate]	Art. 187 <sup>31</sup> (1) a)
7(1)(b) [Grounds for non-recognition or non-execution: immunity or privilege]	Art. 187 <sup>31</sup> (1) b)
7(1)(c) [Grounds for non-recognition or non-execution: <i>ne bis in idem</i> ]	Art. 187 <sup>31</sup> (1) c)

7(1)(d) [Grounds for non-recognition or non-execution: double criminality test]	Art. 187 <sup>24</sup> (2) and (3)
7(2)(a) [Deadline to complete a proper certificate before refusal]	Art. 187 <sup>31</sup> (2) a)
7(2)(b) [Possibility to accept an ‘equivalent document’ instead of a proper certificate before refusal]	Art. 187 <sup>27</sup> (1), Art. 187 <sup>31</sup> (2) b)
7(2)(c) [Possibility to accept recognition/execution the order despite the lack of a proper certificate when sufficient information has been provided]	Art. 187 <sup>31</sup> (2) c)
7(3) [Due notification of refusal to the issuing State]	Art. 187 <sup>31</sup> (3)
7(4) [Practical impossibility to execute the order; due notification to the issuing State]	Art. 187 <sup>31</sup> (4)
8(1)(a) [Grounds for postponement: risks to an ongoing criminal investigation]	Art. 187 <sup>32</sup> (1) a)
8(1)(b) [Grounds for postponement: evidence or property already frozen within criminal proceedings]	Art. 187 <sup>32</sup> (1) b)
8(1)(c) [Grounds for postponement: property already frozen according to an order given within any non-criminal proceedings in the executing State, as long as, under national law, this order has priority over subsequent national freezing orders given within criminal proceedings]	Art. 187 <sup>32</sup> (1) c)
8(2) [Due notification of postponement to the issuing State]	Art. 187 <sup>32</sup> (2)
8(3) [Immediate execution once the ground for postponement has ceased; due notification to the issuing State]	Art. 187 <sup>32</sup> (3)
8(4) Information to the issuing State about any other restraint measures to which the property is subjected	Art. 187 <sup>32</sup> (4)
9(1) Necessary certificate with standard form is to accompany the order when it is transmitted to the executing State (Annex)	Art. 187 <sup>22</sup> (1)

9(2) Need to translate the certificate into one of the official languages of the executing State	Art. 187 <sup>22</sup> (2), Art. 187 <sup>27</sup> (1)
9(3) Possibility to accept a translation in other languages (as long as they are official languages of the EU institutions)	Art. 187 <sup>22</sup> (3)
10(1)(a) Possible request for the evidence to be transferred to the issuing State when transmitting the order & certificate	Art. 187 <sup>25</sup> (3)
10(1)(b) Possible request for confiscation to be transferred to the issuing State when transmitting the order & certificate	Art. 187 <sup>25</sup> (3)
10(1)(c) Instruction in the certificate asking the executing State to maintain the freezing pending a subsequent request for transferring the evidence or for confiscation of the property	Art. 187 <sup>25</sup> (4)
10(2) Submission and processing of requests for transferring the evidence or for confiscation of the property: governed by rules applicable to mutual assistance in criminal matters and to international cooperation relating to confiscation	Art. 187 <sup>25</sup> (3), Art. 187 <sup>30</sup> (4)
10(3) Requests for transferring evidence may not be refused on grounds double criminality where the request concerns an offence listed in article 3(2)	Art. 187 <sup>30</sup> (5)
11(1) Legal remedies without suspensive effect not only in the issuing State but also in the executing State	Art. 187 <sup>28</sup> , Art. 187 <sup>29</sup>
11(2) Actions based on substantive reasons against the freezing order may only be brought in the issuing State	Art. 187 <sup>28</sup> (3)
11(3) Actions brought in the executing State (based on procedural grounds only): due information to the issuing State and its right to submit arguments	Not implemented
11(4) States' duty to take measures to provide information about legal remedies	Not implemented
11(5) Time-limits for bringing an action against the freezing order shall guarantee the possibility of an effective legal remedy	Art. 187 <sup>28</sup> (2)

12(1) The issuing State shall reimburse to the executing State any sums paid in damages caused by the execution of the order, unless injury is exclusively due to the executing State's conduct.	Art. 187 <sup>25</sup> (8), Art. 187 <sup>33</sup> (1)
12(2) National laws about compensation of damage will always apply	Art. 187 <sup>33</sup> (2)
13 Application to Gibraltar	No implementation needed.
14(1) National measures for implementation of the FD	No implementation needed.
14(2) Duty to communicate measures for implementation to the GSC and the Commission; reports thereof; Council's assessment thereof	No implementation needed.
14(3) Duty of the GSC to notify Member States and the Commission of declarations made under article 9(3)	No implementation needed.
15 Entry into force of the FD	No implementation needed.
Annex: Certificate provided for in art. 9	Annex 2

## 23. SLOVAKIA

### General state of implementation (Legislation; entry into force date):

- Implemented by means of the Act No 650/2005 on the execution in the European Union of orders freezing property or evidence, amending Act No 300/2005 (Criminal Code), Act No 301/2005 (Code of Criminal Procedure) and Act No 372/1990 on infringements, as amended.
- Entry into force: 1<sup>st</sup> January 2006

### Competent authority to receive the freezing orders:

- District prosecutors
- The judicial authority in the Slovak Republic authorised to recognise and execute the freezing order is the prosecutor of the prosecutor's office in whose jurisdiction the property or evidence to be frozen on the basis of the freezing order is located at the time when the freezing order and certificate are sent.

(1) Apart from the procedural acts that under Slovak law may be carried out only by a prosecutor, the prosecutor referred to in Section 8(3) shall be entitled to delegate the execution of individual procedural acts involved in executing the freezing order to a police officer acting as a law-enforcement agency.

- For the execution of procedural acts requiring a court decision under Slovak law, the prosecutor shall take the necessary action for such a decision to be issued; the competent court shall be the court in whose jurisdiction the prosecutor who submitted the relevant proposal operates.

### Languages accepted for certificates pursuant to art. 9(3):

- Slovak

### Links:

Code of Criminal Procedure:

<http://www.legislationline.org/documents/action/popup/id/3850>

### Implementation of particular provisions of the FD 2003/577:

The information and documents provided by the Slovakian authorities are not clear enough to permit a secure filling of the table and to check the implementation level

<i>Article in the Framework Decision</i>	<i>Implementation</i>
Article 1 (Scope)	1(1)
2(a) [Definition of 'issuing State']	2(a)
2(b) [Definition of 'executing State']	2(b)
2(c) [Definition of 'freezing order']	3(1)(a), 3(1)(b)
2(d) [Definition of 'property']	2(c)
2(e) [Definition of 'evidence']	2(d)

3(1)(a) [Freezing orders securing evidence]	3(1)(a)
3(1)(b) [Freezing orders for subsequent confiscation of property]	3(1)(b)
3(2) [List of offences to which the double criminality test does not apply]	3(4)
3(3) [Council's authority for future amendments or extensions of the previous list]	No implementation needed.
3(4) [Other offences]	3(3), 3(5)
4(1) [Direct transmission of the order to the competent authority for recognition/execution in the executing State]	4(1), 4(2), 7(1)
4(2) [Transmission through a central authority of orders sent to the UK or Ireland]	Not relevant.
4(3) [Inquiries to find out what the competent authority for execution is]	4(1)
4(4) [Re-direction of an order to the competent authority for execution within the executing State]	8(1)
5(1), paragraph 1 [Immediate recognition and enforcement of the order is due, unless grounds for refusal or postponement]	8(3)
5(1), paragraph 2 [Execution of the order with formalities indicated by the issuing State]	8(4)
5(1), paragraph 3 [Report on the execution sent to the issuing State]	8(4)
5(2) [Law of the executing State applicable to execution]	7(2)
5(3) [Communication to the issuing State within 24 hours]	9(1), 9(2)
6(1) [Freezing remains until requests from the issuing State have been responded]	10(1), 10(2)
6(2) [Possibility to limit the period of the freezing]	10(3)
6(3) [Duty to communicate the lifting of the order to the executing State]	10(1)

7(1)(a) [Grounds for non-recognition or non-execution: problems with certificate]	11(?)
7(1)(b) [Grounds for non-recognition or non-execution: immunity or privilege]	11(?)
7(1)(c) [Grounds for non-recognition or non-execution: <i>ne bis in idem</i> ]	11(?)
7(1)(d) [Grounds for non-recognition or non-execution: double criminality test]	11(?)
7(2)(a) [Deadline to complete a proper certificate before refusal]	11(?)
7(2)(b) [Possibility to accept an 'equivalent document' instead of a proper certificate before refusal]	11(?)
7(2)(c) [Possibility to accept recognition/execution the order despite the lack of a proper certificate when sufficient information has been provided]	11(?)
7(3) [Due notification of refusal to the issuing State]	11(?)
7(4) [Practical impossibility to execute the order; due notification to the issuing State]	
8(1)(a) [Grounds for postponement: risks to an ongoing criminal investigation]	12(?)
8(1)(b) [Grounds for postponement: evidence or property already frozen within criminal proceedings]	12(?)
8(1)(c) [Grounds for postponement: property already frozen according to an order given within any non-criminal proceedings in the executing State, as long as, under national law, this order has priority over subsequent national freezing orders given within criminal proceedings]	12(?)
8(2) [Due notification of postponement to the issuing State]	12(?)
8(3) [Immediate execution once the ground for postponement has ceased; due notification to the issuing State]	12(?)

8(4) Information to the issuing State about any other restraint measures to which the property is subjected	
9(1) Necessary certificate with standard form is to accompany the order when it is transmitted to the executing State (Annex)	7(?)
9(2) Need to translate the certificate into one of the official languages of the executing State	7(?)
9(3) Possibility to accept a translation in other languages (as long as they are official languages of the EU institutions)	7(?)
10(1)(a) Possible request for the evidence to be transferred to the issuing State when transmitting the order & certificate	
10(1)(b) Possible request for confiscation to be transferred to the issuing State when transmitting the order & certificate	
10(1)(c) Instruction in the certificate asking the executing State to maintain the freezing pending a subsequent request for transferring the evidence or for confiscation of the property	
10(2) Submission and processing of requests for transferring the evidence or for confiscation of the property: governed by rules applicable to mutual assistance in criminal matters and to international cooperation relating to confiscation	
10(3) Requests for transferring evidence may not be refused on grounds double criminality where the request concerns an offence listed in article 3(2)	
11(1) Legal remedies without suspensive effect not only in the issuing State but also in the executing State	
11(2) Actions based on substantive reasons against the freezing order may only be brought in the issuing State	



11(3) Actions brought in the executing State (based on procedural grounds only): due information to the issuing State and its right to submit arguments	
11(4) States' duty to take measures to provide information about legal remedies	
11(5) Time-limits for bringing an action against the freezing order shall guarantee the possibility of an effective legal remedy	
12(1) The issuing State shall reimburse to the executing State any sums paid in damages caused by the execution of the order, unless injury is exclusively due to the executing State's conduct.	
12(2) National laws about compensation of damage will always apply	
13 Application to Gibraltar	No implementation needed.
14(1) National measures for implementation of the FD	
14(2) Duty to communicate measures for implementation to the GSC and the Commission; reports thereof; Council's assessment thereof	No implementation needed.
14(3) Duty of the GSC to notify Member States and the Commission of declarations made under article 9(3)	No implementation needed.
15 Entry into force of the FD	No implementation needed.
Annex: Certificate provided for in art. 9	

## 24. SLOVENIA

### General state of implementation (Legislation; entry into force date):

- Implemented by means of the Act on Cooperation in Criminal Matters with the European Union Member States, dated on 25 October 2007
- Entry into force: 25 November 2007

### Competent authority to receive the freezing orders:

- Investigating Judges at District Courts, according to the place where the object or property which is to be seized or temporarily protected is located. In case of more objects or types of property, the court competent for the first object or property mentioned in the decision. If prior rules are not applicable, District Court in Ljubljana.
- A detailed list of the competent authorities is set out in 8549/08 COPEN 80 EJM 33 EUROJUST 39

### Languages accepted for certificates pursuant to art. 9(3):

- Slovenian
- English

**Links:** <http://www.ejn-crimjust.europa.eu/ejn/libdocumentproperties.aspx?Id=110>

### Implementation of particular provisions of the FD 2003/577:

<i>Article in the Framework Decision</i>	<i>Implementation</i>
Article 1 (Scope)	Arts. 1 and 2.
2(a) [Definition of ‘issuing State’]	Art. 7
2(b) [Definition of ‘executing State’]	Art. 7
2(c) [Definition of ‘freezing order’]	Art. 89
2(d) [Definition of ‘property’]	Art. 7
2(e) [Definition of ‘evidence’]	Art. 89
3(1)(a) [Freezing orders securing evidence]	Arts. 1 and 2
3(1)(b) [Freezing orders for subsequent confiscation of property]	Arts. 1 and 2
3(2) [List of offences to which the double criminality test does not apply]	Arts. 8, 89 (2)
3(3) [Council’s authority for future amendments or extensions of the previous list]	No implementation needed.
3(4) [Other offences]	Art. 89 (1)

4(1) [Direct transmission of the order to the competent authority for recognition/execution in the executing State]	Arts. 96, 97 and 14
4(2) [Transmission through a central authority of orders sent to the UK or Ireland]	Not relevant.
4(3) [Inquiries to find out what the competent authority for execution is]	Not implemented
4(4) [Re-direction of an order to the competent authority for execution within the executing State]	Arts. 91 (4) and 95
5(1), paragraph 1 [Immediate recognition and enforcement of the order is due, unless grounds for refusal or postponement]	Art. 92 (1)
5(1), paragraph 2 [Execution of the order with formalities indicated by the issuing State]	Art. 92 (4)
5(1), paragraph 3 [Report on the execution sent to the issuing State]	Art. 95
5(2) [Law of the executing State applicable to execution]	Art. 92 (5), (7) and (8)
5(3) [Communication to the issuing State within 24 hours]	Art. 92 (6)
6(1) [Freezing remains until requests from the issuing State have been responded]	Art. 94 (1)
6(2) [Possibility to limit the period of the freezing]	Art. 94 (2) and (3)
6(3) [Duty to communicate the lifting of the order to the executing State]	Not implemented
7(1)(a) [Grounds for non-recognition or non-execution: problems with certificate]	Art. 92 (2)
7(1)(b) [Grounds for non-recognition or non-execution: immunity or privilege]	Art. 90 (1) 2
7(1)(c) [Grounds for non-recognition or non-execution: <i>ne bis in idem</i> ]	Art. 90 (1) 3
7(1)(d) [Grounds for non-recognition or non-execution: double criminality test]	Art. 90 (1) 1

7(2)(a) [Deadline to complete a proper certificate before refusal]	Art. 92 (2) 1
7(2)(b) [Possibility to accept an ‘equivalent document’ instead of a proper certificate before refusal]	Art. 92 (2) 2
7(2)(c) [Possibility to accept recognition/execution the order despite the lack of a proper certificate when sufficient information has been provided]	Art. 92 (2) 3
7(3) [Due notification of refusal to the issuing State]	Arts. 92 (3) and 95
7(4) [Practical impossibility to execute the order; due notification to the issuing State]	Not implemented
8(1)(a) [Grounds for postponement: risks to an ongoing criminal investigation]	Art. 93 (1) 1
8(1)(b) [Grounds for postponement: evidence or property already frozen within criminal proceedings]	Art. 93 (1) 2
8(1)(c) [Grounds for postponement: property already frozen according to an order given within any non-criminal proceedings in the executing State, as long as, under national law, this order has priority over subsequent national freezing orders given within criminal proceedings]	Art. 93 (1) 3
8(2) [Due notification of postponement to the issuing State]	Art. 95
8(3) [Immediate execution once the ground for postponement has ceased; due notification to the issuing State]	Art. 93 (2)
8(4) Information to the issuing State about any other restraint measures to which the property is subjected	Not implemented
9(1) Necessary certificate with standard form is to accompany the order when it is transmitted to the executing State (Annex)	Art. 92 (1) 1 and 2
9(2) Need to translate the certificate into one of the official languages of the executing State	Art. 92 (1) 3

9(3) Possibility to accept a translation in other languages (as long as they are official languages of the EU institutions)	Art. 92 (1) 3
10(1)(a) Possible request for the evidence to be transferred to the issuing State when transmitting the order & certificate	Art. 94
10(1)(b) Possible request for confiscation to be transferred to the issuing State when transmitting the order & certificate	Art. 92 (10), Art. 94
10(1)(c) Instruction in the certificate asking the executing State to maintain the freezing pending a subsequent request for transferring the evidence or for confiscation of the property	Art. 94
10(2) Submission and processing of requests for transferring the evidence or for confiscation of the property: governed by rules applicable to mutual assistance in criminal matters and to international cooperation relating to confiscation	No implementation needed
10(3) Requests for transferring evidence may not be refused on grounds double criminality where the request concerns an offence listed in article 3(2)	Art. 89 (2)
11(1) Legal remedies without suspensive effect not only in the issuing State but also in the executing State	Art. 92 (9)
11(2) Actions based on substantive reasons against the freezing order may only be brought in the issuing State	Art. 92 (9)
11(3) Actions brought in the executing State (based on procedural grounds only): due information to the issuing State and its right to submit arguments	Art. 95
11(4) States' duty to take measures to provide information about legal remedies	Not implemented
11(5) Time-limits for bringing an action against the freezing order shall guarantee the possibility of an effective legal remedy	Art. 92 (2)

12(1) The issuing State shall reimburse to the executing State any sums paid in damages caused by the execution of the order, unless injury is exclusively due to the executing State's conduct.	Not implemented
12(2) National laws about compensation of damage will always apply	Not implemented
13 Application to Gibraltar	No implementation needed.
14(1) National measures for implementation of the FD	
14(2) Duty to communicate measures for implementation to the GSC and the Commission; reports thereof; Council's assessment thereof	No implementation needed.
14(3) Duty of the GSC to notify Member States and the Commission of declarations made under article 9(3)	No implementation needed.
15 Entry into force of the FD	No implementation needed.
Annex: Certificate provided for in art. 9	Annex 3 of the Act

## 25. SPAIN

### General state of implementation (Legislation; entry into force date):

- Implemented by means of the Law 18/2006 of 5 June on the EU-wide application of freezing orders (*Ley 18/2006, de 5 de junio, para la eficacia en la Unión Europea de las resoluciones de embargo y de aseguramiento de pruebas en procedimientos penales*)
- Entry into force: 7 June 2006

### Competent authority to receive the freezing orders:

- Examining magistrate (“Juez de instrucción”) in which jurisdiction the property or evidence is located.
- Public prosecutors for those freezing evidence orders within their competence.

### Languages accepted for certificates pursuant to art. 9(3):

- Spanish

**Links:** [http://noticias.juridicas.com/base\\_datos/Penal/118-2006.html](http://noticias.juridicas.com/base_datos/Penal/118-2006.html)  
[http://noticias.juridicas.com/base\\_datos/Penal/105-2006.html](http://noticias.juridicas.com/base_datos/Penal/105-2006.html)

### Implementation of particular provisions of the FD 2003/577:

<i>Article in the Framework Decision</i>	<i>Implementation</i>
Article 1 (Scope)	Art. 1.1 and 1.2
2(a) [Definition of ‘issuing State’]	Art. 1.3
2(b) [Definition of ‘executing State’]	Art. 1.3
2(c) [Definition of ‘freezing order’]	Art. 2
2(d) [Definition of ‘property’]	Art. 2
2(e) [Definition of ‘evidence’]	Art. 2
3(1)(a) [Freezing orders securing evidence]	Arts. 1.1, 1.2 and 2
3(1)(b) [Freezing orders for subsequent confiscation of property]	Arts. 1.1, 1.2 and 2
3(2) [List of offences to which the double criminality test does not apply]	Art. 10.1
3(3) [Council’s authority for future amendments or extensions of the previous list]	No implementation needed.
3(4) [Other offences]	Arts. 10.2 and 10.3

4(1) [Direct transmission of the order to the competent authority for recognition/execution in the executing State]	Art. 5.1 Art. 6.1
4(2) [Transmission through a central authority of orders sent to the UK or Ireland]	Additional Disposition of the Act
4(3) [Inquiries to find out what the competent authority for execution is]	Art. 5.2
4(4) [Re-direction of an order to the competent authority for execution within the executing State]	Art. 11.2
5(1), paragraph 1 [Immediate recognition and enforcement of the order is due, unless grounds for refusal or postponement]	Art. 11.1
5(1), paragraph 2 [Execution of the order with formalities indicated by the issuing State]	Art. 7
5(1), paragraph 3 [Report on the execution sent to the issuing State]	Art. 11.3
5(2) [Law of the executing State applicable to execution]	Art. 7, Art. 12.1, Art. 12.3
5(3) [Communication to the issuing State within 24 hours]	Art. 11.3
6(1) [Freezing remains until requests from the issuing State have been responded]	Art. 6.2, Art. 13.1
6(2) [Possibility to limit the period of the freezing]	Art. 13.2
6(3) [Duty to communicate the lifting of the order to the executing State]	Art. 13.3
7(1)(a) [Grounds for non-recognition or non-execution: problems with certificate]	Art. 14.1 a)
7(1)(b) [Grounds for non-recognition or non-execution: immunity or privilege]	Art. 14.1 b) (not correctly implemented)
7(1)(c) [Grounds for non-recognition or non-execution: <i>ne bis in idem</i> ]	Art. 14.1 c)
7(1)(d) [Grounds for non-recognition or non-execution: double criminality test]	Art. 10.2



7(2)(a) [Deadline to complete a proper certificate before refusal]	Art. 14.2 a)
7(2)(b) [Possibility to accept an ‘equivalent document’ instead of a proper certificate before refusal]	Art. 14.2 b)
7(2)(c) [Possibility to accept recognition/execution the order despite the lack of a proper certificate when sufficient information has been provided]	Art. 14.2 c)
7(3) [Due notification of refusal to the issuing State]	Art. 14.3
7(4) [Practical impossibility to execute the order; due notification to the issuing State]	Art. 14.4
8(1)(a) [Grounds for postponement: risks to an ongoing criminal investigation]	Art. 15.1 a)
8(1)(b) [Grounds for postponement: evidence or property already frozen within criminal proceedings]	Art. 15.1 b)
8(1)(c) [Grounds for postponement: property already frozen according to an order given within any non-criminal proceedings in the executing State, as long as, under national law, this order has priority over subsequent national freezing orders given within criminal proceedings]	Art. 15.1 b)
8(2) [Due notification of postponement to the issuing State]	Art. 15.2
8(3) [Immediate execution once the ground for postponement has ceased; due notification to the issuing State]	Art. 15.3
8(4) Information to the issuing State about any other restraint measures to which the property is subjected	Art. 15.4
9(1) Necessary certificate with standard form is to accompany the order when it is transmitted to the executing State (Annex)	Art. 6.1
9(2) Need to translate the certificate into one of the official languages of the executing State	Art. 6.3, Art.11.1

9(3) Possibility to accept a translation in other languages (as long as they are official languages of the EU institutions)	Art. 11.1
10(1)(a) Possible request for the evidence to be transferred to the issuing State when transmitting the order & certificate	Art. 6.2
10(1)(b) Possible request for confiscation to be transferred to the issuing State when transmitting the order & certificate	Art. 6.2
10(1)(c) Instruction in the certificate asking the executing State to maintain the freezing pending a subsequent request for transferring the evidence or for confiscation of the property	Art. 6.2
10(2) Submission and processing of requests for transferring the evidence or for confiscation of the property: governed by rules applicable to mutual assistance in criminal matters and to international cooperation relating to confiscation	Art. 12.2
10(3) Requests for transferring evidence may not be refused on grounds double criminality where the request concerns an offence listed in article 3(2)	Art. 10.2
11(1) Legal remedies without suspensive effect not only in the issuing State but also in the executing State	Art. 9, Art. 16.1
11(2) Actions based on substantive reasons against the freezing order may only be brought in the issuing State	Art. 9, Art. 16.4
11(3) Actions brought in the executing State (based on procedural grounds only): due information to the issuing State and its right to submit arguments	Art. 16.2, Art. 16.3
11(4) States' duty to take measures to provide information about legal remedies	Not directly implemented
11(5) Time-limits for bringing an action against the freezing order shall guarantee the possibility of an effective legal remedy	Not directly implemented

12(1) The issuing State shall reimburse to the executing State any sums paid in damages caused by the execution of the order, unless injury is exclusively due to the executing State's conduct.	Art. 4.1 and 4.2
12(2) National laws about compensation of damage will always apply	Art. 4.2
13 Application to Gibraltar	No implementation needed.
14(1) National measures for implementation of the FD	No implementation needed
14(2) Duty to communicate measures for implementation to the GSC and the Commission; reports thereof; Council's assessment thereof	No implementation needed.
14(3) Duty of the GSC to notify Member States and the Commission of declarations made under article 9(3)	No implementation needed.
15 Entry into force of the FD	No implementation needed.
Annex: Certificate provided for in art. 9	Annex to the Act

## 26. SWEDEN

### General state of implementation (Legislation; entry into force date):

- Implemented by means of the Law (SFS 2005:500) of 9 June 2005 on the recognition and execution in the European Union of freezing orders, and by Regulation (SFS 2005:501) of 9 June 2005 on the recognition and execution in the European Union of freezing orders
- Entry into force: 1<sup>st</sup> July 2005.

### Competent authority to receive the freezing orders:

- Public prosecutors at the international public prosecution offices (in Stockholm, Uppsala, Göteborg, Malmö, Linköping and Sundsvall).
- Public prosecutors at the Economic Crimes Bureau (in Stockholm, Göteborg and Malmö).
- Outside office hours, regular duty and stand-by prosecutors.
- When a freezing order has been executed the public prosecutor shall immediately request the court to verify the declaration that the order can be executed. The competent court is the District Court within whose jurisdiction the freezing order has been executed or, if more than one order has been executed, a District Court within whose jurisdiction one of the freezing orders has been executed.
- A detailed list of the competent authorities (and addresses) is set out in 11728/05 COPEN 125 EJM 44 EUROJUST 48.

### Languages accepted for certificates pursuant to art. 9(3):

- Swedish
- Danish
- Norwegian
- English

### Links:

- <http://www.ejn-crimjust.europa.eu/ejn/libdocumentproperties.aspx?Id=109>
- [http://www.consilium.europa.eu/ueDocs/cms\\_Data/docs/polju/en/EJM685.pdf](http://www.consilium.europa.eu/ueDocs/cms_Data/docs/polju/en/EJM685.pdf)
- <http://www.sweden.gov.se/sb/d/3926/a/27769>
- <http://www.sweden.gov.se/sb/d/3926/a/27778>

### Implementation of particular provisions of the FD 2003/577:

<i>Article in the Framework Decision</i>	<i>Implementation</i>
Article 1 (Scope)	Chapter 1, Section 1
2(a) [Definition of ‘issuing State’]	Not implemented.
2(b) [Definition of ‘executing State’]	Not implemented.
2(c) [Definition of ‘freezing order’]	Chapter 1, Section 2 (Law)

2(d) [Definition of ‘property’]	Not implemented.
2(e) [Definition of ‘evidence’]	Not implemented.
3(1)(a) [Freezing orders securing evidence]	Not implemented.
3(1)(b) [Freezing orders for subsequent confiscation of property]	Not implemented.
3(2) [List of offences to which the double criminality test does not apply]	Not implemented.
3(3) [Council’s authority for future amendments or extensions of the previous list]	No implementation needed.
3(4) [Other offences]	Not implemented.
4(1) [Direct transmission of the order to the competent authority for recognition/execution in the executing State]	Chapter 2, Section 2 (Law) Chapter 3, Section 2 (Law) Chapter 2, Section 2 (Regulation)
4(2) [Transmission through a central authority of orders sent to the UK or Ireland]	Not relevant.
4(3) [Inquiries to find out what the competent authority for execution is]	Not implemented.
4(4) [Re-direction of an order to the competent authority for execution within the executing State]	Not implemented.
5(1), paragraph 1 [Immediate recognition and enforcement of the order is due, unless grounds for refusal or postponement]	Chapter 3, Section 1 (Law) Chapter 3, Section 4 (Law) Chapter 3, Section 6 (Law) Chapter 3, Section 16 (Law) Chapter 3, Section 17 (Law)
5(1), paragraph 2 [Execution of the order with formalities indicated by the issuing State]	Chapter 3, Section 7 (Law)
5(1), paragraph 3 [Report on the execution sent to the issuing State]	Chapter 3, Section 8 (Regulation)

5(2) [Law of the executing State applicable to execution]	Chapter 3, Section 6 (Law) Chapter 3, Section 10 (Law) Chapter 3, Section 11 (Law) Chapter 3, Section 12 (Law) Chapter 3, Section 13 (Law) Chapter 3, Section 4 (Regulation) Chapter 3, Section 5 (Regulation) Chapter 3, Section 6 (Regulation) Chapter 3, Section 11 (Regulation)
5(3) [Communication to the issuing State within 24 hours]	Chapter 3, Section 8 (Law)
6(1) [Freezing remains until requests from the issuing State have been responded]	Not implemented.
6(2) [Possibility to limit the period of the freezing]	Not implemented.
6(3) [Duty to communicate the lifting of the order to the executing State]	Chapter 2, Section 3 (Regulation)
7(1)(a) [Grounds for non-recognition or non-execution: problems with certificate]	Chapter 3, Section 5.1 (Law)
7(1)(b) [Grounds for non-recognition or non-execution: immunity or privilege]	Chapter 3, Section 5.2 (Law)
7(1)(c) [Grounds for non-recognition or non-execution: <i>ne bis in idem</i> ]	Chapter 3, Section 5.4 (Law)
7(1)(d) [Grounds for non-recognition or non-execution: double criminality test]	Not implemented.
7(2)(a) [Deadline to complete a proper certificate before refusal]	Chapter 3, Section 3 (Law)
7(2)(b) [Possibility to accept an 'equivalent document' instead of a proper certificate before refusal]	Not implemented.
7(2)(c) [Possibility to accept recognition/execution the order despite the lack of a proper certificate when sufficient information has been provided]	Not implemented.

7(3) [Due notification of refusal to the issuing State]	Chapter 3, Section 2 (Regulation) Chapter 3, Section 11 (Regulation)
7(4) [Practical impossibility to execute the order; due notification to the issuing State]	Chapter 3, Section 14 (Law) Chapter 3, Section 7 (Regulation)
8(1)(a) [Grounds for postponement: risks to an ongoing criminal investigation]	Chapter 3, Section 9.1 (Law)
8(1)(b) [Grounds for postponement: evidence or property already frozen within criminal proceedings]	Chapter 3, Section 9.2 (Law)
8(1)(c) [Grounds for postponement: property already frozen according to an order given within any non-criminal proceedings in the executing State, as long as, under national law, this order has priority over subsequent national freezing orders given within criminal proceedings]	Chapter 3, Section 9.2 (Law)
8(2) [Due notification of postponement to the issuing State]	Chapter 3, Section 2 (Regulation)
8(3) [Immediate execution once the ground for postponement has ceased; due notification to the issuing State]	Not implemented.
8(4) Information to the issuing State about any other restraint measures to which the property is subjected	Not implemented.
9(1) Necessary certificate with standard form is to accompany the order when it is transmitted to the executing State (Annex)	Chapter 3, Section 2 (Law)
9(2) Need to translate the certificate into one of the official languages of the executing State	Chapter 3, Section 3 (Law)
9(3) Possibility to accept a translation in other languages (as long as they are official languages of the EU institutions)	Chapter 3, Section 3 (Law)
10(1)(a) Possible request for the evidence to be transferred to the issuing State when transmitting the order & certificate	Chapter 3, Section 18 (Law) Chapter 3, Section 3 (Regulation) Chapter 3, Section 8 (Regulation)

10(1)(b) Possible request for confiscation to be transferred to the issuing State when transmitting the order & certificate	Chapter 3, Section 18 (Law) Chapter 3, Section 3 (Regulation) Chapter 3, Section 8 (Regulation)
10(1)(c) Instruction in the certificate asking the executing State to maintain the freezing pending a subsequent request for transferring the evidence or for confiscation of the property	Not implemented.
10(2) Submission and processing of requests for transferring the evidence or for confiscation of the property: governed by rules applicable to mutual assistance in criminal matters and to international cooperation relating to confiscation	Chapter 2, Section 4 Chapter 2, Section 5
10(3) Requests for transferring evidence may not be refused on grounds double criminality where the request concerns an offence listed in article 3(2)	Not implemented.
11(1) Legal remedies without suspensive effect not only in the issuing State but also in the executing State	Chapter 3, Section 20 (Law)
11(2) Actions based on substantive reasons against the freezing order may only be brought in the issuing State	Chapter 3, Section 14 (Regulation)
11(3) Actions brought in the executing State (based on procedural grounds only): due information to the issuing State and its right to submit arguments	Chapter 3, Section 9 (Regulation) Chapter 3, Section 10 (Regulation) Chapter 3, Section 13 (Regulation)
11(4) States' duty to take measures to provide information about legal remedies	Chapter 3, Section 14 (Regulation)
11(5) Time-limits for bringing an action against the freezing order shall guarantee the possibility of an effective legal remedy	Not implemented.
12(1) The issuing State shall reimburse to the executing State any sums paid in damages caused by the execution of the order, unless injury is exclusively due to the executing State's conduct.	Not implemented.
12(2) National laws about compensation of damage will always apply	Not implemented.



13 Application to Gibraltar	No implementation needed.
14(1) National measures for implementation of the FD	No implementation needed.
14(2) Duty to communicate measures for implementation to the GSC and the Commission; reports thereof; Council's assessment thereof	No implementation needed.
14(3) Duty of the GSC to notify Member States and the Commission of declarations made under article 9(3)	No implementation needed.
15 Entry into force of the FD	No implementation needed.
Annex: Certificate provided for in art. 9	Not implemented

### **Comments about implementation**

The ruling contained in Law (SFS 2005:500) of 9 June 2005 on the recognition and execution in the European Union of freezing orders, and in Regulation (SFS 2005:501) of 9 June 2005 on the recognition and execution in the European Union of freezing orders does not cover all issues foreseen in the FD. However, it has to be completed with additional applicable rules in:

- Code on the administration of justice / Swedish Code of Judicial Procedure
- The Law (2000:562) on international legal assistance in criminal cases, containing provisions on the procedure applicable on the introduction into Sweden of property covered by a freezing order.
- The Law (1963:193) on cooperation between Denmark, Finland, Iceland and Norway concerning the implementation of penalties, etc. and the Law (1972:260) on international cooperation concerning the execution of judgments in criminal proceedings, containing provisions on the procedure on the foreign execution of confiscation orders relating to property covered by a freezing order.

## 27. UNITED KINGDOM

### General state of implementation (Legislation; entry into force date):

- Parts of the FD relating to the freezing of *evidence* have been implemented by means of some sections of the Crime (International Co-operation) Act 2003; entry into force: 19.10.2009 [Crime (International Co-operation) Act 2003 (Commencement No. 5) Order 2009].
- Work to implement the Framework Decision in relation to property is ongoing. In particular, provisions for implementing the parts of the FD relating to the freezing of *property* have been included in the Terrorist Act 2000 [Schedule 4, paragraphs 11A-11G, 25A-25G and 41A-41G], but they are not yet in force, since up to today (15.05.2011) no Commencement Order has yet been given.
- However, since 01.01.2006, strong legislation is already in place which provides for international cooperation in both the freezing and confiscation of criminal assets (Part 11 of The Proceeds of Crime Act 2002; and supporting Orders in Council, particularly SI 2005 No. 3181).

### Competent authority to receive the freezing orders:

Freezing order together with the certificate must be sent to:

For England, Wales and Northern  
Ireland:  
UK Central Authority  
Home Office  
5th Floor Fry  
2 Marsham Street  
London  
SW1P 4DF

For Scotland:  
International Co-operation Unit  
Crown Office  
25 Chambers Street  
Edinburgh  
EH1 1LA

Once it has been received, the order will be directed to a court for decision on recognition/execution (Section 20)

### Languages accepted for certificates pursuant to art. 9(3):

English.

### Links:

<http://www.legislation.gov.uk/ukpga/2003/32/contents>  
<http://www.legislation.gov.uk/uksi/2009/2605/contents/made>  
<http://www.legislation.gov.uk/ukpga/2000/11/contents>  
<http://www.legislation.gov.uk/ukpga/2002/29/contents>  
<http://www.legislation.gov.uk/uksi/2005/3181/contents/made>  
<http://www.legislation.gov.uk/ukpga/1984/60/contents>  
<http://www.legislation.gov.uk/nisi/1989/1341/contents/made>

### Implementation of particular provisions of the FD 2003/577:

<i>Article in the Framework Decision</i>	<i>Implementation<sup>6</sup></i>
Article 1 (Scope)	Not explicitly implemented
2(a) [Definition of ‘issuing State’]	Not explicitly implemented
2(b) [Definition of ‘executing State’]	Not explicitly implemented
2(c) [Definition of ‘freezing order’]	Section 10(2) and 20(2): the Act distinguishes ‘ <i>domestic freezing orders</i> ’ [ie, orders issued by the UK to be executed in another State; sect. 10(2)] and ‘ <i>overseas freezing orders</i> ’ [ie, orders issued by another State that are received in the UK for recognition/execution; sect. 20(2)]
2(d) [Definition of ‘property’]	Not implemented
2(e) [Definition of ‘evidence’]	Section 10(3)
3(1)(a) [Freezing orders securing evidence]	Section 10(2) and 20(2)
3(1)(b) [Freezing orders for subsequent confiscation of property]	Not implemented
3(2) [List of offences to which the double criminality test does not apply]	Sections 10(1)(a), 20(4) and 28(5)(a)
3(3) [Council’s authority for future amendments or extensions of the previous list]	No implementation needed.
3(4) [Other offences]	Sections 10(1)(a), 20(4), 28(5)(b) and 28(6)
4(1) [Direct transmission of the order to the competent authority for recognition/execution in the executing State]	Not implemented
4(2) [Transmission through a central authority of orders sent to/from the UK or Ireland]	Sections 11(1), 11(2), 21(1), 21(2): via Secretary of State (England, Wales and Northern Ireland) or Lord Advocate (Scotland)
4(3) [Inquiries to find out what the competent authority for execution is]	Not implemented
4(4) [Re-direction of an order to the competent authority for execution within the executing State]	Not implemented

<sup>6</sup> All references belong to the Crime (International Co-operation) Act 2003 which tackles orders freezing evidence only.

5(1), paragraph 1 [Immediate recognition and enforcement of the order is due, unless grounds for refusal or postponement]	Section 21(5)
5(1), paragraph 2 [Execution of the order with formalities indicated by the issuing State]	Not implemented
5(1), paragraph 3 [Report on the execution sent to the issuing State]	Not implemented
5(2) [Law of the executing State applicable to execution]	Section 22
5(3) [Decision and communication to the issuing State within 24 hours]	Not implemented
6(1) [Freezing remains until requests from the issuing State have been responded]	Section 24
6(2) [Possibility to limit the period of the freezing]	Not implemented
6(3) [Duty to communicate the lifting of the order to the executing State]	Section 25(1)(b)
7(1)(a) [Grounds for non-recognition or non-execution: problems with certificate]	Not explicitly implemented; see sections 11(4), 20(5), though
7(1)(b) [Grounds for non-recognition or non-execution: immunity or privilege]	Not explicitly implemented
7(1)(c) [Grounds for non-recognition or non-execution: <i>ne bis in idem</i> ]	Section 21(6)
7(1)(d) [Grounds for non-recognition or non-execution: double criminality test]	Not explicitly implemented; however, see sections 10(1), 20(4), 28(5) and 28(6)
7(2)(a) [Deadline to complete a proper certificate before refusal]	Not implemented
7(2)(b) [Possibility to accept an 'equivalent document' instead of a proper certificate before refusal]	Not implemented
7(2)(c) [Possibility to accept recognition/execution the order despite the lack of a proper certificate when sufficient information has been provided]	Section 20(5)
7(3) [Due notification of refusal to the issuing State]	Not implemented

7(4) [Practical impossibility to execute the order; due notification to the issuing State]	Not implemented
8(1)(a) [Grounds for postponement: risks to an ongoing criminal investigation]	Section 23(a)
8(1)(b) [Grounds for postponement: evidence or property already frozen within criminal proceedings]	Section 23(b)
8(1)(c) [Grounds for postponement: property already frozen according to an order given within any non-criminal proceedings in the executing State, as long as, under national law, this order has priority over subsequent national freezing orders given within criminal proceedings]	Not implemented
8(2) [Due notification of postponement to the issuing State]	Not implemented
8(3) [Immediate execution once the ground for postponement has ceased; due notification to the issuing State]	Not implemented
8(4) Information to the issuing State about any other restraint measures to which the property is subjected	Not implemented
9(1) Necessary certificate with standard form is to accompany the order when it is transmitted to the executing State (Annex)	Sections 11(4), 20(5) and 20(8)
9(2) Need to translate the certificate into one of the official languages of the executing State	Section 11(5) and 20(6)(c)
9(3) Possibility to accept a translation in other languages (as long as they are official languages of the EU institutions)	Not implemented
10(1)(a) Possible request for the evidence to be transferred to the issuing State when transmitting the order & certificate	Section 20(7)
10(1)(b) Possible request for confiscation to be transferred to the issuing State when transmitting the order & certificate	Not implemented

10(1)(c) Instruction in the certificate asking the executing State to maintain the freezing pending a subsequent request for transferring the evidence or for confiscation of the property	Section 20(7), <i>in fine</i>
10(2) Submission and processing of requests for transferring the evidence or for confiscation of the property: governed by rules applicable to mutual assistance in criminal matters and to international cooperation relating to confiscation	Not explicitly implemented
10(3) Requests for transferring evidence may not be refused on grounds double criminality where the request concerns an offence listed in article 3(2)	Not implemented
11(1) Legal remedies without suspensive effect not only in the issuing State but also in the executing State	Not implemented
11(2) Actions based on substantive reasons against the freezing order may only be brought in the issuing State	Not implemented
11(3) Actions brought in the executing State (based on procedural grounds only): due information to the issuing State and its right to submit arguments	Not implemented
11(4) States' duty to take measures to provide information about legal remedies	Not implemented
11(5) Time-limits for bringing an action against the freezing order shall guarantee the possibility of an effective legal remedy	Not implemented
12(1) The issuing State shall reimburse to the executing State any sums paid in damages caused by the execution of the order, unless injury is exclusively due to the executing State's conduct.	Not implemented
12(2) National laws about compensation of damage will always apply	Not explicitly implemented
13 Application to Gibraltar	No implementation needed.
14(1) National measures for implementation of the FD	No implementation needed.

14(2) Duty to communicate measures for implementation to the GSC and the Commission; reports thereof; Council's assessment thereof	No implementation needed.
14(3) Duty of the GSC to notify Member States and the Commission of declarations made under article 9(3)	No implementation needed.
15 Entry into force of the FD	No implementation needed.
Annex: Certificate provided for in art. 9	Section 28(7)(a): Certificate of the FD applicable

### Comments about implementation

All references above belong to the Crime (International Co-operation) Act 2003 which tackles orders freezing *evidence* only. Legislation to implement the parts of the FD relating to orders freezing *property* is not yet in force.

The Crime (International Co-operation) Act 2003 distinguishes ‘*domestic freezing orders*’ [ie, orders issued by the UK to be executed in another State; Sect. 10(2)] and ‘*overseas freezing orders*’ [ie, orders issued by another State that are received in the UK for recognition/execution; sect. 20(2)].

A ground for refusal is that recognizing the order would be incompatible with any of the Human Rights described at the Human Rights Act 1998 [Section 21(7)].

Another ground for refusal may be that the evidence to be freezed refer to ‘items subject to legal privilege, excluded material or special procedure material’ [Sections 10(3)(d), 26(1) and 28(3), in relation with Sections (10), (11) and (14) of the Police and Criminal Evidence Act 1984; with Sections (12), (13) and (16) of the Police and Criminal Evidence (Northern Ireland) Order 1989; and with Chapter 3 of Part 8 of the Proceeds of Crime Act 2002].

Section 9(2) and (3) deal with the ‘use of evidence obtained’: ‘The evidence may not without the consent of the appropriate overseas authority be used for any purpose other than that specified in the request’. ‘When the evidence is no longer required for that purpose (or for any other purpose for which such consent has been obtained), it must be returned to the appropriate overseas authority, unless that authority indicates that it need not be returned.’

## **ANNEX 2: QUESTIONNAIRES AND EXTRACT OF ANSWERS FROM PRACTITIONERS**



## **ANNEX 2**

### **QUESTIONNAIRES AND EXTRACT OF ANSWERS FROM PRACTITIONERS.**

#### **Instructions**

- ✓ For the purpose of gathering information on the practical experiences of legal practitioners in the use of the mutual recognition instrument order to freeze property or secure evidence (DM 2003/577/JAI), a questionnaire has been prepared and sent to Judges, Public Prosecutors, Ministries of Justice and other relevant persons and institutions in Member States of the European Union and others closely linked to the Union (a list of recipients is attached at the end of this Annex). The files appearing in this document contain a synthesis of the answers provided by the persons and institutions replying to the questionnaire. The literal wording appears in the respective file. Unfortunately, not all Member States contributed (specifically, Italy, Greece, Bulgaria, Austria and Estonia). Files are numbered in the order they were received and named after the State and person, entity or body that replied to the questionnaire.
- ✓ The number appearing in the left-hand column of the file is the question number and answers appear in the right-hand column. The different sections of the questionnaire appear in different colours in the following order: scope of application/transmission of freezing orders/recognition and execution of freezing orders/certificates/general issues.

Certain answers have been highlighted in bold, either because they constitute a special issue or exception in relation to Framework Decision DM 2003/577/JAI, because they indicate how to solve issues that the instrument does not deal with or, in short, because of the relevance of the comments made to evaluating the practical importance and effects of FD 2003/577/JHA.

**- QUESTIONNAIRE ABOUT THE OPERATION OF THE FREEZING ORDER SYSTEM ACCORDING TO THE FD**

**SCOPE**

- 1. Under your national law, may an order freezing property or evidence be granted before criminal proceedings have commenced or, on the contrary, may it only be granted within an ongoing criminal process?**
- 2. Under your national law, may an order freezing property or evidence be granted without judicial supervision (by authorities such as the public prosecutor or the police) or, on the contrary, may it only be granted by a judge?**
- 3. In your national criminal proceedings, what measures are more frequently taken in order to guarantee the subsequent confiscation or the use as evidence of goods, objects or data?**
- 4. Under your national law, who are the competent authorities for granting an order freezing property or evidence? And for executing such an order? In case the competent authorities for granting and execution are not the same, please indicate what practical problems arise, if any.**
- 5. In your opinion, in order to avoid misunderstandings regarding the competence to execute an order freezing property or evidence, will it be better if a national authority such as the Ministry of Justice or the Office of the Public Prosecution is in charge of the appointment of the competent authority for execution?**
- 6. Does your national law include the very same list of offences not subject to the double criminality test foreseen in art. 3.2 of FD 2003/577/JHA? In your opinion, would any changes be necessary or convenient in the FD list or in your national list?**
- 7. Regarding offences NOT listed in art. 3.2 of FD 2003/577/JHA, does your national law require special conditions in order to recognize or to execute an order freezing property or evidence?**

**TRANSMITTING FREEZING ORDERS**

- 8. What procedure or means do you usually follow in order to find out who is the competent judicial authority for execution of an order freezing property or evidence?**
- 9. What language do you usually use when transmitting an order freezing property or evidence? Through what means or procedure do you usually transmit such an order and its annexed certificate?**

**10. Under your national law, as a general rule, what formalities must be followed in order to ensure that the evidence taken is valid? (art. 5.1.II of FD)**

## **EXECUTING FREEZING ORDERS**

**11. According to your national judicial authorities, what are the means, procedures or channels through which an order freezing property or evidence may validly sent/received in your country?**

**12. Under your national law, once an order freezing property or evidence has been received in your country, what is the legally established time-limit for its execution? Do the competent judicial authorities of your country usually comply with execution of the order within this time-limit? Do you think the 24-hour-time-limit after receipt of the order is reasonable?; if not, what other time-limit will it be reasonable, under your view?**

**13. How do your national authorities usually proceed upon receiving a freezing order from another Member State when the certificate is not produced, is not sufficient or is not duly translated into one of the admitted languages?**

**14. Regarding the grounds for non-recognition or non-execution of a freezing order, as foreseen in art. 7 of the FD, in your opinion: should any of the existing grounds be discarded?; should any other ground be included?**

**15. Regarding the grounds for postponement of execution of a freezing order, as foreseen in art. 8 of the FD, in your opinion: should any of the existing grounds be discarded?; should any other ground be included?**

**16. Art. 5.1.II of the FD provides: “Whenever it is necessary to ensure that the evidence taken is valid and provided that such formalities and procedures are not contrary to the fundamental principles of law in the executing State, the judicial authority of the executing State shall also observe the formalities and procedures expressly indicated by the competent judicial authority of the issuing State in the execution of the freezing order”. Have you ever faced circumstances that required such a provision to come into play?**

**17. In your opinion, would it reasonable that the certificate attached to a freezing order would fix a specific time-limit for the lifting of the measures taken as a consequence of the order?**

**18. What sort of practical problems or obstacles arise in your country in relation to requests for transferring evidence or property for confiscation? What is your national practice when processing those requests and, in particular, how is evidence (or even property) transferred to the issuing State?**

**19. Under your national law, what legal remedies may be used against an order freezing property or evidence? Who is entitled to use those legal remedies? On which reasons or grounds may those legal remedies be based? How does your**

**national law attempt to ensure the right to an effective legal remedy to challenge the substantive reasons on which the freezing order rest?**

**20. Regarding injuries or damages caused by the execution of an order freezing property or evidence, how is the amount of injuries or damages calculated in your country? What is the appropriate procedure to apply for the reimbursement of the sums paid in those injuries or damages?**

#### **CERTIFICATE**

**21. Do you notice any defects, lacks or difficulties in the certificate that must be attached to an order freezing property or evidence?**

#### **GENERAL ISSUES**

**22. In your opinion, what are the main obstacles arising within the EU when dealing with the recognition and enforcement of orders freezing property or evidence?**

**23. In your opinion, what measures would improve the execution of orders freezing property or evidence within the European Union?**

**24. Do you know any relevant judicial decision given under your national law implementing FD 2003/577/JHA?**

**1ª .— SUECIA. Ahlstrand Tomas. Oficina Internacional del Ministerio de Gotemburgo**

1	Mientras está en curso un procedimiento criminal.
2	Una <i>freezing order</i> sólo puede ser ordenada por el <i>prosecutor</i> , pero luego debe ser ratificada o denegada por los tribunales.
3	La contestación proporcionada no se ajusta a la pregunta formulada. Se indica, no obstante, que el <i>prosecutor</i> decide, la policía ejecuta y el tribunal confirma una <i>freezing order</i> .
4	El <i>prosecutor</i> decide, la policía ejecuta y los tribunales confirman. No se responde acerca de posibles problemas de competencia.
5	No.
6	No (la lista de categorías delictivas no ha sido traspuesta a la legislación interna). No se hacen apreciaciones acerca de incluir nuevas infracciones a la lista del art. 3.2 DM 2003/577/JAI
7	No.
8	<b>No se cuenta con experiencia, pero se indica con que bastaría con fiarse de la palabra de la autoridad judicial competente del Estado de ejecución.</b>
9	En la lengua del Estado destinatario de la solicitud.
10	<b>Libre valoración de la prueba. Hay pocas normas de no admisibilidad de los medios de prueba y ninguna formal.</b>
11	La contestación proporcionada no se ajusta a la pregunta formulada, con todo se apunta que la <b>autoridad judicial competente para proceder a la ejecución de una <i>freezing order</i> son los <i>prosecutors</i> de las secciones internacionales</b> (Stockholm, Gothenburg y Malmö).
12	<b>No hay un plazo de tiempo. El tribunal fija un período de tiempo en función de la complejidad del caso. No se piensa que el límite de 24 horas resulte del todo razonable, dada su brevedad sería más veces inobservado que observado. Un semana sería posible y 14 días muy razonable</b>
13	Sólo se apunta la posibilidad de contactar con la autoridad judicial competente del estado de emisión para pedir aclaraciones al respecto.
14	No se contesta.
15	No se contesta.
16	No, pero existe la posibilidad de incluir tales formalidades o procedimientos.
17	<b>Sí, sería razonable. La autoridad judicial competente emisora es la que está en mejores condiciones de saber cuándo una <i>freezing order</i> ha dejado de tener interés en el procedimiento penal.</b>
18	No se tiene experiencia práctica.
19	<b>Sólo se apunta el derecho de cualquier interesado a impugnar la <i>freezing order</i> una vez que ésta ha sido ejecutada.</b>

20	No hay específicas normas a este respecto, más allá de las que establecen la responsabilidad del Estado por los daños ocasionados por una interpretación contraria a la ley o a una aplicación imprudente de ésta.
21	No.
22	No se contesta.
23	No se contesta.
24	No se conoce.

#### ANEXO A FICHA 1

#### QUESTIONNAIRE ABOUT THE OPERATION OF THE FREEZING ORDER SYSTEM ACCORDING TO THE FD

*Sweden*

#### SCOPE

1. Under your national law, may an order freezing property or evidence be granted before criminal proceedings have commenced or, on the contrary, may it only be granted within an ongoing criminal process?

*A freezing order would automatically start an ongoing criminal process. So within Swedish criminal process legislation the question has no meaning.*

2. Under your national law, may an order freezing property or evidence be granted without judicial supervision (by authorities such as the public prosecutor or the police) or, on the contrary, may it only be granted by a judge?

*A freezing order can only be issued by the prosecutor. Immediately after a Swedish freezing order has been executed and goods have been seized in the executing state, the Swedish court has to confirm or deny the seizure on request of the prosecutor.*

3. In your national criminal proceedings, what measures are more frequently taken in order to guarantee the subsequent confiscation or the use as evidence of goods, objects or data?

*A parallel judicial process, rather complicated, but in the outline a seizure by the police, a decision by the prosecutor, a confirmation by the court, either immediately or at the latest as part of the main process*

4. Under your national law, who are the competent authorities for granting an order freezing property or evidence? And for executing such an order? In case the competent authorities for granting and execution are not the same, please indicate what practical problems arise, if any.

*Again prosecutors decide, police executes, court confirms*

5. In your opinion, in order to avoid misunderstandings regarding the competence to execute an order freezing property or evidence, will it be better if a national authority such as the Ministry of Justice or the Office of the Public Prosecution is in charge of the appointment of the competent authority for execution?

*No. Better keep freezing orders as close to national systems as possible. In Sweden the Ministry of Justice is a political authority and thus has no authority for judicial decisions. General Office for public prosecution is mainly an administrative body.*

6. Does your national law include the very same list of offences not subject to the double criminality test foreseen in art. 3.2 of FD 2003/577/JHA? In your opinion, would any changes be necessary or convenient in the FD list or in your national list?

*No double criminality list. Practically all European decisions on freezing should be accepted.*

7. Regarding offences NOT listed in art. 3.2 of FD 2003/577/JHA, does your national law require special conditions in order to recognize or to execute an order freezing property or evidence?



*See above; no.*

## **TRANSMITTING FREEZING ORDERS**

8. What procedure or means do you usually follow in order to find out who is the competent judicial authority for execution of an order freezing property or evidence?

*No practical experience. Would usually accept the foreign authority on his or her word.*

9. What language do you usually use when transmitting an order freezing property or evidence? Through what means or procedure do you usually transmit such an order and its annexed certificate?

*Swedish law state that in-coming freezing orders should be written in Scandinavian languages or English. In addressing a freezing order to a foreign country I would use the language of that country.*

10. Under your national law, as a general rule, what formalities must be followed in order to ensure that the evidence taken is valid? (art. 5.1.II of FD)

*Free evaluation of evidence holds in Sweden. That is, very few rules of non-admissability and none formal.*

## **EXECUTING FREEZING ORDERS**

11. According to your national judicial authorities, what are the means, procedures or channels through which an order freezing property or evidence may validly sent/received in your country?

*The issuing and executing authorities are the prosecutors of the international divisions, of which there are three (in Stockholm, Gothenburg, Malmö).*

12. Under your national law, once an order freezing property or evidence has been received in your country, what is the legally established time-limit for its execution? Do the competent judicial authorities of your country usually comply with execution of the order within this time-limit? Do you think the 24-hour-time-limit after receipt of the order is reasonable?; if not, what other time-limit will it be reasonable, under your view?

*No definitive time limit. The court will set an arbitrary time limit according to the complexity of the case.*

*I do not think a 24-hour time limit is reasonable at all; it would obviously be a rule violated more often than not. . A week would be possible but perhaps 14 days could be workable.*

13. How do your national authorities usually proceed upon receiving a freezing order from another Member State when the certificate is not produced, is not sufficient or is not duly translated into one of the admitted languages?

*One would contact the issuing country requesting clarification.*

14. Regarding the grounds for non-recognition or non-execution of a freezing order, as foreseen in art. 7 of the FD, in your opinion: should any of the existing grounds be discarded?; should any other ground be included?

- - -

15. Regarding the grounds for postponement of execution of a freezing order, as foreseen in art. 8 of the FD, in your opinion: should any of the existing grounds be discarded?; should any other ground be included?

- - -

16. Art. 5.1.II of the FD provides: “Whenever it is necessary to ensure that the evidence taken is valid and provided that such formalities and procedures are not contrary to the fundamental principles of law in the executing State, the judicial authority of the executing State shall also observe the formalities and procedures expressly indicated by the competent judicial authority of the issuing State in the execution of the freezing order”. Have you ever faced circumstances that required such a provision to come into play?

*No. But there is a possibility for such formalities in the Swedish freezing order act.*

17. In your opinion, would it be reasonable that the certificate attached to a freezing order would fix a specific time-limit for the lifting of the measures taken as a consequence of the order?

*I don't see why not. The issuing state is best placed to judge when a freezing order has ceased to be of interest.*

18. What sort of practical problems or obstacles arise in your country in relation to requests for transferring evidence or property for confiscation? What is your national practice when processing those requests and, in particular, how is evidence (or even property)

transferred to the issuing State?

*No practical experience.*

19. Under your national law, what legal remedies may be used against an order freezing property or evidence? Who is entitled to use those legal remedies? On which reasons or grounds may those legal remedies be based? How does your national law attempt to ensure the right to an effective legal remedy to challenge the substantive reasons on which the freezing order rest?

*The interested party may challenge a freezing order in court once it is executed. That is, the freezing order as such cannot be challenged before it is executed.*

20. Regarding injuries or damages caused by the execution of an order freezing property or evidence, how is the amount of injuries or damages calculated in your country? What is the appropriate procedure to apply for the reimbursement of the sums paid in those injuries or damages?

*No specific rules except the general responsibility for the state to pay for damages caused by reckless or unlawful interpretation of law and statutes.*

## **CERTIFICATE**

21. Do you notice any defects, lacks or difficulties in the certificate that must be attached to an order freezing property or evidence?

*No*

## **GENERAL ISSUES**

22. In your opinion, what are the main obstacles arising within the EU when dealing with the recognition and enforcement of orders freezing property or evidence?

- - -

23. In your opinion, what measures would improve the execution of orders freezing property or evidence within the European Union?

- - -

24. Do you know any relevant judicial decision given under your national law implementing FD 2003/577/JHA?

*No*

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**2ª.— FRANCIA. Jaques Hossaert, Avocat général à la Cour d'appel Versailles**

1	Es necesario que un procedimiento penal haya comenzado.
2	Sólo una autoridad judicial puede acordar una <i>freezing order</i> .
3	Incautación.
4	Las <i>freezing orders</i> son adoptadas por el <i>juge des libertés et de la detention</i> . La ejecución de las medidas de aseguramiento de bienes o de pruebas corresponde a la policía judicial.
5	No se opina. Se invoca la regla del art. 710-103 CPP relativa al embargo preventivo de bienes.
6	No se contesta explícitamente. Se invocan los arts. 706-73 y 710-103CPP No se hacen apreciaciones acerca de incluir nuevas infracciones a la lista del art. 3.2 DM 2003/577/JAI
7	No.
8	La contestación proporcionada no se ajusta a la pregunta formulada.
9	No se conoce, por falta de experiencia.
10	No se prevén requisitos específicos.
11	<b>Una solicitud de auxilio judicial o, eventualmente, una comunicación directa entre los funcionarios de los servicios de policía.</b>
12	Apunta que sólo la experiencia sobre la hipotética cuestión formulada le permitiría pronunciarse al respecto.
13	No se encuentra en disposición de responder.
14	No responde.
15	No se encuentra en disposición de responder.
16	No.
17	Sí. Se omite cualquier razonamiento al respecto.
18	No se encuentra en disposición de responder.
19	Sólo se indica que la decisión del <i>Juge des libertés et de la detention</i> previsto en el art. 706-103 CPP es susceptible de recurso de apelación ante la <i>Cour d'appel</i> .
20	No se encuentro en disposición de contestar.
21	No se encuentra en disposición de contestar.
22	No se encuentra en disposición de contestar.
23	<b>Una mayor información a los magistrados que puedan estar implicados en las actuaciones relativas a una <i>freezing order</i>.</b>
24	No.

## ANEXO A FICHA 2º

### QUESTIONNAIRE ABOUT THE OPERATION OF THE FREEZING ORDER SYSTEM ACCORDING TO THE FD QUESTIONNAIRE SUR LE FONCTIONNEMENT DU SYSTÈME DE LA DÉCISION DE GEL SELON LA DÉCISION CADRE

#### SCOPE / DOMAINE D'APPLICATION

1. Under your national law, may an order freezing property or evidence be granted before criminal proceedings have commenced or, on the contrary, may it only be granted within an ongoing criminal process?

1. *Selon votre loi nationale, est-il possible de délivrer une ordonnance de gel de biens ou d'éléments de preuve avant que la procédure pénale soit entamée ou, par contre, la délivrance d'une telle décision est-elle seulement possible dans le contexte d'une procédure pénale déjà commencée ?*

#### **Il faut qu'une procédure pénale ait commencé.**

2. Under your national law, may an order freezing property or evidence be granted without judicial supervision (by authorities such as the public prosecutor or the police) or, on the contrary, may it only be granted by a judge?

2. *Selon votre loi nationale, est-il possible de délivrer une ordonnance de gel de biens ou d'éléments de preuve sans contrôle de l'autorité judiciaire (par des autorités telles que le parquet ou la police) ou, par contre, seule une autorité judiciaire peut délivrer une telle décision ?*

#### **Seule une autorité judiciaire peut délivrer une telle ordonnance.**

3. In your national criminal proceedings, what measures are more frequently taken in order to guarantee the subsequent confiscation or the use as evidence of goods, objects or data?

3. *Selon votre loi nationale de procédure pénale, quelles sont les mesures les plus fréquentes pour assurer la postérieure confiscation des biens ou l'utilisation comme preuve des biens ou des objets gelés ?*

#### **Le placement sous scellés.**

4. Under your national law, who are the competent authorities for granting an order freezing property or evidence? And for executing such an order? In case the competent authorities for granting and execution are not the same, please indicate what practical problems arise, if any.

4. *Selon votre loi nationale, quelles sont les autorités compétentes pour délivrer une ordonnance de gel de biens ou d'éléments de preuve ? Et pour l'exécuter ? Au cas où elles ne seraient pas les mêmes, indiquez si ceci cause des difficultés.*

**L'ordonnance de gel des biens est prise par le juge des libertés et de la détention (JLD). Le placement sous scellés relève de l'officier de police judiciaire (OPJ).**

5. In your opinion, in order to avoid misunderstandings regarding the competence to execute an order freezing property or evidence, will it be better if a national authority such as the Ministry of Justice or the Office of the Public Prosecution is in charge of the appointment of the competent authority for execution?

5. *À votre avis, et pour éviter des difficultés concernant la compétence pour l'exécution d'une ordonnance de gel de biens ou d'éléments de preuve, serait-il plus utile qu'une seule autorité nationale –comme le Ministère de la Justice ou l'office du Procureur Général- prenne en charge la détermination de l'autorité compétente pour l'exécution ?*

**Le Code de procédure pénale (CPP) a fixé la règle en son article 710-103 pour le gel des biens, par une loi du 9 juillet 2010.**

6. Does your national law include the very same list of offences not subject to the double criminality test foreseen in art. 3.2 of FD 2003/577/JHA? In your opinion, would any changes be necessary or convenient in the FD list or in your national list?

6. *Est-ce que votre loi nationale inclut exactement la même liste des infractions qui échappent au contrôle de la double incrimination prévues dans l'article 3.2 de la Décision-Cadre 2003/577/JAI ? À votre avis, serait-il nécessaire ou convenant d'introduire des changements de cette liste dans votre liste nationale ?*

**La loi nationale a fixé dès 2005, avec des modifications en 2006 et 2007, une liste des infractions relevant de règles d'enquêtes dérogatoires (art, 706-73 du CPP), à laquelle renvoie l'art. 710-103.**

7. Regarding offences NOT listed in art. 3.2 of FD 2003/577/JHA, does your national law require special conditions in order to recognize or to execute an order freezing property or evidence?

7. Pour ce qui concerne les infractions NON incluses dans la liste de l'article 3.2 de la Décision-Cadre 2003/577/JAI, est-ce que votre loi nationale exige des conditions spéciales pour la reconnaissance ou l'exécution d'une décision ordonnant le gel de biens ou d'éléments de preuve ?

**Question sans objet.**

## **TRANSMITTING FREEZING ORDERS / LA TRANSMISSION DES DÉCISIONS DE GEL**

8. What procedure or means do you usually follow in order to find out who is the competent judicial authority for execution of an order freezing property or evidence?

8. Quelles sont les procédures ou les moyens normalement utilisés pour identifier l'autorité compétente pour l'exécution d'une décision de gel ?

**Il s'agit du procureur de la République sous les ordres duquel travaille l'OPJ.**

9. What language do you usually use when transmitting an order freezing property or evidence? Through what means or procedure do you usually transmit such an order and its annexed certificate?

9. Quelle langue utilisez-vous normalement pour la transmission des décisions de gel ? Quels moyens ou procédures utilisez-vous normalement pour la transmission de la décision et du certificat annexe ?

**Mes fonctions me conduisent pas à transmettre ce type de décision.**

10. Under your national law, as a general rule, what formalities must be followed in order to ensure that the evidence taken is valid? (art. 5.1.II of FD)

10. Selon votre loi nationale, quelles sont normalement les formalités nécessaires pour garantir que les éléments de preuve obtenus sont valables ? (art. 5.1 II D-C)

**Il n'est pas prévu de formalités spécifiques**

## EXECUTING FREEZING ORDERS

11. According to your national judicial authorities, what are the means, procedures or channels through which an order freezing property or evidence may validly sent/received in your country?

11. *Selon votre système national, quels sont les moyens ou les procédures qui peuvent être utilisés pour transmettre ou recevoir une décision de gel dans votre pays ?*

**Une demande d'entraide judiciaire ou, éventuellement, une communication de service de police à service de police.**

12. Under your national law, once an order freezing property or evidence has been received in your country, what is the legally established time-limit for its execution? Do the competent judicial authorities of your country usually comply with execution of the order within this time-limit? Do you think the 24-hour-time-limit after receipt of the order is reasonable?; if not, what other time-limit will it be reasonable, under your view?

12. *Selon votre loi nationale, une fois que la décision de gel a été reçue dans votre pays, quels sont les délais établis par la loi pour l'exécution ? Les autorités compétentes de votre pays, respectent-elles d'habitude ces délais ? Considérez vous que le délai de 24 heures établi par la D-C est raisonnable ?; si non, quel délai pourrait être raisonnable, à votre avis ?*

**Cela nécessiterait d'être testé.**

13. How do your national authorities usually proceed upon receiving a freezing order from another Member State when the certificate is not produced, is not sufficient or is not duly translated into one of the admitted languages?

13. *Quelle est la procédure suivie par vos autorités nationales qui reçoivent une ordonnance de gel d'un autre État membre, lorsque le certificat n'est pas produit, n'est pas suffisant ou n'est pas traduit à une des langues acceptées ?*

**Je suis dans l'incapacité de répondre.**

14. Regarding the grounds for non-recognition or non-execution of a freezing order, as foreseen in art. 7 of the FD, in your opinion: should any of the existing grounds be discarded?; should any other ground be included?

*14. En ce qui concerne les motifs de non-reconnaissance ou de non-exécution d'une décision de gel prévus dans l'article 7 de la Décision-Cadre, et à votre avis : est-ce que quelqu'un de ces motifs devrait être abrogé ?; devrait-on inclure d'autres motifs ?*

15. Regarding the grounds for postponement of execution of a freezing order, as foreseen in art. 8 of the FD, in your opinion: should any of the existing grounds be discarded?; should any other ground be included?

*15. En ce qui concerne les motifs de report de l'exécution d'une décision de gel prévus dans l'article 8 de la Décision-Cadre, et à votre avis : est-ce que quelqu'un de ces motifs devrait être abrogé ?; devrait-on inclure d'autres motifs ?*

**Je suis dans l'incapacité de répondre.**

16. Art. 5.1.II of the FD provides: "Whenever it is necessary to ensure that the evidence taken is valid and provided that such formalities and procedures are not contrary to the fundamental principles of law in the executing State, the judicial authority of the executing State shall also observe the formalities and procedures expressly indicated by the competent judicial authority of the issuing State in the execution of the freezing order". Have you ever faced circumstances that required such a provision to come into play?

17.

*16. L'article 5.1.II de la Décision Cadre établit : « Lorsqu'il est nécessaire de garantir que les éléments de preuve obtenus sont valables et pour autant que ces formalités et procédures ne soient pas contraires aux principes fondamentaux du droit de l'État d'exécution, l'autorité judiciaire de l'État d'exécution observe, lors de l'exécution de la décision de gel, les formalités et procédures expressément indiquées par l'autorité judiciaire compétente de l'État d'émission. » Avez-vous eu l'occasion d'appliquer cette provision ?*

**Non.**

17. In your opinion, would it reasonable that the certificate attached to a freezing order would fix a specific time-limit for the lifting of the measures taken as a consequence of the order?

17. À votre avis, serait-il raisonnable que le certificat accompagnant une décision de gel établisse un délai spécifique pour la mainlevée des mesures prises à conséquence de l'ordonnance ?

**Oui.**

18. What sort of practical problems or obstacles arise in your country in relation to requests for transferring evidence or property for confiscation? What is your national practice when processing those requests and, in particular, how is evidence (or even property) transferred to the issuing State?

18. Quel genre de problèmes pratiques ou obstacles découlent dans votre pays lorsqu'il s'agit de demandes de transfert des preuves ou des biens pour leur confiscation ? Quelle sont les pratiques suivies dans votre pays pour faire suite à ces demandes et, en particulier, comment procède-t-on au transfert des preuves ou des biens à l'État d'émission ?

**Je suis dans l'incapacité de répondre.**

19. Under your national law, what legal remedies may be used against an order freezing property or evidence? Who is entitled to use those legal remedies? On which reasons or grounds may those legal remedies be based? How does your national law attempt to ensure the right to an effective legal remedy to challenge the substantive reasons on which the freezing order rest?

19. Selon votre loi nationale, quelles sont les voies de recours qui s'ouvrent contre une décision de gel de biens ou d'éléments de preuve ? Qui peut se servir de ces voies de recours ? Quels moyens ou motifs peuvent être utilisés pour fonder ces voies de recours ? Comment assure votre loi nationale le droit de contester les raisons substantielles qui sont à l'origine de l'émission de la décision de gel ?

**L'ordonnance du JLD prévue à l'art. 706-103 du CPP est nécessairement susceptible d'appel devant la Cour d'appel.**

20. Regarding injuries or damages caused by the execution of an order freezing property or evidence, how is the amount of injuries or damages calculated in your country? What is the appropriate procedure to apply for the reimbursement of the sums paid in those injuries or damages?

20. *En ce qui concerne les dommages causés par l'exécution d'une décision de gel, comment calcule-t-on leur montant dans votre pays ? Quelle procédure doit-on suivre pour demander le remboursement ?*

**Je suis dans l'incapacité de répondre.**

#### **CERTIFICATE / CERTIFICAT**

21. Do you notice any defects, lacks or difficulties in the certificate that must be attached to an order freezing property or evidence?

21. *Est-ce que vous avez détecté des défauts, des omissions ou des difficultés dans le certificat qui doit accompagner la décision de gel ?*

**Je suis dans l'incapacité de répondre.**

#### **GENERAL ISSUES / QUESTIONS GÉNÉRALES**

22. In your opinion, what are the main obstacles arising within the EU when dealing with the recognition and enforcement of orders freezing property or evidence?

22. *À votre avis, quels sont les principaux obstacles auxquels se heurtent la reconnaissance et l'exécution des décisions de gel de biens ou d'éléments de preuve dans l'Union Européenne ?*

**Je suis dans l'incapacité de répondre.**

23. In your opinion, what measures would improve the execution of orders freezing property or evidence within the European Union?



23. À votre avis, quelles mesures pourraient améliorer la reconnaissance et l'exécution des décisions de gel de biens ou d'éléments de preuve dans l'Union Européenne ?

**Une meilleure information des magistrats concernés par ces prises de décision et par leur diffusion.**

24. Do you know any relevant judicial decision given under your national law implementing FD 2003/577/JHA?

24. Avez-vous connaissance de décisions judiciaires rendues dans votre pays en application de la Décision-Cadre 2003/577/JAI ?

**Non.**

**3ª.— NORUEGA. Anne Groastad. Prosecutor for Norway. Eurojust**

\* La DM 2003/577/JAI no es aplicable a Noruega. Las respuestas ofrecidas lo son, por tanto, desde la sola perspectiva nacional. Es desde esta perspectiva que se distingue entre *seizure* y *charge on property*.

1	Es necesario que esté pendiente un procedimiento penal. En la práctica, se puede acordar <i>seizure</i> o <i>charge on property</i> en cualquier momento de la investigación previa al juicio ( <i>pre-trial</i> )
2	Por regla general, el fiscal acuerda la <i>seizure</i> , mientras que <i>charge on property</i> es acordado por el Tribunal.
3	Es más frecuente la adopción de <i>seizure</i> que <i>charge on property</i> .
4	El fiscal (o en caso de urgencia, la policía) acuerda la <i>seizure</i> . El propietario de los bienes confiscados puede solicitar del tribunal que decida si mantiene o no la medida <i>Charge on property</i> es acordada por el tribunal a instancia del fiscal (o, en caso de urgencia, por este último). Cuando se ha procedido a dar cumplimiento a cualquiera de estas dos medidas, el tribunal tiene que citar a las partes a una vista. El fiscal es oficialmente el responsable de la ejecución de estas medidas, aunque materialmente esta función concierne a la policía. No existen problemas prácticos asociados a esta distribución de competencias
5	No se plantean problemas prácticos.
6	A fin de acordar medidas de aseguramiento de bienes instadas por otros Estados es exigible, de un lado, una comisión rogatoria solicitando dicha asistencia y, de otro, que tales medidas se refieran a un hecho constitutivo de delito conforme a la legislación noruega. La solicitud de embargo extranjera se somete a las mismas condiciones que los embargos nacionales, sin que haya condiciones especiales por ser un procedimiento penal extranjero.
7	Sin objeto, atendida la anterior respuesta
8	No aplicable en Noruega.
9	No aplicable en Noruega.
10	Como regla, la prueba obtenida legalmente en otros países debe tenerse por válidamente obtenida en Noruega, aun cuando conforme a la legislación nacional la policía o el <i>prosecutor</i> no hubieran podido obtener esos mismos elementos de prueba de la misma manera. Esto, si bien no está recogido expresamente en la legislación noruega, se ha recogido en la jurisprudencia del Tribunal Supremo.
11	La DM 2003/577/JAI no se aplica en Noruega, con que la ejecución de una <i>freezing order</i> requiere de la utilización de los instrumentos convencionales de MLA. Al ser Noruega parte signataria del CAAS, las solicitudes de MLA pueden ser enviadas o recibidas directamente por el fiscal del lugar en que se encuentran los bienes y cuya designación es posible a través del Atlas de EJN. También pueden ser enviadas al <i>Director of Public Prosecution</i> .

	Si la solicitud es urgente puede ser enviada a través de Interpol o de Eurojust.
12	No hay un tiempo límite para la ejecución de una <i>freezing order</i> , pero si la carta rogatoria indica que se proceda con urgencia, se hará lo necesario para proceder cuanto antes a su cumplimiento.
13	Para llevar a cabo una <i>freezing order</i> acordada en otro país, es necesario una solicitud de MLA y la correspondiente resolución de la autoridad requirente. Si esta documentación no proporciona información suficiente o falta, el <i>prosecutor</i> debe contactar con el Estado requirente, al efecto de que le proporcione información adicional. Si estos documentos no están redactados en un idioma admitido por Noruega para la recepción de solicitudes MLA, el fiscal decidirá qué hacer con la solicitud recibida.
14	No aplicable en Noruega.
15	No aplicable en Noruega.
16	No aplicable en Noruega.
17	No aplicable en Noruega.
18	Es necesaria una cooperación a nivel práctico con vistas a concertar extremos relativos a la entrega física de los bienes.
19	La persona afectada por una <i>seizure</i> puede pedir del tribunal una revisión acerca de la procedencia de la medida adoptada por el fiscal. Esta revisión se realizará por el <i>District Court</i> , cuya decisión puede ser recurrida ante la <i>Appeal Court</i> y ésta, a su vez, ante el <i>Supreme Court</i> . La decisión de adopción de una <i>charge on property</i> no es apelable, pero cuando ésta se ha llevado a cabo, el tribunal debe decidir si debe ser o no mantenida. Esta decisión es adoptada por el <i>District Court</i> y puede ser recurrida ante la <i>Appeal Court</i> . La decisión adoptada por este último tribunal puede ser recurrida, a su vez, ante el <i>Supreme Court</i> .
20	No hay un procedimiento formal para el cálculo de las indemnizaciones que se reclamen como consecuencia de los daños sufridos. Si el acusado es absuelto o se retira la acusación, podrá solicitar del Estado una compensación económica por los daños, debiendo acreditar los perjuicios económicos padecidos. De modo similar tendrán que actuar los terceros perjudicados.
21	No aplicable en Noruega.
22	Dificultades en la identificación de los bienes radicados en otros Estados y en la rápida incautación de tales bienes, habida cuenta de la facilidad con que los sospechosos o sus cómplices disponen de esos bienes, sustrayéndolos del alcance la Justicia.
23	No aplicable en Noruega.
24	No aplicable en Noruega.

## ANEXO A FICHA 3<sup>a</sup>

Dear colleague,

The answers to your questionnaire are given below. Norway is not a member of the EU, and the Framework Decision 2003/577/JHA of 22 July 2003 does not apply to Norway. In cases of terrorism or financing of terrorism, there are specific provisions on freezing of assets which opens up for freezing in more situations than in other criminal cases. I do not describe these provisions in my answers to the questionnaire, but please let me know if you would like a copy of these provisions.

Freezing of assets in order to secure evidence are done by seizure. There are two possible ways to freeze assets in order to secure future confiscation: 1) Seizure of all kind of "objects", for instance bank accounts, shares, documents, real estate, or any kind of assets/property. 2) Charge on property, which is a kind of freezing of the same kind of objects. The difference between seizure and charge on property is partly the proceedings, which are more comprehensive when it comes to charge on property, and partly the conditions: Seizure is only possible if the assets in question were proceeds of the criminal act (for instance a stolen car or the money on a bank account is outcome of a robbery). In these cases, where the assets may be traced back to the criminal act, the assets may be seized - or the authorities may instead chose to order a charge on the property. In practice, the prosecutor will often chose the procedure of seizure, which is within his/her competence to order (see answers 2 and 4 to the questionnaire). If the assets cannot be traced back to the criminal act, for instance because it is unclear whether the money on the bank account is outcome of the robbery, the only possibility to freeze the asset (for instance the bank account) is by ordering a charge on property (for instance the bank account).

Seizure and charge on property in Norway may be carried out on the request of another state in order to secure evidence or future confiscation in a criminal case in the requesting state on the same conditions as in a Norwegian criminal case. The essential provisions on seizure and charge on property are quoted below.

I hope the answers might be useful for your handbook, and please do not hesitate to contact me if you need clarifications of any of the answers or further information.

Best regards,  
Anne Grostad

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The answers to the questionnaire:

1. There must be a criminal case, meaning that it must be just cause to suspect that a crime has been committed. (In Norway pre-trial investigations may be opened on a just cause to suspect that a crime has been committed; a strong suspicion or a suspicion towards a specific person is not required in order to open investigations). It has to be deemed that the assets form evidence or that they are liable to confiscation. In practice seizure or charge on property will often take place at an early stage of the pre-trial investigation.
2. Seizure is normally ordered by the prosecutor, while charge on property is normally ordered by the court. However, exceptions may be made, in particular in cases of urgency. Please see the provisions quoted below (section 205, 206 and 208 regarding seizure and sections 217 and 218 second paragraph concerning charge on property).
3. Seizure is far more common than charge on property.
4. Seizure may be ordered by the prosecutor (section 205) or in cases of urgency by the police (section 206). The owner of the seized assets may require that the court decides whether the seizure should be maintained or not (section 208). Charge on property is requested by the prosecutor and ordered by the court, or in cases of urgency ordered by the prosecutor (section 217). When the order is carried out, the court has to summon the parties for a court hearing (section 218 second paragraph).  
Seizure and charge on property is executed by the prosecutor, which leaves the practical steps to the police. The order is in most cases made by the prosecutor (usually a seizure order) and carried out by the police under supervision of the prosecutor. In practice these decisions will be made and supervised by the local prosecutor who works within the Police District and in cooperation with the police officers who make the practical steps (the prosecutors at the first level are part of the Police). Thus, practical problems should not occur too often.
5. I do not have an opinion to this question. Practical problems should not occur too often under our system (please see answer to question 4).
- 6-7. Double criminality is necessary in order to freeze assets in Norway: Since the Framework Decision 2003/577/JHA does not apply to Norway, freezing of assets on the request of another state may only be done in accordance with a decision from another state and a Letter Rogatory requesting such assistance. The request may be carried out on the same conditions as if it was a Norwegian criminal case. This presupposes double criminality, but the

Norwegian legislation does not require any additional conditions because the criminal case is not domestic.

8-9. The questions are not applicable to Norway, since the Framework Decision 2003/577/JHA does not apply.

10. As a main rule, evidence which is legally obtained in another country, would be regarded as legally obtained and accessible evidence by the courts in Norway, even if the police/prosecution would not have a possibility to obtain the evidence the same way in Norway. (This general principle is not specifically regulated in the legislation, but was laid down in a Supreme Court decision which concerned communication control which was legally carried out in Spain in a case where the Norwegian police could not have used communication control. The Supreme Court gave permission for use of the evidence, as legally obtained in Spain and on initiative of Spanish authorities). When Norway carries out a request from another state, we follow our proceedings unless the requesting state has requested a specific procedure, which should be applied if our national legislation does not prohibit the requested procedure (this principle is laid down in our legislation).

11. The Framework Decision 2003/577/JHA does not apply to Norway, and a freezing order has to be made through a Letter of Request of Mutual Legal Assistance (LoR), with reference for instance to the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959 Articles 1 and 3 and the Schengen Convention Articles 48 and 53. Norway is a party to the Schengen Convention, and the LoR may be sent directly from or to the local prosecutor (addresses may be found on the "Atlas" of the EJM website <http://www.ejm-crimjust.europa.eu/ejm/>). It is also possible to send the LoR to the Director of Public Prosecutions, P.O.Box 8002 dep, 0030 Oslo, fax: +47 22 33 31 12, email: [postmottak@riksadvokaten.no](mailto:postmottak@riksadvokaten.no) If the matter is urgent, the request should also be sent through Interpol or through Eurojust (the Norwegian Liaison Prosecutor to Eurojust is authorized to issue, send and receive LoRs in criminal matters on behalf of the Norwegian Prosecution Authority).

12. There is no time-limit for the execution of a freezing order, but due to the urgent nature of such orders, a Letter of Request for freezing assets should be handled as soon as possible.

13. The authorities will need a Letter of Request of Mutual Legal Assistance (LoR) and a decision of the competent requesting authorities, and - if the LoR and decision do not provide sufficient information on the crime and evidence, information which gives the Norwegian authorities sufficient basis to determine whether the conditions under Norwegian law are fulfilled to seize/order charge on property. If information is lacking, the prosecutor will contact the requesting state in order to get additional information. The LoR and documents should be in Norwegian, Danish, Swedish or English. If the documents are not in any of these languages, the prosecutor will usually not be able to understand and make the necessary assessments in order to make the freezing order. In cases of utmost urgency, Eurojust should be contacted.

14-17. The questions are not applicable to Norway, since the Framework Decision does not apply.

18. Cooperation on a practical level is needed in the concrete case in order to agree on the practicalities related to the physical surrender.

19. A seizure is normally decided by the prosecutor and subject to court review in accordance with section 208. The person who is affected by the seizure has to request a court review and should be made aware of this right. The decision is made by the District Court and may be appealed to the Appeal Court. The

decision by the Appeal Court may be appealed to the Supreme Court as far as the interpretation of the law or procedural errors are concerned.

The decision by a court or prosecutor to order charge on property is not subject to appeal, but when the freezing of assets has been made, the court will decide whether the order should be maintained (section 218 second paragraph). The decision is made by the District Court and may be appealed to the Appeal Court. The decision by the Appeal Court may be appealed to the Supreme Court as far as the interpretation of the law or procedural errors are concerned.

20. There is not a standardized calculation of economic losses caused by seizure/freezing of assets. If the charges are dropped or the defendant is acquitted, he may apply for economical compensation from the State for amongst others the economic damage he has suffered. He has to verify (establish as probable) his economic losses. Others than the charged person may also be granted economical compensation from the State for damage or inconvenience they have suffered by the seizure/freezing if compensation is deemed to be reasonable.

21. The question is not applicable to Norway, since the Framework Decision does not apply.

22. The main obstacles seem to be the difficulties in identifying assets in other countries and to freeze the assets quickly enough, in particular when it comes to assets which easily may be removed by the suspect or his accomplices.

23-24. The questions seem not applicable to Norway, since the Framework Decision does not apply.

The essential legislation on seizure and charge on property (The Criminal Procedure Act of 22 May 1981 No. 25):

§ 203. Objects that are deemed to be significant as evidence may be seized. The same applies to objects that are deemed to be liable to confiscation or to a claim for surrender by an aggrieved person.

§ 204. Documents or anything else whose contents a witness may refuse to testify about pursuant to sections 117 to 121 and 124 to 125, and which are in the possession either of a person who can refuse to testify or of a person who has a legal interest in keeping them secret, cannot be seized. In so far as a duty to testify may be imposed in certain cases pursuant to the said provisions, a corresponding power to order seizure shall apply.

The prohibition in the first paragraph does not apply to documents or anything else that contains confidences between persons who are suspected of being accomplices to the criminal act. Nor does it prevent documents or anything else being removed from an unlawful possessor to enable them to be delivered to the person entitled thereto.

§ 205. A decision relating to the seizure of objects that the possessor will not surrender voluntarily may be made by the prosecuting authority. The decision shall as far as possible be in writing and specify the nature of the case, the purpose of the seizure, and what it shall include. An oral decision shall as soon as possible be reduced to writing. The provisions of section 200, first paragraph, shall apply correspondingly.

When the prosecuting authority finds that there are special grounds for doing so, it may bring the question of seizure before a court of summary jurisdiction. The provisions of the second to the fourth sentences of the first paragraph of this section and of section 209 shall apply correspondingly to the court's decision relating to seizure. The provisions of the first and third paragraphs of section 208 shall also apply when seizure has been decided on by the court pursuant to this paragraph.

Documents or anything else that the possessor is not obliged to testify about except by special order of the court may not be seized without a court order unless such a special order has already been made. If the police wish to submit documents to the court for a decision as to whether they may be seized, the said documents shall be sealed in a closed envelope in the presence of a representative of the possessor.

§ 206. Without a decision of the prosecuting authority a police officer may effect a seizure when he carries out a decision for search or arrest, and otherwise when delay entails a risk. Seizure may be effected by any person when the suspect is caught in the act or pursued when so caught or on finding fresh clues.

The seizure shall immediately be reported to the prosecuting authority. If the latter finds that the seizure should be ratified, it shall issue a written decision containing such information as is specified in the second sentence of the first paragraph of section 205.

§ 207. All objects seized shall be accurately recorded and marked in such a way as to avoid confusion.

As far as possible, a receipt shall be given to the person who had the object in his possession.

§ 208. Every person who is affected by a seizure may immediately or subsequently require the question whether it shall be ratified to be brought before a court. The prosecuting authority shall ensure that any such person shall be informed of this right.

The provision of the first sentence of the first paragraph shall apply correspondingly when any person who has voluntarily surrendered any object for seizure demands it back.



The decision of the court shall be made by an order.

§ 217. In order to secure payment of a fine, a confiscation, the costs of the case, damages or redress for which it is assumed that the person charged will be adjudged liable, the court may on the application of the prosecuting authority decide that a charge for a specific amount be made on capital assets belonging to the said person when there is reason to fear that execution will otherwise be precluded or essentially impeded. If delay entails any risk, the decision may be made by the prosecuting authority. A decision to create a charge on property may be made until the claim that shall be secured has been decided by a legally enforceable judgment.

The person charged may not make an interlocutory appeal against a decision of the court.

§ 218. The decision shall be implemented by the police or the enforcement officer. The prosecuting authority shall immediately notify the court of the implementation of the decision.

The court shall summon the parties to oral proceedings concerning whether the charge on property shall be ratified and if so to what extent. The decision shall be made by court order.

§ 219. The provisions of sections 33-5 to 33-8 of the Civil Procedure Act and section 213 first paragraph second sentence of this Act shall apply correspondingly.

A charge on property may be avoided if the person charged provides sufficient security.

The charge on property shall cease to apply when the prosecuting authority waives it or when the court by order so decides because the basis for the charge no longer subsists.

**4°. FRANCIA. Pierre Bellet. Chef du Bureau de l'entraide pénale internationale. Ministère de la Justice**

\* Esta ficha sólo recoge las respuestas añadidas a las indicadas en la ficha 2ª. En todo lo demás, las contestaciones son idénticas.

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9	<b>El francés es la lengua utilizada y el modo de transmisión el correo postal.</b>
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11	La contestación proporcionada no se ajusta a la pregunta formulada. Se indica que la transmisión se realiza directamente entre autoridades judiciales.
12	<b>El plazo de 24 horas se reputa demasiado breve. Un plazo de tres días resultaría más razonable en este sentido.</b>
13	<b>Ante la ausencia de certificado o su falta de traducción, la <i>freezing order</i> es denegada.</b>
14	No hay observaciones particulares.
15	No hay observaciones particulares.
16	
17	
18	<b>La transferencia de elementos de prueba se realiza directamente, mientras que la transmisión de bienes a efectos de un posterior</b>

	<b>decomiso está supeditada a una petición posterior de transferencia.</b>
19	
20	Ningún caso significativo.
21	Ningún caso conocido.
22	<b>El hecho de que la <i>freezing order</i> sólo permita la incautación de los bienes designados en la propia resolución, impide la incautación de la totalidad del patrimonio.</b>
23	
24	

#### ANEXO FICHA 4ª

### QUESTIONNAIRE ABOUT THE OPERATION OF THE FREEZING ORDER SYSTEM ACCORDING TO THE FD QUESTIONNAIRE SUR LE FONCTIONNEMENT DU SYSTÈME DE LA DÉCISION DE GEL SELON LA DÉCISION CADRE

#### SCOPE / DOMAINE D'APPLICATION

1. Under your national law, may an order freezing property or evidence be granted before criminal proceedings have commenced or, on the contrary, may it only be granted within an ongoing criminal process?

2. *Selon votre loi nationale, est-il possible de délivrer une ordonnance de gel de biens ou d'éléments de preuve avant que la procédure pénale soit entamée ou, par contre, la délivrance d'une telle décision est-elle seulement possible dans le contexte d'une procédure pénale déjà commencée ?*

#### **Il faut qu'une procédure pénale ait commencé.**

2. Under your national law, may an order freezing property or evidence be granted without judicial supervision (by authorities such as the public prosecutor or the police) or, on the contrary, may it only be granted by a judge?

3. *Selon votre loi nationale, est-il possible de délivrer une ordonnance de gel de biens ou d'éléments de preuve sans contrôle de l'autorité judiciaire (par des autorités telles que le parquet ou la police) ou, par contre, seule une autorité judiciaire peut délivrer une telle décision ?*

**Seule une autorité judiciaire peut délivrer une telle ordonnance.**

3. In your national criminal proceedings, what measures are more frequently taken in order to guarantee the subsequent confiscation or the use as evidence of goods, objects or data?

4. *Selon votre loi nationale de procédure pénale, quelles sont les mesures les plus fréquentes pour assurer la postérieure confiscation des biens ou l'utilisation comme preuve des biens ou des objets gelés ?*

**Le placement sous scellés.**

4. Under your national law, who are the competent authorities for granting an order freezing property or evidence? And for executing such an order? In case the competent authorities for granting and execution are not the same, please indicate what practical problems arise, if any.

5. *Selon votre loi nationale, quelles sont les autorités compétentes pour délivrer une ordonnance de gel de biens ou d'éléments de preuve ? Et pour l'exécuter ? Au cas où elles ne seraient pas les mêmes, indiquez si ceci cause des difficultés.*

**L'ordonnance de gel des biens est prise par le juge des libertés et de la détention (JLD). Le placement sous scellés relève de l'officier de police judiciaire (OPJ).**

5. In your opinion, in order to avoid misunderstandings regarding the competence to execute an order freezing property or evidence, will it be better if a national authority such as the Ministry of Justice or the Office of the Public Prosecution is in charge of the appointment of the competent authority for execution?

6. *À votre avis, et pour éviter des difficultés concernant la compétence pour l'exécution d'une ordonnance de gel de biens ou d'éléments de preuve, serait-il plus utile qu'une seule autorité nationale –comme le Ministère de la Justice ou l'office du Procureur Général- prenne en charge la détermination de l'autorité compétente pour l'exécution ?*

**Le Code de procédure pénale (CPP) a fixé la règle en son article 710-103 pour le gel des biens, par une loi du 9 juillet 2010.**

6. Does your national law include the very same list of offences not subject to the double criminality test foreseen in art. 3.2 of FD 2003/577/JHA? In your opinion, would any changes be necessary or convenient in the FD list or in your national list?

7. *Est-ce que votre loi nationale inclut exactement la même liste des infractions qui échappent au contrôle de la double incrimination prévues dans l'article 3.2 de la Décision-Cadre 2003/577/JAI ? À votre avis, serait-il nécessaire ou convenant d'introduire des changements de cette liste dans votre liste nationale ?*

**La loi nationale a fixé dès 2005, avec des modifications en 2006 et 2007, une liste des infractions relevant de règles d'enquêtes dérogatoires (art. 706-73 du CPP), à laquelle renvoie l'art. 710-103.**

7. Regarding offences NOT listed in art. 3.2 of FD 2003/577/JHA, does your national law require special conditions in order to recognize or to execute an order freezing property or evidence?

7. *Pour ce qui concerne les infractions NON incluses dans la liste de l'article 3.2 de la Décision-Cadre 2003/577/JAI, est-ce que votre loi nationale exige des conditions spéciales pour la reconnaissance ou l'exécution d'une décision ordonnant le gel de biens ou d'éléments de preuve ?*

**Question sans objet.**

## **TRANSMITTING FREEZING ORDERS / LA TRANSMISSION DES DÉCISIONS DE GEL**

8. What procedure or means do you usually follow in order to find out who is the competent judicial authority for execution of an order freezing property or evidence?

9. *Quelles sont les procédures ou les moyens normalement utilisés pour identifier l'autorité compétente pour l'exécution d'une décision de gel ?*

**Il s'agit du procureur de la République sous les ordres duquel travaille l'OPJ.**

9. What language do you usually use when transmitting an order freezing property or evidence? Through what means or procedure do you usually transmit such an order and its annexed certificate?

10. *Quelle langue utilisez-vous normalement pour la transmission des décisions de gel ? Quels moyens ou procédures utilisez-vous normalement pour la transmission de la décision et du certificat annexe ?*

**Le français est la langue utilisée et le mode de transmission est la voie postale**

10. Under your national law, as a general rule, what formalities must be followed in order to ensure that the evidence taken is valid? (art. 5.1.II of FD)

10. *Selon votre loi nationale, quelles sont normalement les formalités nécessaires pour garantir que les éléments de preuve obtenus sont valables ? (art. 5.1 II D-C)*

**Il n'est pas prévu de formalités spécifiques**

**EXECUTING FREEZING ORDERS**

11. According to your national judicial authorities, what are the means, procedures or channels through which an order freezing property or evidence may validly sent/received in your country?

12. *Selon votre système national, quels sont les moyens ou les procédures qui peuvent être utilisés pour transmettre ou recevoir une décision de gel dans votre pays ?*

**Il s'agit d'une transmission directe entre autorités judiciaires**

13. Under your national law, once an order freezing property or evidence has been received in your country, what is the legally established time-limit for its execution? Do the competent judicial authorities of your country usually comply with execution of the order within this

time-limit? Do you think the 24-hour-time-limit after receipt of the order is reasonable?; if not, what other time-limit will it be reasonable, under your view?

13. *Selon votre loi nationale, une fois que la décision de gel a été reçue dans votre pays, quels sont les délais établis par la loi pour l'exécution ? Les autorités compétentes de votre pays, respectent-elles d'habitude ces délais ? Considérez vous que le délai de 24 heures établi par la D-C est raisonnable ?; si non, quel délai pourrait être raisonnable, à votre avis ?*

**Le délai de 24 heures est un peu court, un délai de trois jours serait raisonnable**

13. How do your national authorities usually proceed upon receiving a freezing order from another Member State when the certificate is not produced, is not sufficient or is not duly translated into one of the admitted languages?

14. *Quelle est la procédure suivie par vos autorités nationales qui reçoivent une ordonnance de gel d'un autre État membre, lorsque le certificat n'est pas produit, n'est pas suffisant ou n'est pas traduit à une des langues acceptées ?*

15.

**En l'absence de certificat ou de traduction de celui-ci, la demande de gel est rejetée**

14. Regarding the grounds for non-recognition or non-execution of a freezing order, as foreseen in art. 7 of the FD, in your opinion: should any of the existing grounds be discarded?; should any other ground be included?

14. *En ce qui concerne les motifs de non-reconnaissance ou de non-exécution d'une décision de gel prévus dans l'article 7 de la Décision-Cadre, et à votre avis : est-ce que quelqu'un de ces motifs devrait être abrogé ?; devrait-on inclure d'autres motifs ?*

**Pas d'observations particulières**

15. Regarding the grounds for postponement of execution of a freezing order, as foreseen in art. 8 of the FD, in your opinion: should any of the existing grounds be discarded?; should any other ground be included?

15. *En ce qui concerne les motifs de report de l'exécution d'une décision de gel prévus dans l'article 8 de la Décision-Cadre, et à votre avis : est-ce que quelqu'un de ces motifs devrait être abrogé ?; devrait-on inclure d'autres motifs ?*

**Pas d'observations particulières**

18. Art. 5.1.II of the FD provides: "Whenever it is necessary to ensure that the evidence taken is valid and provided that such formalities and procedures are not contrary to the fundamental principles of law in the executing State, the judicial authority of the executing State shall also observe the formalities and procedures expressly indicated by the competent judicial authority of the issuing State in the execution of the freezing order". Have you ever faced circumstances that required such a provision to come into play?
- 19.

17. *L'article 5.1.II de la Décision Cadre établit : « Lorsqu'il est nécessaire de garantir que les éléments de preuve obtenus sont valables et pour autant que ces formalités et procédures ne soient pas contraires aux principes fondamentaux du droit de l'État d'exécution, l'autorité judiciaire de l'État d'exécution observe, lors de l'exécution de la décision de gel, les formalités et procédures expressément indiquées par l'autorité judiciaire compétente de l'État d'émission. » Avez-vous eu l'occasion d'appliquer cette provision ?*

**Non.**

17. In your opinion, would it reasonable that the certificate attached to a freezing order would fix a specific time-limit for the lifting of the measures taken as a consequence of the order?

18. *À votre avis, serait-il raisonnable que le certificat accompagnant une décision de gel établisse un délai spécifique pour la mainlevée des mesures prises à conséquence de l'ordonnance ?*

**Oui.**

18. What sort of practical problems or obstacles arise in your country in relation to requests for transferring evidence or property for confiscation? What is your national practice when processing those requests and, in particular, how is evidence (or even property) transferred to the issuing State?



19. *Quel genre de problèmes pratiques ou obstacles découlent dans votre pays lorsqu'il s'agit de demandes de transfert des preuves ou des biens pour leur confiscation ? Quelle sont les pratiques suivies dans votre pays pour faire suite à ces demandes et, en particulier, comment procède-t-on au transfert des preuves ou des biens à l'État d'émission ?*

**Le transfert des éléments de preuve se fait directement tandis que le transfert des biens suppose une demande d'entraide ultérieure visant à exécuter la décision définitive de confiscation**

19. Under your national law, what legal remedies may be used against an order freezing property or evidence? Who is entitled to use those legal remedies? On which reasons or grounds may those legal remedies be based? How does your national law attempt to ensure the right to an effective legal remedy to challenge the substantive reasons on which the freezing order rest?

20. *Selon votre loi nationale, quelles sont les voies de recours qui s'ouvrent contre une décision de gel de biens ou d'éléments de preuve ? Qui peut se servir de ces voies de recours ? Quels moyens ou motifs peuvent être utilisés pour fonder ces voies de recours ? Comment assure votre loi nationale le droit de contester les raisons substantielles qui sont à l'origine de l'émission de la décision de gel ?*

**L'ordonnance du JLD prévue à l'art. 706-103 du CPP est nécessairement susceptible d'appel devant la Cour d'appel.**

20. Regarding injuries or damages caused by the execution of an order freezing property or evidence, how is the amount of injuries or damages calculated in your country? What is the appropriate procedure to apply for the reimbursement of the sums paid in those injuries or damages?

21. *En ce qui concerne les dommages causés par l'exécution d'une décision de gel, comment calcule-t-on leur montant dans votre pays ? Quelle procédure doit-on suivre pour demander le remboursement ?*

**Aucun cas signalé  
CERTIFICATE / CERTIFICAT**

21. Do you notice any defects, lacks or difficulties in the certificate that must be attached to an order freezing property or evidence?

21. *Est-ce que vous avez détecté des défauts, des omissions ou des difficultés dans le certificat qui doit accompagner la décision de gel ?*

**Aucun cas à notre connaissance**

**GENERAL ISSUES / QUESTIONS GÉNÉRALES**

22. In your opinion, what are the main obstacles arising within the EU when dealing with the recognition and enforcement of orders freezing property or evidence?

23. *À votre avis, quels sont les principaux obstacles auxquels se heurtent la reconnaissance et l'exécution des décisions de gel de biens ou d'éléments de preuve dans l'Union Européenne ?*

**Le fait que la décision de gel ne concerne la saisie des biens uniquement en relation avec l'infraction ne permet pas de saisie de la totalité du patrimoine de la personne poursuivie**

23. In your opinion, what measures would improve the execution of orders freezing property or evidence within the European Union?

24. *À votre avis, quelles mesures pourraient améliorer la reconnaissance et l'exécution des décisions de gel de biens ou d'éléments de preuve dans l'Union Européenne ?*

**Une meilleure information des magistrats concernés par ces prises de décision et par leur diffusion.**

24. Do you know any relevant judicial decision given under your national law implementing FD 2003/577/JHA?

25. *Avez-vous connaissance de décisions judiciaires rendues dans votre pays en application de la Décision-Cadre 2003/577/JAI ?*

**Non.**

**5ª.— CHIPRE. Financial Intelligence Unit (FIU) & Unit for Combating Money Laundering (MOKAS)**

1	En ambos supuestos.
2	Sólo por un Juez.
3	La contestación proporcionada no se ajusta a la pregunta formulada.
4	El Tribunal acuerda la <i>freezing order</i> , que es ejecutada por la Policía o por la FIU No se aprecian problemas prácticos.
5	<b>La autoridad judicial competente para recibir una <i>freezing order</i> es la FIU, que es también la responsable de su ejecución. Cuando la <i>freezing order</i> es recibida debe presentarse ante el Tribunal para su "registro" y ejecución.</b>
6	<b>La legislación interna no incluye una lista de infracciones exentas del control de doble tipificación</b> No se hacen observaciones a la conveniencia de incluir otros delitos en la lista contenida en el art. 3.2 DM2003/577/JAI
7	La legislación interna sólo permite la ejecución de <i>freezing order</i> respecto de infracciones constitutivas de delito conforme a la propia ley nacional y respecto de las que, a su vez, se permita la adopción de una <i>freezing order</i> .
8	<b>Puntos de contacto CARIN/EJN.</b>
9	<b>Se utiliza el inglés y normalmente se utiliza el correo certificado para el envío de los documentos originales.</b>
10	Las previstas en la Ley de Procedimiento Criminal.
11	<b>FIU.</b>
12	Depende del caso aunque, en general, el plazo de 24 horas resulta demasiado corto.
13	Subsanación dentro de una fecha límite fijada bien por FIU o bien por el tribunal.
14	No.
15	No.
16	No, de momento.
17	Si es posible, sería de gran ayuda.
18	No se dispone de experiencia en este sentido.
19	De la propuesta proporcionada parece inferirse que contempla que se recurra bien ante la autoridad emisora extranjera o ante el tribunal , se entiende que de Chipre cuando éste es el ejecutor, de modo que en este último caso el tribunal se ve vinculado por los hechos e indicios en que se basa la decisión judicial extranjera.
20	La contestación proporcionada no se ajusta a la pregunta formulada.
21	No.

22	<b>Algunos Estados miembros no han incorporado la DM 2003/577/JAI a sus ordenamientos internos. Existe una falta de aplicación uniforme de sus disposiciones.</b>
23	<b>Algunos Estados miembros no han incorporado la DM 2003/577/JAI a sus ordenamientos internos. Existe una falta de aplicación uniforme de sus disposiciones.</b>
24	<b>Se han reconocido y ejecutado dos <i>freezing orders</i>.</b>

## ANEXO FICHA 5ª

### QUESTIONNAIRE ABOUT THE OPERATION OF THE FREEZING ORDER SYSTEM ACCORDING TO THE FD

#### SCOPE

1. Under your national law, may an order freezing property or evidence be granted before criminal proceedings have commenced or, on the contrary, may it only be granted within an ongoing criminal process?

**Both.**

2. Under your national law, may an order freezing property or evidence be granted without judicial supervision (by authorities such as the public prosecutor or the police) or, on the contrary, may it only be granted by a judge?

**By a judge.**

3. In your national criminal proceedings, what measures are more frequently taken in order to guarantee the subsequent confiscation or the use as evidence of goods, objects or data?

**Freezing orders.**

4. Under your national law, who are the competent authorities for granting an order freezing property or evidence? And for executing such an order? In case the competent authorities for granting and execution are not the same, please indicate what practical problems arise, if any.

**Under the provisions of Part IV A of the Prevention and Suppression of Money Laundering and Terrorist Financing Laws of 2007 and 2010, which implements the FD 2003/577/JHA, it is provided that the Court grants the order. Following this, the Police or FIU execute it. No practical problems arise with this procedure.**

5. In your opinion, in order to avoid misunderstandings regarding the competence to execute an order freezing property or evidence, will it be better if a national authority such as the Ministry of Justice or the Office of the Public Prosecution is in charge of the appointment of the competent authority for execution?

**The Authority responsible under the law to receive requests for freezing under the FD 2003/577/JHA, is the FIU, which is also the Authority responsible for its execution i.e. to appear before the Court for the registration and enforcement of the freezing order.**

6. Does your national law include the very same list of offences not subject to the double criminality test foreseen in art. 3.2 of FD 2003/577/JHA? In your opinion, would any changes be necessary or convenient in the FD list or in your national list?

**No list is included. Under the provisions of the Prevention and Suppression of Money Laundering and Terrorist Financing Laws of 2007 and 2010, the all crimes approach has been adopted. Nevertheless, section 43E (d), referring to this FD, provides that the Freezing order may not be enforced if it relates to an act which under the Law of the Republic does not constitute an offence which permits freezing.**

7. Regarding offences NOT listed in art. 3.2 of FD 2003/577/JHA, does your national law require special conditions in order to recognize or to execute an order freezing property or evidence?

**According to s. 43E (d), a freezing order may not be enforced if it relates to an act which under the law of the Republic does not constitute an offence which permits freezing.**

## **TRANSMITTING FREEZING ORDERS**

8. What procedure or means do you usually follow in order to find out who is the competent judicial authority for execution of an order freezing property or evidence?

**CARIN contact points, EJN.**

9. What language do you usually use when transmitting an order freezing property or evidence? Through what means or procedure do you usually transmit such an order and its annexed certificate?

**We use the English language and usually transmit via registered mail the original documents.**

10. Under your national law, as a general rule, what formalities must be followed in order to ensure that the evidence taken is valid? (art. 5.1.II of FD)

**Follow the Criminal Procedure Law.**

## **EXECUTING FREEZING ORDERS**

11. According to your national judicial authorities, what are the means, procedures or channels through which an order freezing property or evidence may validly sent/received in your country?

**Section 43 C (1), (2), (3), (4) provides:**

*“Any request for execution as regards freezing order or confiscation order is submitted directly to the Unit, which, if it considers that the requirements of this Part are met, submits it to the Court as soon as possible for registration and enforcement and informs as soon as possible the competent authority of the issuing state.*

*(2) The Unit does not submit a confiscation order to the Court for registration, unless at the time of the application for execution the said confiscation order is in force and enforceable and no appeal is pending against the order.*

*It is provided that, for the purposes of this section, the term “appeal” shall include any proceedings the object of which is the setting aside of a judgment of the court or the retrial of the case or the stay of its execution.*

*(3) Any request for execution transmitted to the Unit in accordance with subsection (1) of the section, is accompanied by the certificate which is acceptable both in Greek and in English.*

***(4) Subject to the provisions of this Part, the Court, following the submission by the Unit of the application for execution in accordance with subsection (1) of this section, registers the freezing order or the confiscation order for the purposes of its execution.”***

12. Under your national law, once an order freezing property or evidence has been received in your country, what is the legally established time-limit for its execution? Do the competent judicial authorities of your country usually comply with execution of the order within this time-limit? Do you think the 24-hour-time-limit after receipt of the order is reasonable?; if not, what other time-limit will it be reasonable, under your view?

**It depends on the case and the adequacy of the material submitted but the 24-hr time limit is very tight.**

13. How do your national authorities usually proceed upon receiving a freezing order from another Member State when the certificate is not produced, is not sufficient or is not duly translated into one of the admitted languages?

**Section 43 G provides:**

***“The Court or the Unit may, in the case the certificate is not produced or is incomplete, specify a deadline for its presentation, completion or correction or accept an equivalent document.”***

14. Regarding the grounds for non-recognition or non-execution of a freezing order, as foreseen in art. 7 of the FD, in your opinion: should any of the existing grounds be discarded?; should any other ground be included?

**No.**

15. Regarding the grounds for postponement of execution of a freezing order, as foreseen in art. 8 of the FD, in your opinion: should any of the existing grounds be discarded?; should any other ground be included?

**No.**

16. Art. 5.1.II of the FD provides: “Whenever it is necessary to ensure that the evidence taken is valid and provided that such formalities and procedures are not contrary to the fundamental principles of law in the executing State, the judicial authority of the executing State shall also

observe the formalities and procedures expressly indicated by the competent judicial authority of the issuing State in the execution of the freezing order”. Have you ever faced circumstances that required such a provision to come into play?

**Not under this FD yet.**

17. In your opinion, would it reasonable that the certificate attached to a freezing order would fix a specific time-limit for the lifting of the measures taken as a consequence of the order?

**If this is possible, it would be very helpful.**

18. What sort of practical problems or obstacles arise in your country in relation to requests for transferring evidence or property for confiscation? What is your national practice when processing those requests and, in particular, how is evidence (or even property) transferred to the issuing State?

**No such experience under this FD yet.**

19. Under your national law, what legal remedies may be used against an order freezing property or evidence? Who is entitled to use those legal remedies? On which reasons or grounds may those legal remedies be based? How does your national law attempt to ensure the right to an effective legal remedy to challenge the substantive reasons on which the freezing order rest?

**Any affected person is served with a copy of the registration order which can be challenged before the issuing Court or on appeal before the Supreme Court. However, section 43 HD (1) and (2) provide that:**

*“(1) A freezing order or a confiscation order may be amended or revised only by a Court or any other competent authority of the issuing state.*

*(2) The court, when exercising the powers conferred upon it by section 43.H.A., as well as other powers in respect of the execution of a freezing order or confiscation order, shall be bound by the findings as to the facts in so far as they are stated in the conviction or decision of a court or judicial authority of the issuing state or in so far as such conviction or judicial decision is implicitly based on them.”*

20. Regarding injuries or damages caused by the execution of an order freezing property or evidence, how is the amount of injuries or damages calculated in your country? What is the appropriate procedure to apply for the reimbursement of the sums paid in those injuries or damages?



**Section 43 H.G. provides:**

***“If the Republic is responsible for injury caused to any affected person due to the execution of a freezing order or a confiscation order, it requests from the issuing state to reimburse to the Republic any sums paid in damages except if, and to the extent that, the injury is exclusively due to the contact of the Republic.”***

**CERTIFICATE**

21. Do you notice any defects, lacks or difficulties in the certificate that must be attached to an order freezing property or evidence?

**No.**

**GENERAL ISSUES**

22. In your opinion, what are the main obstacles arising within the EU when dealing with the recognition and enforcement of orders freezing property or evidence?

**Some EU Countries have not incorporated this FD in their domestic legislation or do not have a uniform application.**

23. In your opinion, what measures would improve the execution of orders freezing property or evidence within the European Union?

**See reply 22 above.**

24. Do you know any relevant judicial decision given under your national law implementing FD 2003/577/JHA?

**We have registered and enforced in 2 instances freezing orders, implementing FD 2003/577/JHA.**

**6ª.— FINLANDIA. Office of the Prosecutor General**

1	En el ámbito de un procedimiento penal en curso, esto es, una vez que la investigación previa al juicio ( <i>pre-trial</i> ) ha comenzado.
2	Puede acordarse por el fiscal —que es la autoridad judicial que con mayor frecuencia acuerda una <i>freezing order</i> —o por el Juez (a solicitud del fiscal)
3	La mayoría de las medidas acordadas son de carácter coercitivo: <i>seizure, sequestration</i> (confiscación de bienes con vistas a asegurar el pago de una multa o compensación económica o una orden de decomiso) y prohibiciones de enajenación o transferencia de bienes.
4	Autoridades judiciales emisoras puede serlo cualquier fiscal o juez que conozca de un procedimiento penal en curso. Autoridad judicial ejecutora es el fiscal del distrito, cuya competencia se determina en función de la jurisdicción/lugar en que se encuentre el bien al que se refiera la <i>freezing order</i> . <b>Cuando los bienes o pruebas a que se refiera la <i>freezing order</i> se encuentran en distritos diferentes, la competencia para ejecutar la <i>freezing order</i> corresponde a cualquiera de los fiscales que actúen dentro del ámbito de jurisdicción en que se encuentra alguno de aquellos bienes o pruebas.</b> En la respuesta 18 se da contestación a la pregunta de quiénes son las autoridades a las que compete la ejecución material de este tipo de medidas. Por regla general, es la policía o bien —en el caso de <i>sequestration</i> — la <i>enforcement authority</i> del distrito donde la persona es localizada o en su defecto del distrito en que se encuentran los bienes a que se refiere la <i>freezing order</i> .
5	Se reconoce estar satisfecho con lo previsto en su legislación interna.
6	Sí. No se hacen observaciones a la conveniencia de insertar nuevos delitos a la lista del art. 3.2 DM 2003/577/JAI
7	El reconocimiento y ejecución exige que se cumpla con la condición de que los hechos vengan tipificados como delito en Finlandia.
8	<b>La Unidad internacional de la Office of the Prosecutor General ha realizado un handbook para los fiscales con específica información sobre el procedimiento que debe seguirse en relación con las <i>freezings orders</i>. También la policía tiene un handbook que contiene información sobre las notificaciones realizadas por cada Estado miembro. Ambos son muy utilizados.</b> EJN/Eurojust
9	<b>La <i>freezing order</i> es escrita en finés o sueco, que son los idiomas oficiales de Finlandia. El certificado es traducido al idioma oficial o a uno de los idiomas oficiales del Estado de ejecución.</b> <b>La transmisión se realiza normalmente a través de e.mail o fax, o si es necesario por correo.</b>
10	De acuerdo con la legislación interna, no existe ningún formalismo que deba seguirse en relación con la valoración de las pruebas.
11	Una <i>freezing order</i> puede ser enviada/recibida por correo postal, e-mail, fax o por cualquier vía que permita tener constancia escrita de la resolución y que permita al fiscal competente garantizar su autenticidad.

12	El fiscal debe decidir y comunicar la decisión sobre una <i>freezing order</i> tan pronto como sea posible y, de poder ser, dentro de las 24 horas siguientes a su recepción. Aunque este plazo no es categórico <b>los fiscales suelen dar cumplimiento a la <i>freezing order</i> dentro de este plazo.</b> <b>Se considera que el plazo de 24 horas es demasiado corto y que sería mejor un plazo de 48 horas.</b>
13	<b>Si no se aporta el certificado, el fiscal puede decidir denegar el reconocimiento de la <i>freezing order</i>.</b> <b>Si el certificado aportado es incompleto o no está redactado en alguna de las lenguas aceptadas por Finlandia al efecto, el fiscal debe ponerse en contacto con la autoridad judicial emisora, para que proceda a su subsanación.</b>
14	Los motivos de denegación de la <i>freezing order</i> recogidos en el art. 7 DM 2003/577/JAI se consideran suficientes y razonables.
15	Los motivos de suspensión de la ejecución de una <i>freezing order</i> recogidos en el art. 8 DM 2003/577/JAI se consideran suficientes y razonables.
16	No.
17	No se contesta.
18	No se reseñan problemas prácticos en lo relativo a la ejecución de <i>freezing orders</i> en Finlandia. <b>Se apunta como problema que la DM no permite el embargo preventivo de bienes con vistas al posterior pago de las indemnizaciones civiles derivadas del hecho delictivo.</b> Se carece aún de experiencia sobre la transmisión de bienes y pruebas al Estado de emisión de la <i>freezing order</i> .
19	<b>Cualquiera que sea la medida de aseguramiento adoptada, se permite que cualquier persona afectada por ella, por razones formales —no de fondo—, acuda al Tribunal del distrito con vistas a que se reconsidere la adecuación de la medida. La decisión del tribunal debe adoptarse sin dilación, no habiendo por lo demás un plazo específico para la interposición de estos recursos.</b> En relación con los recursos que cabe interponer frente a una <i>freezing order</i> ante el Estado de emisión, por razones de fondo, el fiscal tiene la obligación de proporcionar información al respecto a los interesados, incluyendo los datos para contactar con la autoridad judicial del Estado de emisión.
20	En Finlandia, ambas funciones corresponden al Ministro de Justicia, conforme a la ley nacional de trasposición de la DM 2003/577/JAI.
21	<b>El certificado debería de estar disponible en versión multilingüe y estar redactado de forma que permitiera fácilmente su cumplimentación. A día de hoy, el certificado sólo está disponible en archivo-pdf. No puede, por tanto, ser cumplimentado <i>on line</i>, sino que debe imprimirse y ser escrito a mano.</b>
22	El mismo problema referido en la respuesta 18
23	Los mismos problemas referidos en las respuestas 18 y 22.
24	No.

## ANEXO FICHA 6ª

### QUESTIONNAIRE ABOUT THE OPERATION OF THE FREEZING ORDER SYSTEM ACCORDING TO THE FD

#### SCOPE

**1.** Under your national law, may an order freezing property or evidence be granted before criminal proceedings have commenced or, on the contrary, may it only be granted within an ongoing criminal process?

**Answer:** An order freezing property or evidence may only be granted within an ongoing criminal process, that is once the pretrial investigation has commenced.

**2.** Under your national law, may an order freezing property or evidence be granted without judicial supervision (by authorities such as the public prosecutor or the police) or, on the contrary, may it only be granted by a judge?

**Answer:** An order freezing property or evidence may be granted by a prosecutor or by a judge. A judge can make such a decision on application of a prosecutor. In Finland the prosecutor is the most essential judicial authority concerning the freezing order system.

**3.** In your national criminal proceedings, what measures are more frequently taken in order to guarantee the subsequent confiscation or the use as evidence of goods, objects or data?

**Answer:** More frequently taken measures are coercive measures such as

- seizure, by which an authority takes possession of evidence, an instrument used in the commission of an offence or an object taken by way of an offence, for the duration of the criminal investigation and the trial;
- sequestration, by which property is taken into the possession of the authorities in order to secure the payment of a fine or compensation, or the fulfilment of a confiscation order; and
- restraint on alienation, by which the owner is prohibited from transferring or alienating his property.

4. Under your national law, who are the competent authorities for granting an order freezing property or evidence? And for executing such an order? In case the competent authorities for granting and execution are not the same, please indicate what practical problems arise, if any.

**Answer:**

The competent authority for granting an order freezing property or evidence which is transmitted from Finland is any prosecutor or judge, who is competent in the particular criminal proceedings.

The competent authority for executing an order freezing property or evidence which is transmitted to Finland is a prosecutor. Under the section 5 of the Act on the Execution of Orders Freezing Property or Evidence in the European Union, the following are competent to carry out prosecutors' duties in connection with the execution of freezing orders:

“(1) the prosecutor of Helsinki judicial district where the property or evidence covered by the freezing order is located within the area of jurisdiction of Helsinki or Kouvola court of appeal;

(2) the prosecutor of Pohjois-Savo judicial district where the property or evidence covered by the freezing order is located within the area of jurisdiction of the Eastern Finland court of appeal;

(3) the prosecutor of Oulu judicial district where the property or evidence covered by the freezing order is located within the area of jurisdiction of Rovaniemi court of appeal;

(4) the prosecutor of Pirkanmaa judicial district where the property or evidence covered by the freezing order is located within the area of jurisdiction of Turku or Vaasa court of appeal.

Where the property or evidence are located within several of the areas of jurisdiction referred to in points (1) to (4) of the first paragraph, their location is uncertain, or for some other special reason, the abovementioned district prosecutor will be competent irrespective of which court of appeal's area of jurisdiction the property or evidence covered by the freezing order is located within.

For special reasons the competent prosecutor may also be other than the one referred to in the first or second paragraphs.”

5. In your opinion, in order to avoid misunderstandings regarding the competence to execute an order freezing property or evidence, will it be better if a national authority such as the Ministry of Justice or the Office of the Public Prosecution is in charge of the appointment of the competent authority for execution?

**Answer:** We are satisfied with the current situation (referring to answer 4).

6. Does your national law include the very same list of offences not subject to the double criminality test foreseen in art. 3.2 of FD 2003/577/JHA? In your opinion, would any changes be necessary or convenient in the FD list or in your national list?

**Answer:** Our national law includes the very same list of offences not subject to the double criminality test foreseen in art. 3.2 of FD 2003/577/JHA.

7. Regarding offences NOT listed in art. 3.2 of FD 2003/577/JHA, does your national law require special conditions in order to recognize or to execute an order freezing property or evidence?

**Answer:** Under the section 3 of the Act on the Execution of Orders Freezing Property or Evidence in the European Union, the offence on which the freezing order is based must constitute an offence under the Finnish Penal Code.

## **TRANSMITTING FREEZING ORDERS**

8. What procedure or means do you usually follow in order to find out who is the competent judicial authority for execution of an order freezing property or evidence?

**Answer:** A prosecutor or a judge must find out who is the competent judicial authority in another state. The international Unit in the Office of the Prosecutor General has made in co-operation with other judicial authorities a handbook for prosecutors of EU-freezing orders. The handbook contains specific information of the procedure concerning freezing orders. Also polis has an own handbook where there are listed notification information of every state and the information of languages accepted in every state. The handbooks are very often used. A prosecutor or a judge can also ask help from a contact point of European Judicial Network or from Eurojust.

**9.** What language do you usually use when transmitting an order freezing property or evidence? Through what means or procedure do you usually transmit such an order and its annexed certificate?

**Answer:** The order is usually written in Finnish or Swedish which are official languages in Finland. The certificate is translated into the official language or one of the official languages of the executing State.

An order freezing property or evidence is usually transmitted by e-mail or fax or if necessary by post.

**10.** Under your national law, as a general rule, what formalities must be followed in order to ensure that the evidence taken is valid? (art. 5.1.II of FD)

**Answer:** According to our national law, we don't have any legal formalities concerning evidence evaluation but court finally decides separately in every case after having carefully evaluated all the facts that have been presented what is to be regarded as the truth in the case.

## **EXECUTING FREEZING ORDERS**

**11.** According to your national judicial authorities, what are the means, procedures or channels through which an order freezing property or evidence may validly sent/received in your country?

**Answer:** An order may validly send/receive by mail, e-mail, fax or by any means capable of producing a written record under conditions allowing the competent prosecutor to establish authenticity of the order.

**12..** Under your national law, once an order freezing property or evidence has been received in your country, what is the legally established time-limit for its execution? Do the competent judicial authorities of your country usually comply with execution of the order within this time-limit? Do you think the 24-hour-time-limit after receipt of the order is reasonable?; if not, what other time-limit will it be reasonable, under your view?

**Answer:** The competent prosecutor shall decide and communicate the decision on a freezing order as soon as possible and, whenever practicable, within 24 hours of receipt of the freezing order. Even though the time-limit is not categorical, prosecutors usually comply with the

execution of the order within this time limit. The time limit of 24 hours is however quite tight, we think that time limit of 48 hours would be better.

**13.** How do your national authorities usually proceed upon receiving a freezing order from another Member State when the certificate is not produced, is not sufficient or is not duly translated into one of the admitted languages?

**Answer:** If the certificate is not produced, the prosecutor shall refuse to recognise or execute the freezing order under the section 4 of the Act on the execution of orders freezing property or evidence in the European Union.

If the certificate is incomplete, the prosecutor must primarily contact the issuing judicial authority and ask them to complete the certificate. If the completion is not possible, the competent prosecutor shall refuse to recognise or execute the freezing order under the section 4 of the Act on the execution of orders freezing property or evidence in the European Union.

If the certificate is not provided in either Finnish, Swedish or English, the prosecutor must immediately contact the issuing judicial authority and notify them.

**14.** Regarding the grounds for non-recognition or non-execution of a freezing order, as foreseen in art. 7 of the FD, in your opinion: should any of the existing grounds be discarded? ; should any other ground be included?

**Answer:** The existing grounds are probably sufficient and reasoned. It is difficult at this moment to evaluate the existing grounds more because of the lack of legal praxis of these cases.

**15.** Regarding the grounds for postponement of execution of a freezing order, as foreseen in art. 8 of the FD, in your opinion: should any of the existing grounds be discarded?; should any other ground be included?

**Answer:** The existing grounds are sufficient and reasoned. We also refer to answer 14.

**16.** Art. 5.1. II of the FD provides: “Whenever it is necessary to ensure that the evidence taken is valid and provided that such formalities and procedures are not contrary to the fundamental principles of law in the executing State, the judicial authority of the executing State shall also observe the formalities and procedures expressly indicated by the competent judicial authority of the issuing State in the execution of the freezing order”. Have you ever faced circumstances that required such a provision to come into play?



**Answer:** No, we have never had such a case specifically relating to using of freezing instrument.

17. In your opinion, would it reasonable that the certificate attached to a freezing order would fix a specific time-limit for the lifting of the measures taken as a consequence of the order?

**Answer:** -

18. What sort of practical problems or obstacles arise in your country in relation to requests for transferring evidence or property for confiscation? What is your national practice when processing those requests and, in particular, how is evidence (or even property) transferred to the issuing State?

**Answer:** When a decision freezing property or evidence is executed using seizure, the prosecutor shall deliver the execution decision, the translated certificate and the freezing order to the competent police department for the execution. The competent police department is the local police department where the property is located.

When a decision freezing property or evidence is executed using sequestration or restraint on alienation, the prosecutor shall file an enforcement request and deliver it with the execution decision, the translated certificate and the freezing order to the competent enforcement authority. The competent [enforcement authority is primarily the enforcement authority of the district](#) where the person is located and secondarily the enforcement authority of the district where the property is (supposed to be) located.

**The local police department and the enforcement authority must immediately inform the prosecutor about the execution of the decision or the possible failure of the execution. The prosecutor must inform the issuing State immediately about the execution.**

We have not had yet any practical problems or obstacles in relations to these requests. On the other hand one problem is that this instrument does not cover the claims of the plaintiffs.

We still don't have any experience how would the evidence or property be transferred to the issuing state.

19. Under your national law, what legal remedies may be used against an order freezing property or evidence? Who is entitled to use those legal remedies? On which reasons or grounds may those legal remedies be based? How does your national law attempt to ensure the right to an effective legal remedy to challenge the substantive reasons on which the freezing order rest?

**Answer:**

A person concerned with the freezing order can bring the freezing order before a competent district court for reconsideration. The court has to consider the order without delay.

When a decision freezing property or evidence is executed using sequestration or restraint on alienation, a person concerned with the freezing order can bring the execution decision before a competent district court for reconsideration. The court has to consider the action without delay.

There is no time limit set for these actions.

These actions, however, don't have a suspensive effect on the execution of the freezing order.

A suspect of an offence and an accused or a third person having the possession of the property or the evidence are entitled to abovementioned legal remedies.

The substantive reasons for issuing the freezing order can be challenged only in an action brought before a court in the issuing State, not in the executing State. So a legal remedy may only be based on procedural reasons. If the action is brought in the executing State, the judicial authority of the issuing State shall be informed thereof and of the grounds of the action, so that it can submit the arguments that it deems necessary. It shall be informed of the outcome of the action.

The prosecutor must provide adequate information to a person concerned with the freezing order about how the exercise of the right to bring an action in the issuing State. The prosecutor must also provide the contact details of the judicial authority of the issuing State.

**20.** Regarding injuries or damages caused by the execution of an order freezing property or evidence, how is the amount of injuries or damages calculated in your country? What is the appropriate procedure to apply for the reimbursement of the sums paid in those injuries or damages?

**Answer:** Our national law (sections 24-25 of the Act on the Execution of Orders Freezing Property or Evidence in the European Union) is correspond to art. 12 of FD 2003/577/JHA concerning compensation of the injuries and damages. In Finland Ministry of Justice decides both paying and demanding of compensation from another state caused by the execution of an order freezing property or evidence.

**CERTIFICATE**

**21.** Do you notice any defects, lacks or difficulties in the certificate that must be attached to an order freezing property or evidence?

**Answer:** The certificate should be available in every language and in a form that is easy to formulate. At the moment the certificate is available only as a pdf-file that can not be formulated online but has to be printed out and written by hand.

## **GENERAL ISSUES**

**22.** In your opinion, what are the main obstacles arising within the EU when dealing with the recognition and enforcement of orders freezing property or evidence?

**Answer:** The same problem that is referred in answer 18. It should also be able to freeze the amount of the claims of the plaintiffs.

**23.** In your opinion, what measures would improve the execution of orders freezing property or evidence within the European Union?

**Answer** The same problem that is referred in answers 18 and 22.

**24.** Do you know any relevant judicial decision given under your national law implementing FD 2003/577/JHA?

**Answer:** No, we don't yet have any relevant judicial decisions concerning this matter.

**7ª.— EUROJUST. Laura Surano. Legal Officer**

\* En su contestación Eurojust dice no poder responder al cuestionario, en la medida en que éste ha sido confeccionado para ser contestado por los Estados miembros. No obstante, acompaña a su respuesta el Informe Anual 2010 de Eurojust, que incluye un capítulo relativo a las *freezing orders*.

Sobre este particular, el Informe revela la escasa aplicación de la DM 2003/577/JAI y algunas dificultades prácticas ligadas fundamentalmente al formulario contenido en su Anexo.

Concretamente, se considera que el modo en que **se ha confeccionado este formulario es innecesariamente complejo**. Su cumplimentación requiere, además, de algunos datos que no siempre están a disposición de los Estados miembros, en particular, la identificación de los bienes de los que se pretende el embargo preventivo; de aquí, que la mayoría de las veces sea necesario recurrir previamente a una carta rogatoria al amparo de los Convenios MLA de 1959 y de 2000, medio que, a juicio de los prácticos, resulta también más conveniente a efectos de que se lleve a cabo un embargo preventivo en otro Estado miembro.

Otros aspectos problemáticos que se destacan en relación con aquel formulario afectan a las **diferentes interpretaciones a que se presta su contenido, a la incertidumbre acerca de si su empleo resulta o no obligatorio, y a los indeseables resultados a que puede abocar el hecho de que el certificado no esté redactado en un idioma aceptado por el Estado destinatario de la *freezing order***.

Eurojust, propone en su Informe algunas **soluciones** para solventar estos problemas prácticos, **como la construcción de un Atlas específico para este instrumento similar al confeccionado para la EAW, o la puesta a disposición de los Estados miembros de un listado con los requisitos necesarios para proceder al reconocimiento y ejecución de una *freezing order***.

**ANEXO FICHA 7ª: DOCUMENTO EUROJUST ANUAL REPORT 2010**

**8ª.— PORTUGAL. Departamento de Investigação e Acção Penal**

1	En ambos supuestos.
2	Pueden ser acordadas sin supervisión judicial, tanto por el fiscal como por las autoridades policiales.
3	Embargo de bienes y pruebas.
4	El fiscal y el juez investigador tienen competencia, en función de la fase en que se encuentren las investigaciones, para acordar <i>freezing orders</i> . Sólo el juez, en cambio, es competente para ejecutar una resolución de comiso.
5	La respuesta proporcionada no se ajusta a lo que es objeto de cuestión.
6	Sí. <b>Sería necesario incluir otro tipo de delitos como los relacionados con la esclavitud, o determinados tipos agravados relacionados con la prostitución o con el tráfico de bienes culturales y artísticos.</b>
7	Se exige que se cumpla con la condición de doble tipificación de la conducta y que el embargo esté previsto para dicho delito en la legislación portuguesa.
8	Atlas y puntos de contacto EJN
9	Usualmente se utiliza el francés y el español. La solicitud se envía por correo, fax o a través de la autoridad central.
10	Como regla general, el procedimiento para la obtención de pruebas que requieren una limitación del derecho a la privacidad, como el derecho al secreto de las comunicaciones, requiere ser autorizado por un juez.
11	La <i>freezing order</i> es recibida por el fiscal que debe presentar la solicitud ante el juez competente.
12	<b>En Portugal, no se prevé plazo o límite temporal alguno para decidir o ejecutar la <i>freezing order</i>. En todo caso, esta es una cuestión que es considerada urgente, por lo que debe procederse a su cumplimiento incluso en días y horas inhábiles. El plazo de 24 horas es considerado razonable y viable.</b>
13	<b>Puede denegarse la ejecución de una <i>freezing order</i>, si no se acompaña el certificado o la información proporcionada por éste es insuficiente para darle cumplimiento, pero también puede dispensarse su presentación. No hay posibilidad, en cambio, de denegar la <i>freezing order</i> debido a la falta de traducción.</b>
14	Se apunta a la conveniencia de que se omita como causa de no reconocimiento o de denegación de la ejecución el supuesto de que los hechos no sean constitutivos de delito en el Estado de ejecución.
15	No se dispone de información para emitir una opinión.
16	No.
17	Si.

18	<b>Se apuntan problemas relativos a las anotaciones registrales de embargo de bienes inmuebles en condiciones de producir efectos respecto de terceros, y también problemas relativos a la conservación de los bienes embargados.</b> Se carece de previsiones legales sobre el modo de transferir los bienes y las pruebas.
19	Cualquier persona afectada por la decisión de reconocer y ejecutar una <i>freezing order</i> puede interponer un recurso de apelación frente a tal decisión, al igual que puede recurrir la fiscalía. Los motivos de fondo que llevaron a emitir la resolución sólo pueden apelarse cuando ha sido la autoridad portuguesa la que ha emitido la resolución.
20	Los daños y perjuicios causados como consecuencia de la ejecución de una <i>freezing order</i> se calculan conforme a la ley civil. No hay un procedimiento específico para solicitar el reembolso.
21	No se dispone información para responder.
22	<b>Se predice que será un problema ejecutar en Portugal, y en otros Estados miembros con sistemas legales parecidos, <i>freezing orders</i> adoptadas en procedimientos no penales.</b>
23	No se dispone información para responder.
24	No.

## ANEXO FICHA 8ª

### QUESTIONNAIRE ABOUT THE OPERATION OF THE FREEZING ORDER SYSTEM ACCORDING TO THE FD

#### SCOPE

1. Under your national law, may an order freezing property or evidence be granted before criminal proceedings have commenced or, on the contrary, may it only be granted within an ongoing criminal process?

*-Under the portuguese law, it is possible to seize or freeze property or evidence just within a criminal process or, at least, it will commence a criminal case.*

2. Under your national law, may an order freezing property or evidence be granted without judicial supervision (by authorities such as the public prosecutor or the police) or, on the contrary, may it only be granted by a judge?

*-- Freezing property and evidences can be granted by the public prosecutor and the law enforcement agencies, without a supervision of the judiciary.*

3. In your national criminal proceedings, what measures are more frequently taken in order to guarantee the subsequent confiscation or the use as evidence of goods, objects or data?

*-It is possible to freeze goods and evidence by a such warrant or a seizing decision.*

4. Under your national law, who are the competent authorities for granting an order freezing property or evidence? And for executing such an order? In case the competent authorities for granting and execution are not the same, please indicate what practical problems arise, if any.

*-The public prosecutor and the enquire judge are competent for granting orders of freezing property and evidences. To execute a seizing decision it is competent only the judge.*

5. In your opinion, in order to avoid misunderstandings regarding the competence to execute an order freezing property or evidence, will it be better if a national authority such as the Ministry of Justice or the Office of the Public Prosecution is in charge of the appointment of the competent authority for execution?

*-The portuguese law sets the competent authority to execute a freezing decision and the criteria to determine the competence to do it.*

6. Does your national law include the very same list of offences not subject to the double criminality test foreseen in art. 3.2 of FD 2003/577/JHA? In your opinion, would any changes be necessary or convenient in the FD list or in your national list?

*-The portuguese law includes the very same list of offences of the art. 3.2. of the FD 2003/577/JHA.*

*In our opinion, it will be needed to include other offences such the slavery, some forms of aggravated pandering and the larceny of cultural goods, special antiques, paintings, etc..*

7. Regarding offences NOT listed in art. 3.2 of FD 2003/577/JHA, does your national law require special conditions in order to recognize or to execute an order freezing property or evidence?

*- Yes. Our national law requires the verification of the double incrimination and the possibility of freezing for the same facts if they were committed in Portugal.*

#### **TRANSMITTING FREEZING ORDERS**

8. What procedure or means do you usually follow in order to find out who is the competent judicial authority for execution of an order freezing property or evidence?

*-We query the Atlas of the EJN and the contact points.*

9. What language do you usually use when transmitting an order freezing property or evidence? Through what means or procedure do you usually transmit such an order and its annexed certificate?

*-Usually, we use french and spanish languages. We send the request by post, fax or via central authority.*

10. Under your national law, as a general rule, what formalities must be followed in order to ensure that the evidence taken is valid? (art. 5.1.II of FD)



*-As a general rule, the procedure to get evidence that are related with the privacy, as well the secrecy of the telecommunications, must be granted by a judge, in some cases, even with his presence, for example, telephone tapping and the search in a residence.*

## EXECUTING FREEZING ORDERS

11. According to your national judicial authorities, what are the means, procedures or channels through which an order freezing property or evidence may validly sent/received in your country?

*-The order to seize property or evidences must be received by the public prosecutor who will present the request to the competent judge. In Portugal, the order can be granted be granted by the competent judicial authority (the prosecution and the judge, depends on the case file phase) and sent directly to the competent foreign authority.*

12. Under your national law, once an order freezing property or evidence has been received in your country, what is the legally established time-limit for its execution? Do the competent judicial authorities of your country usually comply with execution of the order within this time-limit? Do you think the 24-hour-time-limit after receipt of the order is reasonable?; if not, what other time-limit will it be reasonable, under your view?

*-There's no time-limit in our system to execute the freezing order but the judicial authority must communicate the requesting authority the decision to execute the order. This decision is considered urgent, that is to say, it will be executed even on holidays, outside the hours of operation of the courts. This 24-hour-limit is reasonable and practicable.*

13. How do your national authorities usually proceed upon receiving a freezing order from another Member State when the certificate is not produced, is not sufficient or is not duly translated into one of the admitted languages?

*- According to our law, the execution can be refused as well the postponement of it, granting a delay to satisfy the requirement or to analyze the demand in order to decide if the certificate can be exempt. There's no possibility to reject the demand due to non translation.*

14. Regarding the grounds for non-recognition or non-execution of a freezing order, as foreseen in art. 7 of the FD, in your opinion: should any of the existing grounds be discarded?; should any other ground be included?

*-In our opinion, it can be discarded the possibility to deny execution or non-recognition in case the fact will not be an offense in the state of execution,*

15. Regarding the grounds for postponement of execution of a freezing order, as foreseen in art. 8 of the FD, in your opinion: should any of the existing grounds be discarded?; should any other ground be included?

*- We don't have information to give an opinion.*

16. Art. 5.1.II of the FD provides: “Whenever it is necessary to ensure that the evidence taken is valid and provided that such formalities and procedures are not contrary to the fundamental principles of law in the executing State, the judicial authority of the executing State shall also observe the formalities and procedures expressly indicated by the competent judicial authority of the issuing State in the execution of the freezing order”. Have you ever faced circumstances that required such a provision to come into play?

*- No.*

17. In your opinion, would it reasonable that the certificate attached to a freezing order would fix a specific time-limit for the lifting of the measures taken as a consequence of the order?

*-Yes.*

18. What sort of practical problems or obstacles arise in your country in relation to requests for transferring evidence or property for confiscation? What is your national practice when processing those requests and, in particular, how is evidence (or even property) transferred to the issuing State?

*-We have some problems related to the register of seizure of real estate, a condition to produce effects to thirty parties, as well problems with keeping and manage freezed goods and evidences.  
Also, we don't have legal provision about the transfer to requesting authorities of the property and evidences frozen.*

19. Under your national law, what legal remedies may be used against an order freezing property or evidence? Who is entitled to use those legal remedies? On which reasons or grounds may those legal remedies be based? How does your national law attempt to ensure the right to an effective legal remedy to challenge the substantive reasons on which the freezing order rest?

*-The person affected by the decision and the prosecution can present an appeal against the decision to freeze property or evidences. The appeal about the fundamentals of the decision can only be brought against the order taken by the portuguese authorities.*

20. Regarding injuries or damages caused by the execution of an order freezing property or evidence, how is the amount of injuries or damages calculated in your country? What is the appropriate procedure to apply for the reimbursement of the sums paid in those injuries or damages?

*- The injuries or damages caused by the execution will be calculated like in civil law.  
There's no specific procedure to apply the reimbursement.*

## CERTIFICATE

21. Do you notice any defects, lacks or difficulties in the certificate that must be attached to an order freezing property or evidence?

*-We don't have information to answer.*

## GENERAL ISSUES

22. In your opinion, what are the main obstacles arising within the EU when dealing with the recognition and enforcement of orders freezing property or evidence?

*-The main problem is the different conception of law systems about the issue.*

*We predicted that will be a problem to execute in Portugal, like in other countries with similar system, decisions about freezing property and evidences taken in a non-criminal procedure.*

23. In your opinion, what measures would improve the execution of orders freezing property or evidence within the European Union?

*-We don't have information to answer.*

24. Do you know any relevant judicial decision given under your national law implementing FD 2003/577/JHA?

*-No.*

**9ª.— SUECIA. *Swedish Economic Crime Authority***

1	Sólo puede acordarse en el ámbito de un procedimiento penal en curso
2	De la respuesta se infiere que las <i>freezing orders</i> no siempre están sometidas a control de un juez, en la medida en que puede ser acordadas: 1) por el tribunal (decisión de " <i>sequestration</i> " ) o 2) por el fiscal (decisión de embargar o confiscar determinados bienes a efectos de prueba)
3	La respuesta proporcionada no se ajusta a la pregunta. Con todo, se indica: — Que si la <i>freezing order</i> concierne a elementos de prueba, la transferencia de estos últimos al Estado de emisión requiere de una solicitud de transferencia formulada con base en MLA y sobre cuya procedencia debe pronunciarse el Estado de ejecución. — Ahora bien, cuando el fiscal entienda que debe remitirse a una autoridad extranjera la orden de embargo de bienes para su posterior decomiso, debe remitirlo a la Swedish Enforcement Agency, que es quien decide sobre dicha remisión, y que sólo puede tener lugar cuando la decisión del tribunal sea firme.
	El fiscal decide sobre si una <i>freezing order</i> debe ser reconocida o ejecutada; una vez que se ha dado cumplimiento a esta última, el fiscal solicita del tribunal un pronunciamiento en que se declare que la medida ha sido ejecutada; Cuando la orden consiste en la « <i>sequestration</i> », con vistas a su posterior decomiso, la autoridad competente para emitirla es el tribunal. <b>La ejecución de las <i>freezing orders</i>, con vistas a un posterior decomiso, corresponde a la <i>Swedish Enforcement Agency</i>, mientras que la ejecución de las <i>freezing orders</i> relativas a elementos de prueba corresponde al fiscal, con la asistencia de la policía.</b>
5	La respuesta proporcionada no se ajusta a la pregunta.
6	No (la lista de categorías delictivas no ha sido traspuesta a la legislación interna). No se hacen apreciaciones acerca de incluir nuevas infracciones a la lista del art. 3.2 DM 2003/577/JAI
7	Se añaden como motivos que permiten denegar el reconocimiento o ejecución: —Que la <i>freezing order</i> se refiera a documentos o mensajes privados o secretos respecto de los que la ley nacional impida su confiscación. — Que la <i>freezing order</i> sea contraria a los principios del Convenio Europeo de Derechos Humanos.
8	EJN/Eurojust
9	Se carece de experiencia en la transmisión de <i>freezing orders</i> . <b>Con todo, se indica que su base de datos incluye un formulario en inglés.</b>

	<b>Correo postal o telefax.</b>
10	No hay formalidades o procedimientos que deban ser observados en la obtención de elementos de prueba.
11	Debe ser enviada/recibida a través de correo postal o telefax.
12	24 horas. Se carece de experiencia suficiente para pronunciarse sobre si este plazo es o no razonable.
13	Tiene que darse la posibilidad de subsanar el certificado en el plazo que se conceda al efecto.
14	No se hacen observaciones.
15	No se hacen observaciones.
16	Se carece de experiencia.
17	No se hacen observaciones.
18	Se carece de experiencia.
19	Recurso de apelación frente a la decisión del tribunal de ejecutar una <i>freezing order</i> o frente a la decisión de la <i>Swedish Enforcement Agency</i> .
20	Una reclamación por daños y perjuicios ante la <i>Office of the Chancellor of Justice</i> . La cantidad que puede obtenerse por este concepto depende de los daños que se estimen en cada caso en particular.
21	Se carece de experiencia sobre las insuficiencias y deficiencias del certificado
22	No se realizan comentarios.
23	No se realizan comentarios.
24	No existen.

## ANEXO FICHA 9ª

### QUESTIONNAIRE ABOUT THE OPERATION OF THE FREEZING ORDER SYSTEM ACCORDING TO THE FD

#### Reply from the Swedish Economic Crime Authority

#### SCOPE

1. Under your national law, may an order freezing property or evidence be granted before criminal proceedings have commenced or, on the contrary, may it only be granted within an ongoing criminal process?

- An order freezing property or evidence may only be granted within an ongoing criminal process.
2. Under your national law, may an order freezing property or evidence be granted without judicial supervision (by authorities such as the public prosecutor or the police) or, on the contrary, may it only be granted by a judge?
    - A Swedish order to freeze property inherent from the Framework Decision can consist of a court's decision of sequestration or a prosecutor's decision to seize or confiscate property.
  3. In your national criminal proceedings, what measures are more frequently taken in order to guarantee the subsequent confiscation or the use as evidence of goods, objects or data?
    - A Swedish decision to freeze property in order to be used as evidence shall be followed by a request to transfer the evidence to the issuing state, through a MLA request which is decided by in accordance with the national rules of the executing state. When it concerns a decision to freeze property to be confiscated it is the Swedish Enforcement Agency who decides on transferring the decision on confiscation to be executed in another EU MS. The prosecutor has to inform the Swedish Enforcement Agency when a freezing order to secure confiscation is transferred to the other EU MS. Such a request may be sent when a final court decision is legally binding.
  4. Under your national law, who are the competent authorities for granting an order freezing property or evidence? And for executing such an order? In case the competent authorities for granting and execution are not the same, please indicate what practical problems arise, if any.
    - The prosecutor grants a freezing order if it is to be recognised and executed. If so, the prosecutor issues a declaration of execution. When the decision has been executed the prosecutor shall request the decision by the court to decide on the declaration of execution. When the order consists of a decision of sequestration the competent authorities are the courts, when it consists of a decision to seize property to be used as evidence the prosecutor is the competent authority. The Swedish Enforcement Agency executes a decision to freeze property to be confiscated. The prosecutor executes the transferring of seized evidence to the issuing state, when large amounts of property by the assistance of the police authority.

5. In your opinion, in order to avoid misunderstandings regarding the competence to execute an order freezing property or evidence, will it be better if a national authority such as the Ministry of Justice or the Office of the Public Prosecution is in charge of the appointment of the competent authority for execution?
  - It is important that it is clear to the issuing state which authority is competent to execute a freezing order, regardless of who is in charge of the appointment.
6. Does your national law include the very same list of offences not subject to the double criminality test foreseen in art. 3.2 of FD 2003/577/JHA? In your opinion, would any changes be necessary or convenient in the FD list or in your national list?
  - There is no ground for refusal of recognition or execution of a freezing order due to lack of double criminality in our national law.
7. Regarding offences NOT listed in art. 3.2 of FD 2003/577/JHA, does your national law require special conditions in order to recognize or to execute an order freezing property or evidence?
  - Grounds for non-recognition and non-execution of a freezing order are the following:
    - the certificate is not produced or is incomplete or manifestly does not correspond to the freezing order;
    - there is an immunity or privilege under the law of the executing State which makes it impossible to execute the freezing order;
    - if it concerns a written document or message for which rules of secrecy due to profession or similar would prevent it from being able to confiscate; and if the principle of ne bis idem applies. Also, it may not be contrary to the principles of the ECHR.

## **TRANSMITTING FREEZING ORDERS**

8. What procedure or means do you usually follow in order to find out who is the competent judicial authority for execution of an order freezing property or evidence?
  - The European Judicial Network and Eurojust would be asked to assist in identifying the competent judicial authority for execution of a freezing order.



9. What language do you usually use when transmitting an order freezing property or evidence? Through what means or procedure do you usually transmit such an order and its annexed certificate?
  - We have within our authority limited experience of transmitting freezing orders. The most common language would be English, there is also a form in English available in our data system. The freezing order should be sent by the prosecutor directly to the competent authority, by post or telefax.
10. Under your national law, as a general rule, what formalities must be followed in order to ensure that the evidence taken is valid? (art. 5.1.II of FD)
  - There are no such formalities that need to be followed under our national law.

## **EXECUTING FREEZING ORDERS**

11. According to your national judicial authorities, what are the means, procedures or channels through which an order freezing property or evidence may validly sent/received in your country?
  - It may be sent/received by post or telefax.
12. Under your national law, once an order freezing property or evidence has been received in your country, what is the legally established time-limit for its execution? Do the competent judicial authorities of your country usually comply with execution of the order within this time-limit? Do you think the 24-hour-time-limit after receipt of the order is reasonable?; if not, what other time-limit will it be reasonable, under your view?
  - The time limit for execution of a freezing order is set to 24 hours. We do not have sufficient experience to express a view on whether it is reasonable or not.
13. How do your national authorities usually proceed upon receiving a freezing order from another Member State when the certificate is not produced, is not sufficient or is not duly translated into one of the admitted languages?

- In this situation the issuing authority would be given the possibility to complete the certificate within a given period of time.
14. Regarding the grounds for non-recognition or non-execution of a freezing order, as foreseen in art. 7 of the FD, in your opinion: should any of the existing grounds be discarded?; should any other ground be included?
- No specific suggestion.
15. Regarding the grounds for postponement of execution of a freezing order, as foreseen in art. 8 of the FD, in your opinion: should any of the existing grounds be discarded?; should any other ground be included?
- No specific suggestion.
16. Art. 5.1.II of the FD provides: “Whenever it is necessary to ensure that the evidence taken is valid and provided that such formalities and procedures are not contrary to the fundamental principles of law in the executing State, the judicial authority of the executing State shall also observe the formalities and procedures expressly indicated by the competent judicial authority of the issuing State in the execution of the freezing order”. Have you ever faced circumstances that required such a provision to come into play?
- We have not had this experience.
17. In your opinion, would it reasonable that the certificate attached to a freezing order would fix a specific time-limit for the lifting of the measures taken as a consequence of the order?
- No specific comment.
18. What sort of practical problems or obstacles arise in your country in relation to requests for transferring evidence or property for confiscation? What is your national practice when processing those requests and, in particular, how is evidence (or even property) transferred to the issuing State?
- We do not have any specific experience of difficulties when processing transfer of evidence or property for confiscation.

19. Under your national law, what legal remedies may be used against an order freezing property or evidence? Who is entitled to use those legal remedies? On which reasons or grounds may those legal remedies be based? How does your national law attempt to ensure the right to an effective legal remedy to challenge the substantive reasons on which the freezing order rest?

- The person affected by the freezing order may appeal the court's decision to execute a freezing order as well as the decision by the Swedish Enforcement Agency.

20. Regarding injuries or damages caused by the execution of an order freezing property or evidence, how is the amount of injuries or damages calculated in your country? What is the appropriate procedure to apply for the reimbursement of the sums paid in those injuries or damages?

- An action for damages is handled by the Office of the Chancellor of Justice. The amount of injuries or damages is dependent on the damages estimated for each specific situation.

## **CERTIFICATE**

21. Do you notice any defects, lacks or difficulties in the certificate that must be attached to an order freezing property or evidence?

- We have not experienced defects, lacks or difficulties in the certificate.

## **GENERAL ISSUES**

22. In your opinion, what are the main obstacles arising within the EU when dealing with the recognition and enforcement of orders freezing property or evidence?

- No specific comment.

23. In your opinion, what measures would improve the execution of orders freezing property or evidence within the European Union?

- No specific comment.

24. Do you know any relevant judicial decision given under your national law implementing FD 2003/577/JHA?

- We have no relevant judicial decision to report.

**10ª.— RUMANÍA. Ingrid Petcu. Prosecutor. Service for International Cooperation, Public Information and Relations National Anticorruption Directorate.**

1	Pueden acordarse por una «autoridad judicial» mientras esté pendiente un «procedimiento penal».
2	Las <i>freezing orders</i> pueden ser acordadas por un fiscal durante la fase de investigación y por un tribunal durante el juicio.
3	La contestación proporcionada no se ajusta a la pregunta formulada.
4	<b>Una <i>freezing order</i> puede ser acordada por el fiscal durante la fase de investigación y por un tribunal durante el juicio. La contestación proporcionada no se ajusta a la pregunta formulada. Se indica —eso sí— que si la <i>freezing order</i> se refiere a varios bienes situados en demarcaciones de dos o más autoridades judiciales, la competencia para proceder a su reconocimiento o ejecución corresponde, según el estado del procedimiento, a la <i>Prosecution Office</i> del Tribunal de Bucarest o al Tribunal de Bucarest. Además, si la <i>freezing order</i> se refiere a bienes que están sometidos a un procedimiento de investigación en curso o a un proceso penal ya decidido por resolución definitiva, la competencia para decidir sobre su reconocimiento y ejecución corresponderá a la <i>Prosecution Office</i> que conozca de aquel procedimiento y al Tribunal que haya conocido del juicio, independientemente del ámbito de jurisdicción de una o otra autoridad judicial.</b>
5	La contestación proporcionada no se pronuncia sobre la pregunta.
6	Sí.
7	Se exige la doble tipificación de la conducta para el aseguramiento de prueba y para el embargo que se trate de un delito para el que la legislación rumana contemple la posibilidad de embargar los bienes.
8	Puntos de contacto nacionales EJN
9	El idioma del Estado de ejecución No se especifica el concreto medio utilizado para la transmisión de la <i>freezing order</i> ni del certificado.
10	La contestación proporcionada no se ajusta a la pregunta formulada. Se recoge, sin embargo, la obligación para la autoridad rumana de respetar las formalidades requeridas por la autoridad de emisión, siempre que no vulnere principios constitucionales, debiendo la autoridad de ejecución rumana realizar un informe sobre la ejecución de la orden que remitirá a la autoridad emisora.
11	La contestación proporcionada no se ajusta a la pregunta formulada.
12	<b><u>En fase de investigación</u>, el plazo establecido por la ley nacional para llevar a cabo la <i>freezing order</i> es de 6 días, si es que la resolución está acompañada del certificado o de un documento equivalente y todos ellos están traducidos al rumano. Si hay problemas de traducción o la <i>freezing order</i> no contiene información suficiente para la determinación de la competencia, el plazo</b>

	<b>podría ser de 8 ó 9 días.</b> <b>En fase de juicio,</b> serían de aplicación los mismos plazos, con el matiz —que el juez debe valorar— que la decisión sobre la <i>freezing order</i> debe adoptarse con urgencia y de modo prioritario.
13	<b>En 24 horas debe comprobar la autoridad receptora que se acompañan todos los documentos y requisitos y que es competente. En caso de apreciar la necesidad de subsanación conferirá 3 días de plazo para aportar la traducción de los documentos o cualquier otra información adicional.</b>
14	No contesta.
15	No contesta.
16	No se contesta, por falta de experiencia en este contexto de quien responde.
17	No contesta.
18	No se contesta, por falta de experiencia en este contexto de quien responde.
19	<b>En la fase de investigación:</b> el fiscal debe adoptar una decisión sobre la <i>freezing order</i> en los 5 días siguientes a que expiren los plazos previstos en el art. 187 CPP. Frente a esta decisión —si es de reconocimiento— cualquier parte o tercer de buena fe dispone de un plazo de 5 días para recurrirla ante el tribunal en cuya jurisdicción el fiscal haya acordado el reconocimiento de la <i>freezing order</i> . <b>Una vez iniciado el proceso,</b> la resolución de reconocimiento y ejecución dictada por el Juez puede apelarse si es contraria a la ley por cualquier persona interesada (incluidos los terceros de buena fe). También en este supuesto, el plazo de interposición del recurso es de 5 días.
20	La contestación proporcionada no responde a la pregunta formulada.
21	No contesta.
22	<b>Los malentendidos que se producen por una defectuosa traducción.</b>
23	No contesta.
24	No contesta.

#### ANEXO FICHA 10º

#### QUESTIONNAIRE ABOUT THE OPERATION OF THE FREEZING ORDER SYSTEM ACCORDING TO THE FD

## SCOPE

1. Under your national law, may an order freezing property or evidence be granted before criminal proceedings have commenced or, on the contrary, may it only be granted within an ongoing criminal process?

*Freezing order shall be taken during criminal proceedings by a judicial authority*

2. Under your national law, may an order freezing property or evidence be granted without judicial supervision (by authorities such as the public prosecutor or the police) or, on the contrary, may it only be granted by a judge?

*The freezing order is issued by the public prosecutor at the stage of criminal prosecution, and by the law court at the trial stage.*

3. In your national criminal proceedings, what measures are more frequently taken in order to guarantee the subsequent confiscation or the use as evidence of goods, objects or data?

*Freezing*

4. Under your national law, who are the competent authorities for granting an order freezing property or evidence? And for executing such an order? In case the competent authorities for granting and execution are not the same, please indicate what practical problems arise, if any.

*For granting-see question 2.*

*For executing-the freezing order is executed by the prosecution office of the tribunal, at the stage of criminal prosecution, and by the tribunal at the trial stage, in whose jurisdiction the property is located for which the freezing order has been issued.*

*If the freezing order concerns several items of property that are located in the jurisdictions of two or more competent Romanian judicial authorities, the competence to recognise and execute the freezing order shall belong, depending on the stage of the proceedings, either to the Prosecution Office of the Tribunal of Bucharest or to the Tribunal of Bucharest.*

*If the freezing order concerns property that is involved in pending criminal proceedings or in proceedings that have been decided by final judgement, the competence shall belong to the prosecution office of the tribunal at the stage of criminal prosecution and to the tribunal at the trial stage, regardless of the degree of jurisdiction of the Romanian judicial authority that has been called upon to solve the case or that has pronounced the judgement*

5. In your opinion, in order to avoid misunderstandings regarding the competence to execute an order freezing property or evidence, will it be better if a national authority such as the Ministry of Justice or the Office of the Public Prosecution is in charge of the appointment of the competent authority for execution?

*There is no misunderstanding in our law regarding the competent authorities for executing freezing orders.*

6. Does your national law include the very same list of offences not subject to the double criminality test foreseen in art. 3.2 of FD 2003/577/JHA? In your opinion, would any changes be necessary or convenient in the FD list or in your national list?

*Our national law include the very same list of offences.*

-

7. Regarding offences NOT listed in art. 3.2 of FD 2003/577/JHA, does your national law require special conditions in order to recognize or to execute an order freezing property or evidence?

*For cases not listed in art. 3.2 of FD 2003/577/JHA the recognition and execution of a freezing order issued for the purposes of securing evidence shall be subject to the condition that the acts for which the order was issued constitute an offence under Romanian law, whatever the constituent elements or however described under the law of the issuing State.*

*For cases not listed in art. 3.2 of FD 2003/577/JHA, the recognition and execution of a freezing order issued for the purposes of subsequent confiscation of property shall be subject to the condition that the acts for which the order was issued constitute an offence which, under Romanian law, allows for such freezing, whatever the constituent elements or however described under the law of the issuing State.*

## TRANSMITTING FREEZING ORDERS

8. What procedure or means do you usually follow in order to find out who is the competent judicial authority for execution of an order freezing property or evidence?

*Where the issuing Romanian judicial authority does not know which executing authority to transmit the order to, it shall request assistance from Romania's contact points for the European Judicial Network, in view of obtaining the required information*

9. What language do you usually use when transmitting an order freezing property or evidence? Through what means or procedure do you usually transmit such an order and its annexed certificate?



*when transmitting an order freezing property or evidence, we use the language of executing State.*

*The freezing order, together with the annexed certificate shall be transmitted by the issuing Romanian judicial authority directly to the competent judicial authority of the executing State. Transmission shall take place by any means capable of producing a written record under conditions allowing the executing judicial authority to establish authenticity.*

10. Under your national law, as a general rule, what formalities must be followed in order to ensure that the evidence taken is valid? (art. 5.1.II of FD)

*Whenever it is necessary to ensure that the evidence taken is valid, the executing Romanian judicial authority shall also observe the formalities and procedures expressly indicated by the issuing judicial authority, provided that such formalities and procedures are not contrary to the constitutional principles.*

*A report on the execution of the freezing order – based on the report drawn up by the judicial body who carried out the freezing order – shall be made forthwith by the executing Romanian judicial authority to the competent authority in the issuing State by any means capable of producing a written record.*

## EXECUTING FREEZING ORDERS

11. According to your national judicial authorities, what are the means, procedures or channels through which an order freezing property or evidence may validly sent/received in your country?

*At whichever stage of the proceedings, the Romanian judicial authority shall recognise any freezing order without any further formality and shall forthwith take the measures required for its immediate execution, in the same way as for a measure under Art. 187<sup>20</sup> para. (1) taken by a Romanian judicial authority (“Freezing order shall mean any measure taken during criminal proceedings by a judicial authority of a Member State consisting of the provisional freezing of property, in order to avoid any operation of destruction, conversion, displacement, transfer or alienation of that property “), unless one of the grounds for non-recognition or non-execution provided for in Art.187<sup>31</sup> or one of the grounds for postponement provided for in Art. 187<sup>32</sup> is applicable.*

### ARTICLE 187<sup>31</sup>

(1) Outside the cases in Art. 187<sup>24</sup> para. (2) and (3), the competent Romanian judicial authorities may refuse to recognise or execute the freezing order only if:

a) the certificate provided for in Art.187<sup>22</sup> is not produced, is incomplete or manifestly does not correspond to the freezing order;

- b) there is an immunity or privilege under Romanian law which makes it impossible to execute the freezing order;
  - c) it is instantly clear from the information provided in the certificate that rendering judicial assistance by transmitting evidence or by effecting confiscation for the offence in respect of which the criminal proceedings are pending would infringe the *ne bis in idem* principle.
- (2) In the case referred to in para. (1) a), the Romanian judicial authority may:
- a) specify a deadline of up to 3 days for the presentation, completion or correction of the certificate;
  - b) accept an equivalent document, or
  - c) exempt the issuing judicial authority from the requirement if it considers that the information provided is sufficient.
- (3) Any decision to refuse recognition or execution shall be taken and notified forthwith to the competent judicial authorities of the issuing State by any means capable of producing a written record.
- (4) In case it is in practice impossible to execute the freezing order for the reason that the property or evidence have disappeared, have been destroyed, cannot be found in the location indicated in the certificate or the location of the property or evidence has not been indicated in a sufficiently precise manner, even after consultation with the judicial authority of the issuing State, the competent judicial authorities of the issuing State shall likewise be notified forthwith.

#### ARTICLE 187<sup>32</sup>

- (1) The competent Romanian judicial authority may postpone the execution of a freezing order:
- a) where its execution might damage ongoing criminal proceedings, until such time as it deems reasonable;
  - b) where the property or evidence concerned have already been subjected to a freezing order in criminal proceedings, and until that freezing order is lifted;
  - c) where, in the case of an order freezing property in criminal proceedings with a view to its subsequent confiscation, that property is already subject to an order made in the course of other proceedings in Romania and until that order is lifted. However, this point shall only apply where such an order would have priority over subsequent national freezing orders in criminal proceedings under national law.
- (2) A report on the postponement of the execution of the freezing order, including the grounds for the postponement and, if possible, the expected duration of the postponement, shall be made forthwith to the competent judicial authority in the issuing State by any means capable of producing a written record.
- (3) As soon as the ground for postponement has ceased to exist, the competent Romanian executing authority shall forthwith take the necessary measures for the execution of the freezing order and inform the issuing judicial authority thereof by any means capable of producing a written record.
- (4) The executing Romanian judicial authority shall inform the issuing judicial authority about any other restraint measure to which the property concerned may be subjected.

12. Under your national law, once an order freezing property or evidence has been received in your country, what is the legally established time-limit for its execution? Do the competent judicial authorities of your country usually comply with execution of the order within this time-limit? Do you think the 24-hour-time-limit after receipt of the order is reasonable?; if not, what other time-limit will it be reasonable, under your view?

*at the stage of criminal prosecution- the legally established time-limit for its execution is about 6 days, if the the order is accompanied by the certificate or by any other equivalent document, and by translations into Romanian .If there are problems with translation into Romanian or the freezing order does not contain sufficient information to determine competence, the legally established time-limit for its execution might be about 8-9 days.*

*at the trial stage- there are similar terms, but a judge should give you a more precise evaluation of executing period, taking into account the expression "The trial shall take place in emergency and priority procedure."*

13. How do your national authorities usually proceed upon receiving a freezing order from another Member State when the certificate is not produced, is not sufficient or is not duly translated into one of the admitted languages?

*Whenever a Romanian judicial authority receives a freezing order, it shall check, within 24 hours of the date of receipt, whether the order is accompanied by the certificate in Art. 187<sup>22</sup> or by any other equivalent document, and by translations into Romanian.*

*If the documents in para. (1) have not been translated, the Romanian judicial authority shall request that the issuing judicial authority should send the translation within 3 days. After receiving the translation, the Romanian judicial authority shall, within 24 hours of the date of receipt, check whether it has competence.*

*If the freezing order does not contain sufficient information to determine competence, the Romanian judicial authority may request additional information from the issuing judicial authority, appointing a time limit of up to 3 days for this.*

14. Regarding the grounds for non-recognition or non-execution of a freezing order, as foreseen in art. 7 of the FD, in your opinion: should any of the existing grounds be discarded?; should any other ground be included?

-

15. Regarding the grounds for postponement of execution of a freezing order, as foreseen in art. 8 of the FD, in your opinion: should any of the existing grounds be discarded?; should any other ground be included?

-

16. Art. 5.1.II of the FD provides: “Whenever it is necessary to ensure that the evidence taken is valid and provided that such formalities and procedures are not contrary to the fundamental principles of law in the executing State, the judicial authority of the executing State shall also observe the formalities and procedures expressly indicated by the competent judicial authority of the issuing State in the execution of the freezing order”. Have you ever faced circumstances that required such a provision to come into play?

*DNA has no competence in the execution of a freezing order, this falls under the competence of the Prosecution Office attached to the Tribunal.*

17. In your opinion, would it reasonable that the certificate attached to a freezing order would fix a specific time-limit for the lifting of the measures taken as a consequence of the order?

-

18. What sort of practical problems or obstacles arise in your country in relation to requests for transferring evidence or property for confiscation? What is your national practice when processing those requests and, in particular, how is evidence (or even property) transferred to the issuing State?

*-the answer should be given by the executing authority, the prosecutor within the Prosecutor's Office attached to the competent Tribunal*

19. Under your national law, what legal remedies may be used against an order freezing property or evidence? Who is entitled to use those legal remedies? On which reasons or grounds may those legal remedies be based? How does your national law attempt to ensure the right to an effective legal remedy to challenge the substantive reasons on which the freezing order rest?

*At the stage of criminal prosecution, the competent public prosecutor shall issue an ordinance within 5 days from the expiry of the time limits in Art. 187<sup>27</sup> (24 hours for checking whether the order is accompanied by the or by any other equivalent document, and by translations into Romanian; 3 days if the order/certificate/ any other equivalent document have not been translated ; 3 days if the freezing order does not contain sufficient information to determine competence)*

*Any party interested, including bona fide third parties, may lodge a complaint against the public prosecutor's ordinance recognising the freezing order, if it has violated their legitimate interests. The complaint must be lodged within 5 days from service of a copy of the ordinance.*

*The substantive reasons for issuing the freezing order may not be questioned in such a complaint. They can be challenged only in an action brought before a court of the issuing State.*

*The complaint shall be brought before the tribunal in whose jurisdiction the public prosecutor who ordered the recognition of the freezing order is located. The presence of the public prosecutor is mandatory at the hearing of the complaint.*

*The case shall be forwarded by the prosecution office to the competent tribunal, within two days of receipt of the notice requesting it.*

*The complaint shall be heard in a public session within 5 days, by a final resolution. The lodging of a complaint shall not stay the enforcement of the freezing order. When hearing the complaint, the law court shall check the prosecutor's ordinance, based on the case record and on any documents produced, and shall pronounce one of the following decisions:*

*a) dismiss the complaint either because it was lodged too late or because it is inadmissible, and uphold the ordinance;*

*b) approve the complaint, cancel the ordinance and ordain revocation of the freezing.*

*The freezing order shall be enforced by the public prosecutor who issued the ordinance recognising it.*

*At the stage of trial, the case shall be heard by a panel of one judge, who shall issue a resolution in camera. The trial shall take place in emergency and priority procedure.*

*The resolution may be appealed against on points of law, within 5 days from the pronouncement or service, as appropriate, by any person interested, including bona fide third parties, if it has violated their legitimate interests. Art. 187<sup>28</sup> shall apply mutatis mutandis.*

*The case shall be forwarded to the appellate court within 24 hours from initiation of the appeal. The appeal shall be heard within 5 days, by the competent court of appeal, based on the case record and on any other documents presented.*

*The appeal shall not stay the enforcement of the freezing order.*

*The freezing order shall be enforced by the designated public prosecutor from the prosecution office of the competent tribunal.*

20. Regarding injuries or damages caused by the execution of an order freezing property or evidence, how is the amount of injuries or damages calculated in your country? What is the appropriate procedure to apply for the reimbursement of the sums paid in those injuries or damages? *where Romania is responsible for injury caused to one of the parties interested, including bona fide third parties by the execution of a freezing order transmitted for execution to a Romanian judicial authority, Romania shall require the issuing State to reimburse any sums paid in damages to the person interested except if, and to the extent that, the injury or any part of it is exclusively due to the conduct of Romanian authorities.*

*Para. (1) is without prejudice to the national law on claims by natural or legal persons for compensation of damage.*

*About "the amount of injuries or damages calculated in our country and the appropriate procedure to apply for the reimbursement of the sums paid in those injuries or damages", the judge within the competent Tribunal could give you an appropriate answer*

## **CERTIFICATE**

21. Do you notice any defects, lacks or difficulties in the certificate that must be attached to an order freezing property or evidence?

-

## **GENERAL ISSUES**

22. In your opinion, what are the main obstacles arising within the EU when dealing with the recognition and enforcement of orders freezing property or evidence?

*-the misunderstanding that arises from translation*

23. In your opinion, what measures would improve the execution of orders freezing property or evidence within the European Union?

-

24. Do you know any relevant judicial decision given under your national law implementing FD 2003/577/JHA?

-

**11<sup>a</sup>.— DINAMARCA. Ministry of Justice. International Division**

\* Dinamarca no aporta respuestas al cuestionario, habida cuenta de que su experiencia práctica sobre la DM 2003/577/JAI se limita a la recepción de una única *freezing order*.

**ANEXO FICHA 11<sup>a</sup>**

Dear Carmen Rodríguez-Medel Nieto,

With reference to your questionnaire on the Framework Decision 2003/577/JHA on freezing orders I can inform you that the FD was implemented into Danish law by act no. 1434 of 22 December 2004.

However our experience far with the FD is too limited to be able to answer your questionnaire, as we so far only have received one case under the FD-regime.

Helga Lund Laursen  
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**12ª.— FRANCIA/ Fabienne Schaller. *Direction des affaires criminelles et des grâces. Ministère de la Justice et des libertés***

1	<b>Aseguramiento de bienes a efectos de un posterior decomiso, sólo en el marco de un proceso penal en curso.</b>
2	Deben ser respaldados por una «autoridad judicial». La expresión no incluye a la Policía, pero sí a los fiscales y a los magistrados.
3	<b>Depósito o comiso + BEPI y PEPP (¿¿??)</b>
4	Le procureur de la République, le juge d'instruction, le juge des libertés et de la détention. Le juge d'instruction. No se reseñan problemas prácticos en la distribución de estas competencias.
5	No. <b>A favor de la remisión directa.</b>
6	Si. No contesta explícitamente a la pregunta, pero de la respuesta parece inferirse el «no».
7	Control de doble tipificación y exigencia de que se prevea el decomiso para la infracción.
8	Tabla de autoridades judiciales competentes realizada por la <i>Direction des affaires criminelles et des grâces</i> + E.J.N.
9	Redacción en francés y posterior traducción a la lengua indicada por el Estado destinatario. Correo postal.
10	Las recogidas en el <i>Code de procédure pénale français</i> (art. 693-3 CPP).
11	No contesta.
12	No contesta.
13	No contesta.
14	No contesta.
15	No contesta.
16	Sí.
17	Eventualmente, en ciertas circunstancias justificadas (que no se especifican).
18	No contesta, so pretexto de que la transferencia de bienes y pruebas no entra dentro del ámbito de la DM 2003/577/JAI Pruebas= comisión rogatoria internacional <b>Comiso= no consentida por la DM 2006/783/JAI</b>
19	<i>Demande de restitution</i> ante el mismo juzgado que ha ejecutado la <i>freezing order</i> . Eventualmente, apelación y casación.
20	El CPP no prevé expresamente una vía para la indemnización de los daños y perjuicios que se pudieran ocasionar como consecuencia de la ejecución de una <i>freezing order</i> .



21	No es posible incluir en las actuaciones el certificado que es utilizado
22	Ninguno
23	Estabilidad en la legislación europea procesal, sin sujeción a cambios tan constantes como los que se suceden en la actualidad
24	Sí, aunque no se indica ni se señala referencia

## ANEXO FICHA 12<sup>a</sup>

### QUESTIONNAIRE ABOUT THE OPERATION OF THE FREEZING ORDER SYSTEM ACCORDING TO THE FD

#### SCOPE

1. Under your national law, may an order freezing property or evidence be granted before criminal proceedings have commenced or, on the contrary, may it only be granted within an ongoing criminal process?

Les mesures de gel d'un bien en application de la décision-cadre ne peuvent avoir lieu que dans le cadre d'une procédure pénale.

2. Under your national law, may an order freezing property or evidence be granted without judicial supervision (by authorities such as the public prosecutor or the police) or, on the contrary, may it only be granted by a judge?

Par la police, non. En revanche, en France, les procureurs de la République sont des magistrats et donc une « autorité judiciaire ».

L'article 695-9-7 du CPP dispose : "Le procureur de la République, les juridictions d'instruction, le juge des libertés et de la détention et les juridictions de jugement compétents, en vertu des dispositions du présent code, pour ordonner une saisie de biens ou d'éléments de preuve, sont compétents pour prendre, dans les mêmes cas et conditions, des décisions de gel visant des biens ou des éléments de preuve situés sur le territoire d'un autre Etat membre de l'Union européenne et pour établir les certificats afférents à ces décisions.

3. In your national criminal proceedings, what measures are more frequently taken in order to guarantee the subsequent confiscation or the use as evidence of goods, objects or data?

La saisie des biens. « saisie » et « gel » ont un sens identique dans le cadre de la procédure pénale. Merci de faire compléter par le BEPI et le PEPP

4. Under your national law, who are the competent authorities for granting an order freezing property or evidence? And for executing such an order? In case the competent authorities for granting and execution are not the same, please indicate what practical problems arise, if any.

1<sup>ère</sup> question : voir Article 695-9-7 du CPP sus-rappelé. Le procureur de la République, le juge d'instruction, le juge des libertés et de la détention.

2<sup>ème</sup> question : Le juge d'instruction.

3<sup>ème</sup> question : Il n'y a aucun problème pratique soulevé par cette différence.

5. In your opinion, in order to avoid misunderstandings regarding the competence to execute an order freezing property or evidence, will it be better if a national authority such as the Ministry of Justice or the Office of the Public Prosecution is in charge of the appointment of the competent authority for execution?

Non.

6. Does your national law include the very same list of offences not subject to the double criminality test foreseen in art. 3.2 of FD 2003/577/JHA? In your opinion, would any changes be necessary or convenient in the FD list or in your national list?

1<sup>ère</sup> question : Oui.

2<sup>ème</sup> question : Pour la mise en œuvre de la décision-cadre la question de la modification des infractions ne se pose pas. Dans le code de procédure pénale français certaines erreurs de traduction dans la version française ont été corrigées. Par exemple la traduction de « *crime against environment* » vise « *crimes ou délits commis contre l'environnement* ». A faire compléter par le BEPI d'un point de vue « opérationnel ».

7. Regarding offences NOT listed in art. 3.2 of FD 2003/577/JHA, does your national law require special conditions in order to recognize or to execute an order freezing property or evidence?

La législation française transpose fidèlement la décision-cadre. Les faits doivent constituer une infraction en France et doivent permettre la saisie en droit français (article 695-9-17 du CPP)

## **TRANSMITTING FREEZING ORDERS**

8. What procedure or means do you usually follow in order to find out who is the competent judicial authority for execution of an order freezing property or evidence?

Un tableau des autorités compétentes dans chacun des Etats membres de l'Union européenne a été élaboré afin de suppléer l'absence de sites Web de l'Union européenne. Ce tableau est régulièrement mis à jour par la direction des affaires criminelles et des grâces. En cas de difficulté, il peut être fait appel au RJE (réseau judiciaire européen).

9. What language do you usually use when transmitting an order freezing property or evidence? Through what means or procedure do you usually transmit such an order and its annexed certificate?

Le certificat est rédigé en français et traduit dans la langue déclarée par l'Etat d'exécution, conformément aux obligations résultant de la décision-cadre.

Le certificat et les documents annexes sont généralement transmis par la poste.

10. Under your national law, as a general rule, what formalities must be followed in order to ensure that the evidence taken is valid? (art. 5.1.II of FD)

La demande est exécutée selon les règles du code de procédure pénale français. Si des procédures particulières sont demandées, la demande peut être exécutée selon ces règles à condition qu'elles ne réduisent pas le droit des parties ou les garanties procédurales du code de procédure pénale français (article 694-3 du CPP).

## **EXECUTING FREEZING ORDERS (quel bureau peut répondre?)**

11. According to your national judicial authorities, what are the means, procedures or channels through which an order freezing property or evidence may validly sent/received in your country?
12. Under your national law, once an order freezing property or evidence has been received in your country, what is the legally established time-limit for its execution? Do the competent judicial authorities of your country usually comply with execution of the order within this time-limit? Do you think the 24-hour-time-limit after receipt of the order is reasonable?; if not, what other time-limit will it be reasonable, under your view?
13. How do your national authorities usually proceed upon receiving a freezing order from another Member State when the certificate is not produced, is not sufficient or is not duly translated into one of the admitted languages?
14. Regarding the grounds for non-recognition or non-execution of a freezing order, as foreseen in art. 7 of the FD, in your opinion: should any of the existing grounds be discarded?; should any other ground be included?
15. Regarding the grounds for postponement of execution of a freezing order, as foreseen in art. 8 of the FD, in your opinion: should any of the existing grounds be discarded?; should any other ground be included?
16. Art. 5.1.II of the FD provides: “Whenever it is necessary to ensure that the evidence taken is valid and provided that such formalities and procedures are not contrary to the fundamental principles of law in the executing State, the judicial authority of the executing State shall also observe the formalities and procedures expressly indicated by the competent judicial authority of the issuing State in the execution of the freezing order”. Have you ever faced circumstances that required such a provision to come into play?

Oui.

17. In your opinion, would it be reasonable that the certificate attached to a freezing order would fix a specific time-limit for the lifting of the measures taken as a consequence of the order?

Eventuellement dans certains cas motivés.

18. What sort of practical problems or obstacles arise in your country in relation to requests for transferring evidence or property for confiscation? What is your national practice when processing those requests and, in particular, how is evidence (or even property) transferred to the issuing State?

1ère question : le transfert de preuve ou de bien « gelés » n'est pas traité par la décision-cadre relative au gel des biens.

2<sup>ème</sup> question : en ce qui concerne les « éléments de preuve » il est nécessaire, au plan juridique d'adresser une commission rogatoire internationale.

En ce qui concerne le transfert de propriété, cette question ne relève pas du gel des biens qui est une mesure conservatoire n'impliquant pas remise en cause de la propriété du bien. Un bien gelé reste la propriété de la personne à qui il appartient.

Le transfert de propriété relève des confiscations et ces questions sont réglées par la décision-cadre 2006/783/JAI du 6 octobre 2006 relative à l'application du principe de reconnaissance mutuelle aux décisions de confiscations. Il n'y a quasiment jamais de « transfert de la propriété » en cas de confiscation transfrontalière. Un tel transfert relève de situation exceptionnelle contraire aux dispositions relative à la décision-cadre relative à l'exécution des confiscations.

19. Under your national law, what legal remedies may be used against an order freezing property or evidence? Who is entitled to use those legal remedies? On which reasons or grounds may those legal remedies be based? How does your national law attempt to ensure the right to an effective legal remedy to challenge the substantive reasons on which the freezing order rest?

En exécution : Il est exact que la décision-cadre prévoit (article 11, paragraphe 1) que « les États membres prennent toutes les dispositions nécessaires pour garantir que toute mesure de gel exécutée en application de l'article 5 puisse faire l'objet de la part de toute personne concernée, y compris des tiers de bonne foi, et en vue de préserver leur intérêt légitime, d'un moyen de recours non suspensif; l'action est engagée devant un tribunal de l'État d'émission ou de l'État d'exécution conformément à la législation nationale de chacun de ces États » mais elle précise aussitôt (article 11 paragraphe 2) que « les raisons

*substantielles qui sont à l'origine de l'émission de la décision de gel ne peuvent être contestées que par une action devant un tribunal de l'État d'émission ».* La décision-cadre empêche donc les Etats membres d'exécution de garantir un recours efficace.

En ce qui concerne les décisions de gel prise en France, toute mesure de gel d'un bien peut faire l'objet d'une demande de restitution (article 99 du code de procédure pénale), éventuellement au stade de l'audience de jugement. Tout refus de restitution (et même l'omission de statuer) peut être déférée par voie d'appel à la chambre de l'instruction et en dernier ressort peut faire l'objet d'un pourvoi en cassation.

20. Regarding injuries or damages caused by the execution of an order freezing property or evidence, how is the amount of injuries or damages calculated in your country? What is the appropriate procedure to apply for the reimbursement of the sums paid in those injuries or damages?

Le gel de biens est ordonné par l'autorité judiciaire et des voies de recours sont prévues à l'encontre de ces décisions de gel. Le seul cas prévu dans la législation française où l'indemnisation d'un préjudice résultant de l'exercice de poursuites pénales est prévue est celui du placement en détention d'une personne (détention provisoire ou détention pour l'exécution d'une condamnation) dans le cas où cette personne est ultérieurement relaxée ou acquittée (éventuellement suite à une décision de révision d'une condamnation).

Aucune autre disposition législative ne prévoit l'indemnisation des éventuels préjudices résultant de procédure pénale régulièrement conduites (placement en garde à vue, recours à la force publique à l'égard d'un témoin, gel ou saisie d'un bien, etc.). La question du mode de calcul de l'indemnisation est donc sans objet.

## **CERTIFICATE**

21. Do you notice any defects, lacks or difficulties in the certificate that must be attached to an order freezing property or evidence?

Pour la mise en œuvre de la décision-cadre, il n'est plus possible de remettre en cause le certificat qui doit être utilisé.

## **GENERAL ISSUES**

22. In your opinion, what are the main obstacles arising within the EU when dealing with the recognition and enforcement of orders freezing property or evidence?

Aucun.

23. In your opinion, what measures would improve the execution of orders freezing property or evidence within the European Union?

L'absence de remise en cause permanente des instruments par de nouveaux instruments qui viennent contredire, ou tout simplement remplacer les procédures existantes. Les magistrats ont besoin d'une législation stable qui ne change pas en permanence.

24. Do you know any relevant judicial decision given under your national law implementing FD 2003/577/JHA?

Oui.

**13ª.— SUECIA. *Office of the Prosecutor general***

1	Basta con una investigación penal en curso.
2	Fiscal/o <i>Court of seizure or sequestration</i> , cuando es el Estado de emisión. Cuando es el Estado de ejecución, decide en primer lugar el fiscal sobre el reconocimiento y la ejecución. Cuando se ejecutan las medidas, el tribunal decide si mantiene la medida.
3	Durante la investigación criminal, pueden adoptarse medidas muy dispares por la policía (pequeña delincuencia) o por el fiscal (delitos graves). Se distingue entre que el bien sea la prueba o el producto del delito o que sea una cantidad que es necesario asegurar para compensar a la víctima, cubrir el importe de una multa o sea equivalente al valor de lo obtenido con el delito. En el primer caso es el fiscal el que adopta la medida (que si requiere registros domiciliarios serán decididos por la policía sólo en el caso de delincuencia menor, o bien por el fiscal o el tribunal) En el segundo, sin embargo, tiene que ser el tribunal el que adopte la medida, siempre a instancia de la fiscalía o de la persona perjudicada por el delito. En espera de esta decisión del tribunal, el fiscal puede tomar en custodia los bienes muebles y en caso de urgencia también la policía, que solicitará su convalidación a la fiscalía.
4	Fiscal+ <i>Court of seizure or sequestration</i> . Policía/ <i>Customs Service/ Enforceent Autorithy</i> . No se reseñan problemas derivados de esta diversidad de competencias.
5	<b>A favor de la remisión directa.</b>
6	No se aprecia la necesidad de incluir otras infracciones en la lista del artículo 3.2 DM 2003/577/JAI.
7	No responde concretamente a lo que se pregunta, si bien se infiere que nunca se exige la doble tipificación de la conducta (por tanto, tampoco cuando es un delito de fuera de la lista del art. 3.2).
8	<b>EJN+Eurojust+Asset Recovery Office.</b>
9	Redacción del certificado en alguno de los idiomas aceptados por el Estado miembro destinatario. No se indica el cauce habitualmente utilizado para la transmisión
10	En la legislación sueca no hay reglas de no admisibilidad de la prueba. La forma en que ésta ha sido obtenida puede —eso sí— influir en su valoración.
11	Se admite la recepción al <i>prosecutor</i> competente vía postal o telefax.
12	Tan pronto como sea posible, deseablemente en las 24 hs siguientes a la recepción de una <i>freezing order</i> <b>A la luz de las pocas <i>freezing orders</i> recibidas en Suecia no puede valorarse si se atiende o no a estas exigencias temporales</b>



	<b>Se entiende adecuada la exigencia de 24 hs prevista en la DM 2003/577/JAI para pronunciarse sobre la procedencia de la freezing order, pero no para llevar a cabo el cumplimiento de las medidas de aseguramiento.</b>
13	Subsanación directa.
14	No hay necesidades de cambio por el momento.
15	No se aprecian necesidades de cambio por el momento.
16	No se indican, debido a la poca incidencia de la DM 2003/577/JAI.
17	<b>Se apunta que esta solución podría comportar problemas añadidos como el de determinar qué ocurriría si no es posible ejecutar las medidas en el plazo requerido, siendo deseable que la autoridad emisora concretase si insta la adopción de las medidas incluso expirado el plazo señalado.</b>
18	Bienes: no se reseñan problemas prácticos, debido a la reciente trasposición de la DM 2006/783/JAI. <i>Swedish Enforcement Authority</i> Pruebas: a través de una comisión rogatoria. El tribunal decide sobre la procedencia o no de la transmisión. Materialmente la transmisión es realizada por la policía.
19	Recurso frente a las decisiones del tribunal relativas a las f.o.; a tal efecto se atribuye legitimación a las partes interesadas. Posibilidad de posterior apelación ante la <i>Court of Appeals</i> .
20	Mediante un procedimiento escrito ante el <i>Chancellor of Justice</i> o mediante reclamación directa al Estado.
21	<b>Se propone la conveniencia de incluir un apartado específico en el certificado indicando la urgencia del caso y específicos límites temporales para la adopción de las medidas. En esta casilla también debería incluirse la opción de reseñar si las medidas deberían ejecutarse aun transcurridos los límites temporales especificados en el certificado.</b>
22	No se ofrece una respuesta dada la escasa aplicación de este instrumento. No obstante, se invoca la conveniencia de respetar el principio de reconocimiento mutuo y de que el certificado sea completado.
23	<b>Procurar el conocimiento de este instrumento entre los operadores jurídicos, mediante reuniones o encuentros en que estos últimos pongan de relieve los problemas prácticos y teóricos apreciados en su aplicación.</b>
24	Se apuntan varias decisiones, que no se identifican. Se menciona en un caso en que se admitió la ejecución de una <i>freezing order</i> pese a que en aquel momento la DM 2006/783/JAI no había sido traspuesta al ordenamiento sueco.

ANEXO FICHA 13<sup>a</sup>

## QUESTIONNAIRE ABOUT THE

## SYSTEM ACCORDING TO THE FD

## OPERATION OF THE FREEZING ORDER

### SCOPE

1. Under your national law, may an order freezing property or evidence be granted before criminal proceedings have commenced or, on the contrary, may it only be granted within an ongoing criminal process?

#### *Answer*

*A Swedish freezing order can only be issued in an ongoing criminal investigation.*

*In cases where Sweden is the executing state a criminal proceeding must have been initiated in the issuing state.*

2. Under your national law, may an order freezing property or evidence be granted without judicial supervision (by authorities such as the public prosecutor or the police) or, on the contrary, may it only be granted by a judge?

#### *Answer*

*A Swedish freezing order is issued by a prosecutor. The basis for the freezing order is either the decision by a prosecutor or a court of seizure or sequestration.*

*In cases where Sweden is the executing state the freezing order is initially handled by the prosecutor, who decides whether the property or evidence should be frozen and, if that is the case, issues a declaration of execution. When the decision is executed the prosecutor must promptly file a motion to the court which will decide whether the property or evidence will remain frozen.*

3. In your national criminal proceedings, what measures are more frequently taken in order to guarantee the subsequent confiscation or the use as evidence of goods, objects or data?

**Answer**

*The prosecutor can decide to seize objects reasonably presumed important to a criminal investigation or taken from a person through a criminal act or subject to criminal forfeiture. The person subjected to a seizure executed without a court order may request a court determination thereof.*

*In order to look for objects to seize, searches of houses, rooms, or closed storage spaces may be conducted. Such a decision can be made by the police (concerning petty crimes), the prosecutor or the court. That means that the decision could be made very swiftly.*

*When it comes to confiscation of property the procedure is somewhat different. If a person is reasonably suspected of an offence and there is reasonable cause to anticipate that, by fleeing, removing property or otherwise, he will evade the obligation which can be assumed will be placed upon him because of the offence to pay fines, the value of forfeited property, corporate fines, or other compensation to the community, or damages or any other compensation to an aggrieved person, the court may order sequestration of so much of the suspect's property that the claim may be assumed to be secured on execution. Issues on sequestration may be entertained at the request of the prosecutor or the aggrieved person.*

*The prosecutor may take moveable property into custody while awaiting the court's order of sequestration. If delay entails risks, a police officer may take such action; however, the police officer must promptly report the measure to the prosecutor who must immediately consider and determine if the property shall remain in custody.*

*The possibility for a police officer and a prosecutor to take moveable property into custody means that even regarding property that is to be confiscated a decision can be made swiftly.*

4. Under your national law, who are the competent authorities for granting an order freezing property or evidence? And for executing such an order? In case the competent authorities for granting and execution are not the same, please indicate what practical problems arise, if any.

**Answer**

*The competent authorities for granting a freezing order is mentioned in the answer under 2.*

*The execution of a freezing order is conducted by the Swedish Police Authority, the Swedish Customs Service or the Swedish Enforcement Authority.*

5. In your opinion, in order to avoid misunderstandings regarding the competence to execute an order freezing property or evidence, will it be better if a national authority such as the Ministry of Justice or the Office of the Public Prosecution is in charge of the appointment of the competent authority for execution?

***Answer***

*The competent authority is according to the Swedish legislation the Prosecution Authority. The prosecutors handling freezing orders are appointed by the Prosecutor General.*

*In our opinion it is a more effective and less formal procedure, if freezing orders are sent directly between judicial authorities with competence for initiating and executing them. Such a procedure is therefore preferable.*

6. Does your national law include the very same list of offences not subject to the double criminality test foreseen in art. 3.2 of FD 2003/577/JHA? In your opinion, would any changes be necessary or convenient in the FD list or in your national list?

***Answer***

*Lack of double criminality is not a ground for refusal according to the Swedish legislation.*

*We can't see the need of a change of the list, especially considering that the same crimes are listed in the council framework decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States FD 2002/584/JHA, and that it obviously is an advantage if the listed crimes correspond.*

7. Regarding offences NOT listed in art. 3.2 of FD 2003/577/JHA, does your national law require special conditions in order to recognize or to execute an order freezing property or evidence?

***Answer***

*A freezing order could be refused*

- if the certificate provided for in Article 9 is not produced or is incomplete;
- if there is an immunity or privilege under the Swedish law which makes it impossible to execute the freezing order;
- if the freezing order concerns a written document or message and if it can be assumed that the document/message contains information that an official or other person may not disclose under testimony according to the Swedish law or if it is a document/message between the suspect and his relative, except if the issue concerns an offence in respect of which a less severe penalty than imprisonment for two years is not prescribed.
- if there is a Swedish decision or a judgment for the same act that the confiscation order is based on.

*A freezing order could not be executed if it is contrary to the principles of the European Convention of Human Rights.*

## TRANSMITTING FREEZING ORDERS

8. What procedure or means do you usually follow in order to find out who is the competent judicial authority for execution of an order freezing property or evidence?

### **Answer**

*Information about where to send a freezing order could be found via EJN or Eurojust. The Asset Recovery Office could also give advices.*

9. What language do you usually use when transmitting an order freezing property or evidence? Through what means or procedure do you usually transmit such an order and its annexed certificate?

### **Answer**

*According to the Swedish law, an in-coming freezing order shall be written in the Scandinavian languages (Swedish, Danish and Norwegian) or in English. When Sweden is the issuing state the prosecutors will use the language the executing state has declared that it accepts.*

10. Under your national law, as a general rule, what formalities must be followed in order to ensure that the evidence taken is valid? (art. 5.1.II of FD)

### **Answer**

*Free evaluation of evidence prevails in the Swedish legal system. Therefore there are no rules of non-admissibility in the Swedish legislation. However, the way the evidence has been collected, could influence the value of the evidence.*

## EXECUTING FREEZING ORDERS

11. According to your national judicial authorities, what are the means, procedures or channels through which an order freezing property or evidence may validly sent/received in your country?

### **Answer**

*A freezing order could be sent directly to the competent prosecutor via post or telefax. The EJN contact points could help finding out where to send the freezing order.*

*All prosecutors are authorized to issue a freezing order.*

12. Under your national law, once an order freezing property or evidence has been received in your country, what is the legally established time-limit for its execution? Do the competent judicial authorities of your country usually comply with execution of the order within this time-limit? Do you think the 24-hour-time-limit after receipt of the order is reasonable?; if not, what other time-limit will it be reasonable, under your view?

### **Answer**

*A freezing order shall be executed as soon as possible and – if possible - within 24 hours of receipt of the freezing order. If the freezing order needs to be complemented the time-limit starts from the point when the freezing order is complete.*

*There are very few cases regarding freezing orders in Sweden and therefore it is not possible to make any general statements about the compliance with the time-limit.*

*Generally speaking one of the advantages with a freezing order is the time-limit, since that in general will lead to a more swiftly handling of the cases. A swift handling is, of course, important regarding freezing of property and evidence, for which there are typically a risk that they will be removed. Our opinion is that 24 hours time-limit as it is expressed in the FD 2003/577/JHA, with no absolute requirement of execution within 24 hours, is adequate.*

13. How do your national authorities usually proceed upon receiving a freezing order from another Member State when the certificate is not produced, is not sufficient or is not duly translated into one of the admitted languages?

**Answer**

*The person responsible for the freezing order will be contacted directly in order to complete the certificate. If that doesn't help EJN or Eurojust could be contacted in order to help the prosecutor to receive the additional information.*

14. Regarding the grounds for non-recognition or non-execution of a freezing order, as foreseen in art. 7 of the FD, in your opinion: should any of the existing grounds be discarded?; should any other ground be included?

**Answer**

*No need for a change for the time being.*

15. Regarding the grounds for postponement of execution of a freezing order, as foreseen in art. 8 of the FD, in your opinion: should any of the existing grounds be discarded?; should any other ground be included?

**Answer**

*We cannot see a need to change the grounds regarding the possibility to postpone the executing of a freezing order.*

16. Art. 5.1.II of the FD provides: "Whenever it is necessary to ensure that the evidence taken is valid and provided that such formalities and procedures are not contrary to the fundamental principles of law in the executing State, the judicial authority of the executing State shall also observe the formalities and procedures expressly indicated by the competent judicial authority of the issuing State in the execution of the freezing order". Have you ever faced circumstances that required such a provision to come into play?

**Answer**

*As far as we know there is no such a case in Sweden. According to the Swedish legislation there is a possibility for Swedish prosecutors to observe the formalities and procedures that are specially requested by an issuing state.*

17. In your opinion, would it reasonable that the certificate attached to a freezing order would fix a specific time-limit for the lifting of the measures taken as a consequence of the order?

**Answer**

*A specification of the time-limit in the freezing order seems to improve the possibilities for the executing state to estimate when a freezing order need to be executed. In case of a specified time-limit in the freezing order, it would be necessary to examine whether the execution is requested even after the time-limit has expired. Therefore it would be desirable if it also was stated in the freezing order whether execution is requested even though the time-limit has expired.*

18. What sort of practical problems or obstacles arise in your country in relation to requests for transferring evidence or property for confiscation? What is your national practice when processing those requests and, in particular, how is evidence (or even property) transferred to the issuing State?

**Answer**

*Sweden has from the 1 July a new legislation regarding transferring property for confiscation. The new legislation is implementing the FD 2006/783 JHA. Therefore it is not possible to make any statements regarding the practice and routines in handling these cases.*

*A confiscation order shall together with a certificate produced according to the standard form in the Annex to the FD 2006/783JHA , be sent to the Swedish Enforcement Authority for recognition and execution. The definition of a confiscation order in the Swedish legislation is the same as in the FD 2006/783JHA. The certificate shall be in any of the Scandinavian languages or in English.*

*Ground for non-recognition and non execution of the confiscation order are as follows;*

- if there is a decision or a judgment for the same act that the confiscation order is based on, and if there is a conviction, the conviction has been executed,*
- if a Swedish prosecutor has decided not to prosecute the act that the confiscation order is based on,*
- if a recognition and execution should not be in consistence with the Swedish legislation regarding immunity and privilege,*
- if the decision to confiscate has been given after proceedings at which the person concerned was not present, if it isn't stated in the certificate that the person concerned has been summoned personally or via counselor or stated that he or she does not contest the decision*
- if the act that the freezing order is based on wholly or partly has been committed in Sweden and isn't a crime according to the Swedish legislation or if the period for execution has expired.*

*The act doesn't need to be criminalized in Sweden for transferring property to the issuing state, if the state is a member of the EU, Norway or Switzerland.*



*Money which has been obtained from the execution of the confiscation order shall if the amount obtained from the execution of the confiscation order is below EUR 10 000 accrue to Sweden. In all other cases, 50 % of the amount which has been obtained from the execution of the confiscation order shall be transferred by Sweden to the issuing State. The Swedish Government can after an agreement with another state decide of another apportionment.*

*For a transfer of evidence to the issuing state, the issuing state must file an MLA. Where to send such a request could be found out via the EJN contact points. Evidence can be transferred if it reasonably can be presumed important to a criminal investigation. Even if the act is not criminalized in Sweden the evidence could be transferred to the issuing state if the state is a member of the EU, Norway or Switzerland and the issuing state has prescribed imprisonment for the crime. The court shall decide whether the evidence should be transferred to the issuing state or not.*

*The actual execution of the decision is regarding transfer of property handled by the Swedish Enforcement Authority and regarding evidence by the Police Authority.*

19. Under your national law, what legal remedies may be used against an order freezing property or evidence? Who is entitled to use those legal remedies? On which reasons or grounds may those legal remedies be based? How does your national law attempt to ensure the right to an effective legal remedy to challenge the substantive reasons on which the freezing order rest?

**Answer**

*The decision of the court to freeze property or evidence could be appealed. An appeal could be filed by the interested parties. After an appeal the Court of Appeals shall try the case. The decision of the issuing state is not to be examined. The Court of Appeals could refuse the freezing order on the same grounds that are listed in the answer under 7.*

20. Regarding injuries or damages caused by the execution of an order freezing property or evidence, how is the amount of injuries or damages calculated in your country? What is the appropriate procedure to apply for the reimbursement of the sums paid in those injuries or damages?

**Answer**

*The Swedish legislation regarding damages states that a person could receive damages if the state due to incorrectness and negligence has caused injuries in its exercise of authority. The Chancellor of Justice can decide regarding some claim of damages that is directed against the state. It is a written procedure at the Chancellor of Justice. The person that claims damages must show what incorrectness or negligence that has been made, that the incorrectness or negligence has caused injury and that the injury motivates the claimed damages. The amount of the damages depends on the actual injury and damage in the*

*specific case. If a person is not satisfied with the decision of the Justice Chancellor he or she can summons the state to appear in court. It is also possible to summons the state directly and not apply for a decision of the Justice Chancellor.*

## **CERTIFICATE**

21. Do you notice any defects, lacks or difficulties in the certificate that must be attached to an order freezing property or evidence?

### **Answer**

*There could be a specific box where one could indicate the urgency of the case and state specific time-limits, if such are needed. In the box there ought also be possible to state whether the freezing order should be executed although the time-limit has expired.*

## **GENERAL ISSUES**

22. In your opinion, what are the main obstacles arising within the EU when dealing with the recognition and enforcement of orders freezing property or evidence?

### **Answer**

*Swedish prosecutor have a rather limited experience of handling cases regarding freezing orders. In Sweden has, as mentioned, the legislation regarding FD 2006/783JHA not been implemented until 1 July this year, and that have made the application of the instrument regarding freezing orders more complicated.*

*Since the experience of freezing orders are limited it is not possible to give an answer on the main obstacles, but generally one could say that it is important that the principle of mutual recognition is maintained and that the certificate is complete.*

*One problem with the freezing order is that it doesn't replace the existing MLA instruments, which leads to confusion and sometimes to a cumbersome two-step procedure.*

23. In your opinion, what measures would improve the execution of orders freezing property or evidence within the European Union?

**Answer**

*One important factor in order to ensure that the instrument is being used is to make sure that the practitioners have knowledge about the instrument. In order to stimulate the using of the instrument training is of great significance. A good way to stimulate the using of freezing orders would be to arrange workshops, where prosecutors from different countries participate and discuss practical and theoretical issues.*

*As mentioned earlier another important factor is the principle of mutual recognition. The decision from another member state must be recognized and accepted. It is not possible to make an evaluation of the grounds for the decision taken by the issuing member state, especially when there is an urgent case, which usually is the case regarding freezing orders.*

24. Do you know any relevant judicial decision given under your national law implementing FD 2003/577/JHA?

**Answer**

*There are some decisions given regarding freezing orders. In one of those cases it was possible to freeze the property but it was evident that it would be difficult to transfer the property for confiscation according to the Swedish legislation on that time. However, as mentioned earlier, the Swedish legislation has been amended and therefore this case is not of any relevance today.*

**14ª.— ESLOVENIA. Ministry of Justice**

1	Es posible en fase de <i>pre-trial</i> , si es que hay razones para sospechar que se ha cometido un delito y que los bienes o las pruebas pueden sustraerse de la acción de la Justicia.
2	No, por lo general está sometida a supervisión judicial. La autoridad judicial competente para emitir una <i>freezing order</i> es: durante <i>el pre-trial</i> y mientras dura la investigación, <i>the investigating judge</i> . Una vez iniciado el proceso, la autoridad judicial competente es <i>the presiding judge</i> . La policía, con todo, puede incautar objetos como resultado de sus investigaciones, pero si tales objetos están en posesión de determinadas personas (que han sido nombradas depositarias de las mismas por un tribunal) sólo podrán ser incautados si media una orden judicial .
3	Posibilidad de confiscación de bienes o pruebas por decisión judicial, previa solicitud del fiscal.
4	<i>Investigating judge</i> . No se indica la autoridad judicial competente para ejecutar materialmente las medidas de aseguramiento, ni problemas de competencia en este sentido.
5	No se proporciona una respuesta concreta a la pregunta formulada.
6	Si. <b>Mayor detalle en las infracciones a las que dan cabida las categorías delictivas de la lista ex art. 3.2 DM 2003/577/JAI. Proporcionaría —se dice— mayor seguridad y evitaría peticiones dirigidas a que se facilite mayor información sobre esas infracciones delictivas.</b>
7	Se exige siempre la doble tipificación de la conducta, a lo que hay que añadir los motivos generales de denegación del reconocimiento o de la ejecución.
8	Los jueces eslovenos consultados no tienen ninguna experiencia sobre la aplicación de este instrumento. En cualquier caso se apunta la posibilidad utilizar EJN, Eurojust o de pedir información al Ministerio de Justicia con vistas a determinar la autoridad judicial competente de ejecución.
9	En alguna de las lenguas admitidas por el Estado de ejecución para la recepción de los documentos; extremo del que se puede recabar información del Ministerio de Justicia. <b>Se permite el envío mediante original o copia por cualquier medio, incluido el correo electrónico, siempre que garantice la confidencialidad de los datos enviados y permita a la autoridad de ejecución comprobar la autenticidad de la remisión y de los datos. Para el supuesto de que la documentación no se envíe a través de correo postal, se debe enviar posteriormente por correo</b>

	<b>una copia o una copia certificada de la decisión y el certificado original.</b>
10	En Eslovenia no hay reglas especiales que condicionen la validez de la prueba, de modo que la obtenida en el extranjero será válida siempre que no contradigan las normas constitucionales.
11	Los jueces eslovenos consultados no tienen experiencia en la recepción de <i>freezing orders</i> . La Ley eslovena permite la recepción mediante original o copia por cualquier medio, incluido el correo electrónico, siempre que garantice la confidencialidad de los datos enviados y permita comprobar la autenticidad de la remisión y de los datos. Para el supuesto de que la documentación no se envíe a través de correo postal, se debe enviar posteriormente por correo una copia o una copia certificada de la decisión y el certificado original.
12	En el menor tiempo posible y, de ser también posible, en las 24 horas siguientes a la recepción de una <i>freezing order</i> . No contesta No contesta
13	Los jueces eslovenos consultados no tienen experiencia en este sentido. Se proporciona la respuesta al amparo de la legislación eslovena, en todo coincidente con la DM 2003/577/JAI
14	Se considera aceptable.
15	Se considera aceptable.
16	Se carece de experiencia práctica al respecto.
17	Se considera razonable la fijación de una duración determinada para adoptar medidas de aseguramiento.
18	Se carece de experiencia práctica al respecto.
19	El afectado puede recurrir dentro de los 8 días de la notificación del embargo, pero no puede cuestionar las razones sustantivas que llevaron a emitir la <i>freezing order</i> . El recurso no suspenderá la ejecución de la orden.
20	No se dispone de datos.
21	<b>El certificado debería contemplar un período de tiempo específico para llevar a cabo la ejecución de la medida.</b>
22	Se carece de experiencia práctica al respecto.
23	<b>Se apunta la conveniencia de adoptar medidas dirigidas a facilitar la aplicación práctica de este instrumento normativo por los operadores jurídicos, como la celebración de <i>workshops</i> o la inclusión de información práctica en una página <i>web</i>.</b>
24	No.

#### ANEXO FICHA 14<sup>a</sup>

#### QUESTIONNAIRE ABOUT THE OPERATION OF THE FREEZING ORDER SYSTEM ACCORDING TO THE FD

## SCOPE

1. Under your national law, may an order freezing property or evidence be granted before criminal proceedings have commenced or, on the contrary, may it only be granted within an ongoing criminal process?

**The court may also order such provisional securing (freezing order) in the pre-trial procedure if there are reasonable grounds for suspicion that a criminal offence has been committed by means of which or for which the proceeds were acquired or such proceeds were acquired for another person or transferred to another person.**

**Police officers may confiscate objects during the criminal investigation or when executing orders of the court.**

2. Under your national law, may an order freezing property or evidence be granted without judicial supervision (by authorities such as the public prosecutor or the police) or, on the contrary, may it only be granted by a judge?

**Objects which must be confiscated under the Penal Code, or which may prove to be evidence in criminal proceedings shall be confiscated and delivered to the court for safekeeping or secured in some other way. Custodians of such objects shall hand them over at the request of the court. Police officers may confiscate objects during the criminal investigation however they can confiscate the objects in possession of custodians only when executing orders of the court.**

**The provisional securing of the request for the confiscation of proceeds shall be ordered by a ruling issued by the investigating judge in the pre-trial procedure and during the investigation. After charge sheet is filed, the ruling out of the main hearing shall be issued by the presiding judge, while at the main hearing it shall be issued by the panel.**

3. In your national criminal proceedings, what measures are more frequently taken in order to guarantee the subsequent confiscation or the use as evidence of goods, objects or data?

**No available data on frequency, but please take note of the general rules for issuing freezing or production order:**

**Objects which must be confiscated under the Penal Code, or which may prove to be evidence in criminal proceedings shall be confiscated and delivered to the court for safekeeping or secured in some other way.**

**When the confiscation of proceeds is taken into consideration in the criminal procedure and there is a danger that the accused alone or through other persons should use these proceeds for a further criminal activity or to conceal, alienate, destroy or otherwise dispose of it in order to prevent or render substantially difficult their confiscation after the completed criminal procedure, the court shall order, on a motion of the public prosecutor, a provisional securing of the request for the confiscation of proceeds.**

4. Under your national law, who are the competent authorities for granting an order freezing property or evidence? And for executing such an order? In case the competent authorities for granting and execution are not the same, please indicate what practical problems arise, if any.

**The provisional securing of the request for the confiscation of proceeds and evidence shall be ordered by a ruling issued by the investigating judge in the pre-trial procedure and during the investigation. After charge sheet is filed, the ruling out of the main hearing shall be issued by the presiding judge, while at the main hearing it shall be issued by the panel.**

**Deciding on the recognition and enforcement of a decision on the seizure or temporary protection of another Member State shall fall within the competence of the investigating judge.**

5. In your opinion, in order to avoid misunderstandings regarding the competence to execute an order freezing property or evidence, will it be better if a national authority such as the Ministry of Justice or the Office of the Public Prosecution is in charge of the appointment of the competent authority for execution?

**In Slovenia the competence for execution of freezing orders issued in other Member States is clearly defined in Act on Cooperation in Criminal Matters as a competence of the investigative judge and is generally not subject of misunderstanding. In the majority of cases the investigative judge is also the issuing authority.**

6. Does your national law include the very same list of offences not subject to the double criminality test foreseen in art. 3.2 of FD 2003/577/JHA? In your opinion, would any changes be necessary or convenient in the FD list or in your national list?

**Yes, the list is the same as in Article 3.2. of FD 2003/577/JHA. The possible changes can include more specific descriptions of some categories of acts. This would ensure more legal security and lawfulness and enable shorter and more efficient proceedings while avoiding the need to request for further information regarding these categories.**

7. Regarding offences NOT listed in art. 3.2 of FD 2003/577/JHA, does your national law require special conditions in order to recognize or to execute an order freezing property or evidence?

**The conditions required in order to recognize and execute an order freezing property or evidence are:**

**The domestic court shall not enforce the decision of the competent authority of another Member State on the seizure of objects or on temporary protection of the confiscation of proceeds from crime if:**

- 1. the conditions regarding double criminality (except for 32 categories) are not fulfilled;**
- 2. the enforcement would be in conflict with the regulations on immunity or privileges;**
- 3. the certificate referred to in point 2 of the first paragraph of Article 92 of this Act clearly indicates that the enforcement would infringe the prohibition of double jeopardy.**

**In criminal matters in relation to duties, taxes, customs and exchange, the enforcement of a decision shall not be refused on the ground that the law of the Republic of Slovenia does not impose the same kind of duty or tax or does not contain the same type of rules as regards duties, taxes, customs or exchange regulations as the law of the ordering State.**

## **TRANSMITTING FREEZING ORDERS**

8. What procedure or means do you usually follow in order to find out who is the competent judicial authority for execution of an order freezing property or evidence?

**Slovenian judges who were contacted for the purpose of this survey replied that so far they don't have any experience with issuing or executing the order freezing property or evidence.**



**The procedure for finding out the competent judicial authority that is generally used regarding the instruments of mutual recognition is request for help addressed to the Ministry of Justice and sometimes also through contact points of European Judicial Network or even Eurojust.**

**The national law prescribes that Eurojust and contact points of the European judicial network may be consulted in order to determine the competent issuing or enforcement authority.**

9. What language do you usually use when transmitting an order freezing property or evidence? Through what means or procedure do you usually transmit such an order and its annexed certificate?

**The order and other writings will be sent in its original form, in a certified copy or in another written form via mail, fax, electronic mail or another secure technical means that protects the secrecy of the data during the transfer and allows the enforcement judicial authority to check the authenticity of the sender and the data. If the decision and the certificate have not been sent via post, the competent authority of the implementing State shall be, on its request, subsequently sent by post a copy or certified copy of the decision and the original certificate.**

**The certificate should be translated in the official language of the implementing State, or in any other language accepted by that State. The ministry shall inform the courts as to which official languages are accepted by individual Member States.**

10. Under your national law, as a general rule, what formalities must be followed in order to ensure that the evidence taken is valid? (art. 5.1.II of FD)

**In our law there are no special rules regarding validity of foreign evidence. In general if the evidence were gathered lawfully in other Member State, they are valid also in our national proceeding, providing that the proceedings in other Member State were not seriously contradicting our constitutional rules.**

## **EXECUTING FREEZING ORDERS**

11. According to your national judicial authorities, what are the means, procedures or channels through which an order freezing property or evidence may validly sent/received in your country?

**Slovenian judges who were contacted for the purpose of this survey replied that so far they don't have any experience with issuing or executing the order freezing property or evidence.**

**According to our law the national authorities should accept any order sent in its original form, in a certified copy or in another written form via mail, fax, electronic mail or another secure technical means that protects the secrecy of the data during the transfer and allows the enforcement judicial authority to check the authenticity of the sender and the data.**

12. Under your national law, once an order freezing property or evidence has been received in your country, what is the legally established time-limit for its execution? Do the competent judicial authorities of your country usually comply with execution of the order within this time-limit? Do you think the 24-hour-time-limit after receipt of the order is reasonable?; if not, what other time-limit will it be reasonable, under your view?

**The court shall decide in the shortest possible time, within twenty-four hours after having received the decision, if possible.**

13. How do your national authorities usually proceed upon receiving a freezing order from another Member State when the certificate is not produced, is not sufficient or is not duly translated into one of the admitted languages?

**Slovenian judges who were contacted for the purpose of this survey replied that so far they don't have any experience with issuing or executing the order freezing property or evidence**

**However the procedure described in our national law is the following:**

**If the certificate has not been sent, is incomplete or is manifestly in conflict with the decision, the competent court may;**

- 1. fix an appropriate time limit for to the authority of the ordering State of the decision, to provide the court with, supplement or amend the certificate;**
- 2. accept other adequate document communicated by the authority of the ordering State;**

**3. comply with a request if the attached information is sufficient for making a decision.**

14. Regarding the grounds for non-recognition or non-execution of a freezing order, as foreseen in art. 7 of the FD, in your opinion: should any of the existing grounds be discarded?; should any other ground be included?

**The existing regulation of grounds for non-recognition is acceptable.**

15. Regarding the grounds for postponement of execution of a freezing order, as foreseen in art. 8 of the FD, in your opinion: should any of the existing grounds be discarded?; should any other ground be included?

**The existing regulation of grounds for postponement is acceptable.**

16. Art. 5.1.II of the FD provides: “Whenever it is necessary to ensure that the evidence taken is valid and provided that such formalities and procedures are not contrary to the fundamental principles of law in the executing State, the judicial authority of the executing State shall also observe the formalities and procedures expressly indicated by the competent judicial authority of the issuing State in the execution of the freezing order”. Have you ever faced circumstances that required such a provision to come into play?

**Slovenian judges who were contacted for the purpose of this survey replied that so far they don’t have any experience with issuing or executing the order freezing property or evidence and therefore they were not yet confronted with the circumstances described in Art. 5.1.II.**

17. In your opinion, would it reasonable that the certificate attached to a freezing order would fix a specific time-limit for the lifting of the measures taken as a consequence of the order?

**Slovenian judges think that fixing a specific time-limit for lifting the measure in the certificate would be reasonable.**

18. What sort of practical problems or obstacles arise in your country in relation to requests for transferring evidence or property for confiscation? What is your national practice when processing those requests and, in particular, how is evidence (or even property) transferred to the issuing State?

**No information available due to the fact that Slovenian judges who were contacted for the purpose of this survey replied that so far they don't have any experience with issuing or executing the order freezing property or evidence.**

19. Under your national law, what legal remedies may be used against an order freezing property or evidence? Who is entitled to use those legal remedies? On which reasons or grounds may those legal remedies be based? How does your national law attempt to ensure the right to an effective legal remedy to challenge the substantive reasons on which the freezing order rest?

**The order shall be served to persons whose property rights and legal interests are affected, and to the state prosecutor.**

**These persons may file an appeal against the order within eight days of its receipt. It is not allowed to challenge the contextual base resulting from the decision on seizure or protection. An appeal shall not withhold the execution of the order. The panel of the high court shall decide on the appeal within three days. Retrial and a request for the protection of legality shall not be allowed.**

20. Regarding injuries or damages caused by the execution of an order freezing property or evidence, how is the amount of injuries or damages calculated in your country? What is the appropriate procedure to apply for the reimbursement of the sums paid in those injuries or damages?

**No available data.**

## **CERTIFICATE**

21. Do you notice any defects, lacks or difficulties in the certificate that must be attached to an order freezing property or evidence?

**As already mentioned before our judges would find reasonable if the certificate would fix a specific time-limit for lifting the requested measure.**

## **GENERAL ISSUES**

22. In your opinion, what are the main obstacles arising within the EU when dealing with the recognition and enforcement of orders freezing property or evidence?

**Slovenian judges who were contacted for the purpose of this survey replied that so far they don't have any practical experience with issuing or executing the order freezing property or evidence**

23. In your opinion, what measures would improve the execution of orders freezing property or evidence within the European Union?

**Specially non-legislative measures and awareness raising, including sharing practical experience, organising workshops for practitioners, all forms of training for judiciary, establishment of web-page with useful practical information, handbook focusing on practical cases ect.**

24. Do you know any relevant judicial decision given under your national law implementing FD 2003/577/JHA?

**No.**

**15ª.— POLONIA. Marzenna Monwid-Olechnowicz. Prosecutor in District Sieraz**

No remite una contestación formal al cuestionario, esgrimiendo carecer de experiencia práctica en la aplicación de la DM 2003/577/JAI. Con todo, sí aporta algunas consideraciones en relación con algunas de las preguntas formuladas en éste, amén su opinión sobre este instrumento normativo. Esta opinión se resume en que la DM 2003/577/JAI no supone ningún añadido a las normas convencionales y a las propias previsiones internas en materia de incautación de bienes y pruebas con carácter transfronterizo y sí en cambio ciertos requerimientos burocráticos que no se compadecen con la rapidez que demanda la adopción de las medidas de aseguramiento de bienes y elementos de prueba. Se reconoce, no obstante, la DM 2003/577/JAI puede tener cierta utilidad en aras a lograr el aseguramiento de bienes y pruebas que se encuentren en otros Estados.

1	Para proceder al aseguramiento de elementos de prueba o de bienes, con vistas a garantizar penas pecuniarias, pagos de multa, o reembolso de los daños ocasionados por el delito es necesario, una decisión del tribunal o del fiscal a petición de la policía o de otra autoridad. También es posible que la policía proceda a la confiscación de bienes en caso de urgencia y antes del inicio de un proceso penal. En estos casos cualquier persona puede solicitar del tribunal o del fiscal que apruebe/deniegue esa confiscación en los 14 días siguientes a aquel en que ésta se produjo.
2	Existe la posibilidad de someter a control judicial la confiscación de bienes o elementos de prueba realizada por la policía o por otra autoridad como los guardias forestales.
3	Interdicción de venta de bienes inmuebles, administración de bienes inmuebles o empresas, depósito de bienes muebles, etc.
4	Autoridades judiciales competentes para decidir sobre la procedencia de una solicitud de embargo preventivo y de aseguramiento de pruebas son el tribunal o el fiscal. Autoridades judiciales competentes para la ejecución el <i>huissier de justice</i> o <i>bureau de fiscal</i> . El modo de llevar a cabo el cumplimiento de las medidas de aseguramiento de bienes y pruebas es el previsto en el CPC-art.292.
5	<b>Opinión favorable a la descentralización en la medida en que permite acelerar la ejecución de las medidas de aseguramiento de bienes o pruebas instadas por otros Estados miembros. No obstante, se resalta que la descentralización presenta como inconveniente el de impedir un mayor conocimiento de este instrumento y de sus utilidades. En este sentido, se considera razonable que, cuando menos, una autoridad central conozca y supervise la aplicación de la DM.</b>

6	Si <b>En cuanto a la conveniencia de hacer cambios en la lista del art. 3.2 DM 2003/577/JAI, se menciona el literal w del art. 607 CPP</b>
7	No
8	EJN
9	Los documentos deben traducirse a una lengua oficial del Estado de ejecución o en otra lengua indicada por el Estado
10	Es necesario realizar un acta sobre la regularidad formal de los términos en que se ha producido la confiscación. Si la obtención de prueba ordenada por el <i>bureau</i> debe practicarse por un operador de telecomunicaciones, es necesario que éste cuente con autorización escrita.
11	Pueden ser recibidas directamente por las autoridades judiciales <b>competentes según las normas internas de asistencia judicial internacional (art. 589 g  § 1) y los Tratados internacionales.</b>
12	Si es posible en las 24 horas siguientes a la recepción de la solicitud. No contesta
13	Es necesario ponerlo en conocimiento de la autoridad requirente, fijando un plazo para el reenvío del certificado, que debe ser completo y estar traducido.
14	No se considera necesario realizar modificaciones internas en relación con el art. 7 DM.
15	No se considera necesario realizar modificaciones en relación con el art. 8 DM
16	No.
17	Se señala que cada caso es diferente. Esta solución parece más bien referida a la cuestión 18 respecto de la que no existe mención.
18	No se contesta.
19	Cualquier persona para la que las medidas de aseguramiento suponga un perjuicio puede interponer una queja en un plazo de 7 días desde la notificación de la orden de ejecución. El art. 589n§ 4 establece que el procurador o tribunal deben notificar inmediatamente, a través de <i>mail o fax</i> , la interposición de la queja a la autoridad judicial competente del Estado de emisión. También debe notificarse a esta última el resultado del recurso
20	Procedimiento previsto en los arts. 589k y 589u CPP. El Tesoro público.
21	No se contesta.
22	Falta de confianza en las autoridades de otros países; diferencias jurídicas, cuestiones indemnizatorias; ausencia de contacto directo entre las autoridades judiciales competentes; ausencia de competencias lingüísticas; y problemas con los traductores y con los tiempos.
23	No se contesta.
24	No se contesta.

ANEXO FICHA 15<sup>a</sup>

La Pologne a mis en œuvre la décision-cadre avant l'échéance fixée (2 août 2005) dans les dispositions des chapitres du Code de procédure pénale:

- Le chapitre 62 a - la demande d'aide juridique à un autre pays / les articles 589 g à 589 k /
- Le chapitre 62 b - l'exécution de la demande d'un autre Etat pour l'aide juridique / les articles 589 l à 589 u /.

La Pologne a mis en œuvre la liste figurant à l'article 3, paragraphe 2, conformément à la décision-cadre mais la liste est dans le chapitre sur le mandat d'arrêt européen - la chapitre 65b l'article 607w.

Je n'ai pas d'expérience pratique.

En 2010, Le Bureau du Procureur Général nous a demandé de l'attention et l'expérience pratique / la lettre datée du 27/10/2010 de signature PG V WM 0102/67/10 /.

À mon avis, comme une pratique qui prépare et exécute les demandes d'entraide judiciaire internationale, la procédure pénal polonais contient des dispositions suffisantes pour arrêter et protéger les biens et les preuves - sans la règle de la directive-cadre.

Je peux exécuter de demande d'un autre Etat selon les règles générales / vertu de les Conventions et les accords bilatéraux /, bien évidemment documentée, et je peux garder / arrêter et protéger / les preuves ou les biens sur la base de l'article 217 Code de procédure pénale.

Pour moi, la directive est une bureaucratie supplémentaire si je réalise une demande d'aide juridique d'autres pays. Il est logique. Les criminels ne connaissent pas de frontières. Il est nécessaire de retirer rapidement leurs bénéfices du crime, des preuves du crime. Chacun le sait, il faut agir rapidement pour être efficace.

Je ne connais pas les codes d'autres pays, les règles d'arrêter et protéger des preuves et des biens. Je pense que la directive peut être nécessaire si j'écris une demande d'aide juridique dans un autre pays.

En Pologne, nous avons :

Chapitre 25. L'arrêt des choses. Rechercher

§ 1 Les choses qui pourraient constituer des preuves dans le cas où l'objet d'une saisie en vue de conservation / garantir/



- les peines pécuniaires / du recouvrement de l'amende/
- des mesures punitives pour les intérêts pécuniaires / garantie du recouvrement de la confiscation des biens ou des choses
- conservation de remboursement du dommages

doit être délivré par la décision le tribunal ou le procureur, en cas d'urgence - à la demande de la police ou autre autorité.

§ 4 Si la police a arrêté des biens, une personne a le droit de soumettre immédiatement une demande de la cour ou de procureur d'approuver l'arrestation. Il faut livrer la décision de la cour ou de procureur dans les 14 jours de rétention.

Mes réponses à certaines questions:

**Ad. 1.** Nous pouvons arrêter des biens aussi avant que la procédure pénal est engagée – art. 217 en cas d'urgence - à la demande de la police ou autre autorité /par exemple - gardes dans les forêts domaniales/.

Un procureur ne sait encore pas sur l'affaire.

**Ad. 2 .** Dans notre procédure nous avons contrôle judiciaire. Art. 236 - la plainte pour le tribunal.

**Ad. 3.** Le chapitre 25 et Le chapitre 32 - protection de la propriété par exemple interdiction de la vente de biens immobiliers, la gestion l'immobilier ou d'entreprise, saisie provisoire des biens mobiliers.

**Ad. 4.** une procédure devant un tribunal – tribunal, une procédure préparatoire – procureur l'exécution - huissier de justice or bureau de fiscal.

Le mode règle par le Code de procédure civile - art. 292.

**Ad. 5.** L'article 4, paragraphe 1, dispose que la décision de gel, accompagnée du certificat, est transmise par l'autorité judiciaire qui l'a prise directement à l'autorité judiciaire compétente pour son exécution. En ce qui concerne la Pologne, le contact direct est établi à partir de la liste des autorités compétentes et il n'y a pas d'autorité central. C'est très bien. La décentralisation accélère l'exécution mais la décentralisation est la raison de l'absence de connaissances sur la mise en œuvre pratique de la directive. À mon avis, les autorités centrales doivent surveiller la mise en œuvre de la directive par les tribunaux et parquets. J'ai reçu votre courrier. Tout d'abord, je l'ai reçu de l'Espagne. Alors le pouvoir central m'a envoyé la même chose.

J'ai voulu préparer une réponse. J'ai demandé mes collègues, mais personne ne sait rien. Personne n'a l'obligation de recueillir des informations. Personne ne sait rien. Je pense que l'autorité centrale doit connaître et surveiller l'application de la décision-cadre. / deux autorités centrales en Pologne - le ministre de la Justice et procureur general /.

**Ad. 6.** La liste est dans le chapitre sur le mandat d'arrêt européen - la chapitre 65b l'article 607w.

**Ad. 7.** Art. 291 Code de procédure pénale - procureur, le tribunal sans demande de la victime peut / il n'existe aucune obligation mais peut / § 1 on peut exécuter

la décision de gel si l'infraction / crime, délit ou l'infraction/ est punissable : amende, confiscation, surcroît, prestations en espèces, obligation de réparer les dégâts, réparation du préjudice subi.

§ 2. crime, délit ou l'infraction contre les biens ou crime, délit ,

l'infraction a causé un dommage à la propriété - on peut exécuter la décision de gel / sans demande de la victime / pour réparer les dommages.

**Ad. 8.** Je cherche dans l'Atlas RJE et je vérifie sur internet, je peux demander un point de contact.

**Ad. 9.** Art. 589g § 6 Les documents doivent être traduits dans la langue officielle de l'État d'exécution ou dans une autre langue indiquée par l'Etat.

**Ad. 10.** Art. 229 il est nécessaire de dresser procès-verbal de la retention -

quand, où, qui, sur quelle base, ce qu'il a fait, comment, pourquoi, une description du biens ou de preuves, signé par les participants aux activités.

Si la preuve est délivré par le bureau , un opérateur de télécommunications - une lettre du représentant autorisé.

**Ad.11.** Art.589g § 1 directement à l'autorité judiciaire compétente d'un autre member, § 4 - selon les règles du chapitre 62 et 66 à l'aide juridique et les accords internationaux.

**Ad. 12.** Art. 589 n § 1 - si possible dans les 24 heures suivant la réception de la décision. 24 heures - selon l'opinion exprimée dans la doctrine <sup>7</sup> c'est un terme instruction, ce qui signifie que le délais ne provoque pas les conséquences négatives de la procédure.

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<sup>7</sup> S. Steinborn, [w:] *Grajewski i in.*, Komentarz, t. II, s. 605; *Hofmański i in.*, Komentarz, t. III, s. 527)

**Ad. 13.** Art. 589 m § 4 il faut consulter avec l'autorité requérante.  
délai d'envoi de certificate. Traduction est nécessaire.

**Ad. 14.** Art. 589 m - possible de refuser. Il est suffisant.

**Ad. 15.** Art. 589 o - entraver d'autres procédures pénales  
- biens faisant déjà l'objet d'une autre décision de gel

**Ad. 16.** Art. 589 r - mode particulier ou d'une forme spéciale - si n'entre pas en conflit avec les principes du droit de la République polonaise.

**Ad. 17.** Chaque cas est différent.

**Ad. 19.** Art. 589 n § 3 la plainte des personnes dont les droits ont été violés. Cette expression est utilisée pour déterminer la classe des personnes habilitées à déposer une plainte, et comprend toute personne qui possède fondement de l'appel /*gravamen*/.<sup>8</sup>

La terme - 7 jours à partir de la date de signification de l'ordonnance d'exécution (article 460 ).

Le dépôt d'une plainte ne suspend pas la décision attaquée.

La disposition de l'art. 589n § 4 - immédiatement le tribunal ou un procureur doit notifier l'autorité judiciaire compétente d'un autre Etat membre de l'UE que la plainte a été portée / par e-mail, fax.

Il faut envoyer le contenu de la décision de la cour – par e-mail, fax.

**Art. 169 code civil**  
**entitled person**

it and hands it over to the acquirer, the latter acquires ownership at the time he takes possession of the thing unless he is acting in bad faith. § 1. If a person who is not entitled to dispose of a movable disposes of  
However, if a thing lost, stolen or otherwise mislaid by the owner is disposed of before three years have passed from the time it was lost, stolen or mislaid, the acquirer may acquire ownership only upon the lapse of the said three years. This restriction does not apply to money or bearer documents or to things acquired at an official public auction or in the course of execution procedure. § 2.

**Art. 170 code civil**  
**Acquisition of an encumbered thing**

In the case of the transfer of ownership of a movable encumbered with a third party right, this right expires at the time the thing is handed over to the acquirer unless the latter is acting in bad faith. The provision of the second paragraph of the preceding article applies accordingly.

<sup>8</sup> Hofmański i in., Komentarz, t. III, s. 529; Grzegorzcyk, Komentarz, s. 1243

**Ad. 20** Art. 589k et 589u - Le Trésor de l'Etat doit être responsable des dommages. / art. 417 code civil - extrêmement art. 417<sup>1</sup> § 2 et 3 code civil/.

**Art. 417**

**State Treasury liability**

§ 1. The State Treasury or a local government unit or another person exercising public authority by force of law is liable for any damage caused by an unlawful action or omission while exercising public authority.

§ 2. If performance of public authority tasks is contracted under an agreement to a local government unit or another legal person, joint and several liability for any damage caused is borne by the contractor and the local government unit contracting the tasks or the State Treasury.

**Art. 417<sup>1</sup>**

**Damage arising from a legislative act**

§ 1. If damage is caused by a legislative act, remedy thereof may be demanded once it has been declared incompliant with the Constitution, a ratified international treaty or the law in the course of appropriate proceedings.

§ 2. If damage is caused by a final and non-revisable court decision or other final decision, remedy thereof may be demanded once such decision has been declared incompliant with the law in the course of appropriate proceedings, unless separate regulations provide otherwise. This also applies to cases where a final and non-revisable court decision or other final decision has been issued based on a legislative act that is incompliant with the Constitution, a ratified international treaty or the law.

§ 3. If damage is caused through failure for a court decision or other decision to be issued and the obligation to issue the same is provided for by a legal regulation, remedy of damage may be demanded once the failure to issue the court decision or other decision is declared incompliant with the law in the course of appropriate proceedings unless separate regulations provide otherwise.

§ 4. If damage is caused by failure for a legislative act to be issued and the obligation to issue the same is provided for by a legal regulation, the failure to issue the act is declared incompliant with the law by the court hearing the case for remedy of damage.

Art. 589 k notre demande d'aide

procureur ou le tribunal doit représenter le Trésor public - comme stations fiscales / l'autorité qui a fait une demande d'aide juridique/ . Les principes généraux - l'autorité est responsable pour les dommages. L'autorité qui fait la faute. La position de la doctrine.<sup>9</sup>

Art. 589 u demande d'un autre membre

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<sup>9</sup> Hofmański i in., Komentarz, t. III, s. 514; Grzegorzczuk, Komentarz, s. 1236; S. Steinborn, [w:] Grajewski i in., t. II, s. 589)

Le ministre de la Justice devrait s'appliquer pour le remboursement du montant de la compensation - Telle est la position de la doctrine.<sup>10</sup> Il n'y a pas de disposition.

Ad. 22. difficultés

- manque de confiance aux autorités d'autres pays
- question de l'indemnisation
- manque de compétences linguistiques
- / le temps /

- les différences juridiques
- manque de contact direct
- problèmes avec les traducteurs

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<sup>10</sup> 1. S. Steinborn, [w:] *Grajewski i in.*, Komentarz, t. II, s. 622

2. Kodeks postępowania karnego. Komentarz  
dr Katarzyna T. Boratyńska, dr Adam Górski, dr Andrzej Sakowicz, dr Andrzej Ważny Rok wydania: 2009 Wydawnictwo: C.H.Beck Wydanie: 3

**16ª.—RUMANÍA. Unit for Crime prevention and Cooperation with EU Asset Recovery Offices. Ministry of Justice**

1	Las medidas de aseguramiento de bienes y pruebas sólo pueden ser adoptadas en el ámbito de un proceso penal en curso o en el período previo de investigación.
2	Una <i>freezing order</i> puede ser emitida por el fiscal —que tiene la consideración de magistrado— en el seno de una investigación criminal, o por un tribunal una vez iniciado el juicio.
3	Incautación de bienes muebles e inmuebles, incluso para garantizar la reparación del daño o el pago de multas. <b>Cuando se trate de garantizar un comiso posterior, la incautación sólo puede realizarse respecto de bienes pertenecientes al sospechoso o acusado (v. art. 163 CPP).</b> Incautación de objetos y escritos que puedan servir como prueba en un proceso penal (art. 96 CPC).
4	Fiscal, cuando la <i>freezing order</i> se adopta durante la fase de investigación criminal y Tribunal cuando se adopta en fase de juicio. La <i>freezing order</i> es ejecutada por la oficina del fiscal cuando se adopta durante la fase de investigación criminal y por el Tribunal que conoce de la fase de juicio en cuya jurisdicción se encuentran los bienes a que se refiere la <i>freezing order</i> . Si la <i>freezing order</i> se refiere a bienes que se encuentran en demarcaciones distintas, la determinación de la competencia para proceder a su reconocimiento y ejecución corresponde, en función del caso, a la <i>Prosecution Office of the Bucharest Tribunal</i> o a <i>Bucharest Tribunal</i> . No se aprecian problemas de competencia.
5	<b>No. Se considera que la intervención de una autoridad central, como regla general, en procedimientos basados en el reconocimiento mutuo constituiría un paso atrás.</b> <b>La intervención de esta clase de autoridades debería reservarse sólo para los casos en que resulte absolutamente necesario.</b>
6	Sí. No se aprecia necesidad de cambios.
7	Se exige la doble tipificación de la conducta para el aseguramiento de prueba y que el delito permita el embargo preventivo según la legislación rumana cuando se requiera el embargo del bien.
8	La contestación proporcionada no se ajusta a la pregunta formulada.
9	No se reseñan especialidades en materia de idioma. El envío suele realizarse a través de correo postal y <b>ocasionalmente a través de fax.</b>
10	No se reseñan especialidades respecto del procedimiento interno y las formalidades que deben seguirse para garantizar la validez de la prueba.
11	Correo postal, <b>fax o e-mail (en condiciones que permitan establecer la autenticidad del documento).</b>

12	<b>En fase de investigación delictiva, el fiscal debe enviar una resolución de reconocimiento de la <i>freezing order</i> dentro de los 5 días siguientes a su recepción. De no recurrirse, dicho reconocimiento se ejecutará en otros cinco días. Una vez iniciado el proceso penal, el tiempo dependerá del trabajo del Juez, quien deberá adoptar una resolución de reconocimiento y ejecución en juicio. Este juicio tendrá lugar a través de un procedimiento urgente y proritario.</b>
13	Se insta la subsanación. De no subsanarse la falta, se deniega la ejecución de la <i>freezing order</i> .
14	No se hacen observaciones.
15	No se hacen observaciones.
16	Pese a la falta de experiencia en la aplicación de este instrumento, se reseña que, a la luz de otros instrumentos convencionales (CAJMP 1959/2000) no se ponen trabas en el cumplimiento de las formalidades y procedimientos indicados por otros Estados en la obtención de elementos pruebas.
17	En su opinión, <b>no puede predecirse un plazo limitado de tiempo para el cumplimiento de la medida cuando se emite una <i>freezing order</i>.</b>
18	No se indican problemas, por falta de experiencia.
19	En fase de investigación delictiva, se permite que cualquier parte interesada (incluidos los terceros de buena fe) puedan interponer un recurso frente a la ordenanza del fiscal reconociendo la <i>freezing order</i> . El plazo para interponer este recurso es de 5 días. Una vez iniciado el proceso, la resolución de reconocimiento y ejecución puede apelarse si es contraria a la ley por cualquier persona interesada (incluidos los terceros de buena fe). El plazo de interposición es de 5 días.
20	La contestación proporcionada no se ajusta a la pregunta formulada.
21	No se conocen, por falta de experiencia.
22	<b>Problemas relativos a la descripción y localización de los bienes y pruebas, así como sobre los derechos de terceros de buena fe relativos a tales bienes.</b>
23	No se contesta.
24	No se conocen, por falta de experiencia.

## ANEXO FICHA 16<sup>a</sup>

### QUESTIONNAIRE ABOUT THE OPERATION OF THE FREEZING ORDER SYSTEM ACCORDING TO THE FD

#### SCOPE

1. Under your national law, may an order freezing property or evidence be granted before criminal proceedings have commenced or, on the contrary, may it only be granted within an ongoing criminal process?

Within Law no. 302/2004 on judicial cooperation in criminal matters, section 3 of chapter II (“Provisions on judicial assistance that apply in relation to the Member States of the European Union”) contains provisions on cooperation with Member States of the European Union, implementing the Council Framework Decision No. 2003/577/JHA of 22 July 2003 on the execution in the European Union of orders freezing property or evidence.

According to this section, *Freezing order* shall mean any measure taken **during criminal proceedings** by a judicial authority of a Member State consisting of the provisional freezing of property, in order to avoid any operation of destruction, conversion, displacement, transfer or alienation of that property (art. 219 para 1).

We can conclude that an order freezing property or evidence may only be granted within an ongoing criminal process. Please also consider that art. 1 from the FD itself stipulates that the purpose of the FD is to establish the rules under which a Member State shall recognize and execute in its territory **a freezing order** issued by a judicial authority of another Member State **in the framework of criminal proceedings**.

2. Under your national law, may an order freezing property or evidence be granted without judicial supervision (by authorities such as the public prosecutor or the police) or, on the contrary, may it only be granted by a judge?

The freezing order is issued by the public prosecutor at the stage of criminal prosecution, and by the law court at the trial stage (art. 222 para 1 from Law 302/2004). According to relevant provisions regarding organization of the judiciary, in Romania the prosecutor is considered a magistrate.

3. In your national criminal proceedings, what measures are more frequently taken in order to guarantee the subsequent confiscation or the use as evidence of goods, objects or data?



According to art. 163 and following provisions from the Criminal Procedure Code - CPC, interim measures are taken during the criminal trial by the prosecutor or the court, consisting in freezing movable and immovable goods for special confiscation, meant to repair the damage produced by the crime, as well as to guarantee the execution of the fine.

The interim measures aimed at repairing the damage can refer to goods belonging to the accused or the defendant and to the person bearing the civil responsibility, up to the probable value of the damage.

The interim measures aimed at guaranteeing the execution of the fine or the confiscation of the assets is taken only against the assets of the accused or the defendant.

According to art. 96 of the CPC, the criminal investigation body or the court has to take away the objects or writings that may serve as means of evidence in the criminal trial.

4. Under your national law, who are the competent authorities for granting an order freezing property or evidence? And for executing such an order? In case the competent authorities for granting and execution are not the same, please indicate what practical problems arise, if any.

The freezing order is issued by the public prosecutor at the stage of criminal prosecution, and by the law court at the trial stage (art. 222 para 1 from Law 302/2004).

The freezing order is executed by the prosecution office of the tribunal, at the stage of criminal prosecution, and by the tribunal at the trial stage, in whose jurisdiction the property is located for which the freezing order has been issued.

If the freezing order concerns several items of property that are located in the jurisdictions of two or more competent Romanian judicial authorities, the competence to recognise and execute the freezing order shall belong, depending on the stage of the proceedings, either to the Prosecution Office of the Bucharest Tribunal or to the Bucharest Tribunal.

If the freezing order concerns property that is involved in pending criminal proceedings or in proceedings that have been decided by final judgement, the competence shall belong to the prosecution office of the tribunal at the stage of criminal prosecution and to the tribunal at the

trial stage, regardless of the degree of jurisdiction of the Romanian judicial authority that has been called upon to solve the case or that has pronounced the judgement.

So far, the Romanian authorities did not receive such request based on this FD.

5. In your opinion, in order to avoid misunderstandings regarding the competence to execute an order freezing property or evidence, will it be better if a national authority such as the Ministry of Justice or the Office of the Public Prosecution is in charge of the appointment of the competent authority for execution?

According to the Romanian law, the competence to execute an order freezing property or evidence is decided according to the place where the property / evidence is located. If the order is referring to multiple properties / evidences Prosecutor's Office of the Bucharest District Court or the Bucharest District Court becomes competent. The direct contact is promoted by all modern legal instruments concerning judicial cooperation in criminal matters and the intervention of a central authority whether is the Ministry of Justice or the Public Prosecutor's Office as a rule, it could be considered a step back.

The competence of the executing authority (court or prosecutor's office) is provided by the law and a central authority can not "appoint" an executing authority according to other criteria.

If the direct contact is not possible, if any problems are encountered that can not be solved by direct contact, the intervention of the central authority is justified and the necessary assistance will be provided, but only when such measure is absolutely necessary.

6. Does your national law include the very same list of offences not subject to the double criminality test foreseen in art. 3.2 of FD 2003/577/JHA? In your opinion, would any changes be necessary or convenient in the FD list or in your national list?

Yes, the list of offences is similar to that provided by art. 3.2 of the FD.

In our opinion, no changes are necessary.

7. Regarding offences NOT listed in art. 3.2 of FD 2003/577/JHA, does your national law require special conditions in order to recognize or to execute an order freezing property or evidence?

For cases not covered by para. (1) of art. 223 (the list of offences), the recognition and execution of a freezing order issued for the purposes of securing evidence shall be subject to the condition that the acts for which the order was issued constitute an offence under Romanian law, whatever the constituent elements or however described under the law of the issuing State.

For cases not covered by para. (1), the recognition and execution of a freezing order issued for the purposes of subsequent confiscation of property shall be subject to the condition that the acts for which the order was issued constitute an offence which, under Romanian law, allows for such freezing, whatever the constituent elements or however described under the law of the issuing State.

In relation to taxes or duties, customs and exchange, execution of the freezing order may not be refused on the ground that Romanian legislation does not impose the same kind of tax or duty or does not contain a tax, duty, customs and exchange regulation of the same kind as the law of the issuing State.

## **TRANSMITTING FREEZING ORDERS**

8. What procedure or means do you usually follow in order to find out who is the competent judicial authority for execution of an order freezing property or evidence?

As already mentioned, according to the Romanian law, „(1) The freezing order is executed by the prosecution office of the tribunal, at the stage of criminal prosecution, and by the tribunal at the trial stage, in whose jurisdiction the property is located for which the freezing order has been issued.

(3) If the freezing order concerns several items of property that are located in the jurisdictions of two or more competent Romanian judicial authorities, the competence to recognise and execute the freezing order shall belong, depending on the stage of the proceedings, either to the Prosecution Office of the Bucharest District Court or to the Bucharest District Court.”

9. What language do you usually use when transmitting an order freezing property or evidence? Through what means or procedure do you usually transmit such an order and its annexed certificate?

The freezing order and the certificate must be accompanied by a translation in one of the official language of the requested state, according to its declaration.

Such requests are usually transmitted by post and rarely also by fax.

10. Under your national law, as a general rule, what formalities must be followed in order to ensure that the evidence taken is valid? (art. 5.1.II of FD)

Art. 225 from Law 302/2004:

(1) At whichever stage of the proceedings, the Romanian judicial authority shall recognise any freezing order without any further formality and shall forthwith take the measures required for its immediate execution, in the same way as for a measure under Art. 219 para. (1) taken by a Romanian judicial authority, unless one of the grounds for non-recognition or non-execution provided for in Art. 230 or one of the grounds for postponement provided for in Art. 231 is applicable.

(2) Whenever it is necessary to ensure that the evidence taken is valid, the executing Romanian judicial authority shall also observe the formalities and procedures expressly indicated by the issuing judicial authority, provided that such formalities and procedures are not contrary to the constitutional principles.

(3) A report on the execution of the freezing order – based on the report drawn up by the judicial body who carried out the freezing order – shall be made forthwith by the executing Romanian judicial authority to the competent authority in the issuing State by any means capable of producing a written record.

(4) Any additional coercive measures rendered necessary by the freezing order shall be taken in accordance with the applicable procedural rules of the Criminal Procedure Code.

## **EXECUTING FREEZING ORDERS**

11. According to your national judicial authorities, what are the means, procedures or channels through which an order freezing property or evidence may validly sent/received in your country?

Such requests can be sent by post, fax or e-mail (under conditions allowing to establish the authenticity of the letter). Usually, the requests were sent / received by post.

12. Under your national law, once an order freezing property or evidence has been received in your country, what is the legally established time-limit for its execution? Do the competent judicial authorities of your country usually comply with execution of the order within this time-limit? Do you think the 24-hour-time-limit after receipt of the order is reasonable?; if not, what other time-limit will it be reasonable, under your view?

According to the Romanian law: „At whichever stage of the proceedings, the Romanian judicial authority shall recognise any freezing order without any further formality and shall forthwith take the measures required for its immediate execution, in the same way as for a measure ... taken by a Romanian judicial authority, unless one of the grounds for non-recognition or non-execution ..... or one of the grounds for postponement ... is applicable”.

However, at the stage of criminal prosecution, the competent public prosecutor shall issue an ordinance within 5 days after receiving the translation and all the necessary supplementary information. The freezing order shall be enforced by the public prosecutor who issued the ordinance recognising it if this ordinance is not challenged within 5 days.

In the stage of judicial proceedings the case shall be heard by a panel of one judge, who shall issue a resolution in camera. The trial shall take place in emergency and priority procedure.

13. How do your national authorities usually proceed upon receiving a freezing order from another Member State when the certificate is not produced, is not sufficient or is not duly translated into one of the admitted languages?

In this case, supplementary information must be requested by the executing authority from the issuing authority. If the problem is not solved, then the execution shall be refused.

14. Regarding the grounds for non-recognition or non-execution of a freezing order, as foreseen in art. 7 of the FD, in your opinion: should any of the existing grounds be discarded?; should any other ground be included?

We have no amendments.

15. Regarding the grounds for postponement of execution of a freezing order, as foreseen in art. 8 of the FD, in your opinion: should any of the existing grounds be discarded?; should any other ground be included?

We have no amendments.

16. Art. 5.1.II of the FD provides: “Whenever it is necessary to ensure that the evidence taken is valid and provided that such formalities and procedures are not contrary to the fundamental principles of law in the executing State, the judicial authority of the executing State shall also

observe the formalities and procedures expressly indicated by the competent judicial authority of the issuing State in the execution of the freezing order”. Have you ever faced circumstances that required such a provision to come into play?

As already mentioned, we have no practical experience with this FD. However, this kind of formalities could be also mentioned in a mutual legal assistance request based on the European Convention on mutual assistance in criminal matters, Strasbourg 1959, or the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union, Brussels, 2000. So far, the Romanian authorities had no problem to comply with such formalities in order to make them usable in the issuing state.

17. In your opinion, would it reasonable that the certificate attached to a freezing order would fix a specific time-limit for the lifting of the measures taken as a consequence of the order?

In our opinion, this time-limit may not be predictable at the moment when the freezing request is issued.

18. What sort of practical problems or obstacles arise in your country in relation to requests for transferring evidence or property for confiscation? What is your national practice when processing those requests and, in particular, how is evidence (or even property) transferred to the issuing State?

As mentioned, we have no practical experience with this FD.

19. Under your national law, what legal remedies may be used against an order freezing property or evidence? Who is entitled to use those legal remedies? On which reasons or grounds may those legal remedies be based? How does your national law attempt to ensure the right to an effective legal remedy to challenge the substantive reasons on which the freezing order rest?

At the stage of criminal prosecution: according to the Romanian law: “any party interested, including bona fide third parties, may lodge a complaint against the public prosecutor’s ordinance recognising the freezing order, if it has violated their legitimate interests. The complaint must be lodged within 5 days from service of a copy of the ordinance.”

At the trial stage: the resolution may be appealed against on points of law, within 5 days from the pronouncement or service, as appropriate, by any person interested, including bona fide third parties, if it has violated their legitimate interests.

20. Regarding injuries or damages caused by the execution of an order freezing property or evidence, how is the amount of injuries or damages calculated in your country? What is the appropriate procedure to apply for the reimbursement of the sums paid in those injuries or damages?

Where Romania is responsible for injury caused to one of the parties interested, including bona fide third parties by the execution of a freezing order transmitted for execution to a Romanian judicial authority, Romania shall require the issuing State to reimburse any sums paid in damages to the person interested except if, and to the extent that, the injury or any part of it is exclusively due to the conduct of Romanian authorities.

### **CERTIFICATE**

21. Do you notice any defects, lacks or difficulties in the certificate that must be attached to an order freezing property or evidence?

We have no practical experience with this FD.

### **GENERAL ISSUES**

22. In your opinion, what are the main obstacles arising within the EU when dealing with the recognition and enforcement of orders freezing property or evidence?

Problems might rise from the incomplete description of the location of properties / evidences and the rights of bona fide third parties concerning those goods.

23. In your opinion, what measures would improve the execution of orders freezing property or evidence within the European Union?

24. Do you know any relevant judicial decision given under your national law implementing FD 2003/577/JHA?

We have no practical experience with this FD both as issuing or executing state.

**17ª.— REINO UNIDO. *MLA Policy&Legislation. Judicial Cooperation Unit***

1	Una vez iniciado un proceso penal o existiendo una investigación penal en curso.
2	Las <i>freezing orders</i> deben ser acordadas por una autoridad judicial, como un juez o un <i>justice of the peace</i> (en Inglaterra y Gales).
3	Búsqueda e incautación.
4	Un Juez. La autoridad de ejecución es la policía que actúe en el territorio en que se encuentre la prueba.
5	Sí. Ésta es la razón por la que existe una autoridad central en el Reino Unido.
6	No hay una lista de categorías delictivas ni se aprecia la necesidad de que deba haberla.
7	No se exigen condiciones adicionales.
8	No se contesta.
9	<b>No se usa la DM 2003/577/JAI por ser defectuosa.</b>
10	No se contesta.
11	Para Inglaterra, Gales e Irlanda del Norte, a través de la Autoridad Central del Reino Unido (para el envío y recepción de las <i>freezing orders</i> ).
12	En 24 horas, si es posible.
13	Se contacta con el Estado miembro emisor de la <i>freezing order</i> para poner en su conocimiento que el certificado está incompleto.
14	El análisis de la doble tipificación de la conducta.
15	No debe suprimirse ninguno pero tampoco añadir nuevos.
16	No.
17	Puede solventarse mediante los oportunos recursos ante el Estado de ejecución.
18	La contestación proporcionada no se ajusta a la pregunta formulada. La falta de experiencia en la transmisión se debe a la imposibilidad de ejecutar la <i>freezing order</i> por ser remitida de manera defectuosa. Tratándose de la transmisión de pruebas, éstas son enviadas a la autoridad de ejecución a través de la autoridad central.
19	Puede un tercero, afectado por la medida, recurrir la ejecución al entender que afecta a sus derechos fundamentales o infringe la prohibición de ne bis in ídem.
20	No se contesta
21	Defectos en la traducción.
22	<b>La errónea formulación de la propia DM 2003/557/JAI.</b>



23	<b>Derogación de sus disposiciones para incluirlas en la <i>European Investigation Order</i>.</b>
24	No.

## ANEXO FICHA 17<sup>a</sup>

### QUESTIONNAIRE ABOUT THE OPERATION OF THE FREEZING ORDER SYSTEM ACCORDING TO THE FD

#### SCOPE

1. Under your national law, may an order freezing property or evidence be granted before criminal proceedings have commenced or, on the contrary, may it only be granted within an ongoing criminal process?

If Criminal proceedings have begun or there is a criminal investigation. Please see Section 20(4) Crime (International Cooperation) Act 2003.

2. Under your national law, may an order freezing property or evidence be granted without judicial supervision (by authorities such as the public prosecutor or the police) or, on the contrary, may it only be granted by a judge?

For overseas freezing orders, these may have been made by a court or a prosecutor or other authority which has this responsibility. Please see Section 20(3) Crime (International Cooperation) Act 2003.

For domestic freezing orders being sent overseas, the freezing order must be made by a judicial authority, such as a judge or justice of the peace (in England and Wales).

3. In your national criminal proceedings, what measures are more frequently taken in order to guarantee the subsequent confiscation or the use as evidence of goods, objects or data?

Search and seizure.

4. Under your national law, who are the competent authorities for granting an order freezing property or evidence? And for executing such an order? In case the competent authorities for granting and execution are not the same, please indicate what practical problems arise, if any.

A Judge. The executing authority is the police in the area which the evidence is situated.

5. In your opinion, in order to avoid misunderstandings regarding the competence to execute an order freezing property or evidence, will it be better if a national authority such as the Ministry of Justice or the Office of the Public Prosecution is in charge of the appointment of the competent authority for execution?

Yes – this is the role of the UK Central Authority

6. Does your national law include the very same list of offences not subject to the double criminality test foreseen in art. 3.2 of FD 2003/577/JHA? In your opinion, would any changes be necessary or convenient in the FD list or in your national list?

Not listed and we do not understand the need for these to be listed.

7. Regarding offences NOT listed in art. 3.2 of FD 2003/577/JHA, does your national law require special conditions in order to recognize or to execute an order freezing property or evidence?

No

## **TRANSMITTING FREEZING ORDERS**

8. What procedure or means do you usually follow in order to find out who is the competent judicial authority for execution of an order freezing property or evidence?

9. What language do you usually use when transmitting an order freezing property or evidence? Through what means or procedure do you usually transmit such an order and its annexed certificate?

We do not use the FD as it is flawed.

10. Under your national law, as a general rule, what formalities must be followed in order to ensure that the evidence taken is valid? (art. 5.1.II of FD)

## **EXECUTING FREEZING ORDERS**

11. According to your national judicial authorities, what are the means, procedures or channels through which an order freezing property or evidence may validly sent/received in your country?

*For England, Wales and Northern Ireland; via the UK Central Authority (both sending and receiving).*

12. Under your national law, once an order freezing property or evidence has been received in your country, what is the legally established time-limit for its execution? Do the competent judicial authorities of your country usually comply with execution of the order within this time-limit? Do you think the 24-hour-time-limit after receipt of the order is reasonable?; if not, what other time-limit will it be reasonable, under your view?

*Our Court Rules state 24 hours, where possible.*

13. How do your national authorities usually proceed upon receiving a freezing order from another Member State when the certificate is not produced, is not sufficient or is not duly translated into one of the admitted languages?

*We will contact the issuing member state and explain that the form is deficient.*

14. Regarding the grounds for non-recognition or non-execution of a freezing order, as foreseen in art. 7 of the FD, in your opinion: should any of the existing grounds be discarded?; should any other ground be included?

*Dual criminality*

15. Regarding the grounds for postponement of execution of a freezing order, as foreseen in art. 8 of the FD, in your opinion: should any of the existing grounds be discarded?; should any other ground be included?

None discarded. No new grounds required.

16. Art. 5.1.II of the FD provides: “Whenever it is necessary to ensure that the evidence taken is valid and provided that such formalities and procedures are not contrary to the fundamental principles of law in the executing State, the judicial authority of the executing State shall also observe the formalities and procedures expressly indicated by the competent judicial authority of the issuing State in the execution of the freezing order”. Have you ever faced circumstances that required such a provision to come into play?

No

17. In your opinion, would it reasonable that the certificate attached to a freezing order would fix a specific time-limit for the lifting of the measures taken as a consequence of the order?

Can be dealt with through legal remedies in the executing country

18. What sort of practical problems or obstacles arise in your country in relation to requests for transferring evidence or property for confiscation? What is your national practice when processing those requests and, in particular, how is evidence (or even property) transferred to the issuing State?

No experience of executing a Freezing Order FD as all the forms that have been sent are always deficient.

Issuing authority can request that the evidence is sent to the court or authority that made the request (Section 24 of the Crime (International Cooperation) Act 2003). Evidence is sent to the issuing State via the UKCA.

19. Under your national law, what legal remedies may be used against an order freezing property or evidence? Who is entitled to use those legal remedies? On which reasons or grounds may those legal remedies be based? How does your national law attempt to ensure the right to an effective legal remedy to challenge the substantive reasons on which the freezing order rest?

Section 25(1) of the Crime (International Cooperation) Act 2003 enables a third party affected by the order, for example the person whose property had been seized, to challenge the execution of the order on the grounds that the execution of the order would be incompatible with the Human Rights Act 1998 or where the principle of double jeopardy is infringed.

20. Regarding injuries or damages caused by the execution of an order freezing property or evidence, how is the amount of injuries or damages calculated in your country? What is the appropriate procedure to apply for the reimbursement of the sums paid in those injuries or damages?

## **CERTIFICATE**

21. Do you notice any defects, lacks or difficulties in the certificate that must be attached to an order freezing property or evidence?

Despite the certificate providing a clear outline, translations look nothing like this and are unrecognisable.

## **GENERAL ISSUES**

22. In your opinion, what are the main obstacles arising within the EU when dealing with the recognition and enforcement of orders freezing property or evidence?

Flawed Freezing Orders Framework Decision.

23. In your opinion, what measures would improve the execution of orders freezing property or evidence within the European Union?

Repeal this and include these provisions in the European Investigation Order.

24. Do you know any relevant judicial decision given under your national law implementing FD 2003/577/JHA?

No

**18ª.— LITUANIA. Rozita Požarskienė. Department of Criminal Prosecution. Prosecutor General's Office of the Republic of Lithuania**

1	Las <i>freezing orders</i> pueden adoptarse en la fase de investigación delictiva (pre-trial) por el fiscal o por el juez que dirige la investigación, y una una vez iniciado el proceso penal, por el tribunal. Sólo pueden emitirse, por tanto, una vez que el procedimiento penal ha comenzado.
2	Las <i>freezing orders</i> pueden ser adoptadas: (1) por el fiscal; (2) por el juez de la investigación previa al juicio; o (3) por el Tribunal. También en casos urgentes pueden ser adoptadas por un oficial de policía o por el fiscal, pero con el consentimiento del Juez que conoce de la fase de pre-trial, del que se debe recabar su consentimiento o confirmación en los 3 días siguientes a la adopción de las medidas.
3	Restricciones temporales sobre los derechos de propiedad (art. 151 CCP)
4	El envío y la recepción del certificado se realiza a través de la <i>Prosecutor General, s Office</i> . Autoridades que pueden acordar una <i>freezing order</i> son: (1) el fiscal; (2) el juez de la investigación previa al juicio; o (3) el Tribunal. La contestación proporcionada no se ajusta a la pregunta formulada.
5	<b>Sí. Es mejor el modelo centralizado.</b>
6	Sí. La comprobación de motivos de no denegación se realiza por la <i>Prosecutor General' s Office</i> . No se hacen observaciones a la posible inclusión de otras categorías delictivas en la lista del art. 3.2 DM 2003/577/JAI.
7	Se exige la doble tipificación de la conducta fuera de la lista. <b>Además de los previstos en la DM 2003/557/JAI, se incluyen dos motivos más para denegar el reconocimiento y ejecución de la <i>freezing order</i> son: (1) violación de los derechos fundamentales o libertades de las personas; (2) cuando las medidas de aseguramiento solicitadas en relación con determinados datos, documentos o bienes resulte prohibida por la Ley lituana.</b>
8	A través del Atlas EJN, puntos de contacto EJN, Miembros nacionales de Eurojust. No se aprecian problemas en este sentido.
9	El certificado se redacta en lituano. La <i>Prosecutor General, s Office</i> encomienda la traducción oficial del certificado u de los documentos que deben acompañar a la <i>freezing order</i> a una de las lenguas aceptadas por el Estado de ejecución.
10	El procedimiento establecido por ley.
11	EL CCP no contiene previsiones en este sentido. Basta con cualquier medio que permita la transmisión de los documentos con garantías de autenticidad. Se pone como ejemplo la posibilidad de utilizar el <b>mail y el fax conjuntamente</b> .
12	<b>24 horas desde la recepción de la solicitud.</b> Sí. Se reseña, no obstante, que durante 2010 se recibió una sola <i>freezing order</i> , que fue reconocida y aceptada; en 2009, se recibieron 4, de las que 3 fueron reconocidas y una denegada. En estos años no se envió ninguna <i>freezing order</i> por parte de las autoridades lituanas.
13	Se permite la denegación o la subsanación en los mismos términos previstos en la DM 2003/577/JAI.

14	No se hacen observaciones.
15	No se hacen observaciones.
16	No se mencionan.
17	<b>Sí, sería razonable.</b>
18	<b>El procedimiento de transferencia no representa ningún problema. Los problemas se derivan del almacenaje por tiempo prolongado de algunas pruebas o de grandes cantidades de bienes.</b>
19	La resolución de reconocimiento de una <i>freezing order</i> puede ser apelada en cualquier momento ante el Juez que conozca de la fase de pre-trial conforme al procedimiento previsto en el art. 61 CCP.
20	No se contesta.
21	No se conocen, por falta de experiencia.
22	No se conocen, por la inusual aplicación de la DM 2003/577/JAI.
23	Implementación de la DM 2006/783/JAI en la totalidad de los ordenamientos internos de los Estados miembros.
24	No hay.

## ANEXO FICHA 18ª

### QUESTIONNAIRE ABOUT THE OPERATION OF THE FREEZING ORDER SYSTEM ACCORDING TO THE FD

#### SCOPE

1. Under your national law, may an order freezing property or evidence be granted before criminal proceedings have commenced or, on the contrary, may it only be granted within an ongoing criminal process?

**The Republic of Lithuania implemented the Framework Decision 2003/577/JHA by Law No. X-1236 of 28 June 2007 by adding Article 41(1) and Article 77(2) to the Code of Criminal Procedure of the Republic of Lithuania and by the Rules of Drafting the Certificate of the Order on Freezing of Property or Evidence and Sending Procedural Documents Related to Temporary Protection of Items, Documents, and other Property to the Judicial Institutions of the EU Member States (approved by the 31 October 2007 Order No. I-**

**150/1R-444 of the Prosecutor General of the Republic of Lithuania and Minister of Justice of the Republic of Lithuania) (hereinafter referred to as Rules).**

**Further to the point 2 of the Rules, the following procedural documents specified in the Code of Criminal Procedure of the Republic of Lithuania are regarded as orders on freezing of property or evidence in Lithuania:**

- a decision of a prosecutor to impose temporary restriction of property rights (Art. 151 of the Criminal Code of the Republic of Lithuania),
- 6. a ruling of a pre-trial investigation judge to extend the period of temporary restriction of property rights (Art. 151 of the Criminal Code of the Republic of Lithuania),
- 7. court ruling to impose or extend temporary restriction of property rights (Art. 151 of the Criminal Code of the Republic of Lithuania),
- 8. a ruling of a pre-trial investigation judge to conduct search (Art. 145 of the Code of Criminal Procedure of the Republic of Lithuania),
- 9. a ruling of a pre-trial investigation judge to conduct seizure (Art. 147 of the Code of Criminal Procedure of the Republic of Lithuania).

**The decision mentioned above may be taken only on stages of pre-trial investigation or court hearings, therefore freezing order may be issued only if criminal proceedings have commenced.**

2. Under your national law, may an order freezing property or evidence be granted without judicial supervision (by authorities such as the public prosecutor or the police) or, on the contrary, may it only be granted by a judge?

**In Lithuania the document regarded as the Order on Freezing of Property or Evidence is adopted by a prosecutor, pre-trial investigation judge, or court (also see the answer to question No. 1).**

The table shows the competence in enforcing procedural coercive measures (mentioned in the answer to question No. 1).during pre-trial investigation



Measure	Decision of the pre-trial investigation judge	Resolution of the prosecutor	Resolution of the pre-trial investigation officer	Implementer	
				Pre-trial investigation officer	Prosecutor
Search <sup>11</sup> (Article 145 of the CCP)	+	+ (if urgent)	+ (if urgent)	+	+
Seizure (Article 147 of the CCP)	+	+ (if urgent)	+ (if urgent)	+	+
Temporary interference with property rights (Article 151 of the CCP)	+ (when it needs to be extended, but not more than 2 time after the 3 month <sup>12</sup> )	+ (not more than 6 months)			

**General notes: the pre-trial judge adopts a decision on application of procedural coercive measures upon prosecutor's request only. When, in urgent cases, the procedural coercive measures can be taken by resolution of the pre-trial investigator or prosecutor, the consent/confirmation of the pre-trial judge of legality must be obtained within 3 days after the implementation of measures.**

**During court hearings the ruling on imposing or extending temporary limitation of ownership is taken by court.**

3. In your national criminal proceedings, what measures are more frequently taken in order to guarantee the subsequent confiscation or the use as evidence of goods, objects or data?

**A coercive measure- temporary restriction of property rights (Art. 151 of the Criminal Code of the Republic of Lithuania) is applied.**

<sup>11</sup>

<sup>12</sup> in criminal cases for serious and grave crimes or when the suspect is hiding, a number of extensions of periods of temporary restrictions of his property rights is not limited.

4. Under your national law, who are the competent authorities for granting an order freezing property or evidence? And for executing such an order? In case the competent authorities for granting and execution are not the same, please indicate what practical problems arise, if any.

**As it was mentioned (see the answers to question No. 1 and No. 2) an Order for Freezing property or Evidence can be issued by a prosecutor, pre-trial investigation judge, or court.**

**According to Rules (point 11) the competent authority for issuing Certificate of Order Freezing Property or Evidence is Prosecutor General's Office of the Republic of Lithuania.**

**Execution of the Order on Freezing of Property or Evidence which was issued by another EU Member State is regulated by the Art. 77<sup>2</sup> of the Code of Criminal Procedure of the Republic of Lithuania. The Order on Freezing of Property or Evidence is verified and the decision regarding recognition thereof is made by the Prosecutor General's Office. Said authority also organizes enforcement thereof.**

**Considering that Lithuania acts both as the issuing state and executing state through the Prosecutor General's Office there are no practical problems**

5. In your opinion, in order to avoid misunderstandings regarding the competence to execute an order freezing property or evidence, will it be better if a national authority such as the Ministry of Justice or the Office of the Public Prosecution is in charge of the appointment of the competent authority for execution?

**Yes, in our opinion the centralized model is better. That's because we have chosen it.**

6. Does your national law include the very same list of offences not subject to the double criminality test foreseen in art. 3.2 of FD 2003/577/JHA? In your opinion, would any changes be necessary or convenient in the FD list or in your national list?

**Yes. The reference to the list of 32 offences is established in the Lithuanian legislation. According to the Article 77<sup>2</sup> of the Code of Criminal Procedure of the Republic of Lithuania, besides other requirements, after receiving the Order on Freezing of Property or Evidence issued by competent authority of another Member State, prosecutor of the Prosecutor General's Office shall verify absence of the one of mandatory grounds for non-recognition- whether the Order on Freezing of Property or Evidence was issued in respect of the**

**act which is not regarded as a crime further to the criminal laws of the Republic of Lithuania except for the cases when the Order on Freezing of Property or Evidence was issued in respect of the criminal act specified in the item 2 Art. 3 of the 22 July 2003 Council Framework Decision 2003/577/JHA on the Execution in the European Union of Orders freezing property or evidence and the criminal laws if the issuing State provide for a punishment related to at least three years of imprisonment for such an act.**

7. Regarding offences NOT listed in art. 3.2 of FD 2003/577/JHA, does your national law require special conditions in order to recognize or to execute an order freezing property or evidence?

**The procedure of recognition and execution of the Order on Freezing of Property or Evidence is established in Article 77<sup>2</sup> of the Code of Criminal Procedure of the Republic of Lithuania.**

**Under provision of this Article the prosecutor of the Prosecutor General's Office of the Republic of Lithuania verifies and decides on recognition of the Order on Freezing of Property or Evidence.**

**Having received an Order on Freezing of Property or Evidence the prosecutor of the Prosecutor General's Office of the Republic of Lithuania shall verify the following:**

- 3. whether the Order on Freezing of Property or Evidence has a certificate and whether the latter is exhaustive and complies with the Order on Freezing of Property or Evidence,**
- 4. whether the translation of the received documents into Lithuanian or English is available.**

**In case of failure to meet said conditions the prosecutor may refuse recognition of the Order on Freezing of Property or Evidence or may establish a final term for provision or updating of the Order on Freezing of Property or Evidence, or may accept a document of equal value instead of the certificate, or may exempt the institution issuing the Order on Freezing of Property or Evidence from this requirement if the information provided is sufficient.**

**Besides the above-mentioned formal requirements (form, language) the prosecutor of the Prosecutor General's Office shall verify absence of the mandatory grounds for non-recognition of the Order on Freezing of Property or Evidence:**

- 10. whether execution of the Order on Freezing of Property or Evidence would violate fundamental rights and (or) freedoms of a person;**

- 11. whether execution of the Order on Freezing of Property or Evidence or related request for legal assistance would violate the prohibition of punishing a person for a second time for the same criminal act**
- 12. whether the Order on Freezing of Property or Evidence is in respect for items, documents or other property which are immune from criminal jurisdiction pursuant to international or national legal norms or when the laws of the Republic of Lithuania prohibit seizure of such items, documents or other property**
- 13. and (as it was mentioned in the answer to question No. 6) whether the Order on Freezing of Property or Evidence was issued in respect of the act which is not regarded as a crime further to the criminal laws of the Republic of Lithuania except for the cases when the Order on Freezing of Property or Evidence was issued in respect of the criminal act specified in the item 2 Art. 3 of the 22 July 2003 Council Framework Decision 2003/577/JHA on the Execution in the European Union of Orders freezing property or evidence and the criminal laws if the issuing State provide for a punishment related to at least three years of imprisonment for such an act.**

#### **TRANSMITTING FREEZING ORDERS**

8. What procedure or means do you usually follow in order to find out who is the competent judicial authority for execution of an order freezing property or evidence?

**In any matter related to forwarding and implementation of an issued Certificate of the Order on Freezing of Property or Evidence the Prosecutor General's Office directly contacts the competent institutions of the EU Member State (point 19 of the Rules).**

**Unknown receiving institution can be established using the Atlas of the European Judicial Network, contact points, Eurojust National Members. We have had no problems in this regard.**

9. What language do you usually use when transmitting an order freezing property or evidence? Through what means or procedure do you usually transmit such an order and its annexed certificate?

**Certificate of Order Freezing Property or Evidence shall be drawn in Lithuanian. The Prosecutor General's Office of the Republic of Lithuania shall ensure official translation of Certificate of Order Freezing Property or Evidence and enclosed procedural documents to the foreign language required by executing State (point 16 of the Rules).**

**According to the Item 17 of the Rules the Certificate of the Order on Freezing of Property or Evidence and the procedural documents are transferred directly (in any way enabling presentation of a written document in such a way that the implementing State could verify authenticity thereof- by fax and by regular post) to the competent judicial institution of the executing State.**

10. Under your national law, as a general rule, what formalities must be followed in order to ensure that the evidence taken is valid? (art. 5.1.II of FD)

**According to the Article 20 of the Code of the Criminal procedure of the Republic of Lithuania, in criminal procedures an evidence is the data obtained by the procedure established by law.**

#### **EXECUTING FREEZING ORDERS**

11. According to your national judicial authorities, what are the means, procedures or channels through which an order freezing property or evidence may validly sent/received in your country?

**The Code of Criminal Procedure of the Republic of Lithuania does not provide for the ways of receiving of the Order on Freezing of Property or Evidence. They may be delivered in any way enabling provision of the written document so that authentication thereof was possible, i.e. both by fax and e-mail.**

12. Under your national law, once an order freezing property or evidence has been received in your country, what is the legally established time-limit for its execution? Do the competent judicial authorities of your country usually comply with execution of the order within this time-limit? Do you think the 24-hour-time-limit after receipt of the order is reasonable?; if not, what other time-limit will it be reasonable, under your view?

**According to the Article Art. 77<sup>2</sup> of the Code of Criminal Procedure of the Republic of Lithuania the Order on Freezing of Property or Evidence is recognized by the decision of the prosecutor. A decision to recognize the Order on Freezing of Property or Evidence, a decision not to recognize the Order on Freezing of Property or Evidence, or the decision to suspend the Order on Freezing of Property or Evidence is usually made within 24 hours from receiving the Order on Freezing of Property or Evidence. The institution which issued the Order on Freezing of Property or Evidence shall be immediately informed of the decision made and grounds thereof.**

**There were no problems with time limits while executing the Order on Freezing of Property . However, it should be mentioned that use of the Certificate of the Order on Freezing of Property or Evidence as the instrument of EU legal co-operation provided for during implementation of the Framework Decision 2003/577/JHA is not frequent: in 2010 the Prosecutor General's Office of the Republic of Lithuania as a competent institution received and recognized 1 Order on Freezing of Property or Evidence and issued 1 Order on Freezing of Property or Evidence; in 2009 4 orders on freezing of property or evidence were received, 3 were recognized, 1 was rejected, 0 were issued.**

13. How do your national authorities usually proceed upon receiving a freezing order from another Member State when the certificate is not produced, is not sufficient or is not duly translated into one of the admitted languages?

**According to provisions of the Article 77<sup>2</sup> of the Code of Criminal Procedure of the Republic of Lithuania upon reception of a Order freezing property or evidence the Prosecutor of the Prosecutor General's Office of the Republic of Lithuania may also not recognize it if he did not receive a certificate, or if said certificate is incomplete or fails to clearly comply with the Order Freezing property or evidence, or the documents received are not translated into Lithuanian or English. In such cases the Prosecutor may set a final term for provision or correction of a certificate or other documents, accept a document of equal value instead of the certificate or to exempt the issuing institution from said requirement if the available information is sufficient.**

14. Regarding the grounds for non-recognition or non-execution of a freezing order, as foreseen in art. 7 of the FD, in your opinion: should any of the existing grounds be discarded?; should any other ground be included?

**Foreseen grounds of refusal are sufficient and all necessary.**

15. Regarding the grounds for postponement of execution of a freezing order, as foreseen in art. 8 of the FD, in your opinion: should any of the existing grounds be discarded?; should any other ground be included?

**Foreseen grounds of refusal are sufficient and all necessary.**

16. Art. 5.1.II of the FD provides: "Whenever it is necessary to ensure that the evidence taken is valid and provided that such formalities and procedures are not contrary to the fundamental principles of law in the executing State, the judicial authority of the executing State shall also

observe the formalities and procedures expressly indicated by the competent judicial authority of the issuing State in the execution of the freezing order”. Have you ever faced circumstances that required such a provision to come into play?

**No, there were no cases mentioned.**

17. In your opinion, would it be reasonable that the certificate attached to a freezing order would fix a specific time-limit for the lifting of the measures taken as a consequence of the order?

**Yes, it would be reasonable.**

18. What sort of practical problems or obstacles arise in your country in relation to requests for transferring evidence or property for confiscation? What is your national practice when processing those requests and, in particular, how is evidence (or even property) transferred to the issuing State?

**In practice evidence is transferred upon the request for legal assistance. The main problems arise not with a process of transfer, but with a long term storage of evidence such as vehicles or goods in large quantity.**

19. Under your national law, what legal remedies may be used against an order freezing property or evidence? Who is entitled to use those legal remedies? On which reasons or grounds may those legal remedies be based? How does your national law attempt to ensure the right to an effective legal remedy to challenge the substantive reasons on which the freezing order rests?

**According to Paragraph 8 of the Article 77(2) of the CCP, the ruling of the prosecutor to recognize the order freezing property or evidence may be appealed to the pre-trial judge in accordance with the procedures of CCP. On the filing of the complaint, as well as on the outcome of the complaint the authority which issued the order has to be informed in writing.**

**Article 61 of the CCP “Acting on the Complaints against the Procedural Acts and Decisions of the Pre-Trial Investigation Officer or the Prosecutor” states:**

- 1. Complaints against the procedural steps and decisions of the pre-trial investigation officer or the prosecutor may be filed during the whole course of the pre-trial investigation and shall not be subject to any time constraints save in the cases provided by this Code.**
- 2. The prosecutor and the pre-trial judge must, within three days from the receipt of a complaint and any relevant evidence, examine it and pass a decision or a ruling where, in the event of upholding the complaint, instances of misconduct shall be indicated and**

recommendations as to their redress shall be made, and in the event of the dismissal of the complaint - the grounds for its dismissal shall be stated.

**3. When examining the complaint, the prosecutor and the pre-trial judge shall have the right to examine the pre-trial investigation materials and request statements from the pre-trial investigation officer or the prosecutor provided they were not submitted before.**

**4. The prosecutor, the counsel of the accused and the complainant may be present during the examination of the complaint by the pre-trial judge. The detained suspect shall be brought, where necessary, before the pre-trial judge.**

**5. A decision on the complaint passed by the prosecutor or the pre-trial judge shall be communicated to the complainant. Where the prosecutor or the pre-trial judge uphold the complaint, the decision or the ruling shall be communicated to the pre-trial investigation officer or the prosecutor for enforcement.**

**6. The decision by the pre-trial judge, adopted by the procedure of this article is final and irreversible, except the situations when this Code provides a possibility of complaint.**

**7. The Articles 62 and 63 of this Code shall not apply in the cases, for which CCP provides other procedure of appealing the decisions or rulings of pre-trial investigation officer or the prosecutor.**

20. Regarding injuries or damages caused by the execution of an order freezing property or evidence, how is the amount of injuries or damages calculated in your country? What is the appropriate procedure to apply for the reimbursement of the sums paid in those injuries or damages?

## **CERTIFICATE**

21. Do you notice any defects, lacks or difficulties in the certificate that must be attached to an order freezing property or evidence?

**It is difficult to identify any defects of certificeta applying it in practice due to the rare application of order freezing property or evidence.**

## **GENERAL ISSUES**

22. In your opinion, what are the main obstacles arising within the EU when dealing with the recognition and enforcement of orders freezing property or evidence?

**It is difficult to identify obstacles due to the rare application of said instrument.**



23. In your opinion, what measures would improve the execution of orders freezing property or evidence within the European Union?

**More efficient application of said measure would facilitate from implementation in the EU Member States of other procedures to which the principle of mutual recognition is applied, e.g. procedures specified in the Council Framework Decision 2006/783/JHA on the application of the principle of mutual recognition to confiscation orders.**

24. Do you know any relevant judicial decision given under your national law implementing FD 2003/577/JHA?

**There were no such decisions.**

**19ª.— LETONIA. Ministry of Justice & Prosecutor-General Office**

1	Una <i>freezing order</i> sólo puede ser acordada en el seno de un proceso penal.
2	Oficial de policía/fiscal/tribunal, en función del estado del procedimiento en que se adopte. La <i>freezing order</i> debe ser aprobada por el <i>investigation judge</i> . Si es adoptada durante la fase de juicio, es el propio tribunal el que la dicta.
3	La medida más frecuentemente adoptada es la incautación.
4	Autoridades que pueden aprobar una <i>freezing order</i> son: (1) el <i>investigation judge</i> ; o (2) el propio tribunal que conoce del proceso en que se acuerda la adopción de medidas de aseguramiento de los bienes o de la prueba. Para la ejecución de la orden, la autoridad competente es la General Prosecution Office, que la ejecuta como si de una orden nacional se tratara. La contestación proporcionada no se ajusta a la pregunta formulada.
5	No contesta sí o no. La respuesta sólo indica lo que ocurre en el ámbito letón en que <b>el <i>Prosecutor-General's Office</i> es la autoridad competente para admitir/denegar la <i>freezing order</i></b> . Es esta oficina la que designa la autoridad competente para ejecutar materialmente el embargo o aseguramiento.
6	Sí. No se aprecia la necesidad de realizar modificaciones.
7	No.
8	Página <i>web</i> EJN.
9	En el idioma aceptado por el Estado destinatario de la <i>freezing order</i> . Normalmente el certificado es transmitido por vía postal, si bien también se usa el <b>e-mail y el fax</b> , si es posible identificar la autoridad judicial competente para la ejecución.
10	La contestación proporcionada no se ajusta a la pregunta formulada. Se indica la necesidad de que la <i>freezing order</i> provenga de un Estado miembro, que el certificado esté correctamente cumplimentado y que los documentos recibidos estén en lengua letona o en inglés.
11	La transmisión puede realizarse válidamente a través de correo postal, si bien también se admite la recepción por fax y e-mail.
12	<b>24 horas desde la recepción de la solicitud, para que la <i>Prosecutor-General's Office</i> se pronuncie sobre su denegación/reconocimiento. En este último caso se envía a la autoridad competente para su ejecución.</b> Se entiende que el límite de 24 hs. es razonable.
13	Se permite la denegación o la subsanación en los mismos términos previstos en la DM 2003/577/JAI.
14	No se consideran necesarios cambios.
15	No se consideran necesarios cambios.

16	No.
17	(..).Es necesario contar con una fecha límite para el mantenimiento de las medidas, pues éstas no ser permanentes. Se indica que las medidas de aseguramiento de bienes y pruebas sólo pueden mantenerse durante un tiempo limitado conforme a la legislación letona, debido a las restricciones que comporta su adopción respecto de determinados derechos individuales como el derecho de propiedad.
18	No se apuntan problemas prácticos. La transferencia de bienes y pruebas a otros Estados miembros exige de una solicitud de MLA.
19	Cabe recurrir en apelación, si bien los motivos sustantivos para la adopción de la medida sólo pueden recurrirse ante la autoridad del Estado de emisión. Por tanto, en Letonia, como Estado de ejecución sólo cabe recurrir frente a los actos de ejecución llevados a cabo. En ningún caso el recurso tiene efecto suspensivo.
20	En función del grado de culpabilidad imputable a la persona causante de los daños. El procedimiento para obtener la indemnización de los daños y perjuicios ocasionados por la ejecución de una <i>freezing order</i> es el previsto en la <i>Civil Procedure Law</i> .
21	<b>Resulta más difícil de cumplimentar que una solicitud de MLA.</b>
22	<b>La necesidad de una solicitud paralela o subsiguiente de MLA para la adopción de otras medidas necesarias para la efectividad de la <i>freezing order</i>.</b>
23	<b>Hubiera sido conveniente la implementación de la DM 2003/577/JAI en los Estados miembros en un mismo tiempo. Al no haberse hecho así no se ha soslayado la necesidad de acudir a instrumentos basados en la MLA y en el reconocimiento mutuo ni evitado la falta de efectividad que se deriva de esto último. La multitud de instrumentos diferentes a los que hay que acudir dependiendo de la actividad que se pretenda (por ejemplo, asegurar prueba: FO, obtener prueba: EEW) complica la utilización de los mismos.</b>
24	No se conoce.

## ANEXO FICHA 19<sup>a</sup>

### QUESTIONNAIRE ABOUT THE OPERATION OF THE FREEZING ORDER SYSTEM ACCORDING TO THE FD

#### Replies by the Republic of Latvia

#### SCOPE

1. Under your national law, may an order freezing property or evidence be granted before criminal proceedings have commenced or, on the contrary, may it only be granted within an ongoing criminal process?

Answer: An order freezing property or evidence is granted only within an ongoing criminal process.

2. Under your national law, may an order freezing property or evidence be granted without judicial supervision (by authorities such as the public prosecutor or the police) or, on the contrary, may it only be granted by a judge?

Answer: The decision on national order freezing property or evidence is taken by an investigator, prosecutor or court depending on the stage of the proceedings. The European order freezing property or evidence is approved by the investigation judge based on the national order; and if the national order is taken by the court – during trial stage – the same court adopts European order freezing property or evidence.

3. In your national criminal proceedings, what measures are more frequently taken in order to guarantee the subsequent confiscation or the use as evidence of goods, objects or data?

Answer: The most frequent measure is seizure (arrest put on property).

4. Under your national law, who are the competent authorities for granting an order freezing property or evidence? And for executing such an order? In case the competent authorities for granting and execution are not the same, please indicate what practical problems arise, if any.

Answer: The European order freezing property or evidence is approved by the investigation judge based on the national order; and if the national order is taken by the court – during trial stage – the same court adopts European order freezing property or evidence.

The competent authority responsible for executing order freezing property or evidence is the Prosecutor-General's Office (the Office). The Office takes a decision on execution of the order. However, the order practically is executed as if it would be national order in accordance with the regulation provided in the Criminal Procedure Law.

5. In your opinion, in order to avoid misunderstandings regarding the competence to execute an order freezing property or evidence, will it be better if a national authority such as the Ministry of Justice or the Office of the Public Prosecution is in charge of the appointment of the competent authority for execution?

Answer: The Office as competent authority for execution of the order freezing property or evidence appoints the competent authority for practical execution.

6. Does your national law include the very same list of offences not subject to the double criminality test foreseen in art. 3.2 of FD 2003/577/JHA? In your opinion, would any changes be necessary or convenient in the FD list or in your national list?

Answer: Yes, the same list of offences is appended to the Criminal Procedure Law as attachment. The changes are not necessary.

7. Regarding offences NOT listed in art. 3.2 of FD 2003/577/JHA, does your national law require special conditions in order to recognize or to execute an order freezing property or evidence?

Answer: No.

## **TRANSMITTING FREEZING ORDERS**

8. What procedure or means do you usually follow in order to find out who is the competent judicial authority for execution of an order freezing property or evidence?

Answer: Usually the webpage of European Judicial Network is used.

9. What language do you usually use when transmitting an order freezing property or evidence? Through what means or procedure do you usually transmit such an order and its annexed certificate?

Answer: When transmitting an order freezing property or evidence language that is mentioned in the notification of the Member State is used. Mainly the certificate is transmitted by post, but email and fax is also accepted (if it is possible to identify the competent authority).

10. Under your national law, as a general rule, what formalities must be followed in order to ensure that the evidence taken is valid? (art. 5.1.II of FD)

Answer: It is necessary to receive valid order freezing property or evidence taken by the competent authority of the EU Member States. There should be correctly filled certificate. The documents should be in English or Latvian.

## **EXECUTING FREEZING ORDERS**

10. According to your national judicial authorities, what are the means, procedures or channels through which an order freezing property or evidence may validly sent/received in your country?

Answer: An order freezing property or evidence may validly sent/received in Latvia by post and fax, an email is also possible.

12. Under your national law, once an order freezing property or evidence has been received in your country, what is the legally established time-limit for its execution? Do the competent judicial authorities of your country usually comply with execution of the order within this time-limit? Do you think the 24-hour-time-limit after receipt of the order is reasonable?; if not, what other time-limit will it be reasonable, under your view?

Answer: The Criminal Procedure Law provides that the Office within 24 hours evaluate the order freezing property or evidence, and if an order is executable the Office sets the competent authority for the execution. We believe that the 24-hour-time-limit is reasonable.

13. How do your national authorities usually proceed upon receiving a freezing order from another Member State when the certificate is not produced, is not sufficient or is not duly translated into one of the admitted languages?

Answer: If the certificate is not produced, is not sufficient or is not duly translated – it is ground for refusal. The Office under Criminal Procedure Law may set a time limit for correct certificate to arrive, or in exceptional cases accept equivalent document, or free the issuing authority from necessity to send correct order, if provided information is sufficient to decide on the order.

14. Regarding the grounds for non-recognition or non-execution of a freezing order, as foreseen in art. 7 of the FD, in your opinion: should any of the existing grounds be discarded?; should any other ground be included?

Answer: No changes should be made.

15. Regarding the grounds for postponement of execution of a freezing order, as foreseen in art. 8 of the FD, in your opinion: should any of the existing grounds be discarded?; should any other ground be included?

Answer: No changes should be made.

16. Art. 5.1.II of the FD provides: “Whenever it is necessary to ensure that the evidence taken is valid and provided that such formalities and procedures are not contrary to the fundamental principles of law in the executing State, the judicial authority of the executing State shall also observe the formalities and procedures expressly indicated by the competent judicial authority of the issuing State in the execution of the freezing order”. Have you ever faced circumstances that required such a provision to come into play?

Answer: Latvia did not face such circumstances.

17. In your opinion, would it be reasonable that the certificate attached to a freezing order would fix a specific time-limit for the lifting of the measures taken as a consequence of the order?

Answer: The specific time-limit for the lifting of the measures taken as a consequence of the order (usually arrest on the property) is necessary. The measures could not be limitless. Moreover, Latvian Criminal Procedure Law provides time limits for such measures, especially because the rights of individual on property are restricted.

18. What sort of practical problems or obstacles arise in your country in relation to requests for transferring evidence or property for confiscation? What is your national practice when processing those requests and, in particular, how is evidence (or even property) transferred to the issuing State?

Answer: The practice in Latvia is that requests for transferring evidence or property for confiscation are done upon the request on mutual legal assistance.

19. Under your national law, what legal remedies may be used against an order freezing property or evidence? Who is entitled to use those legal remedies? On which reasons or grounds may those legal remedies be based? How does your national law attempt to ensure the right to an effective legal remedy to challenge the substantive reasons on which the freezing order rests?

Answer: The Criminal Procedure Law Article 825.6 provides that (1) actions related to execution of order freezing property or evidence shall be appealed in accordance with the procedures specified in this Law.

(2) Submission of the complaint shall not suspend execution of order freezing property or evidence.

(3) A complaint regarding questions of issuing of order freezing property or evidence shall be submitted only to the court of the issuing state.

(4) If a complaint regarding actions taken to execute order of freezing property or evidence has been received, the Office of the Prosecutor-General shall inform the competent institution of the issuing state regarding submission of the complaint and the justification thereof, as well as regarding the result of examination of the complaint.

Consequently, the Criminal Procedure Law does not provide basis for possibility to challenge the freezing order on substantive reasons in Latvia as executing state.

20. Regarding injuries or damages caused by the execution of an order freezing property or evidence, how is the amount of injuries or damages calculated in your country? What is the appropriate procedure to apply for the reimbursement of the sums paid in those injuries or damages?

Answer: The damage is calculated based on the guilt of the person in charge of the execution. The reimbursement takes place within Civil Procedure Law.

## **CERTIFICATE**

21. Do you notice any defects, lacks or difficulties in the certificate that must be attached to an order freezing property or evidence?

Answer: It is more difficult than ordinary mutual legal assistance request.

## **GENERAL ISSUES**

22. In your opinion, what are the main obstacles arising within the EU when dealing with the recognition and enforcement of orders freezing property or evidence?

Answer: There is a need of the parallel or forthcoming mutual legal assistance request for other necessary measures.

23. In your opinion, what measures would improve the execution of orders freezing property or evidence within the European Union?

Answer: We believe that to ensure effective execution of order freezing property or evidence it is necessary that all Member States implement Framework Decision on time. That would ensure that mixed procedure of mutual recognition instruments and mutual legal assistance instruments would not be applied, thus unburden the authorities.

Moreover, we believe that division of mutual legal assistance into separate instruments is not effective, for example, if the arrest on property is necessary than Framework Decision on freezing orders is applicable, if it is necessary to interrogate a person then mutual assistance request is send, however, if it is necessary to receive evidence – European Evidence Warrant is applicable. In many cases the measures are necessary within one criminal procedure, and this division is very problematic for the authorities.

24. Do you know any relevant judicial decision given under your national law implementing FD 2003/577/JHA?

Answer: We not familiar with any judicial decision given under Latvian national law.



**20ª.— MALTA. Ministry of Justice**

1	De la respuesta ofrecida se infiere que sólo una vez iniciado un proceso penal, pues sólo cuando una persona sea formalmente acusada de un delito, el <i>Attorney General</i> o el fiscal pueden solicitar del Tribunal la adopción de una <i>freezing order</i> .
2	De la respuesta ofrecida se infiere la necesidad de que la <i>freezing order</i> sea aprobada por un juez.
3	Durante el período de investigación puede acordarse, como medida cautelar, la confiscación de bienes durante 30 días.
4	<b>El <i>Attorney General</i> es la autoridad competente para recibir <i>freezing orders</i> remitidas por otros Estados y para transmitir las órdenes emitidas desde Malta por un tribunal penal.</b> Un tribunal penal es la autoridad competente para acordar <i>freezing orders</i> . La policía es la autoridad competente para ejecutar <i>freezing orders</i> .
5	No se pronuncia al respecto.
6	Sí se recoge la misma lista de delitos. No se observa la necesidad de realizar cambios.
7	Para los delitos que no se corresponden con el listado, se exige que los hechos estén tipificados en Malta como delitos y lleven aparejada una pena privativa de libertad como mínimo de 12 meses.
8	<b>Consulta de las notificaciones realizadas por los Estados Miembros a la Secretaría General del Consejo/EJN/Eurojust.</b>
9	En la lengua indicada por el Estado de ejecución en la notificación realizada a la Secretaría General del Consejo. Normalmente a través del <b>correo electrónico</b> .
10	Las previstas en la legislación maltesa- CC - sobre admisibilidad y valoración de las pruebas y además es imprescindible que se respeten las normas de obtención de prueba del Estado de ejecución.
11	Por cualquier medio escrito admitido por el Estado de ejecución, que permita corroborar la autenticidad del certificado y de la <i>freezing order</i> .
12	La ley de trasposición <b>no prevé un límite de tiempo específico</b> , pero las <i>freezing orders</i> son reconocidas y ejecutadas sin dilaciones, en un período de tiempo que varía según las circunstancias de cada caso.
13	Se permite la denegación o la subsanación en los mismos términos previstos en la DM 2003/577/JAI. Repárese, asimismo, que la ley de trasposición interna prevé expresamente la necesidad de que el certificado esté cumplimentado en inglés o maltés, <b>así como la no necesidad de traducir la <i>freezing order</i></b> .
14	No se consideran necesarios cambios.
15	No se consideran necesarios cambios.
16	No.

17	<b>Tal clase de limitaciones resultarían absurdas pues no es posible determinar la duración del procedimiento ni las posibles dificultades que puede tener el Estado de ejecución a la hora de proceder a dar cumplimiento a una <i>freezing order</i>.</b>
18	No se conocen.
19	La contestación proporcionada no se ajusta a la pregunta formulada. <b>Revela, no obstante, que la ejecución de una <i>freezing order</i> en Malta no puede comportar que el acusado resulte privado de una cantidad de dinero mínima para su subsistencia y la de su familia . Esta cantidad se fija en 13.976.24 euros cada año. De otra parte, se indica que el tribunal puede permitir que el acusado pague las deudas que contrajo con acreedores de buena fe antes de que se acordara la <i>freezing order</i> e incluso autorizarle a transmitir bienes muebles o inmuebles.</b>
20	Sólo puede obtenerse una indemnización por daños y perjuicios si la <i>freezing order</i> ha sido enviada o ejecutada de forma contraria a la ley o con abuso de superioridad. En estos casos, la obtención de una indemnización requiere del ejercicio de una acción civil ante un tribunal de este orden jurisdiccional.
21	Se carece de datos.
22	<b>Los Estados miembros debería reducir los formalismos al mínimo con vistas a facilitar el reconocimiento de las <i>freezing orders</i></b>
23	<b>En aras a la agilidad y a la supresión de formalidades, debería ser suficiente contar con la traducción a uno de los idiomas más comunes dentro de la Unión Europea (aunque reconoce lo problemático de esta solución por sus implicaciones políticas):</b>
24	No se conocen

#### ANEXO FICHA 20ª

#### QUESTIONNAIRE ABOUT THE OPERATION OF THE FREEZING ORDER SYSTEM ACCORDING TO THE FD

For more information please refer to the notifications made by Malta to the Council General Secretariat.

Reference will be made to the implementing legislation, namely Legal Notice 297 of 2007 which was transmitted to Council General Secretariat with the relevant information -

<http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8984&l=1>

#### SCOPE

1. Under your national law, may an order freezing property or evidence be granted before criminal proceedings have commenced or, on the contrary, may it only be granted within an ongoing criminal process?

Regulation 12(1) states: *Where a person is charged with a relevant offence, the Attorney General or the prosecution may apply to a court of criminal jurisdiction for a freezing order.*

2. Under your national law, may an order freezing property or evidence be granted without judicial supervision (by authorities such as the public prosecutor or the police) or, on the contrary, may it only be granted by a judge?

For a freezing order to be issued in terms of this Framework decision a person must be formally charged with a relevant offence which is defined under Reg 2 as a scheduled offence or any other offence liable to the punishment of imprisonment or of detention for a term of more than one year;

3. In your national criminal proceedings, what measures are more frequently taken in order to guarantee the subsequent confiscation or the use as evidence of goods, objects or data?

During the investigation stage, as a precautionary measure, assets are identified and temporarily frozen (attached) for up to 30 days through the issue of an attachment order.

4. Under your national law, who are the competent authorities for granting an order freezing property or evidence? And for executing such an order? In case the competent authorities for granting and execution are not the same, please indicate what practical problems arise, if any.

Regulation 4:

*4. For purposes of these regulations:*

*(a) the Attorney General shall be competent to receive freezing orders issued in the issuing State and to transmit to the executing State freezing orders issued in Malta by a court of criminal jurisdiction;*

*(b) a court of criminal jurisdiction shall be competent to issue freezing orders.*

Regulations 10 and 11 clearly state that the freezing order is executed by the Police.

5. In your opinion, in order to avoid misunderstandings regarding the competence to execute an order freezing property or evidence, will it be better if a national authority such as the Ministry of Justice or the Office of the Public Prosecution is in charge of the appointment of the competent authority for execution?

Once the matter is specifically legislated for, it is difficult to see why misunderstandings of any kind should arise.

6. Does your national law include the very same list of offences not subject to the double criminality test foreseen in art. 3.2 of FD 2003/577/JHA? In your opinion, would any changes be necessary or convenient in the FD list or in your national list?

Malta adopted the FD list Reg 6 states:

*(1) A freezing order shall contain a statement that the order relates to:*

*(a) conduct which -*

*(i) is a scheduled offence; and*

*(ii) carries a sentence of imprisonment or another form of detention of a maximum period of at least three years in the issuing State;*

*Provided that in such cases there shall be no verification of the double criminality of the act; or*

*(b) conduct which -*

*(i) would constitute an offence under the law of Malta if it occurred in Malta;*

*(ii) is punishable under the laws of Malta with imprisonment or another form of detention for a term of twelve months or a greater punishment*

*(Reg 2 provides that "scheduled offence" is any offence in the list of offences set out in Schedule 1).* No changes are deemed necessary.

7. Regarding offences NOT listed in art. 3.2 of FD 2003/577/JHA, does your national law require special conditions in order to recognize or to execute an order freezing property or evidence?

Further to preceding reply, the grounds for non-recognition or non-execution of a freezing order are those cited in the FD (Vide Regulations 8 and 9).

## TRANSMITTING FREEZING ORDERS

8. What procedure or means do you usually follow in order to find out who is the competent judicial authority for execution of an order freezing property or evidence?

Consulting notifications sent by Member States to General Secretariat, Eurojust or the EJN.

9. What language do you usually use when transmitting an order freezing property or evidence? Through what means or procedure do you usually transmit such an order and its annexed certificate?

The language which would have been specified by the executing state in its notification to Council's General Secretariat. It is transmitted as provided of in the FD, normally via electronic mail (Reg 5).

10. Under your national law, as a general rule, what formalities must be followed in order to ensure that the evidence taken is valid? (art. 5.1.II of FD)

General procedural rules on admissibility and relevance of evidence as found in the Criminal Code are observed. It is indispensable that any evidence must be taken also in accordance with the law of the executing state.

## EXECUTING FREEZING ORDERS

11. According to your national judicial authorities, what are the means, procedures or channels through which an order freezing property or evidence may validly sent/received in your country?

Reg 5 provides:

*(1) A freezing order shall be transmitted with the certificate provided for in Schedule 2 and containing the information prescribed therein, by any means capable of producing a written record under conditions allowing the executing State to establish authenticity.*

12. Under your national law, once an order freezing property or evidence has been received in your country, what is the legally established time-limit for its execution? Do the competent judicial authorities of your country usually comply with execution of the

order within this time-limit? Do you think the 24-hour-time-limit after receipt of the order is reasonable?; if not, what other time-limit will it be reasonable, under your view?

No specific time-limit is provided for under the implementing legislation however such orders are processed and executed without undue delay depending on the circumstances of each case.

13. How do your national authorities usually proceed upon receiving a freezing order from another Member State when the certificate is not produced, is not sufficient or is not duly translated into one of the admitted languages?

Reg 5 stipulates that:

*(2) The certificate shall be in either the Maltese or English language:*

*Provided that it shall not be necessary for the freezing order to be in either the Maltese or English language.*

Reg 6 specifies the requisite formalities. Reg 8(1) may also be of relevance.

*8. (1) Subject to the provisions of sub-regulation (4), a freezing order shall not be recognized by the Attorney General if:*

*(a) the certificate provided for in Schedule 2 is not produced, is incomplete or manifestly does not correspond to the freezing order;*

*(2) Any decision to refuse recognition or execution received in terms of these regulations, shall be taken and notified to the competent judicial authorities of the issuing State by any means capable of producing a written record.....*

*(4) Notwithstanding the provisions of sub-regulation (1)(a) the Attorney General may:*

*(a) accept an equivalent document to the certificate;*

*(b) exempt the issuing judicial authority from producing the certificate if he considers the information provided as sufficient; or*

*(c) specify a deadline for the presentation, completion or correction of the certificate.*

14. Regarding the grounds for non-recognition or non-execution of a freezing order, as foreseen in art. 7 of the FD, in your opinion: should any of the existing grounds be discarded?; should any other ground be included?

To date there is no valid reason accounting for Malta to be at variance from the provisions of the FD.

15. Regarding the grounds for postponement of execution of a freezing order, as foreseen in art. 8 of the FD, in your opinion: should any of the existing grounds be discarded?; should any other ground be included?

To date there is no valid reason accounting for Malta to be at variance from the provisions of the FD.

16. Art. 5.1.II of the FD provides: “Whenever it is necessary to ensure that the evidence taken is valid and provided that such formalities and procedures are not contrary to the fundamental principles of law in the executing State, the judicial authority of the executing State shall also observe the formalities and procedures expressly indicated by the competent judicial authority of the issuing State in the execution of the freezing order”. Have you ever faced circumstances that required such a provision to come into play?

NO

17. In your opinion, would it reasonable that the certificate attached to a freezing order would fix a specific time-limit for the lifting of the measures taken as a consequence of the order?

Such a limitation could prove unreasonable since one may not be able to forecast the length of the proceedings under which the order would have been issued or the potential difficulties encountered in either the issuing or the executing state.

18. What sort of practical problems or obstacles arise in your country in relation to requests for transferring evidence or property for confiscation? What is your national practice when processing those requests and, in particular, how is evidence (or even property) transferred to the issuing State? N/A

19. Under your national law, what legal remedies may be used against an order freezing property or evidence? Who is entitled to use those legal remedies? On which reasons or grounds may those legal remedies be based? How does your national law attempt to ensure the right to an effective legal remedy to challenge the substantive reasons on which the freezing order rest?

If the person subject of a freezing order is in Malta on the date of the order, a Court, determine what moneys may be paid to or received by the accused during the subsistence of such order, specifying the sources, manner and other modalities of payment, including salary, wages, pension and social security benefits payable to the accused, to allow him and his family a decent living in the amount, where the means permit, of thirteen thousand and nine hundred and seventy-six euro and twenty-four cents (13,976.24) every year.

This determination by the Court can also be made following an application to that effect by the Attorney General or any other interested person present in Malta, before or after the order is made to the extent that it is satisfied that this is necessary to allow the accused and his family a decent living.

Moreover the court may also authorise the payment of debts which are due by the accused to *bona fide* creditors and which were contracted before such order was made and on good ground authorise the accused to transfer movable or immovable property.

20. Regarding injuries or damages caused by the execution of an order freezing property or evidence, how is the amount of injuries or damages calculated in your country? What is the appropriate procedure to apply for the reimbursement of the sums paid in those injuries or damages?

This issue will only arise if the order has been issued or executed unlawfully or with abuse of authority. Civil damages may be obtained upon a judgment pronounced by a civil court following a civil action.

## CERTIFICATE

21. Do you notice any defects, lacks or difficulties in the certificate that must be attached to an order freezing property or evidence?  
To date none.

## GENERAL ISSUES

22. In your opinion, what are the main obstacles arising within the EU when dealing with the recognition and enforcement of orders freezing property or evidence?

23. In your opinion, what measures would improve the execution of orders freezing property or evidence within the European Union?



In reply to 22-23, Member states should strive to reduce formalities relating to the recognition of such orders to a bare minimum; having the certificate translated into one of the more widely spoken languages given that this is often problematic is, admittedly, a very sensitive matter carrying a number of political considerations.

24. Do you know any relevant judicial decision given under your national law implementing FD 2003/577/JHA?

N/A

**21ª.— REPÚBLICA CHECA.** Svetlana Klouckova. *Director of International Affairs Department Supreme Public Prosecutors Office of the Czech Republic*

1	En el ámbito de un procedimiento penal en curso, lo que comprende desde la decisión policial de comenzar una investigación penal hasta la decisión del tribunal que ponga fin al proceso penal.
2	<i>Freezing orders</i> sólo puede ser acordadas por el fiscal en el ámbito de una investigación previa al juicio ( <i>pre-trial</i> ) o por un juez una vez comenzado el proceso ( <i>trial</i> ).
3	Aunque no hay detalles estadísticos, se estima que la incautación de prueba es más frecuente.
4	En la investigación penal previa al juicio, policía y fiscal (que supervisa la actuación de aquel primero) son competentes para incautar bienes muebles e inmuebles, dinero, saldos de cuentas corrientes y otros valores. La autoridad competente para ejecutar la medida es la policía (bienes muebles) funcionarios (bienes inmuebles) e instituciones financieras (valores y dinero en cuentas bancarias). En fase de juicio, la autoridad competente para acordar el embargo es el tribunal y, para la ejecución, las mismas a las que antes se ha hecho mención.
5	<b>En Chequia, la autoridad competente para reconocer y ejecutar las <i>freezing orders</i> son <i>Regional Prosecutor's Offices</i>.</b> No se contesta acerca de la conveniencia de utilizar una autoridad central o de la comunicación directa entre autoridades nacionales.
6	Si. <b>Toda la lista es cuestionable, porque a tenor de la Constitución checa no es posible aplicar una sanción a alguien si no constituye delito al amparo de la legislación interna.</b>
7	<b>Se aplica el control de doble tipicidad.</b>
8	Atlas EJN. Los fiscales pueden solicitar ayuda de la <i>International Affairs Department of the Supreme Public Prosecutor's Office</i> y los jueces del <i>International Criminal Department</i> del Ministerio de Justicia.
9	<b>Depende del Estado destinatario. Aun cuando existe sólo obligación de traducir el certificado, se recomienda también la traducción de la <i>freezing order</i>. En base a convenios bilaterales, no hay obligación para la República Checa de utilizar traducciones cuando las resoluciones van a Eslovaquia y a Austria.</b> <b>La <i>freezing order</i> con el certificado puede ser transmitido por fax y después a través de correo.</b>
10	La autoridad policial tiene que levantar un acta en que debe plasmar la descripción de los bienes que han sido incautados, las razones de ello, las personas presentes en el acto y las que estaban en posesión del bien incautado, etc.
11	La autoridad competente para ejecutar las <i>freezing orders</i> es <i>Regional Prosecutor's Office</i> . Es posible enviarlas a través de fax, si con posterioridad se envían los originales a través de correo postal.
12	<b>24 horas. Si no es posible dar cumplimiento a la <i>freezing order</i> en ese tiempo, existe la obligación de comunicar las razones del</b>

	<b>retraso. El plazo de 24 horas no es realista.</b>
13	Se solicita mayor información o la traducción omitida.
14	No
15	No se contesta.
16	<b>No. Como Estado emisor, se utiliza para exigir que se permita la presencia del abogado defensor durante el aseguramiento de la prueba, si es que desea estar presente. Como Estado ejecutor, no conoce casos en los que las formalidades exigidas por el emisor no se hayan respetado.</b>
17	<b>No hay límite de tiempo para el embargo cuando Chequia es el Estado de ejecución. Resulta muy difícil para el Estado de ejecución valorar si el embargo interesa aún al Estado de emisión el cumplimiento de la <i>freezing order</i>.</b>
18	Tratándose de pruebas, los bienes pueden ser transmitidos por correo. Ante la imposibilidad de esto último, la policía organiza cómo debe llevarse a cabo la transmisión. Tratándose de bienes susceptibles de ser decomisados, los bienes permanecen en el Estado de ejecución a la espera de una orden de decomiso.
19	<b>Cuando Chequia es el Estado de emisión: (1) no se prevé ningún recurso frente a la orden de incautación de elementos de prueba; (2) las personas afectadas pueden, en cambio, interponer un recurso ante el tribunal frente a la decisión de la policía o del fiscal de proceder a una incautación de bienes con vistas a su posterior decomiso.</b> Cuando Chequia es el Estado de ejecución: es posible interponer un recurso basado exclusivamente en los defectos procedimentales del reconocimiento y ejecución de la una <i>freezing order</i> . Un fiscal decide sobre estos recursos.
20	<b>Regulación detallada y específica tanto sobre el reembolso de los daños ocasionados en otro Estado miembro como consecuencia del reconocimiento y ejecución de una <i>freezing order</i> como sobre los daños ocasionados en la República Checa como Estado de Ejecución (vid. Sections 460m &amp; 460n CPP)</b>
21	Escasa experiencia práctica. No se han detectado problemas.
22	<b>No existen problemas en el reconocimiento y ejecución de una <i>freezing order</i>. Los problemas se plantean más bien en la efectividad de la localización y confiscación de los bienes.</b>
23	<b>La DM 2003/577/JAI debería reservarse para el embargo preventivo de los bienes con vistas a su posterior decomiso. Tratándose de pruebas, lo normal es que un proceso se requieran otros elementos de prueba distintos de los contemplados en la DM 2003/577/JAI, por lo que, en este extremo, se suele preferir el empleo de la MLA.</b>
24	<b>Se reseñan dos casos en que Chequia ha enviado una <i>freezing order</i>, ambos relativos a la incautación de elementos de prueba. Los</b>

**Estados miembros suelen retrasarse en el cumplimiento efectivo de las *freezing orders*, de modo que los fiscales checos se decantan por el uso de solicitudes MLA.**

## ANEXO FICHA 21<sup>a</sup>

### QUESTIONNAIRE ABOUT THE OPERATION OF THE FREEZING ORDER SYSTEM ACCORDING TO THE FD

#### SCOPE

1. Under your national law, may an order freezing property or evidence be granted before criminal proceedings have commenced or, on the contrary, may it only be granted within an ongoing criminal process?

**Only within an ongoing criminal process. It means from a decision of police authority to commence a criminal proceeding in the particular criminal matter under section 158(3) of the Criminal Procedural Code (CPC) till a final decision of court in the criminal matter.**

2. Under your national law, may an order freezing property or evidence be granted without judicial supervision (by authorities such as the public prosecutor or the police) or, on the contrary, may it only be granted by a judge?

**Freezing order can be issued only by prosecutor (in pre-trial proceedings) or a judge (in trial).**

3. In your national criminal proceedings, what measures are more frequently taken in order to guarantee the subsequent confiscation or the use as evidence of goods, objects or data?

**There are no detailed statistics. I can just estimate that seizure of evidence is more frequent.**

4. Under your national law, who are the competent authorities for granting an order freezing property or evidence? And for executing such an order? In case the competent authorities for granting and execution are not the same, please indicate what practical problems arise, if any.

**In pre-trial proceeding:**

**Both police authority and prosecutor (however prosecutor supervises procedure of police) are competent to seize:**

- movable or immovable item
- money on a bank account
- other value than mentioned above

Police authority can do so only with preliminary consent of prosecutor - in such a case a prosecutor has to be informed as soon as possible and he/she has a right to cancel a decision of police.

**Only prosecutor has a right to seize bounds.**

**Executing authority:**

- movable item - police
- immovable item - a real estate office
- bounds and money on a bank account - financial institution

**In trial:**

**Issuing authority is a court and executing authority are the same as mentioned above.**

5. In your opinion, in order to avoid misunderstandings regarding the competence to execute an order freezing property or evidence, will it be better if a national authority such as the Ministry of Justice or the Office of the Public Prosecution is in charge of the appointment of the competent authority for execution?

**Under Art 5 (1) of the FD "The competent judicial authorities of the executing State shall recognise a freezing order, ... and shall forthwith take the necessary measures for its immediate execution in the same way as for a freezing order made by an authority of the executing State, ..."**

**The CR made a statement to the FD that competent authorities for decision to recognise and execute (it is one decision) are Regional Prosecutor's Offices. These prosecutors issue orders to execute their decisions about "recognition and execution of FO of other MSs" to police, financial institutions, and a real estate office.**

6. Does your national law include the very same list of offences not subject to the double criminality test foreseen in art. 3.2 of FD 2003/577/JHA? In your opinion, would any changes be necessary or convenient in the FD list or in your national list?

**Yes, the list is the same as in the EAW. The whole list is questionable if an item shall be seized for purpose of subsequent confiscation. It is not possible under our Constitution to punish somebody for an act that is not a crime under the law of the Czech Republic.**

7. Regarding offences NOT listed in art. 3.2 of FD 2003/577/JHA, does your national law require special conditions in order to recognize or to execute an order freezing property or evidence?

**We apply a condition of a dual criminality.**

## **TRANSMITTING FREEZING ORDERS**

8. What procedure or means do you usually follow in order to find out who is the competent judicial authority for execution of an order freezing property or evidence?

**Competent prosecutors or judges can use the ATLAS database in the EJM website. They can also seek a help - prosecutors at the International Affairs Department of the Supreme Public Prosecutor's Office and judges at the International Criminal Department of the Ministry of Justice.**

9. What language do you usually use when transmitting an order freezing property or evidence? Through what means or procedure do you usually transmit such an order and its annexed certificate?

**The language for translation depends on statements of MSs to the FD. There is an obligation to translate only a certificate, however, since there is a possibility to refuse recognition of FO if it manifestly does not correspond to the FO, we recommend to our prosecutors to translate also FO to avoid delays (since Czech is not frequent language). There is no obligation to translate FO and certificate that are sent to Slovakia and Austria based on bilateral treaties. FO with certificate can be transmitted by fax and after that by post.**

10. Under your national law, as a general rule, what formalities must be followed in order to ensure that the evidence taken is valid? (art. 5.1.II of FD)

**Police authority has to make a written record - protocol about what was seized, under which bases, who was present during the investigation act (an independent person has also to be present), who handed over the item to police and first of all a detail description of an item.**

## **EXECUTING FREEZING ORDERS**

11. According to your national judicial authorities, what are the means, procedures or channels through which an order freezing property or evidence may validly sent/received in your country?

**Receiving authorities are Regional Prosecutor's Offices. It is possible to send it by fax, however it is necessary to send it after that by post.**

12. Under your national law, once an order freezing property or evidence has been received in your country, what is the legally established time-limit for its execution? Do the competent judicial authorities of your country usually comply with execution of the order within this time-limit? Do you think the 24-hour-time-limit after receipt of the order is reasonable?; if not, what other time-limit will it be reasonable, under your view?

**There is the obligation to keep 24 hours time limit and if it is not possible to keep it, there is an obligation to describe reasons for delay in a reasoning of a decision about recognition and exertion. The time limit set by FD is not realistic.**

13. How do your national authorities usually proceed upon receiving a freezing order from another Member State when the certificate is not produced, is not sufficient or is not duly translated into one of the admitted languages?

**They ask for additional information or for translation.**

14. Regarding the grounds for non-recognition or non-execution of a freezing order, as foreseen in art. 7 of the FD, in your opinion: should any of the existing grounds be discarded?; should any other ground be included?

**Not necessarily. It is obvious from a FD that it is also not possible to recognise FO if  
- there would be substantial doubts concerning keep human rights (Preamble, point 6 of the FD),**

- **FO was not issued in a criminal proceeding (see Art 2 of the FD)**
- **an item would be a national heritage (conflict with the Council Directive from 15/3/1993 (OJ: L 74 from 27/3/1993, p. 399)**
- **concerns to repatriation of item to legitimate owner - FO will be executed as a MLA request under Art 8 of the 2000 Convention.**

15. Regarding the grounds for postponement of execution of a freezing order, as foreseen in art. 8 of the FD, in your opinion: should any of the existing grounds be discarded?; should any other ground be included?

-

16. Art. 5.1.II of the FD provides: “Whenever it is necessary to ensure that the evidence taken is valid and provided that such formalities and procedures are not contrary to the fundamental principles of law in the executing State, the judicial authority of the executing State shall also observe the formalities and procedures expressly indicated by the competent judicial authority of the issuing State in the execution of the freezing order”. Have you ever faced circumstances that required such a provision to come into play?

**The similar provision is in Art 4 of the 2000 Convention. As issuing state we use it the most often when we need to guarantee that a defence council will be allowed to be present during evidence gathering if he/she wants.**

**There was no case when we refused to respect the formalities and procedures mentioned in the FO.**

17. In your opinion, would it reasonable that the certificate attached to a freezing order would fix a specific time-limit for the lifting of the measures taken as a consequence of the order?

**There are no time limits for a seizure in a criminal proceedings in the CR. It would be very difficult for execution state to evaluate if a seizure is still needed in an issuing state.**

18. What sort of practical problems or obstacles arise in your country in relation to requests for transferring evidence or property for confiscation? What is your national practice when processing those requests and, in particular, how is evidence (or even property) transferred to the issuing State?

**evidence:**

**If it is possible, items are sent by post, if not, it is up to police to organise a transfer of an item.**



**items that should be confiscated:**

**They are not transferred to an issuing state (see Art 10 (b) of the FD). Items have always stayed in an executing state waiting for a confiscation order.**

19. Under your national law, what legal remedies may be used against an order freezing property or evidence? Who is entitled to use those legal remedies? On which reasons or grounds may those legal remedies be based? How does your national law attempt to ensure the right to an effective legal remedy to challenge the substantive reasons on which the freezing order rest?

**CZ as an issuing state:**

- there is no complaint against seizure of item that should serve as evidence**
- persons concerned can submit a complaint against a decision of a police or prosecutor to seize an item for purposes of confiscation - a court decides about such a complaint.**

**CZ as an executing state:**

- it is possible to submit a complaint only as far as procedural formalities concerning recognition and execution of FO. A superior prosecutor decides such complaints.**

20. Regarding injuries or damages caused by the execution of an order freezing property or evidence, how is the amount of injuries or damages calculated in your country? What is the appropriate procedure to apply for the reimbursement of the sums paid in those injuries or damages?

### **Regressive Claim in relation to Member States of the European Union**

#### **Section 460m**

**(1) The Ministry of Justice shall reimburse a required sum, paid as compensation for damages by the executing State that recognised and executed the freezing order according to Section 460b, under the condition of reciprocity and upon a request of the executing State, under the conditions that:**

- (a) the order for freezing property or evidence issued in accordance with Section 460b has been cancelled by a final decision of the presiding judge or in pre-trial proceedings by a final decision of the public prosecutor,**
- (b) damage compensated to a person by the executing State according to its national legislation was caused by the cancelled order issued according to Section 460b,**

- (c) the request from the executing State for reimbursement of damage compensated by this State or attached documents contain the amount of settled damages required for reimbursement, its rationalization and information about the authority competent for accepting the reimbursement, including banking connection for the purpose of transferring the required amount or a request for another method of payment, and
  - (d) a final decision on damages made by a competent authority of the executing State is attached to the request according to paragraph (c).
- (2) If the request from the executing Member State does not contain necessary information, the Ministry of Justice shall requisition the competent authority of the executing State to complete the request and shall determine an adequate time limit therefor. Thereat the Ministry of Justice shall notify the authority of consequences of non-compliance with this requisition. If the competent authority of the executing State does not comply with the requisition in the determined limit and not state reasons for this non-compliance, the Ministry of Justice shall not comply with such a request.
- (3) The Ministry of Justice would not refund the damages to the executing State if the damage was caused by wrongful procedure of authorities of the foreign State.

#### **Section 460n**

- (1) The Ministry of Justice shall be entitled to request the issuing State, under conditions determined by this State, for remuneration of a financial amount paid as compensation of damages in the event that:
  - (a) the public prosecutor has recognized the order for freezing property issued by a judicial authority of the issuing State according to Provision 460f and secured execution of the decision on recognition,
  - (b) the judicial authority of the issuing State that has issued such an order notified the public prosecutor of the fact that the order has been cancelled by a final decision in the issuing State, and
  - (c) the Ministry of Justice has already paid damages according to a special legal enactment to a person, whose property was frozen on the basis of a cancelled order and the damage was caused by the order for freezing property issued by a judicial authority of the issuing State.
- (2) The claim for compensation of damages already paid according to sub-section (1) shall be exercised by means of a request to a competent authority of the issuing State according to legal regulations of this State. The request or attached documents shall state

**the amount paid as compensation of damages, including banking connection for transferring the required amount or a request for another means of payment and other details according to requirements of the issuing State.**

**(3) The Ministry of Justice shall not be entitled to request remuneration of compensation of damages if the damage was caused solely by wrongful procedure of authorities of the Czech Republic.**

**(4) Provisions of sub-sections (1) to (3) shall apply *mutatis mutandis* to compensation damages caused by freezing of evidence according to Section 460i carried out on the basis of an order for freezing evidence issued by the issuing State.**

## **CERTIFICATE**

21. Do you notice any defects, lacks or difficulties in the certificate that must be attached to an order freezing property or evidence?

**There were just a few cases in practice. There were no substantial problems.**

## **GENERAL ISSUES**

22. In your opinion, what are the main obstacles arising within the EU when dealing with the recognition and enforcement of orders freezing property or evidence?

**It is not a problem to recognise and execute an FO. There are rather problems in effectiveness of tracing, seizing and confiscations of assets as such.**

23. In your opinion, what measures would improve the execution of orders freezing property or evidence within the European Union?

**There are rather general problems in effectiveness of tracing, seizing and confiscations of assets as such. FO should be forced only to seizing of items for purposes of confiscation and not for purposes of evidence gathering. Prosecutors usually needs also other evidence that only written or material evidence. So, they prefer to use now MLA requests.**

24. Do you know any relevant judicial decision given under your national law implementing FD 2003/577/JHA?

**There were just two cases of issued FOs. They concerned freezing of evidence. There were substantial delays in other MSs, so our prosecutors prefer to use MLA request.**

**22ª. IRLANDA. ANNE FARREL. Mutual Assistance and Extradition Division.**

1	Es necesario siempre un procedimiento penal o una investigación criminal.
2	La autoridad de emisión es a Judge of the High Court.
3	La medida de embargo se mantiene hasta que el acusado es absuelto, o finalmente no es acusado, o hasta que se transforma en un decomiso. El Director of the Public Prosecutor pide a la High Court que emita la orden de decomiso y es la High Court la que designa un receiver (liquidador).
4	La autoridad de emisión es un Juez de la High Court. La autoridad de ejecución es un miembro de la Garda Síochána o un funcionario de aduanas.
5	No se hacen consideraciones.
6	La lista es coincidente, y, por tanto, no se deniega el reconocimiento y la ejecución en estos casos aunque la conducta no esté tipificada en Irlanda.
7	No se contesta a lo que se pregunta.
8	La autoridad central irlandesa contacta con el Miembro Nacional de Irlanda en Eurojust si hay dificultades para averiguar quién es la autoridad destinataria competente.
9	Es insignificante el número de FO emitidas por Irlanda. En MLA, se remite traducida al idioma del destinatario y por correo.
10	No hay experiencia práctica en relación con FO, pero en MLA, Irlanda no suele exigir que se cumpla formalidad alguna al obtener la prueba en el Estado destinatario. Ahora bien, dependiendo del tipo de prueba, puede solicitarse que se respeten algunas formalidades, por ejemplo en la cadena de custodia de dicho elemento probatorio.
11	El Estado emisor debe remitir la resolución de embargo junto con el certificado, así como la solicitud e indicaciones de qué formalidades deben respetarse. La remisión debe hacerse a la Autoridad Central de Irlanda. Debe remitirse por facsímil (¿?) y traducido al inglés. En caso necesario, puede recabarse el original.
12	Si es urgente y va acompañada de los documentos necesarios, puede ejecutarse en el plazo máximo de 24 horas.
13	Hasta que no se cumplan todos los requisitos, la FO no se ejecutará, avisándolo al emisor y aconsejándole sobre cómo cumplir los mismos.
14	No.
15	No.
16	No.
17	No es partidaria de levantar la medida automáticamente en base a un plazo, pero sí de que el Estado emisor informe periódicamente sobre la evolución del proceso penal que motivó la FO.
18	El bien embargado no se transmite en base a una orden de decomiso, sino que es realizado en beneficio del Ministerio de Economía y Hacienda irlandés.
19	La ley irlandesa obliga a notificar a los afectados por el embargo, salvo que el tribunal considere acreditado que se desconoce su paradero. El afectado puede solicitar, y el Tribuna acordar, que la medida de embargo sea alzada o modificada.
20	No contesta a lo preguntado. Señala que los motivos sustantivos para la emisión de la orden solo pueden ser recurridos ante el Estado de emisión.
21	No, pero en una ocasión el Estado de emisión falló al no adjuntar el certificado a la solicitud.

22	El actual régimen está limitado a las resoluciones condenatorias. Algunos Estados, sin embargo, permiten la confiscación basada en resoluciones no condenatorias. Se cuestiona, por tanto, si debe extenderse el principio de reconocimiento mutuo a estas resoluciones y si las mismas son legales, prácticas y eficaces para detectar las ganancias provenientes de delitos.
23	Contesta con la 22.
24	No.

## ANEXO FICHA 22<sup>a</sup>

### QUESTIONNAIRE ABOUT THE OPERATION OF THE FREEZING ORDER SYSTEM ACCORDING TO THE FD

#### SCOPE

1. Under your national law, may an order freezing property or evidence be granted before criminal proceedings have commenced or, on the contrary, may it only be granted within an ongoing criminal process?

**A freezing order relating to evidence requires a criminal proceeding to have been instituted or a criminal investigation to be taking place within the State. A request to enforce a freezing order from within the EU should be transmitted in the form required by the Framework Decision (2003/577/JHA) of 22 July 2003 on the execution in the European Union of orders freezing property or evidence (“FD”). [section 32(1), 34(1) 2008 Act].**

2. Under your national law, may an order freezing property or evidence be granted without judicial supervision (by authorities such as the public prosecutor or the police) or, on the contrary, may it only be granted by a judge?

**An Order is made by a Judge of the High Court. [sections 32 and 35 of 2008 Act].**

3. In your national criminal proceedings, what measures are more frequently taken in order to guarantee the subsequent confiscation or the use as evidence of goods, objects or data?

**A freezing order stays in place either until the person has been acquitted of the charge or if a confiscation order is made and then the confiscation has been satisfied. The Director of Public Prosecutions will request the High Court to make the confiscation order and the High Court will also appoint a Receiver. The freezing order is generally only withdrawn where a prosecution does not proceed, the accused is acquitted or the confiscation order has been satisfied.**

4. Under your national law, who are the competent authorities for granting an order freezing property or evidence? And for executing such an order? In case the competent authorities for granting and execution are not the same, please indicate what practical problems arise, if any.

**The competent authority for granting a freezing order is a Judge of the High Court. The competent authority for the execution of the order is a member of the Garda Síochána or an officer of customs and excise. [section 36(4) 2008 Act].**

5. In your opinion, in order to avoid misunderstandings regarding the competence to execute an order freezing property or evidence, will it be better if a national authority such as the Ministry of Justice or the Office of the Public Prosecution is in charge of the appointment of the competent authority for execution?

**See answers to Questions 3 and 4.**

6. Does your national law include the very same list of offences not subject to the double criminality test foreseen in art. 3.2 of FD 2003/577/JHA? In your opinion, would any changes be necessary or convenient in the FD list or in your national list?

**Our national law makes direct reference to art. 3.2 of the FD. In relation to requests from MSs, a court in the State may not refuse to make a freezing co-operation order, which concerns an offence under art. 3.2, solely on the ground that the conduct constituting the offence does not constitute an offence under the law of the State. [section 35(6) 2008 Act].**

7. Regarding offences NOT listed in art. 3.2 of FD 2003/577/JHA, does your national law require special conditions in order to recognize or to execute an order freezing property or evidence?

**The only condition required under our national law is that specified in art. 3.2, namely that the offence is punishable in the requesting state by a maximum term of imprisonment of not less than 3 years. [section 35(6) 2008 Act].**

## **TRANSMITTING FREEZING ORDERS**

8. What procedure or means do you usually follow in order to find out who is the competent judicial authority for execution of an order freezing property or evidence?

**The Central Authority for Mutual Assistance would contact the Irish National Member for Eurojust if there are difficulties in locating a recipient authority.**

9. What language do you usually use when transmitting an order freezing property or evidence? Through what means or procedure do you usually transmit such an order and its annexed certificate?

**The number of outgoing requests under the FD is negligible however when we transmit a MLA request it is usually accompanied by a translation into the language of the executing authority and forwarded directly by post to the executing authority.**

10. Under your national law, as a general rule, what formalities must be followed in order to ensure that the evidence taken is valid? (art. 5.1.II of FD)

The issue has not arisen, to date, as Ireland has not transmitted any freezing requests for execution. Section 33(3) provides that the court may, in making a request, indicate any procedures to be followed to ensure the admissibility of the evidence. Generally speaking, where evidence is sought from other Member States through mutual legal assistance, Ireland does not, in practice, require particular formalities to be adhered to in the executing state to meet Irish evidential requirements. However, depending on the nature of the evidence sought, formalities in relation to, say, establishing a 'chain of evidence' may possibly be required.

## **EXECUTING FREEZING ORDERS**

11. According to your national judicial authorities, what are the means, procedures or channels through which an order freezing property or evidence may validly sent/received in your country?

**S. 34 of the Criminal Justice (Mutual Assistance) Act 2008 provides for the transmission, from a member state, of a freezing order together with a completed certificate, certified as accurate together with a request and any instruction regarding the treatment of evidence or property concerned, to the Central Authority for Mutual Assistance for enforcement. The Act provides for the documents to be transmitted by facsimile and if not in English that a translation be provided. There is provision for the Central Authority and the High Court to seek the original or a copy of the documents to be transmitted to the Central Authority, if necessary.**

12. Under your national law, once an order freezing property or evidence has been received in your country, what is the legally established time-limit for its execution? Do the competent judicial authorities of your country usually comply with execution of the order within this time-limit? Do you think the 24-hour-time-limit after receipt of the order is reasonable?; if not, what other time-limit will it be reasonable, under your view?

**If the request is urgent and is accompanied by the appropriate documentation it can be executed within the 24 hour time limit.**

13. How do your national authorities usually proceed upon receiving a freezing order from another Member State when the certificate is not produced, is not sufficient or is not duly translated into one of the admitted languages?

**Unless all of the legislative requirement are met, including the completed certificate the request will not be executed and the Issuing authority will be informed accordingly and will be also advised how to comply with our legislative requirements.**

14. Regarding the grounds for non-recognition or non-execution of a freezing order, as foreseen in art. 7 of the FD, in your opinion: should any of the existing grounds be discarded?; should any other ground be included?

**No**



15. Regarding the grounds for postponement of execution of a freezing order, as foreseen in art. 8 of the FD, in your opinion: should any of the existing grounds be discarded?; should any other ground be included?

No

16. Art. 5.1.II of the FD provides: “Whenever it is necessary to ensure that the evidence taken is valid and provided that such formalities and procedures are not contrary to the fundamental principles of law in the executing State, the judicial authority of the executing State shall also observe the formalities and procedures expressly indicated by the competent judicial authority of the issuing State in the execution of the freezing order”. Have you ever faced circumstances that required such a provision to come into play?

No

17. In your opinion, would it be reasonable that the certificate attached to a freezing order would fix a specific time-limit for the lifting of the measures taken as a consequence of the order?

**We would not support an automatic lifting of a freezing order based on time limits or otherwise but we would favour a requirement for the issuing state to regularly update the executing state of the status of the criminal proceedings giving rise to the request.**

18. What sort of practical problems or obstacles arise in your country in relation to requests for transferring evidence or property for confiscation? What is your national practice when processing those requests and, in particular, how is evidence (or even property) transferred to the issuing State?

**Under our National Law property is not transferred on foot of a Confiscation Co-operation Order that is executed in this State, the property is disposed of for the benefit of the Irish Exchequer.**

19. Under your national law, what legal remedies may be used against an order freezing property or evidence? Who is entitled to use those legal remedies? On which reasons or grounds may those legal remedies be based? How does your national law attempt to ensure the right to an effective legal remedy to challenge the substantive reasons on which the freezing order rests?

**The 2008 Act provides for notice to be given to any person who appears to be affected by the freezing or confiscation order unless the court is satisfied that it cannot ascertain the person’s whereabouts. S. 45 of the Act also provides for the High Court, on application by the person affected by the freezing order, to vary or discharge the freezing order under certain conditions.**

20. Regarding injuries or damages caused by the execution of an order freezing property or evidence, how is the amount of injuries or damages calculated in your

country? What is the appropriate procedure to apply for the reimbursement of the sums paid in those injuries or damages?

**The substantive grounds for making the external freezing order may be reviewed only by a judicial authority in the issuing state concerned.**

## **CERTIFICATE**

21. Do you notice any defects, lacks or difficulties in the certificate that must be attached to an order freezing property or evidence?

**No, but we have noted a failure, on occasion, of issuing states to append the certificate to the request.**

## **GENERAL ISSUES**

22. In your opinion, what are the main obstacles arising within the EU when dealing with the recognition and enforcement of orders freezing property or evidence?

23. In your opinion, what measures would improve the execution of orders freezing property or evidence within the European Union?

**Q. 22 and 23. The current regime is confined to recognition of conviction based orders. However, a number of Member States have non-conviction based forfeiture models in place resulting in a greater emphasis in those States in obtaining non-conviction based orders. The question arises as to whether it is necessary to set common standards to facilitate the application of the principle of mutual recognition to non-conviction based freezing requests. If, however, mutual recognition of non-conviction based freezing requests is problematic, are there legal, practical and operational steps that could be taken to enhance the flow of information between AROs to allow the ARO in the receiving state to use domestic powers to target the proceeds of crime?**

24. Do you know any relevant judicial decision given under your national law implementing FD 2003/577/JHA?

**None**

**23ª. REINO UNIDO. Souyam Majumdar y Elena Biurrun. CPS Crimen Organizado**

1	La FD no ha sido implementada en el Reino Unido en su totalidad. Sí lo ha sido en relación con el aseguramiento de prueba que se encuentra en otro Estado miembro, en cuyo caso resulta necesario para la emisión de la FO que exista una investigación criminal en uk. Para el embargo de bienes (en adelante RO: restraint orders), sólo se ha implementado cuando éstos son ganancias procedentes de actividades terroristas. En relación con los demás bienes, el embargo debe solicitarse a través de MLA, y por tanto se exige la doble tipificación de la conducta. En todo caso la investigación criminal debe haber comenzado.
2	La solicitud de FO o de RO debe hacerse ante los tribunales. En el primer caso puede solicitarlo la policía, en el segundo un fiscal (siempre cuando se trata de terrorismo) o la policía (no es lo habitual). Ambas pueden ser modificadas o revocadas por el tribunal a instancia del afectado, inculpado o del fiscal.
3	Production orders, registros y embargos son los medios habituales para asegurar prueba. No suele acudir a la FD sino a MLA. El embargo se utiliza para garantizar el futuro decomiso.
4	La emisión siempre corresponde al tribunal. La ejecución se encomienda a la policía cuando se trata de asegurar una prueba. El embargo se materializa con la notificación al afectado de la RO, quedando obligado a su cumplimiento. No se detectan problemas prácticos.
5	La legislación británica define claramente las competencias para ejecutar las órdenes. Los competentes las remiten a la autoridad central, que es quien la cursa al Estado ejecutor.
6	Si.
7	La doble tipificación es necesaria para cualquier medida coercitiva que pretenda obtener prueba. Para embargar bienes, fuera de los supuestos de terrorismo, se acude a MLA y por tanto la doble tipificación de la conducta es necesaria.
8	Dentro del Crown Prosecution Service, se consulta a la división internacional. Se acude también a Eurojust, EJM o los magistrados de enlace.
9	Al transmitirla, la FO estará siempre en inglés y el certificado en inglés y en la lengua del Estado ejecutor. Se transmite a través de la autoridad central.
10	Junto con la FO se remite una comisión rogatoria donde se especifica que requisitos deben cumplirse para que la obtención de prueba se realice válidamente en el Estado de ejecución. Acompaña anexo con estas reglas, que indican con mucho detalle cómo deben ser interrogados los testigos o imputados y cómo deben consignarse sus respuestas en el acta que se levante.
11	A través de la autoridad central, que es diferente según la parte del Reino Unido donde se pretenda su ejecución.
12	Recibida la FO en el Reino Unido, el tribunal resolverá en el primer día hábil, y excepcionalmente, no más tarde de cinco días hábiles. No pueden contestar sobre si dicho plazo resulta o no adecuado o realista.
13	El certificado es obligatorio, y debe ir firmado por la autoridad competente (permitiéndose la firma electrónica). Debe incluir una declaración de que su contenido es exacto y debe venir traducido al inglés (o galés, en su caso). En caso de que el certificado omita algún dato que es conocido por el tribunal, se entenderá que el certificado está completo.
14	No pueden responder, pues no es competencia del CPS.

15	No pueden responder, pues no es competencia del CPS
16	No pueden responder, pues no es competencia del CPS
17	No pueden responder, pues no es competencia del CPS
18	No pueden responder, pues no es competencia del CPS
19	<p>Está previsto que la fiscalía o el afectado interponga recurso para que el tribunal modifique o revoque la FO. Motivos para así acordarlo son que ya no sea necesaria, que no se haya acusado al sospechoso o que haya sido absuelto, o que la orden no reúna todos los requisitos.</p> <p>Las FO emitidas por otro Estado pueden quedar sin efecto, además, en aplicación del non bis in ídem, que su ejecución vulnere los derechos y libertades fundamentales, o que haya sido cesada en el Estado de emisión.</p> <p>Las RO relacionadas con terrorismo pueden dejarse sin efecto si el procedimiento no comienza a su debido tiempo, siendo el tribunal quien aprecia esto.</p> <p>Las razones sustantivas que llevaron a adoptar la medida pueden ser recurridas como un motivo más para que se alce o modifique el embargo.</p>
20	Detallan los supuestos en los que la emisión de una RO por el Reino Unido da lugar a compensación para el perjudicado.
21	No pueden responder, pues no es competencia del CPS
22	Se reseñan como deficiencias las diferencias entre los distintos sistemas legales y la falta de medios y especialistas en la materia.
23	Se necesita más información sobre la legislación de otros Estados, sus procedimientos, siendo necesario contar con más especialistas.
24	No.

## **ANEXO FICHA 23<sup>a</sup>**

### **QUESTIONNAIRE ABOUT THE OPERATION OF THE FREEZING ORDER SYSTEM ACCORDING TO THE FD**

#### **SCOPE**

1. Under your national law, may an order freezing property or evidence be granted before criminal proceedings have commenced or, on the contrary, may it only be granted within an ongoing criminal process?

**The Council Framework Decision 2003/577/JHA of 22 July 2003 (FD), on the Execution in the European Union of Orders Freezing Property or Evidence has yet to be fully implemented in the UK.**

**The UK has implemented the freezing evidence part of the FD in sections 10 to 12 and 20 to 25 of the Crime International Co-operation Act 2003. Sections 10-12 relate to 'Domestic Freezing Orders' (DFOs) which are orders issued in the UK for protecting evidence which is in the participating country pending its transfer to the United Kingdom'. DFOs may be obtained when there is a criminal investigation into an offence.**

The UK has implemented the freezing property part of the FD only in so far as it applies to the freezing of terrorist property in section 90 and Schedule 4 of the Crime International Co-operation Act 2003 and Rules 24 to 36D of Order 115 of the Rules of the Supreme Court and the Practice Direction to it.

All requests to preserve property, which are not related to terrorism, are dealt with using the UK's processes for mutual legal assistance as set out in the Proceeds of Crime Act 2002 (External Requests and Orders) Order 2005. Accordingly, dual criminality will be required to give effect to such requests. The UK examines the conduct that constitutes the offence rather than how the offence is categorised or described in the requesting country when deciding whether the offence meets the requirement of dual criminality.

The UK calls orders freezing property 'Restraint Orders' (ROs). ROs may be obtained in the UK once a criminal investigation has started.

2. Under your national law, may an order freezing property or evidence be granted without judicial supervision (by authorities such as the public prosecutor or the police) or, on the contrary, may it only be granted by a judge?

**Applications for DFOs and ROs must be made to a court.**

**Applications for DFO may be made by the police.**

**Applications for ROs (for non-terrorism cases) may be made by a police officer (with the authorisation of a senior police officer), a financial investigator designated by the National Policing Improvement Agency (with the authorisation of a senior investigator) or by a prosecutor. Applications for ROs are generally made by prosecutors.**

**Applications for ROs (for terrorism cases) may be made only by a prosecutor.**

**Applications to vary or revoke DFOs may be made by the person who applied for the order or a prosecutor or any other person affected by the order.**

**Applications to discharge or vary ROs (for terrorism and non-terrorism cases) may be made by the prosecutor, the defendant or suspect and anyone affected by the RO.**

3. In your national criminal proceedings, what measures are more frequently taken in order to guarantee the subsequent confiscation or the use as evidence of goods, objects or data?

**Production orders and search and seizure warrants are used more commonly in UK criminal proceedings to preserve evidence. The law enforcement agency applies for the order from a court. DFOs are used rarely. The UK usually sends letters of request to obtain and to preserve evidence in a participating country.**

**ROs are used in order to preserve property so that they may be used to pay confiscation orders.**

4. Under your national law, who are the competent authorities for granting an order freezing property or evidence? And for executing such an order? In case the competent authorities for granting and execution are not the same, please indicate what practical problems arise, if any.

**A court is the competent authority to grant DFOs and ROs (for terrorism and non-terrorism offences).**

**DFOs are executed by sending via the Central Authority of the relevant part of the UK to the participating country where they will be executed.**

**Production orders and search and seizure warrants are executed by serving them on the person who holds the evidence or has control of the premises where the evidence is located. The law enforcement agency obtaining the production order or the search and seizure warrant will execute it.**

**ROs (for terrorism and non-terrorism cases) are executed by serving the orders personally on the defendant/suspect and any other person affected by the orders. The person who obtains the orders has responsibility to serve them.**

**The process of obtaining DFOs, production orders, search and seizure warrants and ROs (for terrorism and non-terrorism cases) ensures that there is judicial supervision.**

**We haven't experienced any practical problems in respect of ROs.**

5. In your opinion, in order to avoid misunderstandings regarding the competence to execute an order freezing property or evidence, will it be better if a national authority such as the Ministry of Justice or the Office of the Public Prosecution is in charge of the appointment of the competent authority for execution?

**There are no misunderstandings regarding the competence to execute each kind of order because the UK legislation sets out who is responsible for executing each type of order. In each case, the agency or authority obtaining the order is responsible for sending it to the UKCA for onward transmission to the participating country or for executing it.**

6. Does your national law include the very same list of offences not subject to the double criminality test foreseen in art. 3.2 of FD 2003/577/JHA? In your opinion, would any changes be necessary or convenient in the FD list or in your national list?

**UK law specifically refers to the list of offences in art. 3.2 of FD.**

7. Regarding offences NOT listed in art. 3.2 of FD 2003/577/JHA, does your national law require special conditions in order to recognize or to execute an order freezing property or evidence?

**UK law requires dual criminality in order to obtain coercive orders seeking evidence from the court. Additionally, all requests to preserve property, which are not related**

**to terrorism, are dealt with using the UK's processes for mutual legal assistance and require dual criminality.**

## **TRANSMITTING FREEZING ORDERS**

8. What procedure or means do you usually follow in order to find out who is the competent judicial authority for execution of an order freezing property or evidence?

**Within the Crown Prosecution Service (CPS) we may consult the International Division and outside the CPS we rely on the European Judicial Network, Eurojust and CPS Liaison Magistrates.**

9. What language do you usually use when transmitting an order freezing property or evidence? Through what means or procedure do you usually transmit such an order and its annexed certificate?

**The DFO will be in English. The certificate accompanying the DFO will be in English and the appropriate language of the participating country. All DFO must be transmitted via the Central Authority of the relevant part of the United Kingdom.**

10. Under your national law, as a general rule, what formalities must be followed in order to ensure that the evidence taken is valid? (art. 5.1.II of FD)

**The UK national law requires that the transmission of the DFO must be followed by the transmission of a letter of request. The letter of request will set out what formalities must be followed in order to ensure that the evidence taken is valid. A copy of the requirements is annexed to this response.**

## **EXECUTING FREEZING ORDERS**

11. According to your national judicial authorities, what are the means, procedures or channels through which an order freezing property or evidence may validly sent/received in your country?

**For UK and for a participating country requests to other countries to freeze evidence under the framework decision, once a freezing order is obtained it is sent to the UK Central Authority who is the designated authority for onward transmission. For requests in relation to England and Wales and Northern Ireland this is the UK Central Authority based in England and for requests in relation to Scotland it is the Crown Office (International Co-operation Unit) in Scotland [this will be referred to as the Central Authority of the relevant part of the UK].**

**ROs in terrorism cases will be sent with the accompanying certificate via the Central Authority of the relevant part of the UK to the participating country where they will be executed.**

**An Overseas Freezing Order (OFO): (1) is an order for protecting, pending its transfer to the participating country, evidence which is in the UK and may be used**

in any proceedings or investigation in the participating country; (2) made by a court exercising criminal jurisdiction in the participating country, a prosecuting authority in the participating country, or any other authority in the participating country which appears to the territorial authority to have the function of making such orders; and (3) must relate to criminal proceedings instituted in the participating country in respect of a listed offence or a criminal investigation being carried on there into such an offence [sections 20(2) to 20(4) Crime International Co-operation Act 2003]. Sections 20 to 25 of the Crime International Co-operation Act 2003 deal with OFOs.

OFOs must be submitted to the UK via the Central Authority of the relevant part of the UK.

Requests to freeze property in terrorism cases must be submitted to the UK via the Central Authority of the relevant part of the UK.

12. Under your national law, once an order freezing property or evidence has been received in your country, what is the legally established time-limit for its execution? Do the competent judicial authorities of your country usually comply with execution of the order within this time-limit? Do you think the 24-hour-time-limit after receipt of the order is reasonable? If not, what other time-limit will it be reasonable, under your view?

For requests to freeze evidence to UK under the framework decision, once the order is received by the nominated court the general rule is that the court will consider the order no later than the next business day. Exceptionally, the court may consider the order later than that, but no more than five business days after service.

We believe that our UKCA colleagues will be better placed to deal with questions as compliance with and the reasonableness of the time-limit for requests to freeze evidence as the CPS does not deal with such requests.

For requests to freeze property in terrorism cases, the same time limits apply. We are unable to assist with the compliance with and the reasonableness of the time-limit as no such requests have been received by the CPS.

13. How do your national authorities usually proceed upon receiving a freezing order from another Member State when the certificate is not produced, is not sufficient or is not duly translated into one of the admitted languages?

The statutory instrument dealing with requests to UK to freeze evidence states that the order must be accompanied by a certificate which must be signed by or on behalf of the court or authority which made or confirmed the order (although electronic signatures are permitted), must include a statement as to the accuracy of the information given in it and must include a translation of it into English (or Welsh if appropriate). Therefore, without a certificate the order cannot be considered. However, if a certificate accompanies the order, the certificate may be treated as giving any specified information which is not given in it if the territorial authority has the information in question.



14. Regarding the grounds for non-recognition or non-execution of a freezing order, as foreseen in art. 7 of the FD, in your opinion: should any of the existing grounds be discarded? Should any other ground be included?

**We believe that our UKCA colleagues will be better placed to deal with questions as to the grounds for non-recognition or non-execution for requests to freeze evidence as the CPS does not deal with such requests.**

**We are unable to assist with questions as to the grounds for non-recognition or non-execution relating to requests to freeze property in terrorism cases as no such requests have been received by the CPS.**

15. Regarding the grounds for postponement of execution of a freezing order, as foreseen in art. 8 of the FD, in your opinion should any of the existing grounds be discarded? Should any other ground be included?

**We believe that our UKCA colleagues will be better placed to deal with questions as to grounds for postponement for requests to freeze evidence as the CPS does not deal with such requests.**

**We have not commented upon questions as to grounds for postponement for requests to freeze property in terrorism cases as no such requests have been received by the CPS.**

16. Art. 5.1.II of the FD provides: “Whenever it is necessary to ensure that the evidence taken is valid and provided that such formalities and procedures are not contrary to the fundamental principles of law in the executing State, the judicial authority of the executing State shall also observe the formalities and procedures expressly indicated by the competent judicial authority of the issuing State in the execution of the freezing order”. Have you ever faced circumstances that required such a provision to come into play?

**We believe that our UKCA colleagues will be better placed to deal with this question for requests to freeze evidence as the CPS does not deal with such requests.**

**We have not commented upon this question for requests to freeze property in terrorism cases as no such requests have been received by the CPS.**

17. In your opinion, would it reasonable that the certificate attached to a freezing order would fix a specific time-limit for the lifting of the measures taken as a consequence of the order?

**We believe that our UKCA colleagues will be better placed to deal with this question for requests to freeze evidence as the CPS does not deal with such requests.**

**We have not commented upon this question for requests to freeze property in terrorism cases as no such requests have been received by the CPS.**

18. What sort of practical problems or obstacles arise in your country in relation to requests for transferring evidence or property for confiscation? What is your national practice when processing those requests and, in particular, how is evidence (or even property) transferred to the issuing State?

**We cannot comment on compliance with and the reasonableness of the time-limit for requests to freeze evidence as the CPS does not deal with such requests.**

**We have not commented upon this question for requests to freeze property in terrorism cases as no such requests have been received by the CPS.**

19. Under your national law, what legal remedies may be used against an order freezing property or evidence? Who is entitled to use those legal remedies? On which reasons or grounds may those legal remedies be based? How does your national law attempt to ensure the right to an effective legal remedy to challenge the substantive reasons on which the freezing order rest?

**The legal remedies available for all orders freezing property or evidence are variation and revocation/discharge.**

**DFOs and OFOs can be varied or revoked by a court as a result of an application by the person who applied for the order, a prosecuting authority or any other person affected by the order [Sections 12 and 25 of the Crime International Co-operation Act 2003].**

**ROs and requests to freeze property in terrorism cases can be varied or discharged by a court as a result of an application by the prosecutor, the defendant/suspect and any other person affected by it [Paragraphs 6 and 11G of Schedule 4 to the Terrorism Act 2000].**

**The common grounds for variation and revocation/discharge include: (1) the order is no longer required, (2) the investigation has come to an end without the suspect being charged, (3) the proceedings have resulted in the acquittal of the defendant, and (4) one of the requirements for making the order has not been met.**

**OFOs can be discharged on the bases of (1) double jeopardy; (2) that giving effect to the order would be incompatible with the European Convention on Human Rights in addition to the above grounds; and (3) the OFO has ceased to have effect in the participating country [section 25 of the Crime International Co-operation Act 2003].**

**UK ROs (for terrorism and non terrorism cases) obtained whilst an investigation is taking place can be discharged if proceedings are not started within a reasonable time [paragraph 6 of Schedule 4 to the Terrorism Act 2000 and section 42(7) of the Proceeds of Crime Act 2002]. It is for the court to decide what constitutes a reasonable time.**

**The substantive reasons for granting an order can be challenged as part of the application to vary or revoke/discharge.**

20. Regarding injuries or damages caused by the execution of an order freezing property or evidence, how is the amount of injuries or damages calculated in your country? What is the appropriate procedure to apply for the reimbursement of the sums paid in those injuries or damages?

**Generally, the unsuccessful party is ordered to pay the legal costs of the successful party.**

**Compensation is payable when UK ROs (for terrorism and non-terrorism cases) are discharged because (a) an investigation does not result in proceedings being started OR a defendant is acquitted in the proceedings, AND (2) there is serious default on the part of a law enforcement agency or a prosecuting authority, AND (3) a person holding property has suffered loss as a result of anything done as a result of a RO AND (4) the court considers compensation to be appropriate. The amount payable is what the court considers to be just in the circumstances. Compensation is payable by the party who was responsible for the serious default.**

**The person suffering loss must apply to the court for compensation and give notice of the applicant for the UK RO.**

**See paragraph 9 of Schedule 4 to the Terrorism Act 2000 and section 72 of the Proceeds of Crime Act 2002 for compensation provisions.**

## **CERTIFICATE**

21. Do you notice any defects, lacks or difficulties in the certificate that must be attached to an order freezing property or evidence?

**We are unable to comment upon this question in respect of requests to freeze evidence as the CPS does not deal with such requests. We are not aware of any requests to restrain or freeze terrorist assets.**

## **GENERAL ISSUES**

22. In your opinion, what are the main obstacles arising within the EU when dealing with the recognition and enforcement of orders freezing property or evidence?

**Differences in legal systems and legislation may lead to misunderstanding and delay. There is also a need for sufficient resources, including dedicated specialist staff.**

23. In your opinion, what measures would improve the execution of orders freezing property or evidence within the European Union?

**Sufficient resources and dedicated specialist staff. The availability of more information on countries' legal systems, law and procedures.**

24. Do you know any relevant judicial decision given under your national law implementing FD 2003/577/JHA?

**We are aware of no relevant judicial decisions.**

## **ANNEX – UK’s requirements when taking evidence**

### **Witness statements – business documents**

*where relevant, for example where a company officer is examining records to provide a narrative account you may wish to include the following, amended as applicable in your case – note where business records, admissible pursuant to the s117CJA 2003 hearsay provisions, can stand alone, such as bank statements and telephone billing, you should avoid asking for statements exhibiting those records. The production of statements in these circumstances may slow down your request to a considerable degree and place a substantial and unnecessary burdens on the requested State. If a statement is required –the following may assist*

**To allow the court in England to admit the statement in evidence, without the need for the witness to give live testimony the statement should include the following**

**I occupy the position of (job title)  
in the employment of (business/organisation)  
located at (address)**

**By virtue of my position I can state that each of the records referred to and produced in this statement are the originals or the duplicate of the original records in the custody of (business/organisation).**

**The documents that I have referred to were created or received by a person in the course of a trade, business, profession or other occupation or as the holder of a paid or unpaid office.**

**The person who supplied the information contained in the documents (the “relevant person”) had or may reasonably be supposed to have had personal knowledge of the matters dealt with.**

**Each person (if any) through whom the information was supplied from the relevant person received the information in the course of a trade, business, profession or other occupation or as the holder of a paid or unpaid office.**

**The relevant person cannot reasonably be expected to have any recollection of the matters dealt with in the documents, having regard to the length of time since he supplied the information and all other circumstances.**

### **Witness statements – general considerations**

**To provide contact details for each witness and ask each witness whether they would be willing to give evidence in the UK , or via videolink from their country, including any dates in which they would be unavailable.**

**To advise whether it is possible to arrange for the evidence of the witness(es) to be given via video link and details of the appropriate person to contact to make arrangements**

**To invite xxx to attend a voluntary interview in order to establish whether xxx. A list of the questions to be asked, which is not intended to be exhaustive, is attached at Appendix ... *You should make it clear to the executing authority if you consider the***

*person is a suspect or whether you are unsure as to their status even if you do not intend to bring proceedings against them in the UK.*

*eg*

*It is not known at this stage whether [X][company Y or any employee of the company] are knowingly involved in this offence or other smuggling offences. If it is discovered that they are I would be grateful if you would contact me to discuss before obtaining any evidence from [X][company officials or employees].*

*If there is a possibility that at a later stage you might wish to prosecute the interviewee you may wish to request the following*

### *Suspects*

*It is requested that xxx be interviewed as a suspect. Please ensure that the following statement, known in England and Wales as a 'caution', is read to the suspect immediately prior to the asking of questions and at the resumption of the interview after any break.*

*The caution: "You do not have to say anything. But it may harm your defence if you do not mention when questioned something which you later rely on in court. Anything you do say may be given in evidence":*

*The interviewee should be asked to confirm that they understand the caution.*

*If it is possible under xxx law, the interview should be tape recorded and copies of the tapes provided to me.*

## **24ª. ALEMANIA. Till Gut, Federal Office of Justice**

1	Se necesita un procedimiento penal, que se inicia a instancia de la fiscalía. En caso de urgencia, también puede hacerlo la policía.
2	En principio, se necesita una orden judicial. En caso de urgencia, la fiscalía o determinados cargos policiales pueden embargar, obteniendo después la confirmación de esta orden por los tribunales.
3	No hay estadísticas que permitan contestar sobre la frecuencia, pero las medidas previstas legalmente son embargo e incautación.
4	La emisión corresponde a un juez durante la fase previa al juicio y al tribunal que conoce del juicio durante éste. La fiscalía es la encargada de la ejecución, pudiendo encargar tareas al respecto a los agentes policiales. No se aprecian problemas al respecto.
5	No se contesta.
6	Si.
7	No se exigen condiciones especiales, pero sí debe cumplirse con el requisito de la doble tipificación.
8	No se contesta
9	No se contesta
10	El requisito primordial en la obtención de prueba es la previa autorización judicial. La jurisprudencia alemana, sin embargo, no excluye automáticamente la prueba si no se ha cumplido con los requisitos del proceso alemán.
11	Depende de cual sea el otro Estado. Entre los Estados miembros, Alemania ha designado las Prosecution Offices como competentes, y está permitida la transmisión directa. Debe remitirse por escrito, por cualquier medio que permita comprobar su autenticidad, y en el caso de la FO debe ir acompañada del certificado.
12	No se contesta
13	No se contesta
14	No se contesta
15	No se contesta
16	No se contesta
17	No se contesta
18	No se han detectado problemas, variando los procedimientos según el Estado de que se trate.
19	El propio tribunal puede llevar el caso ante Higher Regional Court si tiene dudas sobre si debe prestar la asistencia. Asimismo, el interesado o afectado puede recurrir. En ambos casos, pueden ser cuestionados los motivos sustantivos que llevaron a adoptar la orden.
20	Sobre la cuantía no hay una regla general, existiendo distintas las vías legales o procedimientos para obtener resarcimiento de los daños.
21	No se contesta
22	No se contesta
23	No se contesta
24	No se contesta

## ANEXO FICHA 24<sup>a</sup>

### QUESTIONNAIRE ABOUT THE OPERATION OF THE FREEZING ORDER SYSTEM ACCORDING TO THE FD

#### SCOPE

1. Under your national law, may an order freezing property or evidence be granted before criminal proceedings have commenced or, on the contrary, may it only be granted within an ongoing criminal process?

If the freezing order is to be issued by a criminal court with a view to a freezing under German criminal procedure, this forms part of the criminal process. If need be, German prosecutorial authorities may institute criminal proceedings for that purpose. Initiating criminal proceedings falls under the remit of the competent Prosecutor's Office; police may act if urgency requires so (see question 2).

2. Under your national law, may an order freezing property or evidence be granted without judicial supervision (by authorities such as the public prosecutor or the police) or, on the contrary, may it only be granted by a judge?

In principle, a judicial warrant is needed. In exceptional cases of urgency, the Prosecutor's Office or certain investigative officials (see Sec. 152 of the Courts Constitution Act; among them most notably police officers) may seize and thus freeze. In the latter case, court confirmation must be obtained subsequently.

See Sec. 98 of the German Criminal Code (see [http://www.gesetze-im-internet.de/englisch\\_stpo/englisch\\_stpo.html](http://www.gesetze-im-internet.de/englisch_stpo/englisch_stpo.html)) for seizing evidence, and Sec. 111e thereof for securing movable and immovable which may be liable to forfeiture (i.e., proceeds of crime) or confiscation (i.e., instrumentalities of crimes):

#### **Section 98 [Order of Seizure]**

(1) Seizure may be ordered only by the court and, in exigent circumstances, by the public prosecution office and the officials assisting it (section 152 of the Courts Constitution Act). Seizure pursuant to Section 97 subsection (5), second sentence, in the premises of an editorial office, publishing house, printing works or broadcasting company may be ordered only by the court.

(2) An official who has seized an object without a court order shall apply for court confirmation within three days if neither the person concerned nor an adult relative was present at the time of seizure, or if the person concerned and, if he was absent, an adult relative of that person expressly objected to the seizure. The person concerned may at any time apply for a court decision. The competence of the court shall be determined by Section 162. The person concerned may also submit the application to the Local Court in whose district the seizure



took place, which shall then forward the application to the competent court. The person concerned shall be instructed as to his rights.

(3) Where after public charges have been preferred, the public prosecution office or one of the officials assisting has effected seizure, the court shall be notified of the seizure within three days; the objects seized shall be put at its disposal.

(4) [omitted]

#### **Section 111e [Order for Seizure or Attachment]**

(1) Only the court, and in exigent circumstances also the public prosecution office, shall be competent to order seizure (Section 111c) and attachment (Section 111d). Officials assisting the public prosecution office (section 152 Courts Constitution Act) shall also be competent to order seizure of a moveable asset (Section 111c, subsection (1)) in exigent circumstances.

(2) If the public prosecution office has ordered seizure or attachment, it shall apply for court confirmation of the order within one week. This shall not apply when seizure of a moveable asset has been ordered. In all cases the person concerned may apply for a court decision at any time.

(3) [omitted]

(4) [omitted]

3. In your national criminal proceedings, what measures are more frequently taken in order to guarantee the subsequent confiscation or the use as evidence of goods, objects or data?

The available measures would be seizure under Sec. 98 of the German Criminal Code (for evidence), seizure under Sec. 111b thereof (for objects potentially liable to forfeiture or for their confiscation; on the difference between the two, see question 2), or attachment under Sec. 111d thereof (for monetary or similar claims).

For details, see the provisions in question 2 and in the following.

Since none of the relevant German authorities maintains comprehensive statistics on the subject, no figures on the number or frequency of measures exist.

#### **Section 111b [Securing of Objects]**

(1) Objects may be secured by seizure pursuant to Section 111c if there are grounds to assume that the conditions for their forfeiture or

for their confiscation have been fulfilled. Section 94 subsection (3) shall remain unaffected.

(2) If there are grounds to assume that the conditions have been fulfilled for forfeiture of equivalent value or for confiscation of equivalent value of the object, attachment in rem may be ordered pursuant to Section 111d in order to secure such equivalent value.

(3) If there are no cogent grounds, the court may revoke the order in respect of the measures referred to in the first sentence of subsection (1) and in subsection (2) after a maximum period of six months. Where certain facts substantiate the suspicion of the offence and the time limit referred to in the first sentence is not sufficient given the particular difficulty or particular extent of the investigations or for another important reason, the court may, upon application by the public prosecution office, extend the measure provided the grounds referred to justify their continuation. Unless there are cogent grounds, the measure shall not be continued for longer than a period of twelve months.

(4) Sections 102 to 110 shall apply *mutatis mutandis*.

(5) Subsections (1) to (4) shall apply *mutatis mutandis* insofar as forfeiture may not be ordered for the sole reason that the conditions under section 73 subsection (1), second sentence, of the Criminal Code apply.

### **Section 111c** **[Effecting Seizure]**

(1) Seizure of a moveable asset shall be effected in the cases referred to under Section 111b by impounding the asset or by indicating the seizure by seal or in some other way.

(2) Seizure of a plot of land or of a right subject to the provisions on compulsory execution in respect of immovable property shall be effected by making an entry concerning the seizure in the Land Register. The provisions of the Act on Compulsory Sale by Public Auction and Compulsory Administration in respect of the extent of seizure on compulsory sale by public auction shall apply *mutatis mutandis*.

(3) Seizure of a claim or any other property right not subject to the provisions on compulsory execution in respect of immovable property shall be effected by attachment. The provisions of the Civil Procedure Code on compulsory execution in respect of claims and other property rights shall apply *mutatis mutandis*. The request to make the declarations referred to in section 840 subsection (1) of the Civil Procedure Code shall be linked to seizure.

(4) Seizure of ships, ship constructions and aircraft shall be effected pursuant to subsection (1). The seizure shall be entered in the Register in respect of those ships, ship constructions and aircraft that are entered in the Register of Ships, in the Register of Ship Constructions or in the Register of Liens on Aircraft. Application for such entry may be made in respect of ship constructions or aircraft that have not been, but

are capable of being, entered in the Register; the provisions governing an application by a person who is entitled to request entry in the Register by virtue of an executory title shall apply *mutatis mutandis* in this case.

(5) Seizure of an object pursuant to subsections (1) to (4) shall have the effect of a prohibition of alienation within the meaning of section 136 of the Civil Code; the prohibition shall also cover other directions besides alienation.

(6) A moveable asset that has been seized may

1. be handed over to the person concerned against immediate payment of its value or

2. be retained by the person concerned, subject to revocation at any time, for further use in the interim until conclusion of the proceedings.

The sum paid pursuant to the first sentence, number 1, shall be substituted for the asset. The measure pursuant to the first sentence, number 2, may be made dependent on the person concerned providing security or fulfilling certain conditions.

#### **Section 111d** **[Attachment for Equivalent Value; Fine or Costs]**

(1) Attachment *in rem* may be ordered by virtue of forfeiture or of confiscation of equivalent value, by virtue of a fine or of the anticipated costs of criminal proceedings. Attachment may only be ordered by virtue of a fine or of the anticipated costs if judgment has been passed against the defendant imposing punishment. Attachment shall not be ordered to secure execution costs or negligible amounts.

(2) Sections 917 and 920 subsection (1) as well as sections 923, 928, 930 to 932, and 934 subsection (1) of the Civil Procedure Code shall apply *mutatis mutandis*.

(3) If attachment has been ordered by virtue of a fine or of the anticipated costs, an enforcement measure shall be revoked upon application by the defendant if the defendant needs the object of attachment to pay the costs of his defence, his maintenance or the maintenance of his family.

#### **Section 111e** **[Order for Seizure or Attachment]**

(1) Only the court, and in exigent circumstances also the public prosecution office, shall be competent to order seizure (Section 111c) and attachment (Section 111d). Officials assisting the public prosecution office (section 152 Courts Constitution Act) shall also be competent to order seizure of a moveable asset (Section 111c, subsection (1)) in exigent circumstances.

(2) If the public prosecution office has ordered seizure or attachment, it shall apply for court confirmation of the order within one week. This shall not apply when seizure of a moveable asset has been ordered. In all cases the person concerned may apply for a court decision at any time.

(3) The public prosecution office shall inform the person who is aggrieved as a result of the act without delay of enforcement of the order for seizure or attachment, insofar as his identity is known or becomes known during the course of proceedings.

(4) If notifying each aggrieved person individually would result in a disproportionate amount of effort or if it may be assumed that other yet unknown aggrieved persons have claims arising from the act, notice may be given of the seizure or attachment by insertion once in the electronic Federal Gazette. In addition, notice may also be published in some other suitable manner. Personal particulars may only be published insofar as their provision is essential for enabling the aggrieved persons to access the secured assets in order to enforce their claims. Once the security measures have been concluded the public prosecution office shall initiate the deletion of the publication inserted in the electronic Federal Gazette.

#### **Section 111f** **[Effecting Seizure and** **Enforcing Attachment]**

(1) Effecting seizure (Section 111c) shall be incumbent upon the public prosecution office and, in the case of moveable assets (Section 111c subsection (1)), also upon the officials assisting it. Section 98 subsection (4) shall apply *mutatis mutandis*.

(2) The required entries in the Land Register as well as in the registers referred to in Section 111c subsection (4) shall be made upon application by the public prosecution office or by the court that ordered seizure. The same shall apply *mutatis mutandis* to the applications referred to in Section 111c subsection (4).

(3) If enforcement of attachment is to be effected pursuant to the provisions on attachment of moveable assets, this may be effected by the authority designated in section 2 of the Ordinance on Recovery of Claims of the Judicial Authorities, by the court bailiff, by the public prosecution office, or by the officials assisting it (section 152 of the Courts Constitution Act). Subsection (2) shall apply *mutatis mutandis*. The public prosecution office or, upon the application of the public prosecution office, the court that ordered the attachment shall be competent to order attachment of a registered ship or ship construction and to order attachment of a claim arising out of the attachment pursuant to Section 111d.

(4) Section 37 subsection (1) shall apply to service, subject to the proviso that the officials assisting the public prosecution office (section 152 of the Courts Constitution Act) may also be assigned the task of implementing the order.

(5) The person concerned may at any time apply for a decision of the court in respect of measures taken in the course of enforcing the seizure or attachment.

**Section 111g**  
**[Compulsory Execution; Enforcement of**  
**Attachment by the Aggrieved Person]**

(1) Seizure of an object pursuant to Section 111c and the enforcement of attachment pursuant to Section 111d shall not take effect against a disposition made by the aggrieved person, by way of compulsory execution or enforcement of attachment on the basis of a claim arising from the criminal offence.

(2) Compulsory execution or enforcement of attachment pursuant to subsection (1) shall require the approval of the court which is competent to order seizure (Section 111c) or attachment (Section 111d). The decision shall be given in the form of an order that may be contested by the public prosecution office, the accused and the aggrieved person by means of an immediate complaint. Approval shall be refused if the aggrieved person cannot furnish *prima facie* evidence that the claim arose from the criminal offence. Section 294 of the Civil Procedure Code shall apply.

(3) The prohibition of alienation pursuant to Section 111c subsection (5) shall apply from the moment of seizure also for the benefit of aggrieved persons who, during seizure, pursue compulsory execution in respect of the object seized or who enforce attachment. Entry of the prohibition of alienation in the Land Register for the benefit of the state shall also apply, for the purposes of section 892 subsection (1), second sentence, of the Civil Code, as an entry for the benefit of those aggrieved persons who, during seizure, are entered in the Land Register as beneficiaries of the prohibition of alienation. Proof that the claim arose from the criminal offence can be furnished to the Land Registry by submission of the order granting approval. The second and third sentences shall apply *mutatis mutandis* to the prohibition of alienation in the case of ships, ship constructions and aircraft referred to in Section 111c subsection (4). The legal force of the prohibition of alienation for the benefit of the aggrieved person shall not be affected by revocation of seizure. The first and fifth sentences shall apply *mutatis mutandis* for the effect of the lien which arises in respect of the moveable assets through the enforcement of the attachment (Section 111d).

(4) If the object seized or distrained by virtue of attachment is not subject to forfeiture on grounds other than those referred to in section 73 subsection (1), second sentence, of the Criminal Code, or if approval was wrongfully granted, the aggrieved person shall be obliged to compensate third parties for the damage caused to them due to the fact that the prohibition of alienation applies for his benefit pursuant to subsection (3).

(5) Subsections (1) to (4) shall apply *mutatis mutandis* if forfeiture of an object has been ordered but the order has not yet become binding. They shall not apply if the object is subject to confiscation.

4. Under your national law, who are the competent authorities for granting an order freezing property or evidence? And for executing such an order? In case the competent authorities for granting and execution are not the same, please indicate what practical problems arise, if any.

As indicated already in the answer to question 2, the competent authority would in principle be a judge or a court. Before the preferment of public charges, i.e. broadly speaking before the Prosecutor's Office has moved to the competent court to open the trial, this will be typically a judge of the Local Court (see Sec. 162 of the Criminal Code, for exceptions see Sec. 169, both in the following). After the preferment of public charges, the court seized of the principal trial is competent to order the relevant measures.

**Section 162**  
**[Court Investigations]**

(1) The public prosecution office considers a court investigation to be necessary, it shall submit its applications prior to preferment of public charges to the Local Court in the district of which it is located or in which its branch submitting the application is located.

(2) [Omitted]

**Section 169**  
**[Investigating Judges of the Higher Regional Courts and the Federal Court of Justice]**

(1) In cases under the jurisdiction of the Higher Regional Court as the court of first instance pursuant to section 120 of the Courts Constitution Act, the duties incumbent upon the judge at the Local Court in preparatory proceedings may also be performed by investigating judges of the Higher Regional Court concerned. If the Federal Public Prosecutor General is conducting the investigations, the investigating judges of the Federal Court of Justice shall take their place.

(2) The investigating judge of the Higher Regional Court competent for a case may also order investigatory acts although they are not to be performed in the district of such court.

The Prosecutor's Office will take the necessary executing measures, as being generally in charge of investigations and prosecution in pending cases. The Prosecutor's Office can task the police or other law enforcement services with the implementation of procedural measures (see answer to question 2, and also Sec. 111f, sub-sec. 2 and 4, in answer to question 3). With a view to the availability of the resources needed, police will be involved in most cases in practice.

No general practical problems arise from that division of competence. The involved authorities are usually those from the same court district and cooperate. The outlined division of labor follows the same principles generally applicable to other procedural measures in criminal proceedings.

6. Does your national law include the very same list of offences not subject to the double criminality test foreseen in art. 3.2 of FD 2003/577/JHA? In your opinion, would any changes be necessary or convenient in the FD list or in your national list?

Yes. In accordance with the above-mentioned Art. 3.2, German law waives the double criminality test for offences with a custodial sentence of a maximum period of at least three years in the issuing State. The pertinent provisions, Sec. 94, sub-sec. 1, no. 1 of the Act on Cooperation in Criminal Matters, points to the list in Art. 3.2 for that purpose. Sec. 94 applies *mutatis mutandis* for requests to secure evidence, see Sec. 97.

7. Regarding offences NOT listed in art. 3.2 of FD 2003/577/JHA, does your national law require special conditions in order to recognize or to execute an order freezing property or evidence?

No special conditions apply. German law requires the order from the issuing State along with the certificate under Art. 9 of FD 2003/577/JHA. For non-listed offences, the double criminality test would apply. Generally speaking, Germany has made use of the grounds for non-recognition or non-execution and the grounds for postponement of execution under Art. 7 and 8 of FD 2003/577/JHA.

For more details on the general provisions under German mutual legal assistance law, see Sec. 66 and 67 of the Act on Cooperation in Criminal Matters, to which Sec. 94 on requests under FD 2003/577/JHA points:

#### **Section 66 Surrender of Property**

(1) At the request of a competent authority of a foreign state, objects may be surrendered

1. which may serve as evidence in foreign proceedings; or
2. which the person involved or a participant has obtained as a result of the offence forming the basis for the request, or which has been obtained in exchange for such subjects.

(2) Surrender shall be admitted only

1. if the act forming the basis for the request contains the elements of a criminal offence or of an offence admitting the imposition of a fine under German law or if, after analogous conversion of the facts, it would contain them under German law;

2. if a seizure order of a competent authority of the requesting state is submitted or if a declaration of such an authority shows that the requirements for a seizure would exist if the object were located in the requesting state; and

3. if assurances are given that the rights of third parties will not be impaired, with the reservation that objects surrendered will be returned immediately upon request.

(3) The public prosecutor at the Regional Court shall prepare the decision about the surrender and shall carry out the surrender granted. The public prosecutor at the Regional Court in whose district the object is located shall have local jurisdiction. Art. 61 (2), sentence 2 shall apply correspondingly.

### **Section 67 Search and Seizure**

(1) Objects that may become the subject of surrender to a foreign state may be seized or otherwise secured even prior to the receipt of the request for surrender. A search may also be conducted.

(2) If the conditions specified in Art. 66 (1), no. 1 and (2) no. 1 are met, objects may also be secured if necessary for the execution of the request which is not directed towards the surrender of the objects. Para. 1, sentence 2 shall apply correspondingly.

(3) The Local Court in whose district the acts are to be performed shall order the search and seizure. Art. 61 (2), sentence 2 shall apply correspondingly.

(4) If delay would have an adverse effect, the public prosecutor and his auxiliary officials (Section 152 of the Judicature Act) shall be empowered to order the search and seizure.

## **TRANSMITTING FREEZING ORDERS**

10. Under your national law, as a general rule, what formalities must be followed in order to ensure that the evidence taken is valid? (art. 5.1.II of FD)

See answer to question 7. The most important formality would be the need of prior judicial authorization. However, German law including case law does not automatically exclude evidence obtained in violation of criminal procedure.

## **EXECUTING FREEZING ORDERS**

11. According to your national judicial authorities, what are the means, procedures or channels through which an order freezing property or evidence may validly sent/received in your country?

Means, procedures and channels depend on who is the other state.



As for other mutual legal assistance requests between EU member states, the direct channel will typically apply for the transmission of freezing orders. Germany has notified the Prosecutor's Offices as the competent authorities under Art. 4 of FD 2003/577/JHA (see Council Doc. 9309/09 of 4 Mai 2009). Moreover, Art. 6(1) of the EU Mutual Legal Assistance Convention of 2000 provides for the direct channel.

Accordingly, a request must be made in writing, or by any means capable of producing a written record under conditions allowing the receiving Member State to establish authenticity, and if made under FD 2003/577/JHA, it must be accompanied by the certificate under Art. 9.

18. What sort of practical problems or obstacles arise in your country in relation to requests for transferring evidence or property for confiscation? What is your national practice when processing those requests and, in particular, how is evidence (or even property) transferred to the issuing State?

No problems that could be generalized are discernible.

The practice of processing requests and transferring evidence or other material or immaterial objects varies depending on the requesting state. Again, no general problems can be discerned.

19. Under your national law, what legal remedies may be used against an order freezing property or evidence? Who is entitled to use those legal remedies? On which reasons or grounds may those legal remedies be based? How does your national law attempt to ensure the right to an effective legal remedy to challenge the substantive reasons on which the freezing order rest?

As indicated in the answer to question 7, the effectuation of transnational freezing orders essentially follows the procedure for domestic orders, i.e. search and seizure.

Sec. 77 of the Act on Cooperation in Criminal Matters would be noteworthy on the applicability of general criminal procedure:

#### **Section 77 Application of Procedural Rules**

(1) To the extent that this Law does not contain any special procedural rules, the provisions of the Judicature and its Introductory Act, of the Code of Criminal Procedure, of the Juvenile Court Act, of the Law on Taxation and of the Law on Administrative Offences shall apply analogously.

(2) [Omitted]

The court deciding on the freezing order can bring the case before the Higher Regional Court if there are doubts as to the permissibility whether the assistance can be granted (see Sec. 61 of the Act on Cooperation in Criminal Matters).

Any person against whom an order has subsequently been issued may thus challenge it under Sec. 304 et seq. of the Code of Criminal Procedure:

**Section 304**  
**[Admissibility]**

(1) A complaint shall be admissible against all orders made by the courts at first instance or in appellate proceedings on fact and law and against directions given by the presiding judge, the judge in preliminary proceedings, and by a commissioned or a requested judge, unless such orders are expressly exempted from appellate remedy by law.

(2)-(5) [Omitted]

**Section 306**  
**[Filing; Redress or Submission]**

(1) The complaint shall be lodged at the court which, or the presiding judge of which, gave the contested decision, either orally to be recorded by the registry or in writing.

(2) If the court which, or the presiding judge who, gave the contested decision considers the complaint to be well-founded, they shall redress it; in all other cases the complaint shall be submitted immediately, at the latest within three days, to the court hearing the complaint.

(3) These provisions shall also be applicable to the decisions of the judge in the preliminary proceedings and of the commissioned or the requested judge.

**Section 307**  
**[No Obstacle to Enforcement]**

(1) Lodging a complaint shall not constitute an obstacle to enforcement of the contested decision.

(2) The court, the presiding judge, or the judge whose decision is contested, as well as the court hearing the complaint, may, however, order that enforcement of the contested decision be suspended.

**Section 308**  
**[Powers of the Court Hearing the Complaint]**

(1) The court hearing the complaint may not amend the contested decision to the detriment of the complainant's opponent without having communicated the complaint to him for submissions in response. This shall not apply in the cases referred to in Section 33 subsection (4), first sentence.

(2) The court hearing the complaint may order investigations or conduct them itself.

**Section 309**  
**[Decision]**

(1) The decision on the complaint shall be made without an oral hearing, in appropriate cases after hearing the public prosecution office.

(2) If the complaint is considered to be well-founded, the court hearing the complaint shall simultaneously decide on the merits.

In both procedures, the substantive reasons on which the freezing order rest may in theory be challenged. As laid out in Sec. 66, sub-sec. 2, no. 2, though, a seizure order of a competent authority of the requesting state of a declaration of such an authority showing that the requirements for a seizure would exist if the object were located in the requesting state generally suffices. This is in line with the general approach internationally to mutual legal assistance.

20. Regarding injuries or damages caused by the execution of an order freezing property or evidence, how is the amount of injuries or damages calculated in your country? What is the appropriate procedure to apply for the reimbursement of the sums paid in those injuries or damages?

No general rule can be discerned on the amount of injuries or damages.

Under the German law of state liability, a number of different procedures are conceivable to recover damages.

**25ª. PORTUGAL. Vania Costa Ramos. Abogada.**

1	Sólo dentro de un procedimiento criminal.
2	No siempre se requiere la autorización judicial. Durante la fase de investigación, la fiscalía puede acordar el embargo de bienes o el aseguramiento de prueba (aunque en algunos supuestos, como la correspondencia, sólo puede hacerlo un juez). También la policía puede adoptar estas medidas, que tienen que ser posteriormente ratificadas por el fiscal o el juez, pero nunca en relación con una FO europea, que requieren siempre la intervención de un fiscal o de un juez.
3	Embargo y confiscación de cuentas bancarias o propiedades inmobiliarias.
4	La autoridad de emisión es el tribunal encargado de la investigación criminal. La autoridad de ejecución es el fiscal, el juez de instrucción o la policía, dependiendo de la naturaleza de la prueba de que se trate.
5	No se aprecian problemas.
6	La ley nacional portuguesa amplía la categoría de delitos, recogiendo homicidio o robo en general, sin las limitaciones del tenor literal de la FD. Esto debe modificarse o al menos la ley portuguesa debe interpretarse conforme la FD.
7	Se exige la doble tipificación de la conducta, y en caso de embargo para un posterior decomiso, que tal medida sea posible adoptarla en Portugal para un caso similar.
8	No responde.
9	No responde.
10	No responde.
11	No responde.
12	El plazo es de 24 horas, si es posible.
13	No responde.
14	No responde.
15	No responde.
16	No responde.
17	Sí lo considera razonable.
18	No responde.
19	Es posible que el propietario del bien solicite que la medida se alce, debiendo hacerse ante el juez o ante el fiscal en función de la fase del procedimiento penal. Frente a la decisión judicial cabe apelación. Motivos para recurrir el aseguramiento de una prueba son: que la prueba no tenga relación con el delito, que no sea necesario mantener el aseguramiento para que sirva como prueba y que pertenezca a un tercero de buena fe. Estos motivos son de aplicación tanto si se trata de una FO emitida en Portugal como si es ejecutada en Portugal y emitida por otro Estado miembro (es la Corte de Apelaciones la que ve la apelación en estos últimos supuestos).
20	No responde.
21	No responde.
22	No responde.
23	No responde.
24	No responde.

## **ANEXO FICHA 25<sup>a</sup>**

### **QUESTIONNAIRE ABOUT THE OPERATION OF THE FREEZING ORDER SYSTEM ACCORDING TO THE FD**

#### **SCOPE**

1. Under your national law, may an order freezing property or evidence be granted before criminal proceedings have commenced or, on the contrary, may it only be granted within an ongoing criminal process?

In theory assets could be frozen in the scope of civil proceedings in general terms. Nevertheless I do not know any case in which this has happened (probably because it would be very difficult to meet the tests demanded by general civil law without having built the criminal case). In the scope of administrative tax proceedings (which can be related to criminal behaviour) there could be a freezing of assets.

In some cases police authorities may seize and secure evidence on a provisory basis (i.e., it must be confirmed by the prosecutor or the judge) even before the proceedings are formally opened, but always in connection with criminal proceedings.

**An European Freezing order under Law 25/2009, of June 5 2009 (law implementing Council FD 2003/577/JHA) may only be issued in the scope of ongoing criminal proceedings.**

2. Under your national law, may an order freezing property or evidence be granted without judicial supervision (by authorities such as the public prosecutor or the police) or, on the contrary, may it only be granted by a judge?

Yes. During the investigation (subject to some exceptions, such as freezing correspondence, etc.) the public prosecutor may freeze evidence or property which is connected to the crime (crime proceeds). Other property may only be frozen by judicial order (for purposes, v.g., of securing a credit from the State against the defendant).

Police authorities may in some cases police authorities may seize and secure evidence and property on a provisory basis (i.e., it must be confirmed by the prosecutor or the judge).

**An European Freezing order under Law 25/2009, of June 5 2009 (law implementing Council FD 2003/577/JHA) may only be issued by the public prosecutor or by a judge.**

3. In your national criminal proceedings, what measures are more frequently taken in order to guarantee the subsequent confiscation or the use as evidence of goods, objects or data?

Seizure. Freezing of bank accounts and eventually real estate.

4. Under your national law, who are the competent authorities for granting an order freezing property or evidence? And for executing such an order? In case the competent authorities for granting and execution are not the same, please indicate what practical problems arise, if any.

**The competent authorities for granting a freezing order under Law 25/2009, of June 5 2009 (law implementing Council FD 2003/577/JHA) are the courts competent for the criminal instruction of the place where the property or evidence is found.**

**The execution of a freezing order follows the general terms of the Code of Criminal Procedure (i.e., depending on the nature of the evidence at stake, it could be executed by the instruction judge, by the public prosecutor or by the police).**

5. In your opinion, in order to avoid misunderstandings regarding the competence to execute an order freezing property or evidence, will it be better if a national authority such as the Ministry of Justice or the Office of the Public Prosecution is in charge of the appointment of the competent authority for execution?

**No.**

6. Does your national law include the very same list of offences not subject to the double criminality test foreseen in art. 3.2 of FD 2003/577/JHA? In your opinion, would any changes be necessary or convenient in the FD list or in your national list?

**The national list only mentions "homicide" instead of "voluntary homicide" (expression from the FD in Portuguese).**

**This should be changed, or at least restrictively interpreted according to the FD.**

**The national list only mentions "robbery" instead of "organised or armed robbery".**

**The national law has a wider scope than the FD.**

**This should be changed, or at least restrictively interpreted according to the FD.**

7. Regarding offences NOT listed in art. 3.2 of FD 2003/577/JHA, does your national law require special conditions in order to recognize or to execute an order freezing property or evidence?

**The facts must be a crime under Portuguese law.**

**The freezing of assets with the purpose of a subsequent confiscation may only be granted if it is allowed by Portuguese law in a similar case.**

## **TRANSMITTING FREEZING ORDERS**

8. What procedure or means do you usually follow in order to find out who is the competent judicial authority for execution of an order freezing property or evidence?

9. What language do you usually use when transmitting an order freezing property or evidence? Through what means or procedure do you usually transmit such an order and its annexed certificate?

10. Under your national law, as a general rule, what formalities must be followed in order to ensure that the evidence taken is valid? (art. 5.1.II of FD)

## **EXECUTING FREEZING ORDERS**

11. According to your national judicial authorities, what are the means, procedures or channels through which an order freezing property or evidence may validly sent/received in your country?

12. Under your national law, once an order freezing property or evidence has been received in your country, what is the legally established time-limit for its execution? Do the competent judicial authorities of your country usually comply with execution of the order within this time-limit? Do you think the 24-hour-time-limit after receipt of the order is reasonable?; if not, what other time-limit will it be reasonable, under your view?

**There is a time limit of 24 hours “if possible”.**

13. How do your national authorities usually proceed upon receiving a freezing order from another Member State when the certificate is not produced, is not sufficient or is not duly translated into one of the admitted languages?

14. Regarding the grounds for non-recognition or non-execution of a freezing order, as foreseen in art. 7 of the FD, in your opinion: should any of the existing grounds be discarded?; should any other ground be included?

15. Regarding the grounds for postponement of execution of a freezing order, as foreseen in art. 8 of the FD, in your opinion: should any of the existing grounds be discarded?; should any other ground be included?

16. Art. 5.1.II of the FD provides: “Whenever it is necessary to ensure that the evidence taken is valid and provided that such formalities and procedures are not contrary to the fundamental principles of law in the executing State, the judicial authority of the executing State shall also observe the formalities and procedures expressly indicated by the competent judicial authority of the issuing State in the execution of the freezing order”. Have you ever faced circumstances that required such a provision to come into play?

17. In your opinion, would it reasonable that the certificate attached to a freezing order would fix a specific time-limit for the lifting of the measures taken as a consequence of the order?

**Yes.**

18. What sort of practical problems or obstacles arise in your country in relation to requests for transferring evidence or property for confiscation? What is your national practice when processing those requests and, in particular, how is evidence (or even property) transferred to the issuing State?

19. Under your national law, what legal remedies may be used against an order freezing property or evidence? Who is entitled to use those legal remedies? On which reasons or grounds may those legal remedies be based? How does your national law attempt to ensure the right to an effective legal remedy to challenge the substantive reasons on which the freezing order rest?

**It is possible to request the lifting of the freezing order. The request can be made to the prosecutor or to the judge, depending on the procedural stage. Judicial decisions on these matters are subject to appeal to a higher Court.**

**Anyone who is owner of the frozen or seized assets may use these legal remedies.**

**The grounds for a legal remedy against freezing evidence in general are: the evidence is not connected to the crime; it is not necessary to maintain the freezing for purposes of evidence; a third person who is the owner of the asset has no connection with the crime and was acting in good faith.**

**This applies to the cases where evidence or assets have been frozen in another EU Member State on the grounds of a Freezing Order issued by the Portuguese authorities under Law 25/2009.**

**It also applies to the cases in which a Freezing Order from another EU Member State has been recognized and executed in Portugal – in this case the appeal will be tried by the Court of Appeals.**

20. Regarding injuries or damages caused by the execution of an order freezing property or evidence, how is the amount of injuries or damages calculated in your country? What is the appropriate procedure to apply for the reimbursement of the sums paid in those injuries or damages?

## **CERTIFICATE**

21. Do you notice any defects, lacks or difficulties in the certificate that must be attached to an order freezing property or evidence?

## **GENERAL ISSUES**

22. In your opinion, what are the main obstacles arising within the EU when dealing with the recognition and enforcement of orders freezing property or evidence?

23. In your opinion, what measures would improve the execution of orders freezing property or evidence within the European Union?

24. Do you know any relevant judicial decision given under your national law implementing FD 2003/577/JHA?



## 26.<sup>a</sup> LUXEMBURGO. Doris WOLTZ

Procureur d'Etat adjoint

### Parquet du Tribunal d'Arrondissement de Luxembourg

1	Es el juez de instrucción el competente para emitir la orden. Excepcionalmente, en casos de blanqueo de capitales, the State Prosecutor at the District Court of Luxembourg puede tomar algunas medidas, como bloquear una transacción financiera durante un plazo máximo de tres meses, y ello a modo de actuación previa a un embargo o a una solicitud internacional de embargo.
2	No, con la excepción mencionada para el blanqueo de capitales.
3	El embargo de cualquier tipo de bien (incluidos registros o documentos amparados o no por el secreto profesional). El bien puede ser el instrumento del delito o el que se pretendió utilizar para su comisión, el producto del delito, el objeto del delito, cualquier otro bien que puede ayudar a revelar la verdad o cuyo uso puede entorpecer la investigación judicial, o cualquier bien que pueda ser objeto de decomiso posterior. No hay un procedimiento específico para la investigación patrimonial, ni para la administración de los bienes embargados, aunque una reciente ley permite su depósito en el Banco Oficial de Consignación.
4	El juez la emite, y la ejecuta la policía.
5	No se responde a las demás preguntas dada que la ley que implementa la DM está en trámite parlamentario.
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## **ANEXO FICHA 26<sup>a</sup>**

### **QUESTIONNAIRE ABOUT THE OPERATION OF THE FREEZING ORDER SYSTEM ACCORDING TO THE FD**

#### **SCOPE**

1. Under your national law, may an order freezing property or evidence be granted before criminal proceedings have commenced or, on the contrary, may it only be granted within an ongoing criminal process?

Principally, the investigating magistrate is the only authority to grant a freezing order . Banking secrecy does not constitute an obstacle in this context.

The exception is the fight against money-laundering, where the State Prosecutor at the District Court of Luxembourg acts as the **Financial Intelligence Unit** (reception of suspicious transaction reports from professionals who are under reporting obligation<sup>6</sup>, inquiries and co-operation with the corresponding authorities of other States).

The State Prosecutor may issue instructions not to carry out a transaction.

The anti-money-laundering legislation empowers the prosecutor to block transactions for a maximum time limit of 3 months. This power can be used in anticipation of a judicial seizure order or in response to an imminent international request for the seizure of an account, in order to avoid the disappearance of assets.

2. Under your national law, may an order freezing property or evidence be granted without judicial supervision (by authorities such as the public prosecutor or the police) or, on the contrary, may it only be granted by a judge?

No , with the specification made about FIU.

3. In your national criminal proceedings, what measures are more frequently taken in order to guarantee the subsequent confiscation or the use as evidence of goods, objects or data?

Seizure of the proceeds of crime is covered by Article 31.3 and 66 of the Code of Criminal

Investigation which allows the seizure by the investigating magistrate of the objects, documents and effects that have been used to commit the offence, were intended to be used in the commission of the offence, are the object of the offence, appear to be the product of the offence ( as goods), and in general, anything that might contribute to reveal the truth, or if used, might hinder the progress of the judicial investigation, or is subject to confiscation or restitution.

This general provisional measure allows to secure any kinds of value items.

Any registers or documents, subject to professional confidentiality or not, may also be seized as evidence if it is considered that they could help to reveal the truth.

There are no systematic special investigations to identify, locate and freeze the proceeds of crime.

When justified by the nature of the facts, an investigation to establish the economic benefits arising from the offence forms part of the investigation into the facts and into the perpetrators and their accomplices.

There are no specific regulations governing the management of property seized or frozen in the course of criminal proceedings. However, recent legislation allows the investigating magistrate to place seized property in the hands of the Bank for Official Deposits (Caisse de consignation), which has special management rules.

4. Under your national law, who are the competent authorities for granting an order freezing property or evidence? And for executing such an order? In case the competent authorities for granting and execution are not the same, please indicate what practical problems arise, if any.

The investigating judge issues the order which is executed by the Police.

**No responses to the following questions as the bill on FD is introduced to the Parliament.**

5. In your opinion, in order to avoid misunderstandings regarding the competence to execute an order freezing property or evidence, will it be better if a national authority such as the Ministry of Justice or the Office of the Public Prosecution is in charge of the appointment of the competent authority for execution?

6. Does your national law include the very same list of offences not subject to the double criminality test foreseen in art. 3.2 of FD 2003/577/JHA? In your opinion, would any changes be necessary or convenient in the FD list or in your national list?

7. Regarding offences NOT listed in art. 3.2 of FD 2003/577/JHA, does your national law require special conditions in order to recognize or to execute an order freezing property or evidence?

## **TRANSMITTING FREEZING ORDERS**

8. What procedure or means do you usually follow in order to find out who is the competent judicial authority for execution of an order freezing property or evidence?

9. What language do you usually use when transmitting an order freezing property or evidence? Through what means or procedure do you usually transmit such an order and its annexed certificate?

10. Under your national law, as a general rule, what formalities must be followed in order to ensure that the evidence taken is valid? (art. 5.1.II of FD)

## **EXECUTING FREEZING ORDERS**

11. According to your national judicial authorities, what are the means, procedures or channels through which an order freezing property or evidence may validly sent/received in your country?
12. Under your national law, once an order freezing property or evidence has been received in your country, what is the legally established time-limit for its execution? Do the competent judicial authorities of your country usually comply with execution of the order within this time-limit? Do you think the 24-hour-time-limit after receipt of the order is reasonable?; if not, what other time-limit will it be reasonable, under your view?
13. How do your national authorities usually proceed upon receiving a freezing order from another Member State when the certificate is not produced, is not sufficient or is not duly translated into one of the admitted languages?
14. Regarding the grounds for non-recognition or non-execution of a freezing order, as foreseen in art. 7 of the FD, in your opinion: should any of the existing grounds be discarded?; should any other ground be included?
15. Regarding the grounds for postponement of execution of a freezing order, as foreseen in art. 8 of the FD, in your opinion: should any of the existing grounds be discarded?; should any other ground be included?
16. Art. 5.1.II of the FD provides: “Whenever it is necessary to ensure that the evidence taken is valid and provided that such formalities and procedures are not contrary to the fundamental principles of law in the executing State, the judicial authority of the executing State shall also observe the formalities and procedures expressly indicated by the competent judicial authority of the issuing State in the execution of the freezing order”. Have you ever faced circumstances that required such a provision to come into play?
17. In your opinion, would it be reasonable that the certificate attached to a freezing order would fix a specific time-limit for the lifting of the measures taken as a consequence of the order?
18. What sort of practical problems or obstacles arise in your country in relation to requests for transferring evidence or property for confiscation? What is your national practice when processing those requests and, in particular, how is evidence (or even property) transferred to the issuing State?
19. Under your national law, what legal remedies may be used against an order freezing property or evidence? Who is entitled to use those legal remedies? On which reasons or grounds may those legal remedies be based? How does your national law attempt to ensure the right to an effective legal remedy to challenge the substantive reasons on which the freezing order rests?
20. Regarding injuries or damages caused by the execution of an order freezing property or evidence, how is the amount of injuries or damages calculated in your country? What is the appropriate procedure to apply for the reimbursement of the sums paid in those injuries or damages?

## **CERTIFICATE**

21. Do you notice any defects, lacks or difficulties in the certificate that must be attached to an order freezing property or evidence?

## **GENERAL ISSUES**

22. In your opinion, what are the main obstacles arising within the EU when dealing with the recognition and enforcement of orders freezing property or evidence?

23. In your opinion, what measures would improve the execution of orders freezing property or evidence within the European Union?

24. Do you know any relevant judicial decision given under your national law implementing FD 2003/577/JHA?

**27ª. BELGICA. Nathalie Cloosen. Legal advisor for the Belgian Federal Public Service Justice**

1	Puede ser acordada por la fiscalía en la fase de investigación previa al juicio o por el juez instructor en la fase de investigación judicial previa al juicio.
2	Se remite a lo contestado, señalando que en la emisión no hay revisión alguna por parte de un tribunal.
3	El embargo, que permite el posterior decomiso. El propietario puede accionar ante los tribunales en relación con estas medidas, pero suelen ser mantenidas a pesar de que el procedimiento penal se dilate en el tiempo.
4	La autoridad receptora es la fiscalía del lugar donde se encuentran los bienes. Dicha fiscalía lo remite al juez de instrucción, que toma la decisión en relación con su ejecución. En caso de que los bienes estén en varios lugares, la fiscalía competente es aquella donde estén la mayor parte de éstos. El Central Body for Seizure and Confiscation (OCSC) se encarga de centralizar todos los datos relativos a las medidas de embargos, asistiendo a la autoridad judicial, teniendo como misión gestionar y realizar estos bienes.
5	No se aprecian problemas. El Servicio de Justicia Federal Belga es el competente para transmitir la FO al fiscal correspondiente. Se considera ventajoso el contacto directo entre las autoridades competentes y no ve la necesidad de crear servicios centralizados.
6	En la legislación belga, el aborto y la eutanasia no se entienden encuadrados en el concepto asesinato, de modo que deben someterse al control de doble tipificación de la conducta. No se aprecia la necesidad de cambios.
7	En estos supuestos el embargo sólo será ejecutado si la ley belga prevé esta medida para ese específico delito.
8	El Atlas y los puntos de contacto de la ENJ. También los oficiales de enlace belga en otros Estados y el servicio especializado de la Policía Federal en Bruselas.
9	Las FO se redactan en una de las lenguas oficiales para las actuaciones judiciales: francés, holandés o alemán. Se traducirá a la lengua determinada por el Estado que deba recibirla. Son remitidas directamente por la autoridad judicial belga a la autoridad competente destinataria, y frecuentemente son adelantadas por conducto policial, concretamente SIS.
10	No hay procedimientos específicos, cualquier prueba legalmente obtenida en otro Estado puede ser utilizada como prueba en Bélgica.
11	Se transmiten directamente entre autoridades judiciales competentes, por fax, mail o correo, siempre con la condición de que vengan debidamente firmadas. El juez de instrucción puede condicionar la ejecución a recibir el original o una copia oficial certificada.
12	Una vez recibida, la fiscalía lo remite al juez de instrucción que toma la decisión en 24 horas, y si no es posible, en un máximo de 5 días, considerándose razonable este plazo.
13	A pesar de que no hay experiencia práctica al respecto por la infrecuente utilización de este instrumento, las opciones en Bélgica son ejecutarla (y recabar después los datos) u otorgar un plazo para subsanar.

14	Remite a contestación 7ª.
15	No.
16	Bélgica puede cumplir estas formalidades en tanto la resolución no interfiera con la investigación previa al juicio y no vulnere los principios fundamentales del ordenamiento jurídico belga. El grado de cumplimiento es alto dado el escaso número de reglas en obtención de prueba del derecho belga.
17	No, la actual legislación se considera flexible y adecuada.
18	El limitado ámbito de la DM conlleva una carga burocrática, puesto que se necesitan dos solicitudes diferentes, una para embargar y otra para transmitir. En relación con la transmisión de los elementos de prueba, se suelen remitir por el mismo cauce que la FO. Algunas singularidades se deben a razones de seguridad o a la necesidad de adoptar determinadas garantías (armas, muestras sanguíneas). En estos casos se entregan a los oficiales de enlace, que los remiten por medios privados y seguros de comunicación o por vía diplomática. Los bienes embargados no se transmiten hasta que no hay una ejecución definitiva o una orden de decomiso.
19	La decisión del juez de instrucción no puede ser cuestionada. Sin embargo, cualquier interesado puede recurrir para que la medida se alce. Cuando Bélgica es el Estado de ejecución, la competencia del juez se limita a verificar si puede acogerse un motivo de denegación o de suspensión, a comprobar que se dan todos los requisitos y que la conducta realmente se encuadra en una categoría de las 32 listadas.
20	No contesta a la pregunta, pero señala que terceros pueden acreditar que el embargo erróneo ha causado daños.
21	No.
22	No se cuenta con experiencia en la aplicación de las FO, sino que las peticiones de embargo y de prueba se canalizan en MLA. En este ámbito la crítica que puede hacerse es que en ocasiones los bienes no están suficientemente descritos y en otros lo están demasiado, impidiendo embargos otros bienes que quedan sin traba alguna.
23	Contestada con la 22.
24	Contestada con la 22.

## ANEXO FICHA 27<sup>a</sup>

1

### QUESTIONNAIRE ABOUT THE OPERATION OF THE FREEZING ORDER SYSTEM ACCORDING TO THE FD RESPONSES OF BELGIUM SCOPE

1. Under your national law, may an order freezing property or evidence be granted before criminal proceedings have commenced or, on the contrary, may it only be granted within an ongoing criminal process?

Criminal seizure is governed by Articles 35, 35bis, 35ter, 89 and 524bis of the Criminal Procedure Code (CPC). It may be ordered by the public prosecutor at stage of the pre-trial investigation or by the investigating judge at any stage of

the (pre-trial) judicial investigation.

2. Under your national law, may an order freezing property or evidence be granted without judicial supervision (by authorities such as the public prosecutor or the police) or, on the contrary, may it only be granted by a judge?

There is no preliminary judicial review, *i.e.* by a court. See answer to question 1.

3. In your national criminal proceedings, what measures are more frequently taken in order to guarantee the subsequent confiscation or the use as evidence of goods, objects or data?

The seizure of the proceeds should enable the subsequent confiscation of those proceeds. Any action from the (alleged) owner(s) of the proceeds will be dealt with in court. Normally the court maintains the seizure despite often lengthy criminal procedures.

4. Under your national law, who are the competent authorities for granting an order freezing property or evidence? And for executing such an order? In case the competent authorities for granting and execution are not the same, please indicate what practical problems arise, if any.

The competent authority for receiving and handling a freezing order is the public prosecutor of the place where the asset to be seized is located. When a freezing order is transmitted in Belgium, the public prosecutor sends the order to the competent investigating magistrate, who then takes a decision on the enforcement of the request. In case the freezing order concerns assets located in different court districts, the public prosecutor of the district where the majority of asset to be seized are located, is competent. .

The Central Body for Seizure and Confiscation (OCSC) must be informed of any seizure, the procedure for retention of assets and any information identifying

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the persons in respect of whom the seizure was ordered. . The OCSC has a duty to assist the judicial authorities, especially in the context of seizure of assets relating to offences. In performing its duty the Central Body has to:

- centralise all data concerning seizures and confiscations in criminal matters;

- ensure the specific management of seized assets in consultation with the public prosecutors' offices or the investigating magistrates, and, where necessary, have them disposed of with the authorisation of the competent judge.

5. In your opinion, in order to avoid misunderstandings regarding the competence to execute an order freezing property or evidence, will it be better if a national authority such as the Ministry of Justice or the Office of the Public Prosecution is in charge of the appointment of the competent authority for execution?

The little experience Belgium has had with freezing orders has not shown misunderstandings regarding the competence to execute a freezing order. The Framework decision foresees in an adequate procedure in case the competent judicial authority for execution is unknown or the receiving authority has no authority to recognise or execute the freezing order. The Belgian Federal Public Service Justice is furthermore already competent to pass freezing orders on to the competent public prosecutor.

Belgium insists on direct contact between competent authorities and does therefore not believe it will be better to centralise the receipt of freezing orders.

6. Does your national law include the very same list of offences not subject to the double criminality test foreseen in art. 3.2 of FD 2003/577/JHA? In your opinion, would any changes be necessary or convenient in the FD list or in your national list?

Under Belgian law, abortion or euthanasia are not considered to be covered by the concept of murder and are therefore subject to the double criminality test.

No changes are required.



7. Regarding offences NOT listed in art. 3.2 of FD 2003/577/JHA, does your national law require special conditions in order to recognize or to execute an order freezing property or evidence?

The Belgian legislation implementing the Framework Decision foresees in an additional ground for refusal in case the freezing has been ordered with a view to subsequent confiscation. Except for the 32 listed offences, the execution may be refused in case, according to Belgian law, the facts requalified as an offence under Belgian criminal law could not result in a confiscation.

3

### **TRANSMITTING FREEZING ORDERS**

8. What procedure or means do you usually follow in order to find out who is the competent judicial authority for execution of an order freezing property or evidence?

The Atlas on the website of the European Judicial Network or EJM contact points are commonly used to determine the territorial competent judicial. Belgium also has of a wide network of liaison officers and a specialised service of the Federal Police in Brussels.

9. What language do you usually use when transmitting an order freezing property or evidence? Through what means or procedure do you usually transmit such an order and its annexed certificate?

The freezing order is drawn up in (one of) the official language(s) of the judiciary, i.e. French, Dutch or German. A translation will be provided in the language or one of the languages as required by the member state.

The orders are normally transmitted directly from the Belgian judicial authority to the duly designated or identified judicial authority. Orders are usually also or in a preliminary stage transmitted via police channels, more specifically the SIS.

10. Under your national law, as a general rule, what formalities must be followed in order to ensure that the evidence taken is valid? (art. 5.1.II of FD)

There are no formalities or procedures which have to be observed in the executing State to ensure that evidence taken is valid in Belgium. Any item of evidence lawfully obtained abroad can be produced before the Belgian courts.

### **EXECUTING FREEZING ORDERS**

11. According to your national judicial authorities, what are the means, procedures or channels through which an order freezing property or evidence may validly sent/received in your country?

Freezing orders are normally transmitted directly between the competent judicial authorities. Orders can be transmitted by fax, email or post, on the condition that the orders have been signed. The investigative magistrate may make the execution subject to the receipt of the original freezing order or an officially certified copy.

12. Under your national law, once an order freezing property or evidence has been received in your country, what is the legally established time-limit for its execution?

Do the competent judicial authorities of your country usually comply with execution of the order within this time-limit? Do you think the 24-hour-time-limit after receipt of

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the order is reasonable?; if not, what other time-limit will it be reasonable, under your view?

After receipt of the freezing order, the public prosecutor sends the order to the competent investigating magistrate without undue delay. The latter takes a decision on the freezing order, if possible, within 24 hours and not later than 5 days. This time-limit is considered to be reasonable.

13. How do your national authorities usually proceed upon receiving a freezing order from another Member State when the certificate is not produced, is not sufficient or is not duly translated into one of the admitted languages?

If the certificate is not produced, is incomplete or manifestly does not duly

translated, the competent Belgian authority has the following options:

- decide to execute the freezing order after it obtained the required data;
- specify a deadline for the presentation, completion or translation of the certificate. In case this deadline would not be respected, the executing authority may refuse the execution.

Belgium does not yet have relevant experience, due to the rare use of the instrument.

14. Regarding the grounds for non-recognition or non-execution of a freezing order, as foreseen in art. 7 of the FD, in your opinion: should any of the existing grounds be discarded?; should any other ground be included?

See answer to question 7

15. Regarding the grounds for postponement of execution of a freezing order, as foreseen in art. 8 of the FD, in your opinion: should any of the existing grounds be discarded?; should any other ground be included?

No.

16. Art. 5.1.II of the FD provides: "Whenever it is necessary to ensure that the evidence taken is valid and provided that such formalities and procedures are not contrary to the fundamental principles of law in the executing State, the judicial authority of the executing State shall also observe the formalities and procedures expressly indicated by the competent judicial authority of the issuing State in the execution of the freezing order". Have you ever faced circumstances that required such a provision to come into play?

Belgium can comply with specified procedural or formal requirements, insofar the order does not interfere with an ongoing Belgian pre-trial investigation and is not contrary to the fundamental principles of Belgian law. The margin of compliance is significantly high due to the limited rules and procedures on evidence in Belgium.

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17. In your opinion, would it reasonable that the certificate attached to a freezing order would fix a specific time-limit for the lifting of the measures taken as a consequence of the order?

No, the existing legislation provides for the necessary flexibility and is sufficiently adequate.

18. What sort of practical problems or obstacles arise in your country in relation to requests for transferring evidence or property for confiscation? What is your national practice when processing those requests and, in particular, how is evidence (or even property) transferred to the issuing State?

The limited scope of the Framework Decision entails an administrative burden, since there are two separate requests needed for the freezing and the subsequent transfer of evidence or property.

Evidence (seized objects that are deemed as being evidence) usually follow the very same channel as the channel used for the transmission of the freezing order. Specific modalities can be applied in order to assure the (temporary) transfer of original pieces of evidence, the safety (blood & tissue samples, ...) or security (valuable items, weapons, ...) of the evidence. In those cases evidence is often given to (liaison) police officers, sent by private courier services or transmitted via diplomatic services. Frozen assets are normally not transmitted before a definitive execution of a subsequent or eventual confiscation order (judgment).

19. Under your national law, what legal remedies may be used against an order freezing property or evidence? Who is entitled to use those legal remedies? On which reasons or grounds may those legal remedies be based? How does your national law attempt to ensure the right to an effective legal remedy to challenge the substantive reasons on which the freezing order rest?

The decision of the investigative judge cannot be challenged. Any interested

party has however the possibility to introduce a legal remedy in order to lift the freezing, conform article 61 *quater* of the Criminal Procedure Code. In case Belgium is involved as executing state, the competence of the investigative judge are limited verifying if :

- the decision and certificate meet the necessary requirements;
- a ground for refusal can be raised;
- the conduct actually corresponds to a listed offence (list of 32);
- a ground for postponement can be raised.

20. Regarding injuries or damages caused by the execution of an order freezing property or evidence, how is the amount of injuries or damages calculated in your country? What is the appropriate procedure to apply for the reimbursement of the sums paid in those injuries or damages?

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Third parties for instance that claim the seized property have burden of proof. They should provide information about sustained damages that originate from the (wrongful) seizure.

### **CERTIFICATE**

21. Do you notice any defects, lacks or difficulties in the certificate that must be attached to an order freezing property or evidence?

No.

### **GENERAL ISSUES**

22. In your opinion, what are the main obstacles arising within the EU when dealing with the recognition and enforcement of orders freezing property or evidence?

23. In your opinion, what measures would improve the execution of orders freezing property or evidence within the European Union?

24. Do you know any relevant judicial decisions given under your national law implementing FD 2003/577/JHA?

Answer to questions 22, 23 and 24:

The freezing order is, as indicated above, still rarely used, since this measure is seldom requested alone. This type of request is frequently accompanied by other requests for mutual legal assistance (such as hearings, searches, etc.).

As to the seizure (freezing) of assets, all experience is based upon the application of the 1990 CoE Money laundering Convention. The seizure of evidence is (still) based upon the EU 2000 MLA-convention. Under this convention a request for the seizure of evidence is in most cases the (logical) consequence of a request for a house search.

A fundamental criticism relates to the description of the goods to be frozen.

The description is often not sufficiently precise or exactly too precise, whereby certain seizable goods are left untouched.

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**28ª. Países Bajos. Adrienne Boerwinkel**  
**Ministry of Security and Justice**  
**Directorate of Legislation (Unit Criminal Law)**

1	Debe emitirse en el seno de una investigación criminal (que empieza la policía con la supervisión del fiscal). También puede emitirse finalizada la investigación e iniciado el proceso penal. Es el fiscal quien emite la freezing order.
2	El fiscal es el único competente para la emisión, sin supervisión judicial.
3	La mayoría de medidas están destinadas al aseguramiento de la prueba, pero también es común embargar bienes para su ulterior confiscación.
4	La emisión corresponde a la fiscalía, la ejecución a la policía. En casos nacionales, también la policía puede asegurar prueba.
5	Le corresponde a cada Estado miembro decidir si, dadas las características de su sistema, es más eficaz acudir a una autoridad central. La página web de EJNI facilita información sobre las autoridades competentes.
6	Se incluyen los mismos delitos, sin que se aprecie necesidad de cambio alguno.
7	Se exige la doble tipificación de la conducta.
8	Atlas de EJNI, punto de contacto de EJNI, Asset Recovery Office.
9	La lengua exigida por cada Estado miembro. Transmisión por todos los medios posibles (mail, fax, correo) dependiendo de la urgencia de cada caso.
10	En general no se exigen formalidades específicas, salvo para el registro domiciliario, que requiere la decisión del investigating judge.
11	En la recepción, todos los medios que garantizan la autenticidad de la FO están permitidos en Países Bajos, y se transmiten según las exigencias del Estado miembro destinatario.
12	El fiscal debe decidir con prontitud, si es posible, en 24 horas. No hay un plazo límite para ejecutarla. 24 horas no es realista, hubiera sido deseable un plazo de 7 días.
13	En casos urgentes, se adoptan las medidas preliminares en espera de recibir la FO debidamente cumplimentada.
14	Debería añadirse un motivo de denegación: una FO debe ir seguida de una solicitud de transferencia de la prueba o de confiscación del bien. Si el Estado de ejecución sabe de antemano que esta ulterior solicitud no podrá ejecutarse, debiera poder denegar el embargo preventivo del bien o el aseguramiento de la prueba.
15	No.
16	No. Los tribunales holandeses aceptan la prueba si la FO ha sido emitida conforme a su legislación y se ha ejecutado conforme a la legislación del Estado de ejecución.
17	No se contesta.
18	La transferencia se realiza de conformidad con el convenio de asistencia legal mutua del 2000. La confiscación de acuerdo con la FD de reconocimiento mutuo de decomiso siempre que haya sido implementada en el otro Estado miembro. Si no, por vía convencional.
19	Tanto el sospechoso como un tercer interesado pueden recurrir la FO.
20	No se contesta.
21	No.

22	Los principales obstáculos son el carácter limitado de esta FO, es decir: <ul style="list-style-type: none"> <li>- Que no incluya la adopción de medidas coercitivas (como el registro domiciliario)</li> <li>- Que no incluya la transferencia de la prueba asegurada.</li> </ul>
23	Se remita a la respuesta 22.
24	No.

## QUESTIONNAIRE ABOUT THE OPERATION OF THE FREEZING ORDER SYSTEM ACCORDING TO THE FD

### REPLIES BY THE NETHERLANDS

#### SCOPE

1. *Under your national law, may an order freezing property or evidence be granted before criminal proceedings have commenced or, on the contrary, may it only be granted within an ongoing criminal process?*

Reply NL: An order freezing property or evidence may be granted in the context of criminal investigations. This means that there must be a suspicion that a criminal act has been committed. Once the police has started an investigation under supervision of the public prosecutor, the public prosecutor may decide to grant a freezing order. However, a freezing order may also be granted once the investigation has been concluded and the criminal process has commenced.

2. *Under your national law, may an order freezing property or evidence be granted without judicial supervision (by authorities such as the public prosecutor or the police) or, on the contrary, may it only be granted by a judge?*

Reply NL: The public prosecutor is the (only) competent authority for granting freezing orders. In principle, no judicial supervision is required for issuing a order freezing property or evidence.

3. *In your national criminal proceedings, what measures are more frequently taken in order to guarantee the subsequent confiscation or the use as evidence of goods, objects or data?*

Reply NL: The majority of freezing orders (seizure) applies to securing evidence. However, freezing in order to secure property for subsequent confiscation is also common in the Netherlands.

4. *Under your national law, who are the competent authorities for granting an order freezing property or evidence? And for executing such an order? In case the competent authorities for granting and execution are not the same, please indicate what practical problems arise, if any.*

Reply NL: An order freezing property or evidence may be granted by the public prosecutor. Usually it is executed by the police. In national cases the police may also freeze (seize) evidence.

5. *In your opinion, in order to avoid misunderstandings regarding the competence to execute an order freezing property or evidence, will it be better if a national authority such as the Ministry of Justice or the Office of the Public Prosecution is in charge of the appointment of the competent authority for execution?*

Reply NL: This is up to the Member States to decide what is most efficient given their national system. The systems within the Member States differ too much to prescribe one specific method. The website of the EJNI gives details upon the competent authorities in the member states.

6. *Does your national law include the very same list of offences not subject to the double criminality test foreseen in art. 3.2 of FD 2003/577/JHA? In your opinion, would any changes be necessary or convenient in the FD list or in your national list?*

Reply NL: Yes. No.

7. *Regarding offences NOT listed in art. 3.2 of FD 2003/577/JHA, does your national law require special conditions in order to recognize or to execute an order freezing property or evidence?*

Reply NL: Yes, for the offence not listed in Article 3(2) of the Framework Decision dual criminality is required for the recognition and execution of orders freezing property or evidence issued by another Member State.

## **TRANSMITTING FREEZING ORDERS**

8. *What procedure or means do you usually follow in order to find out who is the competent judicial authority for execution of an order freezing property or evidence?*

Reply NL: a. Consultation of the website of the EJNI (Atlas) or b. consultation of an EJNI contact point or c. consultation of an ARO (asset recovery office).

9. *What language do you usually use when transmitting an order freezing property or evidence? Through what means or procedure do you usually transmit such an order and its annexed certificate?*

Reply NL: Language that is required by the MS where execution must take place. All possible means, depending upon urgency and requirements of receiving MS (e-mail, fax, normal mail).

10. *Under your national law, as a general rule, what formalities must be followed in order to ensure that the evidence taken is valid? (art. 5.1.II of FD)*

Reply NL: In general, no special formalities are required. However, if the search of private premises is necessary in order to secure evidence, a decision of the investigating judge is needed.

## **EXECUTING FREEZING ORDERS**

11. According to your national judicial authorities, what are the means, procedures or channels through which an order freezing property or evidence may validly sent/received in your country?

Reply NL: All possible means and channels (see also 9), provided the authenticity is guaranteed (and for outgoing orders: according to requirements of the MS involved).

12. Under your national law, once an order freezing property or evidence has been received in your country, what is the legally established time-limit for its execution? Do the competent judicial authorities of your country usually comply with execution of the order within this time-limit? Do you think the 24-hour-time-limit after receipt of the order is reasonable?; if not, what other time-limit will it be reasonable, under your view?

Reply NL: The national implementation legislation required the public prosecutor to decide promptly, where possible within 24-hours on the recognition of the freezing order. There is no legally established time-limit for *executing* a freezing order (neither is there in the framework decision!). The 24-hours time limit for deciding on a freezing order is not realistic. Often (especially freezing properties or bank accounts) it requires examination of registers and involvement of officials, etcetera. More realistic would be a period of seven days (one week).

13. How do your national authorities usually proceed upon receiving a freezing order from another Member State when the certificate is not produced, is not sufficient or is not duly translated into one of the admitted languages?

Reply NL: In urgent cases preliminary work may take place, awaiting a freezing order that meets all requirements.

14. Regarding the grounds for non-recognition or non-execution of a freezing order, as foreseen in art. 7 of the FD, in your opinion: should any of the existing grounds be discarded?; should any other ground be included?

Reply NL: Yes, a ground for refusal should be included which is the following. A freezing order should be followed by either a request to transfer the evidence to the issuing state or by a request to execute a confiscation order. If the executing state knows on beforehand that such a subsequent request cannot be executed, the executing state should be able to refuse the freezing order. It makes no sense to freeze evidence or property if one knows on beforehand that the subsequent request for transferring the evidence or confiscating the property cannot be executed.

15. Regarding the grounds for postponement of execution of a freezing order, as foreseen in art. 8 of the FD, in your opinion: should any of the existing grounds be discarded?; should any other ground be included?

Reply NL: No

16. Art. 5.1.II of the FD provides: “Whenever it is necessary to ensure that the evidence taken is valid and provided that such formalities and procedures are not contrary to the fundamental principles of law in the executing State, the judicial authority of the executing State shall also observe the formalities and procedures expressly indicated by the competent judicial authority of

*the issuing State in the execution of the freezing order". Have you ever faced circumstances that required such a provision to come into play?*

Reply NL: No. Usually this kind of evidence is accepted by courts if the freezing order has been issued according to Dutch law and executed according to national legislation of the executing MS.

*17. In your opinion, would it reasonable that the certificate attached to a freezing order would fix a specific time-limit for the lifting of the measures taken as a consequence of the order?*

Reply NL: No opinion

*18. What sort of practical problems or obstacles arise in your country in relation to requests for transferring evidence or property for confiscation? What is your national practice when processing those requests and, in particular, how is evidence (or even property) transferred to the issuing State?*

Reply NL: This is currently done according to the existing mutual legal assistance procedures based on the EU Mutual assistance agreement of 2000. Confiscation orders are executed in accordance with the FD on mutual recognition of confiscation orders unless the issuing state has not yet implemented that Framework Decision. In such case, they are executed in accordance with the existing treaties on enforcement of foreign sentences.

*19. Under your national law, what legal remedies may be used against an order freezing property or evidence? Who is entitled to use those legal remedies? On which reasons or grounds may those legal remedies be based? How does your national law attempt to ensure the right to an effective legal remedy to challenge the substantive reasons on which the freezing order rest?*

Reply NL: Both the suspect and a third interested party may challenge a decision to freeze evidence or property.

*20. Regarding injuries or damages caused by the execution of an order freezing property or evidence, how is the amount of injuries or damages calculated in your country? What is the appropriate procedure to apply for the reimbursement of the sums paid in those injuries or damages?*

## **CERTIFICATE**

*21. Do you notice any defects, lacks or difficulties in the certificate that must be attached to an order freezing property or evidence?*

Reply NL: No

## **GENERAL ISSUES**

*22. In your opinion, what are the main obstacles arising within the EU when dealing with the recognition and enforcement of orders freezing property or evidence?*

Reply NL: The main obstacles are the following:



- the FD is limited to only 'freezing' it does not include the use of coercive measures such as house search or a production order which may be needed in order to freeze the evidence.
- the FD is limited to freezing and does not include the transfer of seized evidence to the issuing Member State.

*23. In your opinion, what measures would improve the execution of orders freezing property or evidence within the European Union?*

Reply NL: See Q 22. Freezing order that includes request for coercive measures (if necessary) and for the transfer of seized items (if possible).

*24. Do you know any relevant judicial decision given under your national law implementing FD 2003/577/JHA?*

Reply NL: No

**29ª. España.**

**Francisco Jiménez-Villarejo**

**Fiscal Anticorrupción Málaga. EJM Contact Point.**

1	Tiene que existir un procedimiento penal o una investigación penal ante la fiscalía.
2	Siempre es necesaria la supervisión judicial, de modo que ni para causas nacionales ni tampoco para transnacionales puede hacerlo la policía o la fiscalía sin intervención judicial.
3	Registros, embargos y prohibiciones de disponer en relación con bienes inmuebles.
4	Con carácter general, es el juez de instrucción el competente para la emisión de la resolución de embargo. El fiscal puede emitir y ejecutar resoluciones de aseguramiento de prueba siempre y cuando no se requiera la adopción de medidas coercitivas, pues en este último caso corresponde la competencia a la autoridad judicial. La autoridad de ejecución es la policía del lugar donde se encuentren los bienes. Existen las llamadas Oficinas de Averiguación Patrimonial, que cooperan con la autoridad judicial en la búsqueda y embargo de bienes. En relación con el tráfico de drogas y los delitos económicos de entidad y fraudes contra el presupuesto de la Unión Europea hay unidades especializadas con similar finalidad.
5	Se considera recomendable que la autoridad de ejecución fuera la Fiscalía General del Estado. Es la fiscalía de cooperación internacional la que de hecho sirve de intermediario cuando la autoridad judicial no se considera competente para ejecutar una FO, transmitiéndolo la fiscalía al competente e informando al respecto a la autoridad de emisión.
6	La ley de implementación española (ley 18/2006) regula la categoría de delitos para los que está excluido el control de doble tipificación de idéntica manera a la D.M. Expresamente señala la ley que la calificación de los hechos realizada por la autoridad de emisión es vinculante para la de ejecución, sin permitirse una recalificación de los mismos.
7	<b>Que el delito quede fuera del listado sería un motivo de denegación obligatorio de la ejecución.</b>
8	Puntos de contacto de la EJM.
9	La transmisión de la resolución y del certificado debe hacerse directamente por la autoridad judicial de emisión a la competente del Estado de ejecución. Se traduce el certificado al idioma aceptado en el Estado de ejecución, surgiendo la duda de si debe también traducirse la resolución (considerando que debe resolverse según prevea la legislación de implementación y, en su caso, el principio de reciprocidad). Se transmite por cualquier medio que deje constancia escrita y en condiciones que permitan garantizar su autenticidad.
10	La autoridad judicial española de emisión tiene la posibilidad de indicar qué formalidades o procedimientos deben seguirse para garantizar la validez de la prueba.
11	La transmisión directa a la autoridad competente suele ir precedida de un informe de la fiscalía de cooperación internacional que indica quien es la concreta

	<p>autoridad de ejecución. La ley española prevé también recabar la asistencia del punto de contacto de la EJM. La práctica en la recepción evidencia que algunos Estados (singularmente Países Bajos) suelen remitirlas a través del Miembro Nacional de España en Eurojust, práctica ésta nada recomendable que atenta al principio de reconocimiento mutuo.</p>
12	<p>Debe distinguirse entre el plazo para decidir sobre el reconocimiento del plazo para ejecutar la FO. Cuando la autoridad española recibe la FO debe verificar en 24 horas si la resolución viene acompañada del certificado u otro documento equivalente, y la traducción si es necesaria. Debe asimismo verificar su competencia.</p> <p>En la práctica se ha podido constatar la poca prioridad que se otorga a las peticiones de embargo y decomiso en la mayor parte de los países. Reducir los plazos no es realista, singularmente en lo que se refiere a bienes inmuebles, embargo de acciones societarias y en casos complejos de corrupción y delitos económicos de entidad.</p> <p>La ejecución inmediata es normalmente imposible. Un mes es un plazo más realista.</p>
13	<p>Puede pedir información suplementaria dentro del plazo máximo de tres días si no dispone de información necesaria para verificar su competencia. Si el formulario es deficiente o no se acompaña, puede rehusar la ejecución salvo que considere que tiene suficiente información.</p>
14	<p>La ley española ha convertido en obligatorios todos los motivos de denegación previstos en la DM.</p>
15	<p>Los motivos son los previstos en la DM, sin que se considere necesario añadir otros.</p>
16	<p>No.</p>
17	<p>Sí, esta información debe ser facilitada por la autoridad de emisión en el certificado.</p>
18	<p>Es problemático que haya multitud de instrumentos y la coexistencia entre los basados en asistencia legal mutua y los de reconocimiento mutuo, creando un régimen fragmentario que resulta inoperativo. Vigente ya el Tratado de Lisboa, resulta necesario una reunificación de los instrumentos existentes de reconocimiento mutuo (un paso significativo en esta dirección es el proyecto de directiva EIO).</p> <p>También resultan problemáticas algunas especificidades del sistema español (como el relativo a las autoridades competentes, el ejercicio de la acción civil en el proceso penal, entre otros). Es también un problema práctico que las leyes de implementación no se incorporen a la Ley de Enjuiciamiento Criminal o a un código de cooperación penal internacional.</p>
19	<p>El régimen de recursos es el previsto en las normas generales de procedimiento penal. Pueden recurrir tanto el fiscal, como cualquier interesado, incluidos terceros de buena fe. Los motivos de fondo que permitieron la emisión de la FO sólo pueden ser recurridos ante el Estado de emisión. El recurso nunca tendrá carácter suspensivo.</p> <p>El embargo se mantiene hasta la resolución final de la autoridad de emisión. Puede acordarse el embargo por la autoridad española de ejecución por un periodo de tiempo menor.</p> <p>Si la autoridad española pretende levantar el embargo, informará a la autoridad de emisión, que podrá hacer alegaciones.</p>
20	<p>No hay previsión de reembolso de los daños abonados en la Ley 18/2006 (a</p>

	diferencia de la regulación que se contiene en la legislación de implementación del reconocimiento mutuo en materia de decomiso, ley 4/2010).
21	El certificado podría ser más claro, pero el gran problema lo encontramos con la mala calidad de las traducciones.
22	<p>Los principales problemas son:</p> <ul style="list-style-type: none"> <li>- En las órdenes patrimoniales y bancarias, así como de inmuebles, es necesario que estén completa y correctamente identificadas y localizadas. Además, para que el embargo preventivo del inmueble pueda ser inscrito en el Registro de la Propiedad es necesario contar con una valoración aproximada de la cantidad previsible a confiscar.</li> <li>- Los embargos preventivos y las prohibiciones de disponer tienen un plazo máximo de cuatro años (sin perjuicio de que la fiscalía solicite la extensión de dicho plazo a otros cuatro años).</li> <li>- La persona afectada por la medida debe estar identificada. Si la persona mencionada en el certificado no coincide con el titular registral, deben explicitarse todos los indicios de criminalidad que justifican ante el registrador que se embargue el bien a nombre de otra persona, constituyendo la excepción a la regla general.</li> <li>- Si afecta la FO a un matrimonio, debe facilitarse información sobre el régimen económico matrimonial.</li> </ul>
23	<p>Es necesaria una previa armonización normativa en relación con las normas nacionales de embargo preventivo. Es imprescindible nuevas y más eficientes herramientas para identificar y seguir los bienes. También el previo intercambio de información bancaria y patrimonial.</p> <p>Resulta problemática la falta de sincronización entre las legislaciones internas de los diferentes Estados miembros de embargo y decomiso de bienes.</p> <p>Asimismo, deben articularse mejores mecanismos con terceros Estados.</p> <p>Por último, son necesarias oficinas multidisciplinarias y descentralizadas de AROs por toda la Unión.</p>
24	<b>Si.</b>

## QUESTIONNAIRE ABOUT THE OPERATION OF THE FREEZING ORDER SYSTEM ACCORDING TO THE FD

### SCOPE

1. Under your national law, may an order freezing property or evidence be granted before criminal proceedings have commenced or, on the contrary, may it only be granted within an ongoing criminal process?

If Criminal judicial pre-trial proceedings have begun or there is a criminal investigation in the Prosecution office, a sort of a preliminary investigation proceedings. Regarding to this possibility, in particular for evidentiary purpose, please see Section 3 (1) and (2) of the Law nº 18/06 declares the Prosecutor as a issuing and executing authority for freezing evidence orders, see also section 773 (2) of the Penal Procedure Code and art. 5 of the Public Prosecutor's Organic Statute, Law nº 50/1981. Nevertheless no coercive measures can be enforced by the prosecutors in order to assure any evidentiary material.

The authority responsible for carrying out the criminal investigations in its first stages is not the prosecutor, but the investigating judge, being the investigative powers of prosecutors during this phase of the proceedings very restricted. The prosecutor as the police can execute a temporary seizure informing a.s.a.p. the judicial authority (art. 770 Penal Procedure Code). Some measures, such as search and seizure or freezing of assets, are not allowed to prosecutors and can only be decided by the judge.

2. Under your national law, may an order freezing property or evidence be granted without judicial supervision (by authorities such as the public prosecutor or the police) or, on the contrary, may it only be granted by a judge?

Neither for overseas or domestic freezing orders, the police or even the prosecutor can issue then in the framework of a penal procedure without the supervision of a judicial authority.

Paradoxically as the right for property is granted in our National Constitution without any legal reservation for the judicial authority, we can find out how in other administrative files, like tax or National Health files, the investigators can issue freezing orders without any forthwith judicial supervision.

In conclusion, as there are some redundancies and loopholes in our system, I think that we need to carry out an overall reform concerning the topic and it is the right time to do so.

3. In your national criminal proceedings, what measures are more frequently taken in order to guarantee the subsequent confiscation or the use as evidence of goods, objects or data?

Search and seizure. Also ‘Restraint Orders’ for Estate property

4. Under your national law, who are the competent authorities for granting an order freezing property or evidence? And for executing such an order? In case the competent authorities for granting and execution are not the same, please indicate what practical problems arise, if any.

The examining judge as a general rule and the prosecutor with the limited scope above mentioned and the promote role assigned by our penal procedure are the competent authorities. In domestic investigations, on the other hand, both prosecutors and judges can obtain all the relevant information concerning assets belonging to suspected people, but only the latter can seize them.

The executing authority for common or ordinary offences is the police in the area which the evidence is situated. I have to underline that in order to help judges to search and seize assets belonging to criminals; there are the so-called “Offices of Patrimonial Investigation” all over the country, dependent on the Tax Agency and with direct access to the databases of bank accounts, notaries, Land Registry and Companies Registry, among others.

There is also a national fund of confiscated assets concerning drug trafficking crimes and related offences, whose purpose is twofold. On the one hand, it aims to finance preventive programmes and the treatment of persons affected by drug consumption. On the other hand, the confiscated goods are also employed to fight against drug trafficking, as well as to enhance the international cooperation in that field. Nevertheless, except for drug trafficking offences, there are no public funds with regard to other kind of crimes.

In the particular field of serious economic offences and frauds against the E.U. budget, the Special Prosecutor's Office against Corruption and Organised Crime, which is supported by units of the Police and the Tax Agency, both of them specialised in carrying out financial investigations, appears to be the most appropriate body to carry out the patrimonial investigation of the suspected people. In any case, since prosecutors cannot seize the assets they find, if they want to do so, they need to forward the case to the investigating judge and ask him to adopt such a measure. The problem is that, once the case is in the hands of the investigating judge, the prosecutor cannot follow his investigations, and the means that single investigating judges have at hand to trace and identify assets are not always as effective as those at the disposal of the aforementioned Special Prosecutor's Office.

5. In your opinion, in order to avoid misunderstandings regarding the competence to execute an order freezing property or evidence, will it be better if a national authority such as the Ministry of Justice or the Office of the Public Prosecution is in charge of the appointment of the competent authority for execution?

We still have a XIX century Penal Procedure Code clearly insufficient in the regulation of the legal regime of freezing and confiscation orders and, I must say, incredibly not updated in this and other areas. This old domestic legislation is not in line with the EU concept of freezing and in order to avoid misunderstandings I highly recommend to centralise the appointment of the competent executing authority in the General prosecution Office where you can find, on the other hand, most of the European Judicial Network contact points with a view to obtaining the necessary information according to the provisions of article 4 (3) of the 2003/577/JHA Framework Decision. As a matter of fact Prosecutors of the National International Cooperation Network and from the EJN are acting as an intermediary when the Spanish judicial authority considers it does not have the competence for the execution of the freezing order, sending the freezing order to the competent judicial authority and inform the issuing judicial authority about this.

6. Does your national law include the very same list of offences not subject to the double criminality test foreseen in art. 3.2 of FD 2003/577/JHA? In your opinion, would any changes be necessary or convenient in the FD list or in your national list?

As I did mentioned before the Council Framework Decision 2003/577/JHA on freezing orders was implemented in the Spanish Legal System by our Law no. 18/2006. The listed offences for which double criminality checks are abolished provided in art 3 (2) of the Framework Decision were implemented in our National Law [art. 10 (1)] in conformity with the Framework Decision.

Our implementing law expressly provide that the competent authority is bound by the qualification made by the issuing MS. A fortiori, and according to the mutual

recognition principle, the implementing law may not contain 'legislative requalification' and I agree with that.

7. Regarding offences NOT listed in art. 3.2 of FD 2003/577/JHA, does your national law require special conditions in order to recognize or to execute an order freezing property or evidence?

Offences not listed must be considered a mandatory ground of refusal for the execution of the freezing order with no discretionary margin of manoeuvre for the judicial executing authority as article 10 (2) of our National Law provides

## TRANSMITTING FREEZING ORDERS

8. What procedure or means do you usually follow in order to find out who is the competent judicial authority for execution of an order freezing property or evidence?

I highly recommend to use the assistance of a contact point of the European Judicial Network as the Framework Decision [article 4 (3)] and our national Law [art. 5 (2)] do.

9. What language do you usually use when transmitting an order freezing property or evidence? Through what means or procedure do you usually transmit such an order and its annexed certificate?

The freezing order together with a certificate drawn up according to provisions of law must be transmitted by the issuing Spanish judicial authority directly to the competent judicial authority from the executing state.

Depending on the Country where the property or evidence have been found, a certificate issued by a Spanish judicial authority must be translated into the relevant official language or into one of the official languages of the executing Member State or into another language that is accepted by that Member State. The question is, Must the judicial resolution be translated?. Probably the answer is in each national legislation requirements and still in the reciprocity principle.

The transmission is carried out by any means which produces a written record and under conditions that should allow the executing judicial authority to establish the authenticity of the document and of the certificate.

10. Under your national law, as a general rule, what formalities must be followed in order to ensure that the evidence taken is valid? (art. 5.1.II of FD)

The Spanish issuing judicial authority has the possibility to indicate to the authority in the executing state any formalities or procedures that have to be observed so as to guarantee the validity of the evidence.

## EXECUTING FREEZING ORDERS

11. According to your national judicial authorities, what are the means, procedures or channels through which an order freezing property or evidence may validly sent/received in your country?

When the competent executing authority can be identified and localized (see new EJNI website and the FO-Atlas) freezing orders can be transmitted directly.

Normally a previous report of the specialised in MLA affaires Prosecutor inform the competent Spanish judicial authority on these practical details.

In cases in which the issuing Spanish judicial authority does not know the executing authority, it is obliged by law to seek assistance from a contact point of the European Judicial Network, not necessary a Spanish one, with a view to obtaining the necessary information.

As far as I know in Málaga and the Costa del Sol we have received freezing orders (mainly from the Netherlands) canalized by the Spanish National Member at Eurojust. In my opinion even when this channel is not excluded must be just exception in order to overcome particular difficulties. I realised that the Dutch authorities, make an extend use of Eurojust. This practice can be highly effective but is not in line with the Mutual Recognition principle. Reading up the Evaluation Report on the fifth round of Mutual Evaluations "Financial Crime and Financial Investigations" - Report on the Netherlands - we can find out how all freezing orders requested in Spain are sent via Eurojust, in order to ensure that the correct competent authorities in Spain are the recipients. An unknown recipient authority may be located by means of the EJNI-Atlas. Its generalization involves a risk against the principle of direct contact favourable to a new centralization.

12. Under your national law, once an order freezing property or evidence has been received in your country, what is the legally established time-limit for its execution? Do the competent judicial authorities of your country usually comply with execution of the order within this time-limit? Do you think the 24-hour-time-limit after receipt of the order is reasonable?; if not, what other time-limit will it be reasonable, under your view?

We have to distinguish between time limits for rendering a recognition decision and time limits for the complete execution of the freezing order.

When a Spanish judicial authority receives a freezing order, it must, within 24 hours from the date of receipt, verify if the order is accompanied by the certificate or by any other equivalent document, as well as by its translation into Spanish, if necessary. Also after receipt of the certificate, the Spanish judicial authority must verify its competence within 24 hours at most from the date of receipt.

Each of the countries studied has its own rules and procedures in this field (lex loci criteria), which are often not sufficiently known in the requesting state.

Practitioners have checked the limited priority given to freezing and confiscation affaires (and transnational confiscation) in most of the countries up today. Therefore undersized time-limits for execution are not realistic regarding in particular regarding to Estates properties, companies' shares to be frozen and in general in complex corruption and serious economic crime cases.



The forthwith execution provided is normally impossible. Probably a month is a more realistic time limit for the execution

13. How do your national authorities usually proceed upon receiving a freezing order from another Member State when the certificate is not produced, is not sufficient or is not duly translated into one of the admitted languages?

If the freezing order does not contain sufficient data to establish competence, the Spanish judicial authority may ask the issuing judicial authority to provide supplementary information, within a maximum period of 3 days.

If there is no adequate form, the form is deficient or the certificated is not produced, the Spanish judicial authority may refuse the execution of this request unless he or she considers enough the information provided by the issuing authority in the certificate or in an equivalent document and not necessary to provide supplementary information or fulfil further formal requirements. Therefore is up to the Spanish judicial authority to accept an incomplete order, according to article 7 (2) of our domestic Law 18/2006.

14. Regarding the grounds for non-recognition or non-execution of a freezing order, as foreseen in art. 7 of the FD, in your opinion: should any of the existing grounds be discarded?; should any other ground be included?

The Spanish Law takes on board all the FWD grounds for refusal as mandatory (grounds for refusal) not incorporating additional ones.

Regarding the ECJ judgement in the Wolzenburg ruling indicates that the national legislator may make an optional ground for refusal subject to certain conditions. Thus I thing that consideration of this issue is still ongoing and can be review in my country.

As our national law do not consider the possibility of extended confiscation powers to be assure by a freezing order, and our new Penal Code in forced this year provided this kind of confiscation, as a result of the implementation of the 2005/212/JHA Framework Decision, we need an specific ground for refusal for extended confiscation powers regarding closest relations, as we have in the Law nº 4/2010. A lack of global vision regarding to provisional and final decisions in the field of confiscation need to be overcame.

15. Regarding the grounds for postponement of execution of a freezing order, as foreseen in art. 8 of the FD, in your opinion: should any of the existing grounds be discarded?; should any other ground be included?

They are in line with the MLA consolidated and accepted criteria. Grounds of postponement as exceptions to the principle of immediate execution, they should not be extended beyond the cases provided for in the FD. Therefore they have been properly implemented in the Spanish legislation, are reasonable and not against mutual recognition principle. As far as I know no new grounds required.

16. Art. 5.1.II of the FD provides: “Whenever it is necessary to ensure that the evidence taken is valid and provided that such formalities and procedures are not contrary to the

fundamental principles of law in the executing State, the judicial authority of the executing State shall also observe the formalities and procedures expressly indicated by the competent judicial authority of the issuing State in the execution of the freezing order”. Have you ever faced circumstances that required such a provision to come into play?

No

17. In your opinion, would it be reasonable that the certificate attached to a freezing order would fix a specific time-limit for the lifting of the measures taken as a consequence of the order?

Yes I think that information must be provided in advance in the certificate by the issuing authority

18. What sort of practical problems or obstacles arise in your country in relation to requests for transferring evidence or property for confiscation? What is your national practice when processing those requests and, in particular, how is evidence (or even property) transferred to the issuing State?

We have a lack of experience in this field but are in position to affirm that due to the numerous international instruments applicable and the coexistence of mutual legal assistance with mutual recognition instruments. That scenario creates a fragmented approach making the task of the judicial authorities more difficult which is the opposite of what mutual recognition is supposed to achieve. The existing instruments in this area constitute a fragmentary regime a new approach is needed.

Also it is essential to have in place one effective and single mechanism to freeze and confiscate assets abroad based on Mutual Recognition principal instead of the piecemeal legal framework we have nowadays matching evidentiary and asset recovery issues up. In light of the above considerations, a recasting of the existing EU legal framework should be considered under the provisions of the new Treaty of Lisbon. One suitable step in the right direction is the on-going proposal of the Directive EIO. Such an exercise would be in line with the EU policies of simplification and better regulation and must be competed with a comprehensive regulation on freezing and confiscation in another one single instrument a new Directive that replace all the existing ones as far as freezing and confiscation of ill-gotten assets is concerned, including mutual legal assistance conventions and protocols. I think that this proposal would improve the legal framework in this field.

Peculiarities of the Spanish judicial system:

a) The person responsible for carrying out the criminal investigations in its first stages is not the prosecutor, but the investigating judge, being the investigative powers of prosecutors during this phase of the proceedings very restricted. Some measures, such as search and seizure or freezing of assets, are not allowed to prosecutors and can only be decided by the judge. We still have a XIX century Penal Procedure Code and, I must say, incredibly not updated in this area.

b) In the criminal proceedings both the criminal and the civil action are filed, and the victim has the right to intervene in the proceedings exercising both or either the criminal and the civil action. In any case, even if the victim does not file the civil action, the prosecutor is obliged to do so on their behalf unless they expressly renounce it.

Some consequences of these peculiarities are the following:

a) Investigating judges must search and seize assets of the suspected criminals, without specific request either from the victim or the prosecutor, at the beginning of the proceedings, in order to guarantee the result of the civil claims linked to the commission of the offence.

This applies to all cases in which there is a prejudice, and consequently to the offences affecting the financial interests of the E.U. In such cases, as the victim is the E.U. itself, if it wants to exercise the civil action, it must be represented in the proceedings by the Commission (art. 335 of the Treaty on the functioning of the E.U., according to the Treaty of Lisbon). Otherwise, the prosecutor will file the civil action on behalf of the E.U.

b) Moreover, to be seized by the investigating judge, the assets owned by the suspected criminals do not need to be proceeds of crime strictly speaking, pursuant to the common rule of Civil Law, according to which debtors are responsible throughout all their properties.

c) Additionally, all instruments and proceeds of crime must be confiscated whenever there is a final conviction, even if there are not any direct victims and consequently there is no possibility of filing the civil action (e.g. most drug trafficking cases). Also in this case, investigating judges must search and seize the instruments and proceeds of crime from the beginning of the criminal procedure, as expressly provided for in our Criminal Code with regard to drug trafficking offences (article 374), and in general in our Criminal Procedure Act (article 338).

Last but not least, Spanish legislators choose a special law to implement the Framework Decision instead of amending the Penal procedure code or incorporate it in a Mutual Recognition Code or an International Cooperation Law. The current situation lacks the visibility of the law in order to be generally applied.

19. Under your national law, what legal remedies may be used against an order freezing property or evidence? Who is entitled to use those legal remedies? On which reasons or grounds may those legal remedies be based? How does your national law attempt to ensure the right to an effective legal remedy to challenge the substantive reasons on which the freezing order rest?

We can use the legal remedies already provided in our Procedural Law. Non specific rules where established for the decision executing a foreign freezing order.

Not only the prosecutor but any interested person, including good faith (bona fide) third-parties, may file a complaint against the judicial resolution rendered by the examining judge ordering the acknowledgement of the freezing order, if it entailed damages to his/her legitimate interests.

The reasons for the issuance of the freezing order cannot be the subject of the complaint, and can be challenged only before a court from the issuing state. The appeal does not suspend the freezing order.

The freezing of the asset is maintained until the final determination of the request by the issuing authority. Nevertheless, the competent Spanish judicial authority may, after consultation with the issuing judicial authority, in accordance with the Spanish legislation and practice applicable in the matter and depending on the circumstances of the case, order the freezing of the asset for a shorter period.

If the competent Spanish judicial authority intends to revoke the freezing measure, it will inform the issuing judicial authority, offering it the possibility to formulate observations. Also, when the judicial authority of the issuing state informs the Spanish executing authority about the revocation of the freezing order, the latter has the obligation to revoke the measure as promptly as possible.

The use of legal remedies does not have the consequence of suspending the execution of the freezing order (art. 16.1 Law n° 18/2006). Even when it can be subject to discussion, considering the final nature of the confiscation judicial decision the same suspensive effect acts when we have a partial appeal against the recognition of a confiscation order (art. 23 Law 4/2020).

20. Regarding injuries or damages caused by the execution of an order freezing property or evidence, how is the amount of injuries or damages calculated in your country? What is the appropriate procedure to apply for the reimbursement of the sums paid in those injuries or damages?

No provision for the reimbursement of damages caused by the execution of an order freezing property or evidence is provided in our national law (Law 18/2006). However we can find it out in our domestic law implementing the confiscation order Framework Decision (Law 4/2010) covering either the possibility to compensate the executing states for their costs involved in liabilities to accused persons or third parties for violation of their 'right to property'. In any case this provision does not oblige MS to lay down rules on the compensation for unlawful or unjust confiscation; it only deals with the situation where a MS has been found liable to pay compensation, under its own laws, for the execution of a confiscation order which emanated from another MS. If the damage is the executing state's fault, then the issuing state has no obligation to repay.

Nevertheless, a more specific assessment of the new system is not possible as few cases have been registered and no reliable statistical data is available.

## CERTIFICATE

21. Do you notice any defects, lacks or difficulties in the certificate that must be attached to an order freezing property or evidence?

Certificate can be clearer but probably the problem can be located in the translations. As far as I check certificates are usually translated into the language of the requested

state (in my case in Spanish) by a professional translator or interpreter, but the translation is not always adequately in line with the (legal) terminology used in the requested state. Despite unacceptable delays, and unprofessional translations of the documents (even containing irritating linguistic errors), due to the differences of legal systems, sometimes professional translations misrepresent specific legal terms relating to a freezing and confiscation matter.

## GENERAL ISSUES

22. In your opinion, what are the main obstacles arising within the EU when dealing with the recognition and enforcement of orders freezing property or evidence?

Stocktaking from a legal and practical point of views the main problems and bottlenecks we can underline the following ones:

- In banking and patrimonial orders, the account and the Estate Property must be completely and correctly localised and identified. Also if you want an Estate Property freezing order to be properly registered a provisional estimation of the expected confiscation order amount must be indicated (up to).
- As the possibility of limiting the duration of the freezing order is not provided in our domestic law the examining judge must take into account that the closing date for provisional measures (either restraint/freezing orders) to be registered is 4 years, the Prosecutor must ask the judicial authority for a judicial warrant requesting the Land Register to extend it for the same period (art. 86 Spanish Hypothecation law)
- Furthermore, the person affected must be identified. This person can be the formal registered holder in the Official Land Registry or not. As our legislation require the coincidence between the formal holder and the real owner to registry any restriction order due to the “tracto sucesivo” principle (art. 20 Spanish Hypothecation law) in the criminal proceeding Spanish judges (and prosecutors) need to be very carefully and if the person identify in the certificate is nor the formal and registered person must detailed and listed in the request, the judicial decision and in the warrant all the incriminating criminal evidences pursuant to justified before the Land Register that there’s is an exception to that general rule (as last paragraph of the above mentioned art. 20 allows).
- If the freezing order affect a marriage person is necessary to provide in the certificate detailed information on the marriage settlement agreement under their respective national law.

23. In your opinion, what measures would improve the execution of orders freezing property or evidence within the European Union?

- Necessity of a previous normative approximation. We can realise that this approximation have been done in the confiscation national legislation according to the 2005/212/JHA Framework Decision, but there were no substantive attempt of approximation respect of the freezing national legislation within the EU Member States. The current diversity of regulations and the application of the “locus regit actum” criteria are really weighty for the proper execution of foreign freezing orders.
- Necessity of new and more efficient tools (IT) for identification ad tracing of assets.

- Need to use previous informal mutual assistance or mutual legal assistance in order to trace and gather all the banking and patrimonial information available as a priori requirement to issue a mutual recognition freezing certificate.
- Lack of a general vision or legal synchronization between EU and domestic normative instruments on the execution of trans-European freezing and confiscation orders.
- As far as third countries can be involved, we need to improve relationships with 3<sup>rd</sup> countries, jurisdictions and territories.
- Necessity of multidisciplinary and decentralised AROs all over EU.
- 

24. Do you know any relevant judicial decision given under your national law implementing FD 2003/577/JHA?

Yes

## LISTADO DE DESTINATARIOS

### **LISTADO A (Estados Miembros)**

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