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

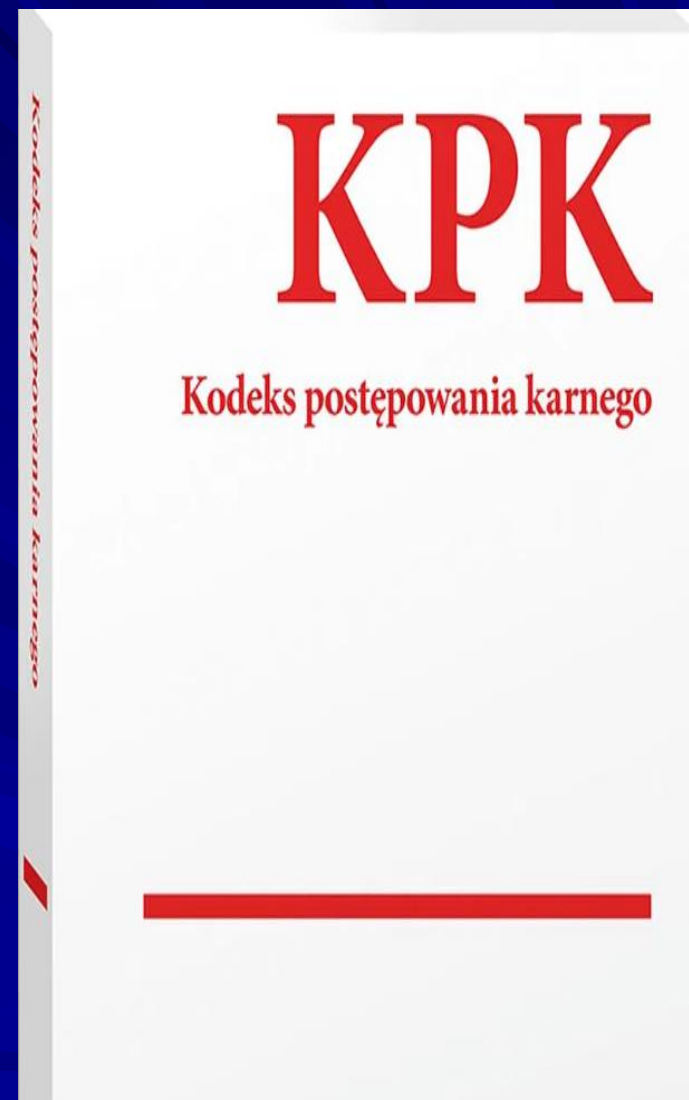
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POLAND – Ministry of Justice

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In Polish criminal proceedings, the issue of property security is regulated by Chapter Thirty-second of the Code of Criminal Procedure.

If a defendant is charged with an offence for which, or in connection with which, a fine, pecuniary benefit, forfeiture, compensation measure, return to the victim or other entitled entity of the financial benefit which the perpetrator has derived from the committed offence, or its equivalent - the enforcement of the decision may be secured ex officio on the property of the defendant if there is a justified fear that without such security the enforcement of the decision will be impossible or significantly hindered.



Ex officio security may also be provided for the enforcement of a decision on the defendant's property on court costs if there is a justified fear that without such security the enforcement of the decision in this respect will be impossible or considerably hindered.

The security on property shall be immediately revoked in whole or in part if the reasons for which it was applied to a certain extent cease to exist or if reasons justifying its revocation even in part arise.

The threatened forfeiture shall be secured by the seizure of movable property, debts and other property rights and by imposing a prohibition on the sale and encumbrance of real property.

This prohibition shall be disclosed in the land register or, in the absence thereof, in the collection of filed documents.

Where necessary, administration of the accused's property may be established.

In pre-trial proceedings, an order for security by the establishment of a compulsory administration shall be issued by the public prosecutor.

The order is subject to approval by the court.

In the Crime Department The Organized and Corruption Bureau of the National Prosecutor's Office in Poland does not collect practical data obstacles and legal issues arising during the implementation of Regulation (EU) 2018/1805 of the European Parliament and of the Council of 14 November 2018 on the mutual recognition of freezing orders and confiscation orders.

In connection with the above, the local departments were contacted Department of Organized Crime and Corruption of the National Prosecutor's Office to provide relevant information on this subject.



From the answers received, it appears that in the majority of the Sub-Divisions there were no preparatory proceedings underway to answer the questionnaire.

In view of the above, practical obstacles and legal issues arising in the implementation of the indicated regulation **were not reported.**



The Silesian Regional Division of the Department, referring to question twenty-four of the questionnaire reported that he had used the Court Atlas, pointing out that the website was opaque and unintuitive, resulting in **difficulties in identifying the competent authorities** and an **incomplete translation into Polish**.



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The Lublin Branch of the Department informed that it applied the regulation in one of the cases (the Kingdom of Denmark) concerning article 204 § 2 of the Criminal Code (this provision relates to deriving financial benefit from the practice of prostitution by another person) in connection with article 65 § 1 of the Criminal Code (this provision relates to an offender who has made a regular source of income from the commission of a crime or commits a crime acting in an organized group) in connection with article 12 § 1 of the Criminal Code (this provision relates to a continuous act).



Within the framework of the indicated investigation, the object of the seizure was a property with a residential building, located in Denmark (the estimated value is about ninety-four thousands euro).

In this Department's Subdivision used judicial cooperation tools in the form of the **Judicial Atlas** and the Judicial Library; no reference was made to possible difficulties in their use, it should therefore be presumed that such did not occur.

EUROPEAN JUDICIAL NETWORK
Connecting Justice

ABOUT EJN | EJN TOOLS FOR JUDICIAL COOPERATION | LEGAL INSTRUMENTS FOR JUDICIAL COOPERATION | EJN CONTACT POINT AREA

HOME / JUDICIAL ATLAS

JUDICIAL ATLAS

Atlas allows to identify an authority that is competent to receive a request for judicial cooperation according to the requested measure. Valid for the EU countries and Norway.

Search Competent Authorities

[Extradition of EU citizens \(Petruhhin\): National Focal Points.](#)

Select country to where your request is to be sent to, clicking on the map :

Detailed responses from the selected prosecutor's office.

And now detailed answers will be presented on the basis of data obtained from the Regional Prosecutor's Office in Gdansk (as well as organizational units subordinate to the Regional Prosecutor's Office in Gdansk).

The data will be presented as part of the answers to the individual questions of the questionnaire on the application of the Regulation of the Parliament European Parliament and of the Council (EU) 2018/1805 of November 14, 2018.



The Regional Prosecutor's Office in Gdansk – answers.

1) Based on official statistics in your country, how many cases of application of Regulation No. 1805/2018 (hereinafter: REG)?

In the Regional Prosecutor's Office in Gdansk and subordinate units, there have been registered nine cases of application of REG.

2) How many cases represent the issuing authority, and how many as the executing authority?

There were three applications to foreign authorities, six applications were received from foreign authorities' foreign authorities.

3) With which countries? (Please indicate the total number of cases handled with each country, including whether they are issuing authorities or executing)

Referred to: one application to France, one application to the Czech Republic, one application to the Republic of Lithuania.

Received: two applications from Austria, two applications from Germany, one application from Hungary, one application from Estonia.

6) What types of crimes were the basis for issuing certificates?

a) Regional Prosecutor's Office in Gdansk:

The request from the Regional Prosecutor's Office in Gdansk was made to France and the Czech Republic on the activities of more than sixty capital or personally related companies commercial law companies operating in the European Union (including Poland, the Czech Republic, Slovakia, Cyprus, the Netherlands), as well as outside the EU (including Gibraltar, Uganda), most of the of the group's income was derived from illegal gambling activities and invested it in fuel, hotel, restaurant, real estate development, medical and IT sectors.

(b) Elblag District Prosecutor's Office

The basis for the issuance of the certificate by the Republic of Estonia was the crime of fraud involving the sending of false information between business partners, as a result of which the bank account of a Polish citizen received money in the amount about of thirty-four thousands EUR which he was not entitled to receive, and was paid by him, as a result of which the Estonian company suffered damage.

Regional Prosecutor in Gdansk – continuation.

(c) District Prosecutor's Office in Gdansk

- ❑ an application from Austria in a case of „professional fraud qualified”,**
- ❑ an application from Hungary in a case of fraud against a company,**
- ❑ application from Germany in a case of fraud against a company,**
- ❑ application from Germany in a fraud case,**
- ❑ application from Austria in a fraud case.**

(d) Regional Prosecutor's Office in Slupsk

The basis for the issuance of a security certificate is an act under article 286 § 1 of the Criminal Code (fraud) the perpetrator, by misleading the victim as to the investment opportunities led him to an unfavorable disposition of property by transferring money to a designated foreign bank account.

Regional Prosecutor in Gdansk – continuation.

7) What type of assets were subject to seizure/confiscation underlying the certificates?

In all the applications mentioned, the freezing of funds in bank accounts was requested.

10) In how many cases was recognition denied?

In none, except for the case of the Elblag District Prosecutor's Office acting as an executing authority, recognition was not denied. Safeguards - freezes of funds have not been executed due to lack of funds in bank accounts or transfer of the request in accordance with jurisdiction to another prosecutor's office.

11) What grounds for refusal are used?

The Elblag District Prosecutor's Office did not secure for the Estonian authorities' procedural funds in the bank account of a Polish citizen, as these funds were subject to blocking under the decision of the prosecutor of the Elblag District Prosecutor's Office. Subsequently, the decision of the prosecutor of the Elblag District Prosecutor's Office on material evidence ruled that the money located in a bank account held in favor of a Polish citizen would be returned to the wronged party after this order became final.

Regional Prosecutor in Gdansk – continuation.

13) Have you ever used the REG on mutual recognition of freezing and seizure orders?

Yes. The Regional Prosecutor's Office in Gdansk has applied REG on mutual recognition of freezing and confiscation orders twice. Requests were made to France and the Czech Republic to secure the suspects' property located in French and Czech The Regional Prosecutor's Office in Slupsk has applied to Lithuania for a preservation order.

14) If yes, how many times?

From one to five times.

22) In order to identify the competent authority to issue or execute a warrant freezing or confiscation in another EU member state, to whom have you asked for information (or, in practice, which competent authorities in your country request the information)?

Not approached; in this case, the European Judicial Network would be approached.

Regional Prosecutor in Gdansk – continuation.

24) According to your experience or available research and data competent authorities in your country are aware of practical tools for judicial cooperation judicial cooperation (in particular, the "Judicial Atlas," the "Judicial Library" and the "Compendium") available on the European Judicial Network website?

Yes/No.

Have you ever used one or more of the aforementioned "tools"?

Yes/No.

If yes, have you encountered difficulties in using them?

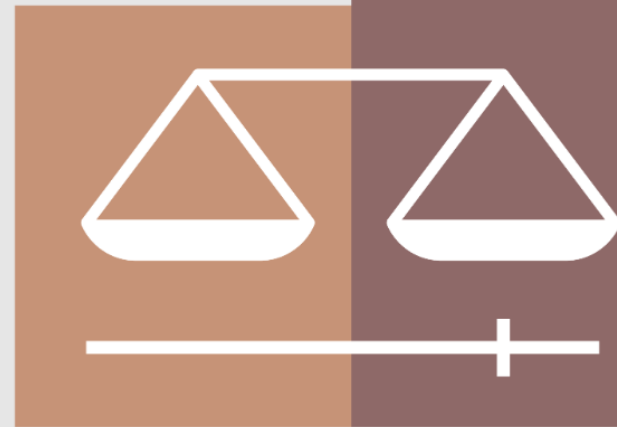
Yes/No/Please provide a detailed answer.

In the Regional Prosecutor's Office in Gdansk and subordinate units in any case, in which it is necessary to use instruments of international cooperation in criminal cases, international cooperation tools on EJM sites are used, Such as the Judicial Atlas, the Judicial Library.

No difficulties were encountered in using the indicated tools.

25) In your experience, in your country, are issuing and executing authorities aware of the role played by Eurojust in the application of the REG?

The role of Eurojust in the application of the REG is known.



EUROJUST

European Union Agency for
Criminal Justice Cooperation

33) What are the major theoretical or practical difficulties you have encountered in identifying the competent authority to issue or execute a freezing or confiscation certificate?

In the applications that were received by the District Prosecutor's Office in Gdansk, in three cases, the local jurisdiction of the prosecutor's office was incorrectly identified on the basis of incorrect data on the bank's headquarters.

50) Please provide detailed guidelines for practical implementation of REG in light of your experience.

It is not possible to provide an answer due to too little experience in the application of REG.

51) Please provide detailed proposals for national law reforms to better guarantee the application of REG in practice.

Providing an answer is not possible due to too little experience in applying REG.

52) Please provide detailed proposals for harmonization to better guarantee the application of REG in practice.

Providing an answer is not possible due to too little experience in the application of REG.

53) Do you have data on the gender of the person subject to the orders of security and confiscation? Have you encountered any problems related to gender when applying REGs?

**No data are available regarding the gender of the persons subject to the orders.
No difficulties in this regard.**