

Subsidiary Legislation made under s. 49 of Mutual Legal Assistance (European Union) Act 2005 as read with section 23(g)(i) of the Interpretation and General Clauses Act.

EUROPEAN FREEZING AND CONFISCATION ORDERS
REGULATIONS 2014

Repealed by LN. 2020/524 as from 1.1.2021

(LN. 2014/224)

Commencement **1.12.2014**

Amending enactments	Relevant current provisions	Commencement date
LN. 2017/154 2019/169	rr. 1A, 2, Sch. <i>Notice of Corrigendum</i>	27.7.2017

Transposing:

Council Framework Decision 2003/577/JHA

Council Framework Decision 2006/783/JHA

Council Framework Decision 2009/299/JHA

Directive 2014/41/EU

EU Legislation/International Agreements involved:

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25. Notification, communication etc.

SCHEDULE

In exercise of the powers conferred upon him by section 49 of Mutual Legal Assistance (European Union) Act 2005 as read with section 23(g)(i) of the Interpretation and General Clauses Act and all other enabling powers, and in order to transpose Council Framework Decision 2003/577/JHA of 22 July 2003 on the execution in the European Union of Orders freezing property or evidence, Council Framework Decision 2006/783/JHA of 6 October 2006 on the application of the principle of mutual recognition to confiscation orders, the Minister has made the following Regulations—

Title and commencement.

1. These Regulations may be cited as the European Freezing and Confiscation Orders Regulations 2014 and come into operation on 1 December 2014.

Application.

1A.(1) Subject to subsection (2), the regulations listed in the Schedule shall not apply to a Member State.

(2) The sections listed in the Schedule shall continue to apply to Ireland and Denmark.

Scope and Interpretation.

2.(1) Unless otherwise stated, these Regulations apply with respect to freezing orders, restraint orders and confiscation orders transmitted—

- (a) to Gibraltar from a Member State;
- (b) from Gibraltar to a Member State;

in accordance with Framework Decision 2003/577/JHA or Framework Decision 2006/783/JHA (as amended from time to time).

(2) In these Regulations—

“evidence” has the meaning given to it in article 2(e) of Framework Decision 2003/577/JHA; and

“Member State” means a State participating in Framework Decision 2003/577/JHA or Framework Decision 2006/783/JHA (as the case may be).

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(3) The Central Authority in Gibraltar for the purposes of Framework Decision 2003/577/JHA and Framework Decision 2006/783/JHA shall be the Minister with responsibility for justice.

(4) Other expressions used in these Regulations which are defined in Framework Decision 2003/577/JHA or Framework Decision 2006/783/JHA shall be construed in accordance with the relevant Decision.

Chapter I - Freezing of Evidence

Domestic freezing orders - Evidence

3.(1) If it appears to a judicial authority in Gibraltar, on an application made by a person mentioned in subregulation (4)—

- (a) that proceedings in respect of a listed offence have been instituted or such an offence is being investigated,
- (b) that there are reasonable grounds to believe that there is evidence in a Member State which satisfies the requirements of subregulation (3), and
- (c) that a request has been made, or will be made, under the Mutual Legal Assistance (European Union) Act 2005 or any other Act for the evidence to be sent to the authority making such request,

the judicial authority may make a domestic freezing order in respect of the evidence.

(2) A domestic freezing order is an order for protecting evidence which is in a Member State pending its transfer to Gibraltar. A domestic freezing order may include any measure in order to provisionally prevent the destruction, transformation, moving, transfer or disposal of property that could be evidence.

(3) The requirements are that the evidence—

- (a) is on premises specified in the application in the Member State,
- (b) is likely to be of substantial value (whether by itself or together with other evidence) to the proceedings or investigation,
- (c) is likely to be admissible in evidence at a trial for the offence, and

(d) does not consist of or include items subject to legal privilege.

(4) The application may be made by or on behalf of the Attorney General.

(5) In this Chapter the judicial authorities are any judge of the Supreme Court or a Stipendiary Magistrate.

(6) This regulation is without prejudice to the right of a Member State to make a request for assistance under the Mutual Legal Assistance (European Union) Act 2005 or any other Act.

Sending freezing orders - Evidence

4.(1) A domestic freezing order made in Gibraltar is to be sent to the Minister with responsibility for justice for forwarding to—

- (a) a court exercising jurisdiction in the Member State where the evidence is situated, or
- (b) any authority recognised by the government of the country in question as the appropriate authority for receiving orders of that kind.

(2) The judicial authority is to send the order to the Minister with responsibility for justice as soon as is reasonably practicable and in any event before the end of the period of 14 days beginning with its being made.

(3) The order must be accompanied by a certificate giving the specified information and, unless the certificate indicates when the judicial authority expects such a request to be made, by a request under the Mutual Legal Assistance (European Union) Act 2005 or any other Act for the evidence to be sent to the authority making such request.

(4) The certificate must include a translation of it into an appropriate language of the Member State (if that language is not English).

(5) The certificate must be signed by or on behalf of the judicial authority who made the order and must include a statement as to the accuracy of the information given in it. The signature may be an electronic signature.

(6) If the authority competent to execute the order is not known to the Minister with responsibility for justice, the latter shall make all necessary enquiries, including via the contact points of the European judicial network, in order to obtain information from the executing State.

Variation or revocation of freezing orders - Evidence

5.(1) The judicial authority that made a domestic freezing order may vary or revoke it on an application by a person mentioned below.

- (2) The persons are–
 - (a) the Attorney General,
 - (b) any other person affected by the order.

Overseas Orders for the Freezing of Evidence

Overseas freezing orders – Evidence.

6.(1) Regulation 7 applies where an overseas freezing order made by a court or authority in a Member State is received in Gibraltar, transmitted in accordance with article 4 of the 2003 Framework Decision, from the court or authority which made or confirmed the order, by the Minister with responsibility for justice.

- (2) An overseas freezing order is an order–
 - (a) to provisionally prevent the destruction, transformation, moving, transfer or disposal, pending its transfer to the Member State, evidence which is in Gibraltar and may be used in any proceedings or investigation in that Member State, and
 - (b) in respect of which the following requirements of this regulation are met.
- (3) The order must have been made by–
 - (a) a court exercising criminal jurisdiction in the Member State;
 - (b) a prosecuting authority in the Member State; or
 - (c) any other authority in the Member State which appears to the Minister with responsibility for justice to have the function of making such orders.
- (4) The order must relate to–
 - (a) criminal proceedings instituted in the Member State in respect of a listed offence, or

- (b) a criminal investigation being carried on there into such an offence.

(5) The order must be accompanied by a certificate which gives the specified information; but a certificate may be treated as giving any specified information which is not given in it if the Minister with responsibility for justice has the information in question.

- (6) The certificate must—
 - (a) be signed by or on behalf of the court or authority which made or confirmed the order,
 - (b) include a statement as to the accuracy of the information given in it,
 - (c) if it is not in English, include a translation of it into English.

The signature may be an electronic signature.

(7) The order must be accompanied by a request for the evidence to be sent to a court or authority in the Member State, unless the certificate indicates when such a request is expected to be made. Such a request shall be submitted and processed in accordance with the Law in Gibraltar relating to mutual legal assistance in criminal matters.

(8) References below in this Chapter to an overseas freezing order include its accompanying certificate.

Considering the order.

7.(1) Where this section applies the Minister with responsibility for justice must forthwith—

- (a) by notice nominate a court in Gibraltar to give effect to the overseas freezing order,
- (b) send a copy of the overseas freezing order to the nominated court, to the Attorney General and to the Commissioner of Police for the area in which the evidence is situated,
- (c) tell the Commissioner of Police and to the Attorney General which court has been nominated.

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(2) The nominated court is to consider the overseas freezing order on its own initiative as soon as practicable and whenever possible within 24 hours of receipt of the freezing order and communicate its decision to the Minister with responsibility for justice, the Attorney General and the authority making such request.

(3) Before giving effect to the overseas freezing order, the nominated court must give the Attorney General an opportunity to be heard.

(4) The court may decide not to give effect to the overseas freezing order only if, in its opinion, one of the following conditions is met—

- (a) the certificate provided for in article 9 of the 2003 Framework Decision—
 - (i) is not produced, is incomplete, or manifestly does not correspond to the order, or
 - (ii) is not in English or accompanied by a translation into English;
- (b) there is an immunity or privilege under the law of Gibraltar which makes it impossible to execute the freezing order;
- (c) the execution of the freezing order would be contrary to the principle of ne bis in idem;
- (d) the criminal conduct is not—
 - (i) a listed 2003 Framework Decision offence; or
 - (ii) or conduct which—
 - (A) constitutes an offence in Gibraltar; or
 - (B) would constitute an offence in Gibraltar if it occurred in Gibraltar,

which could give rise to a domestic confiscation order under the law of Gibraltar, provided that in relation to taxes, duties, customs duties and exchange activities, execution of a confiscation order may not be refused on the ground that the law of the Gibraltar does not impose the same kind of tax or duty or does not contain the same types of rules concerning taxes, duties, customs duties and exchange activities as the law of the issuing State.

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2004-03
Repealed
Subsidiary
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(5) In case of a proposed refusal under subregulation (4)(a), the 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.

(6) 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.

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

Giving effect to the order.

8.(1) The nominated court is to give effect to the overseas freezing order by issuing a warrant authorising a police officer—

- (a) to enter the premises to which the overseas freezing order relates and search the premises to the extent reasonably required for the purpose of discovering any evidence to which the order relates, and
- (b) to seize and retain any evidence for which he is authorised to search.

(2) But so far as the overseas freezing order relates to excluded material or special procedure material the court is to give effect to the order by making a production order.

(3) A production order is an order for the person who appears to the court to be in possession of the material to produce it to a police officer before the end of the period of seven days beginning with the date of the production order or such longer period as the production order may specify.

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(4) The police officer may take away any material produced to him under a production order; and the material is to be treated for the purposes of section 27 of the Criminal Procedure and Evidence Act 2011 (access and copying) as if it had been seized by the police officer.

(5) If a person fails to comply with a production order, the court may (whether or not it deals with the matter as a contempt of court) issue a warrant under subregulation (1) in respect of the material to which the production order relates.

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

Postponed effect.

9.(1) The nominated court may postpone giving effect to an overseas freezing order in respect of any evidence—

- (a) in order to avoid prejudicing a criminal investigation which is taking place in Gibraltar, or
- (b) if, under an order made by a court in criminal proceedings in Gibraltar, the evidence may not be removed from Gibraltar.

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

Evidence seized under the order.

10.(1) Any evidence seized by a police officer or produced under regulation 8 shall be retained until a notice under subregulation (2) is issued or there is an authorisation made under regulation 11 to release it.

- (2) If–
- (a) the overseas freezing order was accompanied by a request for the evidence to be sent to a court or authority in accordance with the Mutual Legal Assistance (European Union) Act 2005 or any other Act, or
 - (b) the Minister with responsibility for justice subsequently receives such a request,

the Minister with responsibility for justice may by notice require the police officer to send the evidence to the court or authority that made the request in accordance with the procedures contained in such Act.

Release of evidence held under the order.

11.(1) On an application made by a person mentioned below, the nominated court may authorise the release of any evidence retained under regulation 10 if, in its opinion–

- (a) a condition in regulation 7(4)(b) or (c) is met, or
- (b) the overseas freezing order has ceased to have effect in the issuing State.

(2) The persons are–

- (a) the Attorney General,
- (b) the police officer or other person in possession of the seized evidence,
- (c) any other person affected by the order.

(3) If the Minister with responsibility for justice decides not to give a notice under regulation 10(2) in respect of any evidence retained under that regulation, he must give the person in possession of the seized evidence a notice authorising him to release the evidence.

Powers under warrants.

12.(1) A court may not issue a warrant under regulation 8 in respect of any evidence unless the court has reasonable grounds for believing that it does not consist of or include items subject to legal privilege, excluded material or special procedure material.

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(2) Subregulation (1) does not prevent a warrant being issued by virtue of regulation 8(5) in respect of excluded material or special procedure material.

Interpretation of Chapter I.

13.(1) In this Chapter–

“domestic freezing order” has the meaning given by regulation 3(2),

“notice” means a notice in writing,

“overseas freezing order” has the meaning given by regulation 6,

“premises” has the same meaning as in the Criminal Procedure and Evidence Act 2011,

“the 2003 Framework Decision” means the Framework Decision on the execution in the European Union of orders freezing property or evidence adopted by the Council of the European Union on 22nd July 2003.

(2) The following subregulations have effect for the purposes of this Chapter.

(3) “Items subject to legal privilege”, “excluded material” and “special procedure material” have the same meaning as in the Criminal Procedure and Evidence Act 2011.

(4) A listed offence means–

(a) an offence described in article 3(2) of the 2003 Framework Decision, or

(b) an offence prescribed or of a description prescribed by an order made by the Minister with responsibility for justice.

(5) An order prescribing an offence or a description of offences under subregulation (4)(b) may require, in the case of an overseas freezing order, that the conduct which constitutes the offence or offences would, if it occurred in Gibraltar, constitute an offence in Gibraltar.

(6) Specified information, in relation to a certificate required by regulation 4(3) or 6(5), means–

- (a) any information required to be given by the form of certificate annexed to the 2003 Framework Decision, or
- (b) any information prescribed by an order made by the Minister with responsibility for justice.

CHAPTER II

PROCEEDS OF CRIME (FOREIGN PROPERTY AND FOREIGN ORDERS)

Interpretation of Chapter II.

14. In this Chapter–

“the 2003 Framework Decision” means the Framework Decision on the execution in the European Union of orders freezing property or evidence adopted by the Council of the European Union on 22nd July 2003;

“the 2006 Framework Decision” means Council Framework Decision 2006/783/JHA of 6 October 2006 on the application of the principle of mutual recognition to confiscation orders;

“domestic confiscation order” means a confiscation order under section 23 of the Crime (Money Laundering and Proceeds) Act 2007 or section 3 of the Drug Trafficking Offences Act 1995 or such other provision as the Minister with responsibility for justice may prescribe;

“domestic restraint order” means a restraint order under section 30 of the Crime (Money Laundering and Proceeds) Act 2007 or section 27 of the Drug Trafficking Offences Act 1995 or such other provision as the Minister with responsibility for justice may prescribe;

“property” and “instrumentalities” have the meanings given in article 2(d) and (f) of the 2006 Framework Decision;

“relevant prosecutor” means the Attorney General;

“specified information” means–

- (a) in relation to a certificate under regulation 15, any information required to be given by the form of certificate annexed to the 2003 Framework Decision;

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- (b) in relation to a certificate under regulation 20, any information required to be given by the form of certificate annexed to the 2006 Framework Decision.

Restraint Orders

Domestic restraint orders: certification.

15.(1) If any of the property to which an application for a domestic restraint order relates is property in a Member State, the relevant prosecutor may ask the Supreme Court to make a certificate under this regulation.

- (2) The Supreme Court may make a certificate under this regulation if—
 - (a) it makes a domestic restraint order in relation to property in a Member State, and
 - (b) it is satisfied that there are reasonable grounds for believing that the property—
 - (i) is the instrumentalities of an offence, or
 - (ii) is the proceeds of an offence.
- (3) A certificate under this regulation is a certificate which—
 - (a) is made for the purposes of the 2003 Framework Decision, and
 - (b) gives the specified information.
- (4) If the Supreme Court makes a certificate under this regulation, the domestic restraint order must provide for notice of the certificate to be given to the person affected by it.
- (5) A court which has relevant powers in respect of a domestic restraint order is to have the same relevant powers in respect of a certificate under this regulation.
- (6) For that purpose “relevant powers” means the powers—
 - (a) to consider an appeal,
 - (b) to consider an application for reconsideration, variation or discharge, and

- (c) to make an order on any such appeal or application.

Sending domestic restraint orders and certificates overseas.

16.(1) If a certificate is made under regulation 15, the domestic restraint order and the certificate are to be forwarded by the relevant prosecutor, in accordance with article 4 of the 2003 Framework Decision, to—

- (a) a court exercising jurisdiction in the Member State where the property is situated, or
- (b) any authority recognised by the government of that Member State as the appropriate authority for receiving orders of that kind.

(2) The domestic restraint order and the certificate must be accompanied by a domestic confiscation order, unless the certificate indicates when the Court expects a domestic confiscation order to be sent.

(3) The certificate must include a translation of it into an appropriate language of the other Member State (if that language is not English).

(4) The certificate must be signed by or on behalf of the Court and must include a statement as to the accuracy of the information given in it.

(5) The signature may be an electronic signature.

(6) If the domestic restraint order and the certificate are not accompanied by a domestic confiscation order, but a domestic confiscation order is subsequently made, it is to be sent to the prosecutor for forwarding as mentioned in paragraph (1).

Overseas Restraint Orders

Sending overseas restraint orders to the court.

17.(1) In a case where—

- (a) the Minister with responsibility for justice receives an overseas restraint order from the court or authority which made or confirmed the order, and
- (b) none of the conditions in subregulation (3) apply, and
- (c) the condition in subregulation (4) applies.

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the Minister with responsibility for justice must send a copy of the order to the Supreme Court and to the Attorney General.

(2) An overseas restraint order is an order made by an appropriate court or authority in a Member State which—

- (a) relates to—
 - (i) criminal proceedings instituted in the Member State, or
 - (ii) a criminal investigation being carried on there; and
- (b) prohibits dealing with property which is in Gibraltar and which the appropriate court or authority considers to be property that—
 - (i) has been or is likely to be the instrumentalities of criminal conduct, or
 - (ii) is the proceeds of criminal conduct.

(3) The Minister may decide not to give effect to the overseas freezing order only if, in his opinion, one of the following conditions is met—

- (a) the certificate provided for in article 9 of the 2003 Framework Decision—
 - (i) is not produced, is incomplete, or manifestly does not correspond to the order, or
 - (ii) is not in English or accompanied by a translation into English;
- (b) there is an immunity or privilege under the law of Gibraltar which makes it impossible to execute the freezing order;
- (c) the execution of the freezing order would be contrary to the principle of ne bis in idem;
- (d) the criminal conduct is not—
 - (i) a listed 2003 Framework Decision offence; or
 - (ii) or conduct which—
 - (A) constitutes an offence in Gibraltar; or

(B) would constitute an offence in Gibraltar if it occurred in Gibraltar,

which could give rise to a domestic confiscation order under the law of Gibraltar, provided that in relation to taxes, duties, customs duties and exchange activities, execution of a confiscation order may not be refused on the ground that the law of the Gibraltar does not impose the same kind of tax or duty or does not contain the same types of rules concerning taxes, duties, customs duties and exchange activities as the law of the issuing State.

- (4) The condition is that—
- (a) the order is accompanied by another order made by a court exercising criminal jurisdiction in the issuing State for the confiscation of the property; or
 - (b) such an order for the confiscation of the property may be made and the certificate indicates when that order is expected to be sent.
- (5) An appropriate court or authority in a Member State in relation to an overseas restraint order is—
- (a) a court exercising criminal jurisdiction in the country,
 - (b) a prosecuting authority in the country, or
 - (c) any other authority in the country which appears to the relevant prosecutor to have the function of making such orders.
- (6) References in this Chapter to an overseas restraint order include its accompanying certificate.

Giving effect to overseas restraint orders.

18.(1) Subject to paragraph (2), where the Supreme Court receives a copy of an overseas restraint order sent by Minister with responsibility for justice in accordance with regulation 17, the Court must consider giving effect to the order no later than the end of the next working day after the relevant day.

(2) In exceptional circumstances, the Supreme Court may delay its consideration of the overseas restraint order, provided that it does consider

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giving effect to the order no later than the end of the fifth working day after the relevant day.

(3) Subject to paragraph (4), the Supreme Court may consider giving effect to the overseas restraint order—

- (a) at a hearing, which must be in private unless the Court directs otherwise; or
- (b) without a hearing.

(4) The Supreme Court must not consider giving effect to the overseas restraint order unless the Attorney General—

- (a) is present; or
- (b) has had a reasonable opportunity to make representations.

(5) The Supreme Court may decide not to give effect to the overseas restraint order only if, in its opinion, a condition in regulation 17 (3) or (4) applies.

(6) The Supreme Court may postpone giving effect to an overseas restraint order in respect of any property—

- (a) in order to avoid prejudicing a criminal investigation which is taking place in Gibraltar, or
- (b) if, under an order made by a court in criminal proceedings in Gibraltar, the property may not be dealt with.

(7) A report on the postponement of the execution of the overseas restraint 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.

(8) As soon as the ground for postponement has ceased to exist, the Supreme Court shall forthwith take the necessary measures for the execution of the overseas restraint order and inform the competent authority in the issuing State thereof by any means capable of producing a written record.

(9) The Supreme Court shall inform the competent authority of the issuing State about any other restraint measure to which the property concerned may be subjected.

(10) In this regulation, “relevant day” means the day on which a copy of an overseas restraint order sent by the Minister with responsibility for justice in accordance with regulation 17 is received by the court.

Registration and enforcement of overseas restraint orders.

19.(1) Where the Supreme Court decides to give effect to an overseas restraint order, it must—

- (a) direct its registration as an order in that court, and
- (b) give directions for notice of the order to be given to any person affected by it.

(2) For the purpose of enforcing an overseas restraint order registered in the Supreme Court, the order is to have effect as if it were an order made by that court.

(3) Subject to paragraph (4), the Supreme Court may cancel the registration of the order, or vary the property to which the order applies, on an application by a relevant prosecutor, or any other person affected by it, if or to the extent that—

- (a) the Supreme Court is of the opinion mentioned in regulation 18(5), or
- (b) the Supreme Court is of the opinion that the order has ceased to have effect in the Member State.

(4) To make an application to cancel the registration of the order, or vary the property to which the order applies, the relevant prosecutor or person affected by the order must—

- (a) apply in writing as soon as practicable after becoming aware of the grounds for doing so;
- (b) serve the application on—
 - (i) the Supreme Court;
 - (ii) the Attorney General (if the applicant is not the Attorney General); and
 - (iii) any person who will or may be affected by the application;

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- (c) explain why it is appropriate for the registration of the order to be cancelled or varied;
- (d) set out the proposed terms of any variation; and
- (e) if a hearing is requested in relation to the application, explain why a hearing is necessary.

(5) Subject to paragraph (6), the provisions of the domestic law of Gibraltar apply (with the appropriate modifications and subject to the preceding provisions of this Chapter) in relation to an overseas restraint order registered in the Supreme Court as they apply in relation to an equivalent domestic restraint order.

(6) No challenge to the substantive reasons in relation to which an overseas restraint order has been made by an appropriate court or authority in the issuing State may be considered by the Supreme Court.

Confiscation Orders

Domestic confiscation orders: certification.

20.(1) If any of the property to which an application for a domestic confiscation order relates is property in a Member State, the relevant prosecutor may ask the Supreme Court to make a certificate under this regulation.

- (2) The Supreme Court may make a certificate under this regulation if—
 - (a) it makes a domestic confiscation order in relation to property in a Member State, and
 - (b) it is satisfied that there are reasonable grounds for believing that the property—
 - (i) was or was intended to be the instrumentalities of an offence, or
 - (ii) is the proceeds of an offence.
- (3) A certificate under this regulation is a certificate which—
 - (a) is made for the purposes of the 2006 Framework Decision, and
 - (b) gives the specified information.

(4) If the Supreme Court makes a certificate under this regulation, the domestic confiscation order must provide for notice of the certificate to be given to the person affected by it.

(5) A court which has relevant powers in respect of a domestic confiscation order is to have the same relevant powers in respect of a certificate under this regulation.

(6) For that purpose “relevant powers” means the powers–

- (a) to consider an appeal,
- (b) to consider an application for reconsideration, variation or discharge, and
- (c) to make an order on any such appeal or application.

Sending domestic confiscation orders and certificates overseas.

21.(1) If a certificate is made under regulation 20, the domestic confiscation order and the certificate are to be forwarded by the competent authority to–

- (a) a court exercising jurisdiction in the executing Member State where-
 - (i) the property is situated, or
 - (ii) the natural or legal person against whom the domestic confiscation order has been issued is normally resident or has its registered seat;

in accordance with article 4 of the 2006 Framework Decision; or

- (b) any authority recognised by the government of such Member State as the appropriate authority for receiving orders of that kind.

(2) The certificate must include a translation of it into an appropriate language of the Member State (if that language is not English).

(3) The certificate must be signed by or on behalf of the Supreme Court and must include a statement as to the accuracy of the information given in it.

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- (4) The signature may be an electronic signature.
- (5) If the authority competent to execute the confiscation order is not known to the competent authority, the latter shall make all necessary enquiries, including via the contact points of the European judicial network, in order to obtain information from the executing State.
- (6) Subject to the conditions set out in paragraphs 2 and 3 of article 5 of the 2006 Framework Decision, a domestic confiscation may only be transmitted pursuant to this regulation to one executing State at any one time.

Sending overseas confiscation orders to the court.

22.(1) In a case where—

- (a) the Central Authority receives an overseas confiscation order from the court or authority which made or confirmed the order, and
- (b) conditions A to C are met,

the Central Authority must send a copy of the order to the Supreme Court.

(2) An overseas confiscation order is an order made by an appropriate court or authority in a Member State for the confiscation of property which is in Gibraltar, or is the property of a resident of Gibraltar, and which the appropriate court or authority considers—

- (a) was used or intended to be used for the purposes of criminal conduct, or
- (b) is the proceeds of criminal conduct.

(3) Condition A is that a person has been convicted of that criminal conduct in that Member State.

(4) Condition B is that the overseas confiscation order was made at the conclusion of the proceedings that gave rise to the conviction.

- (5) Condition C is that the order is accompanied by a certificate which—
- (a) gives the specified information;
- (b) is signed by or on behalf of the court or authority which made or confirmed the order,

- (c) includes a statement as to the accuracy of the information given in it, and
 - (d) if it is not in English, includes a translation of it into English.
- (6) For the purposes of Condition C—
- (a) the certificate may be treated as giving any specified information which is not given in it if the relevant prosecutor has the information in question;
 - (b) the signature may be an electronic signature.
- (7) An appropriate court or authority in an issuing Member State in relation to an overseas confiscation order is—
- (a) a court exercising criminal jurisdiction in the Member State,
 - (b) a prosecuting authority in the Member State, or
 - (c) any other authority in the Member State which appears to the relevant prosecutor to have the function of making such orders.
- (8) References in this Chapter to an overseas confiscation order include its accompanying certificate.
- (9) In this regulation—
- “resident of Gibraltar” means—
- (a) an individual who is normally resident in Gibraltar, or
 - (b) a body of persons (whether corporate or not) established in Gibraltar (including a company registered in Gibraltar);
- “criminal conduct” means—
- (a) a listed 2006 Framework Decision offence; or
 - (b) conduct which—
 - (i) constitutes an offence in Gibraltar; or
 - (ii) would constitute an offence in Gibraltar if it occurred in Gibraltar,

which could give rise to a domestic confiscation order under the law of Gibraltar.

Giving effect to overseas confiscation orders.

23.(1) Where the Supreme Court receives a copy of an overseas confiscation order sent by the Central Authority (which has been transmitted to it in accordance with articles 4 and 5 of the 2006 Framework Decision) in accordance with regulation 22, the Supreme Court must consider giving effect to the order.

(2) Subject to paragraph (3), the Supreme Court may consider giving effect to the overseas confiscation order—

- (a) at a hearing, which must be in private unless the Supreme Court directs otherwise; or
- (b) without a hearing.

(3) The Supreme Court must not consider giving effect to the overseas confiscation order unless the relevant prosecutor—

- (a) is present; or
- (b) has had a reasonable opportunity to make representations.

(4) The Supreme Court may decide not to give effect to the overseas confiscation order only if—

- (a) the certificate provided for in article 4 of the 2006 Framework Decision is not produced, is incomplete, or manifestly does not correspond to the order;
- (b) the certificate is not in English or accompanied by a translation into English;
- (c) the execution of the order would be contrary to the principle of ne bis in idem;
- (d) the criminal conduct is not—
 - (i) a listed 2006 Framework Decision offence; or
 - (ii) or conduct which—

- (A) constitutes an offence in Gibraltar; or
 - (B) would constitute an offence in Gibraltar if it occurred in Gibraltar, which could give rise to a domestic confiscation order under the law of Gibraltar, provided that in relation to taxes, duties, customs duties and exchange activities, execution of a confiscation order may not be refused on the ground that the law of the Gibraltar does not impose the same kind of tax or duty or does not contain the same types of rules concerning taxes, duties, customs duties and exchange activities as the law of the issuing State;
- (e) there is immunity or privilege under the law of Gibraltar which would prevent the execution of a domestic confiscation order on the property concerned;
 - (f) the rights of any interested party, including bona fide third parties, under the law of Gibraltar make it impossible to execute the confiscation order;
 - (g) according to the certificate provided, the person did not appear in person at the trial resulting in the confiscation order, unless the certificate states that one of the criteria contained in article 8.2.(e) of the 2006 Framework Decision has been fulfilled;
 - (h) the confiscation order is based on criminal proceedings in respect of criminal offences which–
 - (i) under the law of Gibraltar, are regarded as having been committed wholly or partly within its Gibraltar, or
 - (ii) were committed outside the territory of the issuing State, and the law of Gibraltar does not permit legal proceedings to be taken in respect of such offences where they are committed outside that State's territory;
 - (i) the confiscation order, in the view of the Supreme Court, was issued in circumstances where confiscation of the property was ordered under the extended powers of confiscation referred to in article 2(d)(iv) of the 2006 Framework Decision;

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- (j) the execution of a confiscation order is barred by statutory time limitations in Gibraltar, provided that the acts fall within the jurisdiction of Gibraltar the criminal law of Gibraltar.

Provided that the Supreme Court shall, before deciding not to recognise and execute a confiscation order pursuant to this subregulation, or to limit the execution thereof pursuant to article 8.3 of the 2006 Framework Decision, give specific consideration to consulting, by any appropriate means, the competent authorities of the issuing State. Consultation is obligatory where the decision is likely to be based on—

- (i) paragraph (a), (c), (g), (h) or (i),
- (iii) paragraph (f) and information is not being provided under article 9(3) of the 2006 Framework Decision, or
- (iv) limiting the execution of the confiscation order under article 8.3 of the 2006 Framework Decision.

(5) The Supreme Court may, acting in accordance with article 10 of the 2006 Framework Decision, postpone giving effect to an overseas confiscation order in respect of any property—

- (a) in order to avoid prejudicing a criminal investigation which is taking place in Gibraltar;
- (b) where it considers that there is a risk that the amount recovered through the execution of the order in Gibraltar may exceed the amount specified in the order because of simultaneous execution of the order in more than one Member State;
- (c) if, under an order made by a court in criminal proceedings in Gibraltar, the property may not be dealt with, or the property is subject to proceedings for such an order; or
- (d) if a person affected by the order has applied to cancel the registration of the order, or vary the property to which the order applies, in accordance with regulation 24.

(6) Where it is impossible to execute the confiscation order for the reason that the property to be confiscated has already been confiscated, has disappeared, has been destroyed, cannot be found in the location indicated in the certificate or the location of the property has not been indicated in a sufficiently precise manner, even after consultation with the issuing State, the competent authority of the issuing State shall be notified forthwith.

(7) The Supreme Court may, acting in accordance with article 12.2 of the 2006 Framework Decision, deduct from the amount to be confiscated such amount as it is proven has been confiscated in any Member State pursuant to the confiscation order.

Registration and enforcement of overseas confiscation orders.

24. (1) Where the Supreme Court decides to give effect to an overseas confiscation order, it must—

- (a) direct its registration as an order in that court, and
- (b) give directions for notice of the order to be given to any person affected by it.

(2) For the purpose of enforcing an overseas confiscation order registered in the Supreme Court, the order is, subject to article 12.4 of the 2006 Framework Decision (whereby the executing state may not impose measures as an alternative to the confiscation order including custodial sanctions etc. without the consent of the issuing state) to have effect as if it were an order made by that court.

(3) Subject to subregulation (4), the Supreme Court may cancel the registration of the order, or vary the property to which the order applies, on an application by a relevant prosecutor, or any other person affected by it, if or to the extent that—

- (a) the Supreme Court is of the opinion mentioned in regulation 23(4), or
- (b) the Supreme Court is of the opinion that the order has ceased to have effect in the Member State.

(4) To make an application to cancel the registration of the order, or vary the property to which the order applies, the relevant prosecutor or person affected by the order must—

- (a) apply in writing as soon as practicable after becoming aware of the grounds for doing so;
- (b) serve the application on—
 - (i) the Supreme Court;
 - (ii) the relevant prosecutor (if the applicant is not the relevant prosecutor); and

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- (iii) any person who will or may be affected by the application;
- (c) explain why it is appropriate for the registration of the order to be cancelled or varied;
- (d) set out the proposed terms of any variation; and
- (e) if a hearing is requested in relation to the application, explain why a hearing is necessary.

(5) No challenge to the substantive reasons in relation to which an overseas confiscation order has been made by an appropriate court or authority in a Member State may be considered by the court.

(6) If an action is brought before the Supreme Court under this regulation, the competent authority of the issuing State shall be informed thereof.

Notification, Communication etc.

Notification, communication etc.

25.(1) Where proceedings are started in relation to an overseas restraint order or an overseas confiscation order—

- (a) the Supreme Court must notify the Central Authority; and
- (b) the Central Authority must notify the court or authority which made or confirmed the overseas restraint order or the overseas confiscation order (as the case may be).

(2) Where the Supreme Court makes a relevant decision, the Central Authority must communicate that decision with reasons to the court or authority which made or confirmed the overseas restraint order or the overseas confiscation order to which the decision relates as soon as reasonably practicable.

(3) Where an overseas confiscation order provides for the confiscation of one or more specified items of property from the subject of the order, the Supreme Court must seek the consent of the court or authority which made or confirmed the overseas confiscation order to replace such provision with a requirement that the subject of the order pay a sum of money equivalent to the value of any such specified items of property.

(4) Where an overseas confiscation order provides for the confiscation of a sum of money, the Supreme Court must—

- (a) seek the consent of the court or authority which made or confirmed the overseas confiscation order to convert the amount provided into the currency of that Member State; and
- (b) where consent is granted, arrange for such conversion at a rate of exchange that was available on the date that the overseas confiscation order was issued.

(5) The amount obtained in relation to an overseas confiscation order shall be disposed of in accordance with article 16 of the 2006 Framework Decision. Where the amount obtained in relation to an overseas confiscation order is greater than or equal to an amount equivalent to 10,000 Euros, the Supreme Court must transfer to the court or authority which made or confirmed the order 50% of the amount obtained, unless otherwise agreed between the Central Authority in Gibraltar and that court or authority.

(6) Where a domestic confiscation order certified in accordance with regulation 20 ceases to have effect or has been part satisfied, the Supreme Court must notify any court or authority to whom the order has been sent as soon as reasonably practicable.

(7) Where, in the opinion of the Supreme Court, giving effect to a domestic confiscation order certified in accordance with regulation 20 may lead to more than the amount specified in that order being confiscated, the Supreme Court must notify any court or authority to whom the order has been sent as soon as reasonably practicable.

(8) In this regulation—

“overseas restraint order” and “overseas confiscation order” have the meanings given in regulations 17 and 22 (as the case may be);

“relevant decision” means—

- (a) a decision to give effect to, or to not give effect to, an overseas restraint order,
- (b) a decision to postpone giving effect to an overseas restraint order, or to end any such postponement,
- (c) a decision to discharge an overseas restraint order,

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- (d) a decision to consider an appeal against, or an application to discharge or vary an overseas restraint order,
- (e) a decision not to recognise or give effect to, or to give limited effect to, an overseas confiscation order,
- (f) a decision to postpone giving effect to an overseas confiscation order, or to end any such postponement, or
- (g) a decision to consider an appeal against, or an application to discharge or vary an overseas confiscation order.

SCHEDULE

Section 1A

The regulations of these Regulations which shall not apply to the Member States of the European Union, with the exception of Ireland and Denmark, are-

- regulation 3
- regulation 4
- regulation 5
- regulation 6
- regulation 7
- regulation 8
- regulation 9.