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RECOVER

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

Grant Agreement No. 101091375

The practical implementation of the EU Regulation no. 1805/2018

ROMANIA

STATISTICAL DATA

2021 – GENERAL PROSECUTOR'S OFFICE

- the number of freezing orders received from another state and recognized – 51
- the number of freezing orders received from another state and executed – 45
- the number of freezing orders received from another state that were refused – 1
- the average execution time of the recognized orders – from 3,5 months

STATISTICAL DATA

2022 – GENERAL PROSECUTOR'S OFFICE

- the number of freezing orders received from another state and recognized – 43
- the number of freezing orders received from another state and executed – 38
- the number of freezing orders received from another state that were refused – 4
- the average execution time of the recognized orders – from 5 days to 3 months

STATISTICAL DATA – COURTS

December 2020 – September 2023

- the number of confiscation orders received from another state and recognized – 9
 - Germany – 2
 - Sweden – 2
 - France – 1
 - Belgium – 1
 - Slovenia – 1
 - Croatia – 1
 - Austria – 1

STATISTICAL DATA – COURTS

December 2020 – September 2023

- the number of confiscation orders received from another state and partially recognized – 1 – France
- the number of freezing orders received from another state and refused – 2
 - Italy – 1
 - Bulgaria – 1
- the number of freezing orders received from another state and withdrew – 1 – Slovenia

STATISTICAL DATA – COURTS

December 2020 – September 2023

- the number of freezing orders received from another state and recognized – 6
 - Italy – 2
 - Slovenia – 2
 - France – 1
 - Austria – 1
- the number of freezing orders received from another state that were refused – 1 – Spain

STATISTICAL DATA – COURTS

December 2020 – September 2023

- the number of freezing orders recognized by prosecutors and appealed before judges – 28
 - Belgium – 9
 - France – 7
 - Spain – 7
 - Germany – 3
 - Italy – 2
- 1 partially admitted – Belgium
- 1 totally admitted - Germany

STATISTICAL DATA CONCLUSIONS

- Regarding to the freezing orders addressed to prosecutors for recognition, although we have all the statistical data, we cannot, at this moment, present the reasons why the recognition was rejected because we do not have access to the relevant documents.
- Thus, the activity of recognizing freezing orders takes place mainly during the criminal investigation phase. In this context, we cannot have access to those files.

STATISTICAL DATA CONCLUSIONS

- As respects the freezing orders and confiscation orders addressed to the courts for recognition, we note that data collection was difficult, because the courts do not have a clear record of these types of cases.
- During these years, the courts did not send clear statistics to the Ministry of Justice regarding the number of cases in which they were entrusted with the recognition of freezing and confiscation orders.
- However, we have access to all judicial decisions in electronic format, and by using search criteria such as "2018/1805" – number of Regulation, we were able to identify all judgments where the courts referred to 2018/1805 Regulation.

STATISTICAL DATA CONCLUSIONS

- Statistics at European level can be improved if the MSs in the European Parliament will support art. 26 of the Proposal for a new Directive on asset recovery and confiscation;
- In Romania, from 1 October 2023, the ROARMIS electronic register will become operational, which will include all seizure and confiscation orders, including those issued or recognised under Regulation 2018/1805.
- ROARMIS is an integrated national IT system for recording claims arising from crimes which includes, among other things, information on the different stages of the recovery process, starting with the first phases of identification and tracing of the assets, followed by the seizure of the proceeds of crime and other types of property, and ending with the implementation of the final procedures for the execution of special or extended confiscation security measures, the repair of prejudices, the conclusion of international agreements on the sharing of assets resulting from crime or the decision on the re-use of confiscated property in the public or social interest.
- Romanian representatives in the COPEN meetings supported the importance of the Article 26 and the necessity of having such a provision, bearing in mind also the need to overcome practical obstacles and to harmonise the implementation of Regulation 2018/1805.
- Unfortunately, the majority of the Member States have expressed their opposition to the mandatory establishment of such registers at the national level.

Practical cases

- According to art. 19, *The executing authority may decide not to recognise or execute a confiscation order only where:*
- (b) there is a **privilege or immunity** under the law of the executing State that would prevent the confiscation of the property concerned;
- In the case of the recognition of a confiscation order in equivalent, the execution is carried out according national legislation of the state who recognizes the order.
- In Romania, the executions of a confiscations order takes place in the form of a fiscal enforcement. However, the provisions on the prescription of tax claims are not applicable, in the context where national legislation expressly establishes that security measures, including confiscation by equivalent, are not time-barred. Thus, although the first court initially rejected the request for recognition on the grounds that the claim was time-barred, the appeal was admitted and the confiscation order was recognized.

Practical cases

- An interesting case was that in which the national court partially recognized a confiscation order, the reason for refusal being represented by the constitutional principle of the more favorable criminal law.
- The security measure of extended confiscation is highly repressive. Since it is a criminal law sanction, it is subject to more favourable criminal law provisions. In the case law of the Romanian Constitutional Court, it has been established that the provisions relating to extended confiscation are constitutional insofar as extended confiscation does not apply to property acquired before the entry into force of Law No 63/2012.
- In this context, the Romanian Court did not recognize partially the extended confiscation ordered by the French Court in the context where one of the immovable assets indicated in the confiscation certificate was acquired before 2010.

Practical cases

- Recognition of the confiscation order was rejected on the grounds that the asset had been sold prior to the ordering of the confiscation measure in the requesting state.
- The asset has not been previously seized by the authorities of the requesting state, an aspect that once again underlines the importance of ordering freezing measures from the beginning of criminal investigation, as well as urgent recognition of them.

Practical cases

- Particular attention must be paid to the competence of the bodies that recognize the freezing orders.
- Thus, the recognition of freezing orders is carried out by competent authorities from the requested state according to national law.
- According to Romanian national law, during the criminal investigation phase, the freezing order is disposed by the prosecutor, which implies that he also has the competence to recognize a freezing order issued by foreign authorities, even if, according to the legislation of certain states, such an order it is under the jurisdiction of an instruction judge – Belgium.

Practical cases

- Regarding translation costs, if the Romanian Courts wanted to translate the confiscation order as well, and not just the certificate, the costs were covered by the public budget.
- There is no specific provision to this effect, but the general provisions that provide for the payment by the State of all translation costs are applicable.

Thank you!

ANABI Team