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**Press Release for RECOVER International Seminar on the
“Dissemination of the 1st year’s results of the RECOVER project
on “Mutual recognition of freezing and confiscation orders
between efficiency and the rule of law”- Regulation (EU)
2018/1805”**

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On Thursday 30th of November 2023 the international seminar of the project RECOVER (Mutual recognition of freezing and confiscation orders between efficiency and the rule of law) was held both physically and on the platform Microsoft Teams, with the participation of all the Partners, the members of the advisory and monitoring boards, other external experts, and many external participants. It focused on the dissemination of the results of the first year of the project. The event served as a collaborative platform for experts to share insights, address challenges, and contribute to the overarching goal of improving the understanding and effectiveness of asset confiscation across European states. Each presentation provided a unique perspective, contributing to a comprehensive and nuanced approach within the project.

Prof. E.U. Savona made the initial greetings, underlining that the current confiscation mechanism is not functioning optimally and highlighting the imperative need for heightened awareness. In light of these challenges, it becomes crucial to formulate practical suggestions contingent upon the availability of precise statistics. The project RECOVER represents a unique opportunity to proactively address difficulties stemming from legislative constraints, organizational problems, limited knowledge, and disparities between the internal and external actions of different states on confiscation. In the broader context, Prof. Savona remarked that the RECOVER project aimed to not only generate knowledge but also to deeply comprehend the phenomenon, with the ultimate goal of fostering an increased understanding of confiscation and mutual recognition in Europe.

Subsequently, Mr M. Anastasio presented a scheme on the functioning of the REG in 10 Member States. He underlined that the focal point of the project revolved around positive/negative harmonization, with the explicit intention of enhancing mutual recognition. He presented the structure of the project, the consortium, comprising 12 participants, and he specifically outlined the contents and structure of the working package 2, spanning from December 2022 to May 2023, and working package 3, which extended from June to November 2023. The RECOVER schema, involving 10 Member States, explored

national models of confiscation and statistical data, drawing insights from national reports, workshop results, and external sources. The utility of the project extended to law enforcement authorities, research, and policy development. Challenges, notably in data collection, were acknowledged, and synchronicity among legal foundations/models of confiscation across Member States was recognized. A comparative chart presentation was included to ensure a comprehensive understanding of the project's outcomes.

Prof. A.M. Maugeri, in her role as the coordinator of RECOVER, provided explanations on the scope of the Regulation and the intricate concept of “proceedings in criminal matters”. Art. 1 establishes that “This Regulation lays down the rules under which a Member State recognizes and executes in its territory freezing orders and confiscation orders issued by another Member State within the framework of proceedings in criminal matters”, as opposed to “within the framework of criminal proceedings” as established in the original proposal. Recital 13 states that « “proceedings in criminal matters” is an autonomous concept of Union law and that “The term therefore covers all types of freezing orders and confiscation orders issued following proceedings in relation to a criminal offence”; this expression “proceedings in relation to a criminal offence” is repeated in Art. 2 in the definition of confiscation. It is important to verify this “relation to a criminal offence”, namely that there is a *link* between the assets to be confiscated and a crime; therefore, **it is sufficient that the proceedings before a judicial authority concern the proceeds and/or instruments of the crime.** The Prof. Maugeri stressed the importance of role of the Italian delegation in the replacement of the expression “criminal proceedings” used in the first version of the Regulation with the expression “proceedings in criminal matters”; the Italian delegation, supported by some other delegations, claimed that the proposed use of the words “criminal proceedings” raised an issue in relation to the Italian system of so-called “preventive confiscation”, which would be excluded from the current scope of the Regulation (at least partly). Therefore, Italy suggested using the concept of Article 82 (1) TFEU, which refers to “proceedings in criminal matters”. This would allow its *system of preventive confiscation* to be included, while freezing and confiscation orders issued within the framework of proceedings in civil and administrative matters would be explicitly excluded; confiscation orders issued under the Italian system of preventive confiscation have *a clear link with criminal activities* and, thus, in principle, fall within the framework of proceedings in criminal matters. In the context of a debate on the matter by the EU ministries of Justice (UE, Cons. JAI, 12/13 October 2017), it was argued that certain preventive confiscation systems would also be included in the scope of the Regulation, provided that the decision to confiscate *«soit clairement en rapport avec des activités criminelles et que des garanties procédurales appropriées s’appliquent»*. Prof. Maugeri placed a strong emphasis on respecting fundamental rights, because the Regulation requires that confiscation be applied not only in proceedings in criminal matters, but also with the safeguards of criminal matters in the Member States, in particular those provided for in the six Directives on procedural rights and - as established in the recital 18 – “the essential safeguards for criminal proceedings” which are set out in the Charter and which “should apply to proceedings in criminal matters that are not criminal proceedings but which are covered by this Regulation”. The problem is to understand if the hybrid proceedings, which several MS have, are covered by the Regulation and if they apply “the essential safeguards for criminal proceedings”, including the presumption of innocence which allows the use of

presumptions, but demands the respect of the right to silence. The presentation concluded with a detailed examination of the grounds for refusal of the recognition of orders, stressing the introduction of “a manifest breach of a relevant fundamental right” (art. 8 l. f and 19 l. h). Prof. Maugeri concluded examining the European Court of Human Rights case law in this sector. In conclusion the concept of “proceedings in criminal matters” is very extended, but it demands the respect of the essential fundamental rights of the criminal law.

Prof. P. Pinto de Albuquerque, former ECHR judge, concentrated on the respect of the fundamental rights in the proceeding for the adoption of non-conviction based confiscations (NCBC) in MS, and in particular safeguarding third-party rights in confiscation. Drawing upon many articles of the European Convention on Human Rights (ECHR), Prof. P. Pinto de Albuquerque cited relevant case-law to substantiate the need for the recognition and active participation of third parties in criminal procedures, emphasizing a holistic approach to the protection of individual rights.

Ms S. Fonte, Team Leader at Eurojust, delivered a comprehensive presentation on Eurojust's indispensable role in asset recovery cases. The report encompassed Eurojust's casework in asset recovery, delving into identification, freezing, confiscation, and restitution/compensation of shared assets. A salient point emphasized Eurojust's coordination and collaboration with national agencies and ministries across multiple jurisdictions. Particular attention was devoted to legal challenges and best practices encountered in cases coordinated by Eurojust. Topics included asset tracing, the benefits of interdisciplinary approaches, and the crucial importance of early consultations between competent authorities. A compelling example illustrated Eurojust's effective support during the simultaneous execution of multiple freezing orders from various countries, showcasing the practical significance of the organization.

Ms L. Lotti, prosecutor from Rome, addressed the territorial distribution of illicit activities in Italy, underscoring the crucial need for international judicial cooperation. The presentation categorized areas of crime, including drug trafficking, cybercrime, illegal immigration, human trafficking, trafficking in counterfeit products, and smuggling.

During the conference, Prof. Maugeri invited RECOVER partners and external experts to take the floor for the presentation of national systems of confiscation. Partners from Italy (Dr M. Fini – Italian Ministry of Justice), Bulgaria (Ms V. Ilieva – General Prosecutor's Office), Germany (Ms A. Sakellaraki and Mr T. Bettels – Humboldt University), Netherlands (Ms J.L. de Boer and Mr R. van der Ende – General Prosecutor's Office), Poland (Mr P. Szymanski – Polish Ministry of Justice), Spain (Mr J.M. Compañy – General Prosecutor's Office), Romania (Mr E. Levai and Ms A. Scutaru-Sandru – ANABI), took the floor and presented their national reports. Experts from Sweden (K. Sigstedt), Austria (K. Stiebellehner), Croatia (L. Sokanovic), Slovenia (A. Erbeznik), Norway (J. Boucht) intervened and provided fruitful insights into the confiscation systems of their countries.

After each of these presentations there was a lively debate among the Partners and all the participants, which substantially contributed to identifying the most relevant and recurring practical problems and obstacles in the implementation of the Reg., meditating on the possible solutions and good practices to be adopted in order to improve the praxis and strengthen mutual trust and mutual recognition. In the next weeks, we will continue to update you on the upcoming activities of the project and on the results that the consortium will achieve... Stay tuned!