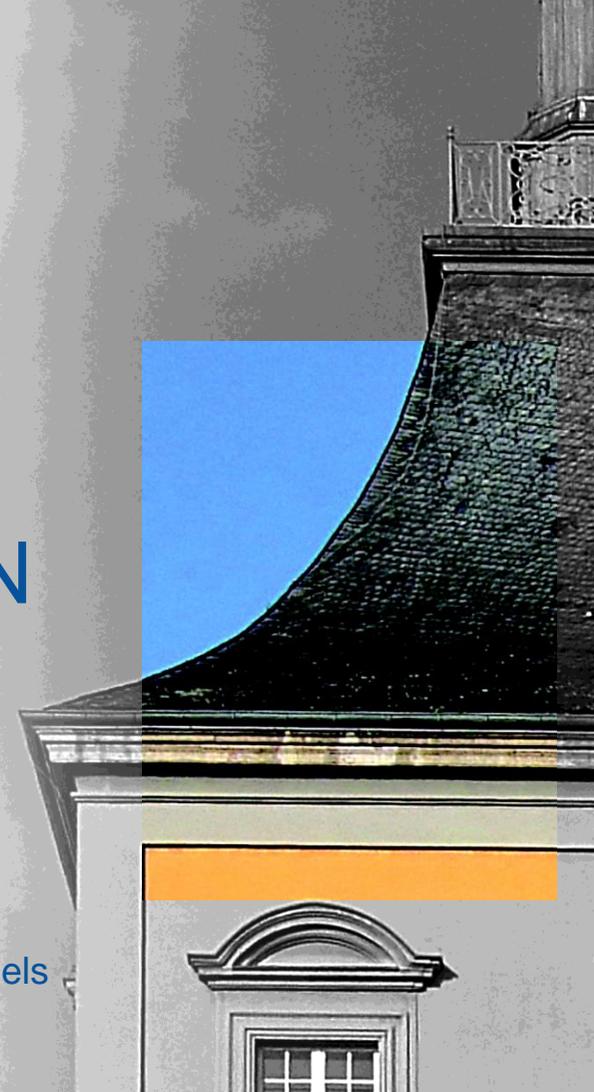


# MUTUAL RECOGNITION AND CRIMINAL CONFISCATION IN EUROPE

Criminal Confiscation: Perspectives from Europe, 21<sup>st</sup> February 2019, Brussels



# I. INTRODUCTION

Legal framework on mutual recognition:

- Framework Decision 2003/577/JHA on freezing orders (FD Freezing)
  - Provisional measures
- Framework Decision 2006/783/JHA on confiscation orders (FD Confiscation)
  - Scope: conviction-based confiscation
- Regulation (EU) 2018/1805 on freezing and confiscation orders
  - will replace the Framework Decisions as from December 2020
  - Scope: (non) conviction-based confiscation (if issued within the framework of proceedings in criminal matters)

## II. PROCEDURE

- Certificate (+ freezing/confiscation order) to be transmitted directly to the competent/central authority
  - Language: official language(s) of the executing state
  - Time limits:
    - FD Freezing: decision “as soon as possible“, “whenever practicable, within 24 hours“
    - FD Confiscation: (-)
    - Regulation:
      - Freezing: decision and execution “no later than 48 hours“
      - Confiscation: decision “no later than 45 days“
-

## II. PROCEDURE (FREEZING)

Competent authority (as notified by the Member States):

BE	Prosecution service
DE	Prosecution service
FR	Prosecution service
IT	Prosecution service
NL	Prosecution service
RO	Ministry of Justice

## II. PROCEDURE (FREEZING)

### Time limits:

BE	Decision: not later than 5 days
DE	-
FR	Decision: “as soon as possible”, Execution: “immediately”
IT	-
NL	Decision: “promptly”
RO	Decsion: within 24 hours

## II. PROCEDURE (CONFISCATION)

Competent authority (as notified by the Member States):

BE	Prosecution service, Federal Department of Justice (central authority)
DE	Prosecution service
FR	Prosecution service
IT	Court of Appeal, Ministry of Justice (central authority)
NL	Central Judicial Recovery Agency (central authority)
RO	Ministry of Justice

## II. PROCEDURE (CONFISCATION)

### Time limits:

BE	-
DE	-
FR	Decision: “without delay“
IT	-
NL	-
RO	-

## II. PROCEDURE (FREEZING & CONFISCATION)

Languages accepted:

BE	French, Dutch, German, English
DE	German, other languages on the basis of reciprocity
FR	French
IT	Italian
NL	Dutch, English
RO	Romanian

### III. GROUNDS FOR REFUSAL (FREEZING)

Certificate incomplete/incorrect	BE <sup>M</sup> , DE <sup>M</sup> , FR <sup>O</sup> , IT <sup>O</sup> , NL <sup>O</sup> , RO <sup>M</sup>
Immunity or privilege	BE <sup>M</sup> , DE <sup>M</sup> , FR <sup>M</sup> , IT <sup>O</sup> , NL <sup>O</sup> , RO <sup>M</sup>
<i>ne bis in idem</i>	BE <sup>M</sup> , DE <sup>M</sup> , FR <sup>M</sup> , IT <sup>O</sup> , NL <sup>O</sup> , RO <sup>M</sup>
No dual criminality	BE <sup>M</sup> , DE <sup>M</sup> , FR <sup>M</sup> , IT <sup>O</sup> , NL <sup>O</sup> , RO <sup>M</sup>
European/national <i>ordre public</i> ?	BE <sup>M</sup> , DE <sup>M</sup> , FR <sup>M</sup> (national)

### III. GROUNDS FOR REFUSAL (CONFISCATION)

Certificate incomplete/incorrect	BE <sup>0</sup> , DE <sup>0</sup> , FR <sup>M</sup> , IT <sup>0</sup> , NL <sup>0</sup> , RO <sup>0</sup>
<i>ne bis in idem</i>	BE <sup>M</sup> , DE <sup>M</sup> , FR <sup>M</sup> , IT <sup>0</sup> , NL <sup>M</sup> , RO <sup>0</sup>
No dual criminality	BE <sup>M</sup> , DE <sup>M</sup> , FR <sup>M</sup> , NL <sup>M</sup> , IT <sup>0</sup> , RO <sup>M</sup>
Immunity or privilege	BE <sup>M</sup> , FR <sup>M</sup> , NL <sup>M</sup> , IT <sup>0</sup> , RO <sup>0</sup>
Territoriality principle	BE <sup>M</sup> , DE <sup>M</sup> , FR <sup>0</sup> , IT <sup>0</sup> , NL <sup>0</sup> , RO <sup>0</sup>
Execution time-barred	BE <sup>0</sup> , DE <sup>M</sup> , FR <sup>M</sup> , NL <sup>M</sup> , RO <sup>0</sup>

### III. GROUNDS FOR REFUSAL (CONFISCATION)

Interested party rights	BE <sup>0</sup> , DE <sup>M</sup> , FR <sup>M</sup> (third parties), IT <sup>0</sup> , NL <sup>M</sup> , RO <sup>0</sup>
<i>Trials in absentia</i>	BE <sup>0</sup> , DE <sup>M</sup> , FR <sup>M</sup> , IT <sup>0</sup> , NL <sup>M</sup> , RO <sup>0</sup>
Extended confiscation	BE <sup>0</sup> , DE <sup>M</sup> , FR <sup>M</sup> , IT <sup>0</sup> , NL <sup>0</sup> , RO <sup>0</sup>
European/national <i>ordre public</i> ?	BE <sup>M</sup> , DE <sup>M</sup> , FR <sup>M</sup> (discriminatory grounds), RO <sup>0</sup>

## IV. CONCLUSION AND OUTLOOK

- Operational/communication issues (competent authority, language barriers)
- “Technical” issues (terms very vague)
- Incorrect transposition of the FDs (European/national *ordre public*)

→ Situation to be improved by the Regulation?

Thank you very much for your attention!