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

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The 5 points of the presentation

1. **New statistical data from Europol – Annually seized assets in the EU**
2. **How the procedure of the mutual recognition of freezing and confiscation orders works in the German legal system – Competent authorities for incoming and outgoing requests**
3. **German statistical data**
4. **Difficulties encountered in practice**
5. **Good practices**

(1) New statistical data from Europol

Source: Europol (2023), European Financial and Economic Crime Threat Assessment 2023 - The Other Side of the Coin: An Analysis of Financial and Economic Crime, Publications Office of the European Union, Luxembourg, p. 18.

- **The value of assets seized annually in the EU has almost doubled to at least 4.1 billion on average in 2020 and 2021 compared to the previous estimate made in 2016 (at that time it was 2.4 billion on average per year for 2010-2014).**
- **The annual revenues of organised crime in the EU ranges from 92 to 188 billion.**
- **The percentage of illicit assets seized in the EU is still very small, at around 4.4% to 2.2% of total illicit revenues (actually estimated at less than 2% of the annual proceeds of organised crime).**

(2) The procedure of the mutual recognition of freezing and confiscation orders in the German legal system – Competent authorities for incoming and outgoing requests

- **Legal basis:** §§ 96a et seq. of the Act on International Mutual Assistance in Criminal Matters (*Gesetz über die internationale Rechtshilfe in Strafsachen – IRG*).
- **§ 96b (1) (1) IRG:** for incoming foreign freezing orders competent is the local court (*Amtsgericht*) referred to § 67 (3) IRG.
- **§ 96b (1) (2) IRG:** for competent is the regional court simultaneous transmission of freezing & confiscation order of § 50 (1) and § 51 IRG (*Landgericht*).
- **§ 96b (2) IRG:** for incoming foreign confiscation orders competent is the regional court of § 50 (1) and § 51 IRG (*Landgericht*) > admissibility + grounds for refusal.
- **§ 96b (3) IRG:** the public prosecution office (*Staatsanwaltschaft*) of § 50 (2) and 51 IRG is competent to first receive an incoming freezing or confiscation order and to prepare the decision for its recognition and execution for the court.
- **§ 96b (4) IRG:** right to be heard & **§ 96b (5) IRG:** right to legal aid.

(2) The procedure of the mutual recognition of freezing and confiscation orders in the German legal system – Competent authorities for incoming and outgoing requests

- **§ 96c (1) IRG:** the public prosecution office is responsible for the execution/enforcement of the decision. It may also postpone the execution of a freezing or a confiscation order or consider it impossible (§ 96c (2) IRG in conjunction with Art. 10 and 21 of the Regulation on the postponement as well as Art. 13 and 22 of the Regulation on the impossibility).
- **§ 96d (1) IRG:** the legal remedy available to the person against whom the freezing or confiscation order has been issued is the immediate complaint (*sofortige Beschwerde*) against the decision on the recognition and the execution of the freezing or confiscation order in accordance with Art. 33 of the Regulation on the legal remedies available in the executing State.
- **§ 96e (1) IRG:** the competent authority for outgoing requests for recognition and execution of German freezing or confiscation orders to another Member State of the EU is the public prosecution office, which is responsible for issuing and transmitting such requests.

(3) German statistical data

Source: latest statistic of the public prosecutor's offices (*Statistik der Staatsanwaltschaften*), published on the 30th of August 2023 and covering the reporting year 2022, <https://www.destatis.de/DE/Themen/Staat/Justiz-Rechtspflege/Publikationen/Downloads-Gerichte/statistischer-bericht-staatsanwaltschaften-2100260227005.html>

- 2411-01/17 Selbständige Einziehungsverfahren: 483 (2020), 579 (2021), 592 (2022) > **There is a gradual increase in the total number of autonomous confiscation cases throughout Germany in the years 2020 to 2022.**
- **Interestingly, in the year 2022, of the 102.832 persons against whom an asset recovery measure is to be enforced, almost half of them, i.e. 47.572, will be subject to asset confiscation or asset value confiscation measures.**
- 2411-01/31 Anzahl der vollstreckten Sicherstellungsentscheidungen: 9.596 (2017), 9.281 (2018), 11.764 (2019), 16.276 (2020), 15.909 (2021), 16.744 (2022) > **The number of executed freezing orders almost doubled in 6 years, between 2017 and 2022.**
- 2411-01/32 Anzahl der vollstreckten Einziehungsentscheidungen: 19.484 (2017), 49.910 (2018), 61.681 (2019), 64.576 (2020), 63.521 (2021), 59.546 (2022) > **There are two main observations: First, the number of the executed confiscation orders more than tripled between 2017 and 2022. Second, it is clear that the number of executed confiscation orders is always much higher than the number of freezing orders over the reporting years.**

(3) German statistical data

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- 2411-01/32: 19.484 (2017), 49.910 (2018), 61.681 (2019), 64.576 (2020), 63.521 (2021), 59.546 (2022) > **First, the number of the executed confiscation orders more than tripled between 2017 and 2022. Second, it is clear that the number of executed confiscation orders is always much higher than the number of freezing orders over the reporting years.**
- 2411-01/34: 198.646 € (2017), 1.866.580 € (2018), 796.255 € (2019), 821.078 € (2020), 1.052.732 € (2021), 922.649 € (2022) > **The estimated total value of confiscated assets appears to increase significantly from only 198.646 € in 2017 to 922.649 € in 2022 up to 1.866.580 € in 2018.**

(4) Difficulties encountered in practice

- Cooperation between FIUs of other MS or third countries.
- Reliability of data provided by public prosecution offices to the relevant statistical offices.

In Germany, the Federal Office of Justice (*Bundesamt für Justiz*) is the competent authority collecting statistical data in this area.

- No central register for some assets, such as real estate and boats (yachts and pleasure boats).
- Real estate is organised by property and not by the name of the owner, so it is not easy to find out who owns the property.
- Other cooperation problems such as the time taken to respond, the use of confidential information, the duration of freezing, the completeness of the information provided.
- AROs lack a central register and staff.

AROs in Germany (BKA police ARO and BfJ judicial ARO). Both collect statistical data. Since 2000, the police ARO collects annually data on tracing, identification and freezing of assets. The judicial ARO collects data only on freezing and confiscation of assets.

- Lack of evidence on the beneficiaries of criminal assets.
- Difficulties in the management of the assets, in the establishment of AMOs and official channels for their cooperation at international and EU level, and often the prosecution offices in charge of asset management and disposal do not have relevant specialisation.

(5) Good practices

- Federal Criminal Police Office (*BKA*) and State police (*Landespolizei*) personnel have police officers specialised in financial investigations.
- Federal Financial Supervisory Authority (*Bundesanstalt für Finanzdienstleistungsaufsicht – BaFin*) database on holders and beneficiaries of bank accounts, car holders, immovable property with real estate registers and company registers.
- BKA intranet internal Wikipedia on asset recovery (tips and best practices on asset recovery).
- Bavarian pilot programme to outsource the management of frozen assets to a private company.

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Thank you for your kind attention!

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