

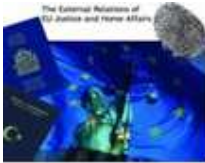


Malta-EU Steering & Action Committee

JUSTICE AND HOME AFFAIRS

Sectoral Committee
Weekly Update
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Malta-EU Steering & Action Committee

COM(2010)428 – Report from the Commission to the European Parliament and the Council based on Article 22 of the Council Framework Decision 2006/783/JHA of 6 October 2006 on the application of the principle of mutual recognition to confiscation orders

Criminals take advantage of the open borders in the EU by moving stolen assets or illegal goods across borders. Confiscation is a valuable tool to stop this practice. Council Framework Decision 2006/783/JHA90 allows Member States to obtain the confiscation of criminal assets abroad. Thus, one EU country can send a confiscation order to another country where the subject of the order lives or has property or income. The other country directly carries out the confiscation, under its own national rules, without any further formality.

In this report the European Commission states that half of EU countries have yet to put these rules in place. The report shows that by February 2010 only 13 of the 27 EU countries have put the rules in place. Although the deadline for implementing the measures was 24 November 2008, seven countries told the Commission that the legislative process was still underway, while the other seven gave no information.

The 13 Member States that have put the rules in place are already using them to fight crime. Justice authorities in the Netherlands, for example, have sent 121 confiscation orders to counterparts across the EU since the rules were in force, for assets worth a total of almost €20 million. However, the report highlights that poor implementation and red tape, which often reflect a lack of trust in other country's justice systems, still make it hard to attack criminal assets.

The current EU rules lists limited circumstances in which Member States may refuse to carry out confiscation orders, such as violation of double jeopardy (being tried twice for the same crime) or very long delays between the facts and final conviction. However, the report shows that all but three countries (Ireland, Portugal and the Netherlands) have added further reasons for refusing to carry out other countries' confiscation orders. This limits the impact of an instrument intended to allow authorities to immediately recognise each others' decisions.

The Commission report also warned that even where the rules are in place, confiscation orders are still not recognised automatically due to legal formalities, such as public hearings, which have been added to national rules in four countries (Czech Republic, Poland, Romania and Slovenia).

http://ec.europa.eu/justice/news/intro/doc/com_2010_428_en.pdf



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Proposal for a Directive of the European Parliament and the Council: the European Investigation Order in criminal matters

Seven EU Member States (Austria, Belgium, Bulgaria, Estonia, Slovenia, Spain and Sweden) have come up with a proposal for a European Investigation Order. The objective of the proposed Directive is to create a single, efficient and flexible instrument for obtaining evidence located in another Member State in the framework of criminal proceedings.

In the current situation, judicial authorities have to use two different regimes: mutual legal assistance, on the one hand, and mutual recognition, on the other hand. Mutual recognition may be used only for the parts which are covered by one of the instruments currently adopted. Two mutual recognition instruments applicable to obtaining evidence exist today: Council Framework Decision 2003/577/JHA of 22 July 2003 on the execution in the European Union of orders freezing property or evidence and Framework Decision 2008/978/JHA 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 which applies only to pre-existing evidence. The numerous instruments applicable to mutual legal assistance and the coexistence of mutual legal assistance with mutual recognition create 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 main changes brought by the new instrument are:

- simplification of the procedure through the creation of a single instrument (the new Directive) and therefore replacement of all existing instruments as far as obtaining evidence is concerned, including mutual legal assistance conventions, the Framework Decision on freezing orders and the Framework Decision on the European evidence warrant;
- focus on the investigative measure (as in mutual legal assistance) to be executed rather than on the type of evidence to be collected;
- limitation of the possibilities to refuse to execute or recognise the European investigation order;
- acceleration of the procedure;
- practical improvements such as the possibility for agents of the issuing State to assist in the execution of the European investigation order in the executing State.

This week the Commission published an opinion wherein it recognizes the added value of replacing the current fragmented system for investigative measures with a single legal framework. It also notes the need for clear and detailed rules, which would be fully compliant with the EU Charter of Fundamental Rights. These measures would include minimum standards for gathering evidence so that its admissibility in court is beyond doubt, as well as high data protection standards for sensitive information.

<http://register.consilium.europa.eu/pdf/en/10/st09/st09288-ad01.en10.pdf>

Commission opinion:

http://ec.europa.eu/justice/news/intro/doc/comment_2010_08_24_en.pdf