



Mutual recognition of decisions in criminal matters

Freezing and confiscation of criminal assets



European Commission

DG Justice - Judicial cooperation in criminal matters in the EU

History

- The Tampere European Council (1999) endorsed the principle of mutual recognition as cornerstone of judicial cooperation in both civil and criminal matters within the EU.
- 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.

Context

- Instruments adopted in the framework of the former third pillar:
 - by unanimity
 - no real involvement of the EP
 - no scrutiny of the ECJ
 - no legal means to require a transposition (apart from a general binding obligation)

Mutual recognition – general approach

- Recognition of the accurateness and legality of the decision taken in another MS and enforcing as it was a decision taken by a national judge.
- No harmonisation of standards.

Direct contacts between authorities

- Issuing and executing state.
- No involvement on substance of the central authority (only pure transmission of requests if necessary).
- Contacts only between competent authorities

Procedure

- Recognition on the basis of the translated certificate (not the decision).
- No possibility to double check the substance of the decision (assumption of trust between different legal orders of the MS).
- Forthwith recognition and immediate execution of the request.
- Information exchange between the issuing and executing state on recognition/execution.

Scope

- Application to all criminal offences.
- Abolition of the dual criminality test with regard to 32 offences, *i.a.*:
 - participation in a criminal organisation,
 - terrorism,
 - trafficking in human beings,
 - sexual exploitation of children and child pornography,

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- illicit trafficking in narcotic drugs and psychotropic substances,
- illicit trafficking in weapons, munitions and explosives,
- corruption,
- computer-related crime,
- racism and xenophobia,
- rape ect.

Limited list of grounds for refusal

- In principle all grounds are optional (leaving discretion for the national judge).
- List of grounds is limited (no new grounds should be added).
- Standard grounds, *i.a.* ne bis in idem, immunity.

Examples of instruments based on the principle of mutual recognition

- Framework Decision 2003/577/JHA on the application of principle of mutual recognition to orders freezing property or evidence
- Framework Decision 2006/783/JHA on the application of principle of mutual recognition to confiscation orders
- Framework Decision 2005/214/JHA on the application of principle of mutual recognition to financial penalties

Background

- In the current economic climate, there is needed to prevent the increasing penetration of criminal wealth in the licit economy of the Union.
- Crime hurts the economy by depriving both national governments and the EU budget of tax revenues. Illegal trade also harms the smooth functioning of the Internal Market by undercutting legitimate traders.
- The overall amount recovered from organised crime is modest, especially if compared to the estimated revenues of organised criminal groups.
- In order to disrupt organised crime activities it is essential to deprive criminals of the proceeds of crime. Beyond being a sanction, confiscation is also a preventative tool by making known that criminals will not be allowed to enjoy their illicit wealth.
- **Criminals must have no safe havens:** Organised crime activities are often transnational in nature and the assets of criminal groups are increasingly invested outside their home country and often in several Member States. The penetration of organised crime into the legal economy, even if it takes place in a single Member State, affects the functioning of the whole EU Internal Market.

FD 2003/577/JHA on orders freezing property or evidence

- Objective: implementation of the principle of MR to freezing order,
- Easy transmission (certificate) and immediate execution,
- Limited grounds for non recognition,
 - Wrongness in the certificate,
 - Immunity,
 - *Ne bis in idem*,
 - Absence of double criminality (except 32 cat. offences),
- Subsequent treatment of the frozen property,
- Legal remedies,
- Reimbursement.

FD 2005/214/JHA on financial penalties

- Definitions: financial penalty means:
 - A sum of money on conviction of an offence imposed in a decision,
 - Compensation imposed in the same decision for the benefit of victims (in criminal proceedings),
 - A sum of money in respect of the costs of court proceedings,
 - A sum of money to a public fund or a victim support org. imposed in the same decision,
- Transmission (certificate) and recourse to the central authority,
- Scope (32 offences),
- Easy transmission and forthwith execution,
- Limited grounds for non recognition:
 - Ne bis in idem,
 - Territory competency,
 - Legal entities,
 - Threshold of 70 euros, [etc.]
- Determination of the amount to be paid,
- Law governing enforcement,
- Imprisonment or other alternative sanction by way of substitution for non recovery,
- Termination of enforcement.

FD 2006/783/JHA on confiscation orders

- Objective: (following confiscation) implementation of the principle of MR to confiscation order,
- Applies to all kind of confiscation order, including of proceeds of offence, instrumentalities, resulting from extended powers of confiscation (FD 512/212), other extended powers of confiscation (non-conviction based confiscation, etc.),
- Easy transmission (certificate) and forthwith execution,
- Limited grounds for non-recognition or non-execution,
- Legal remedies,
- Postponement of execution,
- Management of multiple confiscation orders,
- Law governing execution,
- Disposal of confiscated property,
- Information of the result of the execution,
- Reimbursement.

Assessment

- Insufficient national transpositions,
- Inconsistencies,
- Insufficient implementation,
- Non-legislative measures are insufficient,
- Need for reviewing legislation (recasting-lisbonisation)?
- Need for more mutual trust?
- Systematically targeting criminal assets,
- Recourse to the Court (infringement) but not before 1 November 2014.

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Хвала вам на пажњи!