

MUTUAL RECOGNITION OF CONFISCATION ORDERS AND NATIONAL DIFFERENCES



I. OVERVIEW

1. The main differences between the Member States' confiscation schemes
2. The shortcomings of the Framework Decision 2006/783/JHA
3. The Draft Regulation as remedy?

I. THE MAIN DIFFERENCES

- legal nature:
 - sanction vs. preventive/safety measure
- different confiscation schemes:
 - ordinary/criminal confiscation
 - non-conviction based confiscation
 - extended confiscation
- different standards of proof:
 - high standard (“beyond reasonable doubt”)
 - low standard (“on the balance of probabilities”)

II. FRAMEWORK DECISION 2006/783/JHA

1. A Limited Scope:

Article 1 (1):

*“The purpose of this Framework Decision is to establish the rules under which a Member State shall recognise and execute in its territory a confiscation order issued by a court **competent in criminal matters** of another Member State.”*

Article 2 (c):

*“‘[C]onfiscation order’ shall mean a final penalty or measure imposed by a court **following proceedings in relation to a criminal offence** or offences, resulting in the definitive deprivation of property“*

II. FRAMEWORK DECISION 2006/783/JHA

2. Extensive Grounds for Refusal:

Article 8 (2):

“The competent judicial authority of the executing State (...) may also refuse to recognise and execute the confiscation order if it is established that:

(...)

(g) the confiscation order, in the view of that authority, was issued in circumstances where confiscation of the property was ordered under the extended powers of confiscation”

II. FRAMEWORK DECISION 2006/783/JHA

Article 8 (3):

“If it appears to the competent authority of the executing State that:

- the confiscation order was issued in circumstances where confiscation of the property was ordered under the extended powers of confiscation (...),*

and

- the confiscation order falls outside the scope of the option adopted by the executing State under Article 3(2) of Framework Decision 2005/212/JHA, it shall execute the confiscation order at least to the extent provided for in similar domestic cases under national law.”*

III. DRAFT REGULATION

1. A Broader Scope:

Article 1 (1):

*“This Regulation lays down the rules under which a Member State shall recognise and execute (...) a confiscation order issued by another Member State **within the framework of criminal proceedings**”.*

III. DRAFT REGULATION

2. Limited Grounds for Refusal:

“An exhaustive list of grounds for non-recognition and non-execution of confiscation orders (...) is laid down in Article 9. The list differs significantly from the list contained in the 2006 Framework Decision. Some grounds for refusal remain the same (...). However, the grounds for refusal linked to the type of the confiscation order (e.g. extended confiscation) have not been included in the proposal”

– Explanatory Memorandum, p. 13

3. Choice of Instrument:

Regulation (Article 288 TFEU) → Rules will be directly applicable

Thank you for your attention!