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**Mutual recognition of freezing and confiscation
orders between efficiency and the rule of law**

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Practical obstacles and legal issues arising in the implementation of REG

BULGARIA

(the point of view of the Prosecutor's Office)

Bulgaria has experience in implementing Regulation (EU) 1805/2018 as well as other EU acts on the mutual recognition of freezing and confiscation orders, mainly as an executing country.

Statistical data – still in process of collecting; to be presented in the final report by the end of October

Before pointing out some of the problems encountered in the practice of the Bulgarian judicial authorities, it is necessary to present in general the manner in which the Regulation is implemented in Bulgaria as an issuing and executing State.

At the time of the entry into force of Regulation (EU) 1805/2018, two separate laws for the recognition of orders of competent judicial authorities of other States were already effective in Bulgaria – one in relation to freezing orders and the other in relation to effective confiscation orders, freezing orders and other financial sanctions.

The implementation of Regulation (EU) 1805/2018 has been carried out by the Bulgarian legislator by an amendment to:

- the Recognition, Execution, Issuance and Transmission of Property Freezing Orders Act (the Freezing Orders Act) and
- the Recognition, Execution, Issuance and Transmission of Orders of Confiscation or Forfeiture and Decisions Imposing Financial Sanctions Act (the Confiscation Orders Act)

model of freezing (seizure) order or confiscation order :

According to the practice of the Bulgarian courts (both as an issuing and executing authority), the order for direct confiscation of property is most often applied. It is extremely rare, if ever, to have a freezing order or a confiscation order of equivalent value, against third parties, extended confiscation or non-judgmental confiscation.

the types of criminal offences:

The types of criminal offences that have most often been the reason for issuing certificates and transmitted from or to Bulgaria, the practice shows the following.

The most common crimes for which foreign judicial authorities issue and send confiscation orders are fraud, tax crimes and human and drug trafficking.

the types of assets :

The types of assets that have been subject to confiscation (freezing order) are diverse. Most often, it is a matter of movable property – money in bank accounts. In most cases, the holder of the bank accounts is a legal person whose manager has been sentenced of a tax crime – entering into fictitious transactions and tax evasion. There are also cases of immovable property – apartments.

In order to identify the property to be frozen or confiscated, preliminary investigations are carried out, including the use of a EIO. There are numerous examples of cases in which, based on a received EIO, the Bulgarian prosecutors have identified assets through the Registry Agency and through banking and credit institutions. We specify that for the purpose of obtaining information about balances in bank accounts by the investigating authorities in Bulgaria, a court decision is required.

The requesting State is provided with this information; consequently, a certificate containing a request for confiscation of immovable property located within the territory of Bulgaria and owned by the guilty person is received.

Competent authorities in Bulgaria under Regulation (EU) 1805/2018:

- for the issuance of a freezing certificate pursuant to Article 2, paragraph 8 of the Regulation – the court of first instance, the proceedings being initiated on the grounds of a request from the prosecutor. The freezing order is then transmitted by the prosecutor for execution directly to the competent authority in the executing State, when it comes to the pre-trial phase. When it comes to the trial phase, the order is transmitted by the Bulgarian court to the competent authority of the executing State (Article 28).

Competent authorities in Bulgaria under Regulation (EU) 1805/2018:

- for the execution of a freezing certificate pursuant to Article 2, paragraph 9 of the Regulation, the competent authority in Bulgaria under Article 11 of the Freezing Orders Act, which refers to Article 400 of the Civil Procedure Code, is the bailiff
- for the issuance of a confiscation certificate pursuant to Article 2, paragraph 8 of the Regulation – under Article 25, paragraph 2 of the Confiscation Orders Act – the court of first instance

Competent authorities in Bulgaria under Regulation (EU) 1805/2018:

- for the execution of a confiscation certificate pursuant to Article 2, paragraph 9 of the Regulation – under Article 22 of the Confiscation Orders Act, the decision on confiscation is transmitted for execution to the National Revenue Agency. This competence is based on Article 3, paragraph 1, item 16 of the National Revenue Agency Act, according to which the Agency “executes orders for confiscation or forfeiture of property and decisions imposing financial sanctions, issued in a Member State of the European Union, and recognized and enforceable in the Republic Bulgaria”.

Refusals:

- In Bulgaria, there are cases of refusal to recognize for execution confiscation or forfeiture orders of foreign countries. The most frequent grounds for refusal are: the act for which the person has been sentenced and confiscation of property is requested does not constitute a criminal offence under our legislation; no evidence has been gathered to deny the claims of the person whose property is confiscated that he/she has not been notified of the criminal proceedings against him/her; in the meantime, the property has been disposed of, for which a confiscation certificate has been received and another person (legal or natural) is already its owner.

Note:

- There are cases of incompleteness in the received Certificate from the issuing State and they are removed by consultations with the relevant authority.

In Bulgaria, no cases have been reported in which the recognition and acceptance for execution of a foreign authority's order for property confiscation or freezing to have been refused because the certificate is not presented, is incomplete or clearly does not comply with the order enclosed.

Difficulties in implementing Regulation (EU) 1805/2018:

It should be clarified that the problems do not refer only to the implementation of the Regulation, but to all orders for seizure or confiscation issued by foreign authorities and sent for recognition and execution in Bulgaria during the last years.

- in identifying the competent court; - translation of the certificate or the orders to be applied; - in identifying the assets to be confiscated; - delay of the procedure when the certificates are not accompanied by the confiscation order; - problems related to guaranteeing the right to effective legal remedies (Article 33 of the Regulation), impossibility to fulfil orders (Article 22 of the Regulation), multiple orders for the same person or assets.

Difficulties :

1. As an executing country - significant problem is the determination of the competent court that would examine the proceedings under Art. 16, para. 1 of the Confiscation Orders Act.

Usually the court of the Republic of Bulgaria, which is the only competent authority for the issuance of a property freezing order or a an order of confiscation, refers to Eurojust for assistance, and only in few cases to the Ministry of Justice. In some cases, the requested information is comprehensive. In other cases, the information is incomplete, which is mainly due to differences in terminology and the legislation of the Member States.

Difficulties :

2. There are often difficulties due to the quality of the translation of Certificates, in some cases the translation is inaccurate and incomprehensible.

For example, it cannot be established from the translated text whether the request is to freeze property in pending criminal proceedings, or to recognize and execute a final decision of confiscation, or it concerns confiscation that has been ordered in civil proceedings (they are not subject to recognition and execution under the Confiscation Orders Act).

In order to be clarified this issue the respective order is requested.

Difficulties :

Regarding translation, difficulties have arisen also due to the absence, incompleteness and/or insufficient quality of the translation of the certificate and/or the interpretation of the text, when the translation is not precise in terms of the legal terminology used.

In such cases, the Bulgarian court assigns the translation to a translator from the List of translators of the Sofia City Court, who are found to be proficient in legal terminology.

Difficulties :

When the translation is made by the executing State, namely by the Bulgarian court, no reimbursement of expenses is required from the State transmitting the order, since, according to Article 13, paragraph 1 of the Confiscation Orders Act, the costs are borne by Bulgaria.

Pursuant to paragraph 2 only in case of large and excessive costs incurred in the criminal proceedings in relation to the recognition and execution of the foreign order, the Bulgarian court may propose to the issuing State to share the expenses.

Difficulties :

3. The court in Bulgaria, as an executing authority, often has to demand from the issuing authority to submit the property freezing or confiscation order, and the translation of these documents. For this purpose, the Bulgarian court gives the issuing State a reasonable time to prepare the translation and deliver the documents to the Bulgarian court. Communication is usually carried out through Eurojust being the most efficient and fastest connection, or through the Ministry of Justice. The documents are requested and received at the e-mail address specified by the Bulgarian court.

Problems for the Bulgarian authorities in the mutual recognition, arising from the type of seized/frozen assets:

- The main problems are related to determining the competent court that would examine a received Certificate of property confiscation, when the immovable property is located in different cities and the competence falls with different district courts, accordingly. Such difficulties also arise when the legal persons whose properties or bank account balances are to be confiscated change their company seat by registering at addresses in different district cities.

Problems for the Bulgarian authorities in the mutual recognition, arising from the type of seized/frozen assets:

- Pursuant to Article 44, paragraph 1 of the Criminal Procedure Code, jurisdiction disputes between courts are decided by the Supreme Court of Cassation and this delays the process and creates time frame for disposal or concealment of the property which is subject to confiscation or serves as collateral.

Problems for the Bulgarian authorities in the mutual recognition, arising from the type of seized/frozen assets:

Problems also arise when it is allowed to confiscate property, which is at the same time secured under Article 72 of the Criminal Procedure Code in pending criminal proceedings conducted within the territory of Bulgaria.

Pursuant to Article 21, paragraph 1, item 2 of the Confiscation Orders Act, the court of the executing State may postpone the execution of the confiscation decision when its execution could prejudice pending criminal proceedings. The law states that the court may postpone admission of the decision for a reasonable period of time.

Problems for the Bulgarian authorities in the mutual recognition, arising from the type of seized/frozen assets:

... There is no mechanism for interaction between the court and the prosecutor's office regarding the exchange of information, and there is no institution which is obliged ex officio to follow if the criminal proceedings are competed within the territory of the Republic of Bulgaria and this is a factual and legal obstacle to the admission of the confiscation and is a reason to postpone the decision.

Problems for the Bulgarian authorities in the mutual recognition, arising from the type of seized/frozen assets:

... It is not also regulated whether a postponement of the decision can be continued and rendered a second time under the same request or whether new proceedings should be initiated with the transmission of a new Certificate, and how the expiration of the limitation period for the execution of the confiscation, being under the Bulgarian legislation, should be monitored.

Problems for the Bulgarian authorities in the mutual recognition, arising from the type of seized/frozen assets:

- Another problem is related to the responsibility for managing the immovable or movable property that is subject to confiscation. Article 24 of the Freezing Orders Act states that it is managed and guarded in accordance with Art. 117 et seq. of the Counter-Corruption and Unlawfully Acquired Assets Forfeiture Act. The authorities responsible for the management of this property are formally the directors of the territorial directorates and the inspectors thereto, according to Art. 16. There is no procedure for the appointment of a responsible official for the property, until its actual handover, who would manage this property and protect it from encroachments.

Problems for the Bulgarian authorities in the mutual recognition, arising from the translation:

- Not always, according to the Bulgarian authorities, the information contained in the freezing or confiscation certificate is complete, clear and accurate. This is largely due to the difference in the legislation of the MS, as well as to translation problems. Difficulties mainly arise in relation to the description of the criminal offence for which recognition and execution of the judicial act is requested, i.e. difficulties arise when assessing whether there is double criminality or whether the criminal act falls within the scope of Art. 3 of the Regulation, respectively whether it falls within the scope of Article 14 of the Confiscation Orders Act.

Other problems for the Bulgarian authorities in the mutual recognition:

Incompleteness is also found in the specification of additional circumstances – in some of the Certificates it is not specified when the limitation period for execution of the confiscation or freezing order according to the legislation of the issuing State and whether measures have been taken for its execution, so that it could be assessed whether the limitation period for execution has also expired according to our legislation.

Other problems for the Bulgarian authorities in the mutual recognition:

Data are not provided to a sufficient extent whether the judicial order of confiscation has been issued *in absentia* proceedings, whether the accused person, respectively the defendant or the affected person, has been provided with legal assistance and whether he or she has been personally aware of the ongoing criminal proceedings and the possibility to appeal against them. If the accused person, respectively the defendant has not been personally notified and informed, what is the reason for that.

Proposals for changing and supplementing the model of the freezing or confiscation certificate:

It is proposed to fill in more data on the limitation period for execution according to the legislation of the issuing State; whether measures of execution have been taken, as well as what measures have been taken by the relevant authorities of the executing State.

Proposals for changes in the national legislation with a view to ensuring better implementation of the Regulation in practice:

- to introduce a strict order for the management of the property subject to confiscation;
- to provide for the possibility of re-opening criminal proceedings when the prerequisites of Art. 422 of the CPC are met.

Note: according to Art. 422 CPC a criminal case shall be re-opened where: circumstances or proofs ... which had not been known to the court that issued the judgement and which are of substantial importance to the case or substantial violations have been committed in relation to court rulings.

For the purposes of the previous national report we received certain information from the National Statistical Institute regarding 2021:

Type of acts	Number	Value (euro)
Acts for securing property sent for recognition and execution in another state (outgoing freezing requests)	3	138 600,00
confiscation orders received in Bulgaria for recognition and execution, admitted for execution (admitted requests for confiscation)	59	65 137, 85
confiscation orders received in Bulgaria for recognition and execution, rejected for execution (rejected ingoing requests for confiscation)	81	1 000 902,66

The number of the freezing and confiscation orders includes all orders received for execution in Bulgaria and sent from Bulgaria in 2021, without specifying whether they are based specifically on Regulation (EU) 1805/2018.

The measures for the implementation of the Regulation have been introduced in special laws that have existed since 2007 and 2010 and relate to the recognition of foreign judgments on freezing and confiscation in Bulgaria and vice versa.

Thank you for your attention!

Questions