

# RESTRAINT ORDERS AND APPOINTMENT OF RECEIVERS IN CONNECTION WITH CRIMINAL PROCEEDINGS AND INVESTIGATIONS

**This Practice Direction supplements RSC Order 115**

## **Scope and interpretation**

- 1.1** This practice direction applies to applications to the High Court for a restraint order or the appointment of a receiver under –
- (1) Part VI of the Criminal Justice Act 1988 ('the 1988 Act'); or
  - (2) Part I of the Drug Trafficking Act 1994 ('the 1994 Act'); or
  - (3) Schedule 4 to the Terrorism Act 2000 ('the 2000 Act').
- (Part VI of the 1988 Act and Part I of the 1994 Act are repealed by the Proceeds of Crime Act 2002 from a day to be appointed, but will continue to apply to pending and transitional cases. Following their repeal, applications for a restraint order or the appointment of a receiver which would previously have been made under those Acts will instead be made to the Crown Court under Part 2 of the 2002 Act.)
- 1.2** In this practice direction –
- (1) 'the prosecutor' means the person applying for a restraint order or the appointment of a receiver; and
  - (2) 'the defendant' means the person against whom criminal proceedings have been brought or a criminal investigation is taking place, and against whom a confiscation order or forfeiture order has been or might be made.

## **SECTION I – RESTRAINT ORDERS**

### **Form of restraint order**

- 2.** An example of a restraint order is set out in Appendix 1 to this practice direction. This example may be modified as appropriate in any particular case.

### **Amount under restraint**

- 3.1** A restraint order may, where appropriate, apply to –
- (1) all of the defendant's realisable property;
  - (2) the defendant's realisable property up to a specified value; or
  - (3) one or more particular specified assets.
- 3.2** Where –

- (1) a confiscation order or forfeiture order has already been made against the defendant in a particular amount; or
  - (2) the prosecutor is able to make a reasonably accurate estimate of the amount of any confiscation order or forfeiture order that might be made against him, and, in either case, it is clear that the defendant's realisable property is greater in value than the amount or estimated amount of that order, the court will normally limit the application of the restraint order in accordance with paragraph 3.1(2) or (3).
- 3.3** In such cases the prosecutor's draft order should normally either include an appropriate financial limit or specify the particular assets to which the order should apply.

### **Living expenses and legal fees**

- 4.** A restraint order will normally, unless it is clear that a person restrained has sufficient assets which are not subject to the order, include an exception to the order permitting that person to spend assets –
- (1) in the case of an individual, for reasonable living expenses; and
  - (2) in the case of either an individual or a company, to pay reasonable legal fees so that they may take advice in relation to the order and if so advised apply for its variation or discharge.

### **Restraint orders against third parties**

- 5.1** Where a restraint order applies to property held in the name of a person other than the defendant –
- (1) the order must be addressed to that person in addition to the defendant; and
  - (2) in applying for the order, the prosecutor must consider the guidance given in the matter of G (restraint order) [2001] EWHC Admin 606.
- 5.2** Examples of additional persons to whom an order must, where appropriate, be addressed include –
- (1) a person who has a joint bank account with the defendant;
  - (2) in proceedings under the 1988 Act or the 1994 Act, a person to whom the defendant is alleged to have made a gift which may be treated as realisable property of the defendant under the provisions of the relevant Act; or
  - (3) a company, where the prosecutor alleges that assets apparently belonging to the company are in reality those of the defendant.
- 5.3** However, an order should not normally be addressed –
- (1) to a bank with whom a defendant has an account; or
  - (2) to the business name of a defendant who carries on an unincorporated business (such business not being a separate legal entity from the defendant).

### **Restraint orders against businesses**

- 6.** If an application for a restraint order is made against a company, partnership or individual apparently carrying on a legitimate business –
- (1) the court will take into account the interests of the employees, creditors and customers of the business and, in the case of a company, any shareholders other than the defendant, before making an order which would or might prevent the business from being continued; and
  - (2) any restraint order made against that person will normally contain an exception enabling it to deal with its assets in the ordinary course of business.

### **Duration of order made on application without notice – rules 4(2) and 27(2)**

- 7.1** RSC Order 115 rules 4(2) and 27(2) provide that, unless the court otherwise directs, a restraint order made without notice shall have effect until a day which shall be fixed for a further hearing where all parties may attend ('the return date').
- 7.2** Where a return date is fixed, it will normally be no more than 14 days after the date of the order.
- 7.3** Where no return date is fixed, the court will always include in the order a provision giving the defendant or anyone affected by the order permission to apply to vary or discharge the order (see paragraph 14 of the sample form of order).

## **SECTION II – APPOINTMENT OF RECEIVER**

- 8.1** CPR Part 69, and Practice Direction 69, apply to the appointment of a receiver under the 1988, 1994 or 2000 Act, subject to the provisions of RSC Order 115 rule 8 and rule 23(e) where applicable.
- 8.2** In particular, CPR rule 69.7, and paragraph 9 of Practice Direction 69, apply in relation to the remuneration of the receiver.
- 8.3** Where no confiscation or forfeiture order has been made –
  - (1)** an application for the appointment of a receiver should not be made without notice, unless the application is urgent or there is some other good reason for not giving notice to the defendant; and
  - (2)** if the application is made without notice, the prosecutor's written evidence should explain the reasons for doing so.
- 8.4** Where the court appoints a receiver on an application without notice in the circumstances set out in paragraph 8.3, the order will normally limit the receiver's powers to manage, deal with or sell property (other than with the defendant's consent) to the extent that is shown to be urgently necessary. If the receiver seeks further powers, he should apply on notice for further directions.

## **SECTION III – DOMESTIC FREEZING ORDER CERTIFICATE**

### **Form of domestic freezing order certificate**

- 9.** An example of a domestic freezing order certificate is set out in the Annex to Council Framework Decision 2003/577/JHA of 22 July 2003 on the execution in the European Union of orders freezing property or evidence. This Framework Decision is set out in Appendix 2 to this Practice Direction.

# Appendix 1

## RESTRAINT ORDER PROHIBITING DISPOSAL OF ASSETS

## IN THE HIGH COURT OF JUSTICE QUEEN'S BENCH DIVISION [ADMINISTRATIVE COURT]

Before The Honourable Mr Justice [

] sitting in private

Claim No.

Dated

IN THE MATTER OF [

] (Defendant)

AND IN THE MATTER OF THE [CRIMINAL JUSTICE ACT 1988]  
[DRUG TRAFFICKING ACT 1994] [TERRORISM ACT 2000]

TO: [(1)] [*the Defendant*]  
[(2)] Y  
[(3)] Z LIMITED

### PENAL NOTICE

If you [ ] disobey this order you may be held to be in contempt of court and may be imprisoned, fined or have your assets seized.

Any other person who knows of this order and does anything which helps or permits the Defendant [or Y or Z Ltd] to breach the terms of this order may also be held to be in contempt of court and may be imprisoned, fined or have their assets seized.

### THIS ORDER

1. This is a Restraint Order made against [ ] (“the Defendant”) [and Y and Z Ltd] on [ ] by Mr Justice [ ] on the application of [ ] (“the Prosecutor”). The Judge read the witness statements listed in Schedule A and accepted the undertakings set out in Schedule B at the end of this order.
2. This order was made at a hearing without notice to the Defendant [or to Y and Z Ltd]. The Defendant [and Y and Z Ltd] has a right to apply to the court to vary or discharge the order – see paragraph 15 below.
- [3. There will be a further hearing of this matter on [insert date] (“the return date”) when the Prosecutor will apply for the continuation of this order. The Defendant [and Y and Z Ltd] and any other person affected by this order are entitled to appear and to object to the continuation of this order or to ask for it to be varied.]<sup>1</sup>

<sup>1</sup> Include this paragraph if the court fixes a return date.

## DISPOSAL OF OR DEALING WITH ASSETS

4. The Defendant must not [until further order of the court]-
  - (1) remove from England and Wales<sup>1</sup> any of his assets which are in England and Wales [up to the value of £ ]; or
  - (2) in any way dispose of, deal with or diminish the value of any of his assets whether they are in or outside England and Wales [up to the same value].
5. Paragraph 4 applies to all the Defendant's assets whether or not they are in his own name and whether they are solely or jointly owned. For the purpose of this order the Defendant's assets include any asset which he has the power, directly or indirectly, to dispose of or deal with as if it were his own. The Defendant is to be regarded as having such power if a third party holds or controls the asset in accordance with his direct or indirect instructions.
6. This prohibition includes the following assets in particular-
  - (a) the property known as *[title/address]* or the net sale money after payment of any mortgages if it has been sold;
  - (b) the property and assets of the Defendant's business [known as *[name]*] [carried on at *[address]*] or the sale money if any of them have been sold; and
  - (c) any money in the account numbered *[account number]* at *[title/address]*.
- [7. (1) If the total value free of charges or other securities ("unencumbered value") of the Defendant's assets in England and Wales exceeds £ , the Defendant may remove any of those assets from England and Wales or may dispose of or deal with them so long as the total unencumbered value of the Respondent's assets still in England and Wales remains above £ .
- (2) If the total unencumbered value of the Defendant's assets in England and Wales does not exceed £ , the Defendant must not remove any of those assets from England and Wales and must not dispose of or deal with any of them. If the Defendant has other assets outside England and Wales, he may dispose of or deal with those assets outside England and Wales so long as the total unencumbered value of all his assets

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<sup>1</sup> In orders made under Schedule 4 to the Terrorism Act 2000, this paragraph should be amended by substituting a prohibition on removing assets from Great Britain.

whether in or outside England and Wales remains above £  
.]

8. [Y must not in any way dispose of or deal with or diminish the value of *[insert description of property]*].<sup>1</sup>
9. [Z Ltd must not in any way dispose of or deal with or diminish the value of any of its property or assets.]

## PROVISION OF INFORMATION<sup>2</sup>

10. The Defendant must serve a witness statement certified by a statement of truth on the Prosecutor within [ ] days after this order has been served on him setting out all his assets and all assets under his control whether in or outside England and Wales and whether in his own name or not and whether solely or jointly owned, giving the value, location and details of all such assets. The witness statement must include:
  - (1) the name and address of all persons including financial institutions holding any such assets;
  - (2) details of the Defendant's current salary or other form of income, identifying the amounts paid, by whom they are paid and the account or accounts into which such sums are paid;
  - (3) the names and numbers of all accounts held by or under the control of the Defendant, together with the name and address of the place where the account is held and the sums in the account;
  - (4) details (including addresses) of any real property in which the Defendant has any interest, including an interest in any of the net sale money if the property were to be sold. These details must include details of any mortgage or charge on the property;
  - (5) details of all National Savings Certificates, unit trusts, shares or debentures in any company or corporation, wherever incorporated in the world, owned or controlled by the Defendant or in which he has an interest;
  - (6) details of all trusts of which the Defendant is a beneficiary, including the name and address of every trustee;
  - (7) particulars of any income or debt due to the Defendant including the name and address of the debtor;

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<sup>1</sup> It may, depending on the circumstances, be appropriate for the order to include more detailed provisions restraining a third party, corresponding with paragraphs 4 to 7 above.

<sup>2</sup> This section of the order is optional, although it will usually be included in orders made under the 1988 or 1994 Acts.

- (8) details of all assets over £1,000 in value transferred by the Defendant, or anyone on his behalf, to others since [date], identifying the name and address of all persons to whom such property was transferred.
11. (1) Subject to any further order of the court any information given in compliance with this order shall only be used-
- (a) for the purpose of these proceedings;
- (b) if the Defendant is convicted, for the purposes of any confiscation hearing that may take place; and
- (c) if a confiscation order is made, for the purposes of enforcing that order, including any receivership proceedings.
- (2) There shall be no disclosure of any material disclosed in compliance with this order to any co-defendant in the criminal proceedings.
- (3) However, nothing in this paragraph shall make inadmissible any disclosure made by the Defendant in any proceedings for perjury relating to that disclosure.

#### **EXCEPTIONS TO THIS ORDER**

12. (1) This order does not prohibit the Defendant [or Y] from spending up to £ a week towards his ordinary living expenses and up to £ [or a reasonable sum] on legal advice and representation in connection with this order. But before spending any money the Defendant [or Y] must tell the Prosecutor where the money is to come from.
- [(2) This order does not prohibit the Defendant [or Y] from spending any money they may receive by way of state benefit from the Department of Social Security.]
- [(3) This order does not prohibit the Defendant from spending towards his ordinary living expenses any sum earned by him whilst he is in prison.]
- [(4) This order does not prohibit Z Ltd from spending up to £ [or a reasonable sum] on legal advice and representation. But before spending any money Z Ltd must tell the Prosecutor where the money is to come from.]
- (5) The Defendant [or Y or Z Ltd] may agree with the Prosecutor that the above spending limits be varied or that this Order be

varied in any other respect in relation to them, but any such agreement must be in writing.

- (6) This order does not prevent-
- (a) any person from paying any money in satisfaction of the whole or part of any confiscation order which may be made against the Defendant; or
  - (b) the levy of distress upon any goods subject to this order for the purpose of enforcement of any confiscation order which may be made against the Defendant.

## **COSTS**

13. The costs of this order are reserved.

## **VARIATION OR DISCHARGE OF THIS ORDER**

14. Anyone affected by this order may apply to the court at any time to vary or discharge this order (or so much of it as affects that person), but they must first inform the Prosecutor and the Defendant [and Y and Z Ltd] giving two clear days' notice. If any evidence is to be relied upon in support of the application, the substance of it must be communicated in writing to the Prosecutor in advance.

## **INTERPRETATION OF THIS ORDER**

15. A person who is an individual who is ordered not to do something must not do it himself or in any other way. He must not do it through others acting on his behalf or on his instructions or with his encouragement.
16. A person which is not an individual which is ordered not to do something must not do it itself or by its directors, officers, partners, employees or agents or in any other way.

## **PARTIES OTHER THAN THE DEFENDANT**

17. **Effect of this order**

It is a contempt of court for any person notified of this order knowingly to assist in or permit a breach of this order. Any person doing so may be imprisoned, fined or have their assets seized. He is also at risk of prosecution for a money laundering offence.

18. **Set off by banks**



This order does not prevent any bank from exercising any right of set off it may have in respect of any facility which it gave to the Defendant before it was notified of this order.

**19. Withdrawals by the Defendant**

No bank need enquire as to the application or proposed application of any money withdrawn by the Defendant if the withdrawal appears to be permitted by this order.

**20. Persons outside England, Wales and Scotland**

- (1) Except as provided in paragraph (2) below, the terms of this order do not affect or concern anyone outside the jurisdiction of this court or Scotland.
- (2) The terms of this order will affect the following persons in a country or state outside the jurisdiction of this court or Scotland-
  - (a) a person to whom this order is addressed or the officer or agent appointed by power of attorney of such a person;
  - (b) any person who-
    - (i) is subject to the jurisdiction of this court or Scotland;
    - (ii) has been given written notice of this order at his residence or place of business within the jurisdiction of this court or Scotland; and
    - (iii) is able to prevent acts or omissions outside the jurisdiction of this court or Scotland which constitute or assist in a breach of the terms of this order; and
  - (c) any other person, only to the extent that this order is declared enforceable by or is enforced by a court in that country or state.

**21. Enforcement in Scotland**

This order shall have effect in the law of Scotland, and may be enforced there, if it is registered under section 35 of the Proceeds of Crime (Scotland) Act 1995.

**[22. Assets located outside England and Wales**

Nothing in this order shall, in respect of assets located outside England and Wales, prevent any third party from complying with-

- (1) what it reasonably believes to be its obligations, contractual or otherwise, under the laws and obligations of the country or state in which those assets are situated or under the proper law of any contract between itself and the Respondent; and
- (2) any orders of the courts of that country or state, provided that reasonable notice of any application for such an order is given to the Applicant's solicitors;

unless those assets are situated in Scotland and this order has been registered there, in which case this order must be obeyed there.]

## **COMMUNICATIONS WITH THE COURT**

All communications to the court about this order should be sent to-

*The Administrative Court Office, Royal Courts of Justice, Strand, London WC2A 2LL  
quoting the case number. The office is open between 10 a.m. and 4.30 p.m. Monday  
to Friday. The telephone number is 0207 947 6653.*

## **SCHEDULE A**

### **WITNESS STATEMENTS**

## **SCHEDULE B**

### **UNDERTAKINGS GIVEN TO THE COURT BY THE PROSECUTOR**

- (1) The Prosecutor will serve upon the Defendant [and Y and Z Ltd] -
  - (a) a copy of this order; and
  - (b) a copy of the witness statement containing the evidence relied upon by the Prosecutor, and any other documents provided to the court on the making of the application;
- (2) Anyone notified of this order will be given a copy of it by the Prosecutor.
- (3) The Prosecutor will pay the reasonable costs of anyone other than the Defendant [and Y and Z Ltd] which are incurred as a result of this order including the costs of finding out whether that person holds any of the Defendant's assets, save that the Prosecutor will not without an order of the court be obliged to pay any legal or accountancy costs so incurred unless the Prosecutor first gives its consent in writing.

### **ADDRESS OF THE PROSECUTOR FOR SERVICE AND ANY COMMUNICATION IN RESPECT OF THESE PROCEEDINGS**

*[Address, reference, fax and telephone numbers]"*

## Appendix 2

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Council Framework Decision 2003/577/JHA of 22 July 2003 on the execution in the European Union of orders freezing property or evidence (which contains an example of a domestic freezing order certificate)

(Acts adopted pursuant to Title VI of the Treaty on European Union)

**COUNCIL FRAMEWORK DECISION 2003/577/JHA**  
**of 22 July 2003**  
**on the execution in the European Union of orders freezing property or evidence**

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 <sup>(1)</sup>,

Having regard to the opinion of the European Parliament <sup>(2)</sup>,

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 are 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 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.

*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;

<sup>(1)</sup> OJ C 75, 7.3.2001, p. 3.

<sup>(2)</sup> Opinion delivered on 11 June 2002 (not yet published in the Official Journal).

- (b) 'executing State' shall mean the Member State in whose territory the property or evidence is located;
- (c) 'freezing order' 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.
- 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.

### 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,

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.

## 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<sup>(1)</sup>, 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.

<sup>(1)</sup> Council Joint Action 98/428/JHA of 29 June 1998 on the Creation of the European Judicial Network (OJ L 191, 7.7.1998, p. 4).

## 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.

## 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.

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.

#### 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 have disappeared, have been destroyed, cannot be found in the location indicated in the certificate or the location of the property or

#### 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.

#### 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.

#### 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 in 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.

#### 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.

#### 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.

#### 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*.

Done at Brussels, 22 July 2003.

*For the Council*  
*The President*  
G. ALEMANNO

## ANNEX

## CERTIFICATE PROVIDED FOR IN ARTICLE 9

(a) The judicial authority which issued the freezing order:

Official name: .....

.....

Name of its representative: .....

Post held (title/grade): .....

File reference: .....

Address: .....

.....

Tel: (country code) (area/city code) (...) .....

Fax: (country code) (area/city code) (...) .....

E-mail: .....

Languages in which it is possible to communicate with the issuing judicial authority .....

.....

Contact details (including languages in which it is possible to communicate with the person(s)) of the person(s) to contact if additional information on the execution of the order is necessary or to make necessary practical arrangements for the transfer of evidence (if applicable): .....

.....

.....

(b) The authority competent for the enforcement of the freezing order in the issuing State

Official name: .....

.....

Name of its representative: .....

Post held (title/grade): .....

File reference: .....

Address: .....

.....

Tel: (country code) (area/city code) (...) .....

Fax: (country code) (area/city code) (...) .....

E-mail: .....

Languages in which it is possible to communicate with the authority competent for the enforcement .....

.....

Contact details (including languages in which it is possible to communicate with the person(s)) of the person(s) to contact if additional information on the execution of the order is necessary or to make necessary practical arrangements for the transfer of evidence (if applicable): .....

.....

(c) In the case where points (a) and (b) have been filled, this point must be filled in order to indicate which/or both of these two authorities must be contacted: .....

☐ Authority mentioned under point (a)

☐ Authority mentioned under point (b)

(d) Where a central authority has been made responsible for the transmission and administrative reception of freezing orders (only applicable for Ireland and the United Kingdom):

Name of the central authority: .....

.....

Contact person, if applicable (title/grade and name): .....

.....

Address: .....

.....

File reference .....

Tel: (country code) (area/city code) .....

Fax: (country code) (area/city code) .....

E-mail: .....

(e) The freezing order:

1. Date and if applicable reference number

2. State the purpose of the order

2.1. Subsequent confiscation

2.2. Securing evidence

3. Description of formalities and procedures to be observed when executing a freezing order concerning evidence (if applicable)

(f) Information regarding the property or evidence in the executing State covered by the freezing order:

Description of the property or evidence and location:

1. (a) Precise description of the property and, where applicable, the maximum amount for which recovery is sought (if such maximum amount is indicated in the order concerning the value of proceeds)

(b) Precise description of the evidence

2. Exact location of the property or evidence (if not known, the last known location)

3. Party having custody of the property or evidence or known beneficial owner of the property or evidence, if different from the person suspected of the offence or convicted (if applicable under the national law of the issuing State)

.....

.....

(g) Information regarding the identity of the (1) natural or (2) legal person(s), suspected of the offence or convicted (if applicable under the national law of the issuing State) or/and the person(s) to whom the freezing order relates (if available):

1. Natural persons

Name: .....

Forename(s): .....

Maiden name, where applicable: .....

Aliases, where applicable: .....

Sex: .....

Nationality: .....

Date of birth: .....

Place of birth: .....

Residence and/or known address; if not known state the last known address: .....

.....

Language(s) which the person understands (if known): .....

.....

2. Legal persons

Name: .....

Form of legal person: .....

Registration number: .....

Registered seat: .....

.....

(h) Action to be taken by the executing State after executing the freezing order

Confiscation

1.1. The property is to be kept in the executing State for the purpose of subsequent confiscation of the property

1.1.1. Find enclosed request regarding enforcement of a confiscation order issued in the issuing State on ..... (date)

1.1.2. Find enclosed request regarding confiscation in the executing State and subsequent enforcement of that order

1.1.3. Estimated date for submission of a request referred to in 1.1.1 or 1.1.2. ....

or

Securing of evidence

2.1. The property is to be transferred to the issuing State to serve as evidence

2.1.1. Find enclosed a request for the transfer

or

2.2. The property is to be kept in the executing State for the purpose of subsequent use as evidence in the issuing State

2.2.2. Estimated date for submission of a request referred to in 2.1.1. ....

## (i) Offences:

Description of the relevant grounds for the freezing order and a summary of facts as known to the judicial authority issuing the freezing order and certificate:

.....  
.....  
.....

Nature and legal classification of the offence(s) and the applicable statutory provision/code on basis of which the freezing order was made:

.....  
.....  
.....

## 1. If applicable, tick one or more of the following offences to which the offence(s) identified above relate(s), if the offence(s) are punishable in the issuing State by a custodial sentence of a maximum of at least three years:

- ☐ 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 Court;
- ☐ unlawful seizure of aircraft/ships;
- ☐ sabotage.

## 2. Full descriptions of offence(s) not covered by section 1 above:

.....  
.....  
.....

- (j) Legal remedies against the freezing order for interested parties, including bona fide third parties, available in the issuing State:

Description of the legal remedies available including necessary steps to take

Court before which the action may be taken

Information as to those for whom the action is available

Time limit for submission of the action

Authority in the issuing State who can supply further information on procedures for submitting appeals in the issuing State and on whether legal assistance and translation is available:

Name

Contact person (if applicable): .....

Address: .....

Tel: (country code) (area/city code) .....

Fax: (country code) (area/city code) .....

E-mail: .....

- (k) Other circumstances relevant to the case (optional information): .....

.....

.....

- (l) The text of the freezing order is attached to the certificate.

Signature of the issuing judicial authority and/or its representative certifying the content of the certificate as accurate:

.....

Name: .....

Post held (title/grade): .....

Date: .....

Official stamp (if available)