



Co-funded by  
the European Union

**RECOVER – JUST-2022-JCOO – GA no. 101091375**

**WP3**

**Questionnaire on the practical obstacles and legal issues  
Arising in the implementation of REG**

1) On the basis of the official statistics in Your country how many are the cases of application of the Regulation no. 1805/2018 (thereinafter: REG)?

At our request, the National Institute of Statistics provided data as follows:

2021:

Freezing orders sent for recognition and execution to another state - 3;

Confiscation orders received for recognition and execution, recognized for execution – 59;

Confiscation orders received for recognition and execution, denied for execution – 81

2022:

Confiscation orders received for recognition and execution, recognized – 2

Confiscation orders received for recognition and execution, denied – 18

Freezing orders received for recognition and execution, admitted for execution (admitted requests for freezing) – 60.

Confiscation orders and freezing orders sent to another country to be executed - 0.

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

Most of the cases of application of the Regulation relate to the recognition and execution of freezing or confiscation orders issued by competent authorities in other Member States. We have 3 cases in 2021 in which Bulgaria is the issuing authority.

3) With which States? (please, provide the total number of cases handled with each State, taking care to specify whether these are as issuing or executing authority)

The competent Bulgarian authorities did not provide accurate data on the number of incoming and outgoing orders from and to each individual country in the required time. It is only reported that the confiscation orders and freezing orders received for recognition and enforcement are mainly from Germany, France, Netherlands, Austria, Romania, and Slovenia.

As for the cases in which Bulgaria is the issuing country, we can report that in one of the cases of warrants for securing in 2021 the order was sent to Portugal, in another - to Spain, and in the third case we were not notified of the country with the explanation, that the case contains classified information.

4) Which model of freezing (seizure) order or confiscation order (direct confiscation, confiscation of the equivalent value, confiscation against third parties, extended confiscation, confiscation without conviction) based the issuance of the certificate in these cases (both as issuing authority and as executing authority)?

Confiscation orders and freezing orders received for recognition and execution in Bulgaria are mainly two types - direct confiscation and confiscation of the equivalent value.

5) In the praxis have you ever had cases in your country concerning a freezing or confiscation certificate unrelated to a conviction, for example on the basis of a confiscation ordered also if the crime is statute barred or in case of the offender death or because the perpetrator remained unknown? Yes / No. If yes, please provide more details.

Pursuant to Art. 19, p. 1, item 3 of the Recognition, Execution and Transmission of Confiscation or Seizure Orders and Decisions Imposing Financial Penalties Act the court may refuse to recognize or to allow the execution of a confiscation order if it establishes that the execution of the order is with expired prescription barred under the Bulgarian legislation. In the practice of the competent Bulgarian authorities, there are no reported cases in which the statute of limitations has expired under Bulgarian legislation. However, there are cases in which the judicial act was received in order to be executed towards the end of the expiry of the limitation period both under Bulgarian legislation and under the legislation of the issuing country. Such delays are observed in the decisions made by the judicial authorities of Spain, Austria, and Italy. The Certificates are issued by the judicial authorities of the Netherlands and Germany in the shortest possible time.

6) Which types of crime were the basis for issuing the certificates? Please, provide a detailed answer.

In the preliminary survey conducted among competent authorities, the most common crimes for which foreign judicial authorities issue and send confiscation orders were fraud, tax crimes and human and drug trafficking.

However in the course of collecting statistical data by the National Statistical Institute, when asking this question, the courts have answered “non-observance of the road traffic regulations; Crimes under Articles 225-7, 225-5, 225-6, 225-11, 22520, 225-21, 225-24, 225-25 of the French Criminal Code”.

7) What type of assets were the subject of the seizure (freezing order)/confiscation underlying the certificates? Please, provide a detailed answer

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.

8) In order to identify the asset to be seized/confiscated, have specific investigations been carried out beforehand? Yes / No. If yes, was a European Investigation Order or other mutual assistance instrument used for this purpose? Please, provide a detailed answer

In order to identify the property to be frozen or confiscated, preliminary investigations are carried out, including the use of an 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.

9) Both as issuing authority and as executing authority, which are the main obstacles to mutual recognition deriving from the type of seizure/confiscation or the type of seized/frozen asset? Please, provide a detailed answer.

The Bulgarian competent authorities, as issuing and executing authorities, do not report obstacles to the mutual recognition of orders, which obstacles stem from the type of seizure/confiscation. As for

obstacles arising from the type of seized/frozen assets, these are indicated in answers to the questions below.

10) In how many cases has recognition been refused (both as executing authority and as issuing authority)?

According to information from the National Statistical Institute, in 2022 the Bulgarian competent authorities refused to recognize and execute confiscation orders in 18 cases.

11) Which grounds for refusal are applied?

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.

12) Which problems have arisen in these first years of REG application? E.g., difficulties in identifying the competent authority as executing State, inconveniences related to the translation of the certificate or of the orders to be applied, difficulties in identifying the assets to be confiscated, problems connected to the guarantee of the right to effective legal remedies (art. 33), impossibility to execute orders (art. 22), multiple orders for the same person or assets...

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. The problems are related to: - identifying the competent court; - correct translation of the certificate or the orders to be applied; - identifying the assets to be confiscated; - delay of the procedure when the certificates are not accompanied by the confiscation order; - guaranteeing the right to effective legal remedies; - impossibility to execute orders.

13) Have you ever applied the REG on the mutual recognition of freezing and confiscation orders? Yes / No

14) If yes, how many times? Once / From 1 to 5 times / More than 5 times

15) Have you applied the REG as executing or issuing authority?

16) Have you had doubts about the application of the REG to the case at issue? Yes / No. If yes, were the doubts related to the scope of the Regulation with regard to the other involved State(s) and/or with regard to the type of measure to be recognized and enforced?

The competent Bulgarian authorities do not report a case in their practice in which they doubted the applicability of the Regulation.

17) Which authorities in your State are competent to issue a freezing certificate pursuant to Article 2(8) of the REG?

For the issuance of a freezing certificate pursuant to Article 2, paragraph 8 of the Regulation – **the court of first instance (regional court or district court)**. The proceedings are 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.

18) Which authorities in your State are competent to execute a freezing certificate pursuant to Article 2(9) of the REG?

The competent authority in Bulgaria under Article 2, paragraph 8 of the Regulation is the **district court**. After the order for securing has been recognized for enforcement in Bulgaria, the competent authority that takes the actual actions for execution is the bailiff.

19) Which authorities in your State are competent to issue a confiscation certificate pursuant to Article 2(8) of the REG?

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**.

20) Which authorities in your State are competent to execute a confiscation certificate pursuant to Article 2(9) of the REG?

The competent authority in Bulgaria under Article 2, paragraph 9 of the Regulation is the **district court**. After the confiscation order has been recognized for execution in Bulgaria, the competent authority that takes the actual actions for execution is the National Revenue Agency.

21) Do you know the legal basis of this competence?

For the issuance of a freezing order – art. 27 in connection with art. 19 of the Recognition, Execution, Issuance and Transmission of Property Freezing Orders Act;

For the execution of a freezing order - art. 24 in connection with art. 6 of the Recognition, Execution, Issuance and Transmission of Property Freezing Orders Act;

For the issuance of a confiscation order – art. 48 in connection with art. 7 of the Recognition, Execution and Transmission of Confiscation or Seizure Orders and Decisions Imposing Financial Penalties Act;

For the execution of a confiscation order - art. 44 in connection with art. 6 of the Recognition, Execution and Transmission of Confiscation or Seizure Orders and Decisions Imposing Financial Penalties Act;

22) In order to identify the competent authority for issuing or executing a freezing or confiscation order in another EU Member State, to whom did you ask for information (or in practice to whom the competent authorities in your country ask for information)? EU Commission / EU Council / European Judicial Network / Eurojust / Ministry of Justice / Colleagues

In view of the fact that the court transmits the Certificates prepared under Recognition, Execution and Transmission of Confiscation or Seizure Orders and Decisions Imposing Financial Penalties Act and Recognition, Execution, Issuance and Transmission of Property Freezing Orders Act through Eurojust or through the Ministry of Justice, no significant practical or theoretical problems have been found in the identification of the competent foreign authority which should consider, accept and allow the execution of the judicial act issued by a competent Bulgarian court.

23) Was the information received complete and correct? Yes/No. Please, provide a detailed answer.

The competent Bulgarian authorities have not reported cases in which the answers to the requested additional information were not complete or correct.

24) According to your experience or to the available studies and data, are the competent authorities in your country aware of the practical tools for judicial cooperation (in particular "Judicial Atlas", "Judicial Library" and "Compendium") available on the website of the European Judicial Network? Yes / No. Have you ever used one or more of the above mentioned "tools"? Yes / No. If yes, have you faced difficulties in using them? Yes / No / Please provide a detailed answer.

In the practice of prosecutors, the "Court Atlas" is used, and no difficulties have been encountered in using this application.

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

The judicial authorities in Bulgaria appreciate the role of Eurojust in the implementation of the Regulation and often seek the assistance of our national representatives in the international organisation.

26) Which channels the issuing authorities in your country use to transmit the freezing or confiscation order? Ministry of Justice / Eurojust / Liaison Magistrate / Direct transmission to the foreign executing authority / Other / Not applicable

The competent Bulgarian authorities report that most often, when transmitting the freezing or confiscation order, the issuing authorities in Bulgaria use the Ministry of Justice and Eurojust, and less often hand it over directly to the foreign executing authority.

27) By which channels the executing authorities in your country receive the freezing or confiscation orders? Ministry of Justice / Eurojust / Liaison Magistrate / Direct transmission from the issuing foreign authority / Other / Not applicable

According to the conducted survey, among the competent Bulgarian authorities, freezing/confiscation orders are most often received directly from the competent issuing authority or through Eurojust.

28) In the application of the REG as issuing authority, have problems arisen in relation to the lack of transmission of the order (national judicial decision)? Or to the lack of translation of the order (national judicial decision)? Has the translation been required into the official language of the executing State or into another language which that State has formally accepted? Yes / No. If yes, by whom and on which legal basis? By the foreign executing authority / by the central authority of the executing foreign State / by the Ministry of Justice / by Eurojust / On the basis of the Regulation / On the basis of the national law of the executing State / On the basis of the customary law principle of international comity with assurance of reciprocity

The competent Bulgarian authorities report that they often have to ask the issuing authority to present the order (national judicial decision) for freezing or for confiscation, as well as to request a translation of the documents - the Certificate and the acts of the issuing authority.

29) Is the reimbursement of translation costs asked to the executing State? Yes / No

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 Recognition, Execution and Transmission of Confiscation or Seizure Orders and Decisions Imposing Financial Penalties 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.

30) Has any difficulty arisen because of the lack, incompleteness and/or insufficient quality of the translation of the certificate and/or of the underlying national measure? Yes / No. If yes, how has it been solved?

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 Recognition, Execution and Transmission of Confiscation or Seizure Orders and Decisions Imposing Financial Penalties Act.

The Bulgarian court gives a reasonable time for the issuing country to prepare the translation and deliver the documents to the Bulgarian court. Communication is usually through Eurojust, as the most efficient and fastest way, or through the Ministry of Justice. The documents are requested and received at the email address specified by the Bulgarian court.

31) Whether as issuing or as executing authority, have you ever had experience of cases where, due to the urgency of the freezing or confiscation, the translation of the certificate into English was requested/accepted (instead of the translation into the official language of the other State or into another language(s) which that State has formally declared to accept)? Yes / No. If yes, please provide a detailed answer.

The Bulgarian competent authorities do not report such cases in their practice.

32) Whether as issuing or as executing authority, have you ever had experience of cases where, due to the urgency of freezing (seizure) or confiscation, the execution of the certificate was preceded by the freezing of the asset on the basis of the cooperation with police authorities or FIUs (Financial Intelligence Units)? Yes / No. If yes, please provide a detailed answer

The Bulgarian competent authorities do not report such cases in their practice.

33) Which are the major, theoretic and/or practical, difficulties you have faced in identifying the competent authority to issue or execute a freezing or confiscation certificate

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.

34) When problems arose and the proceeding ended with the recognition of the freezing or the confiscation, how were these problems solved? Please, provide a detailed answer.

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 prerequisites for disposal or concealment of the property which is subject to confiscation or serves as collateral.

35) Have any additional documents or information been provided? Yes / No. If yes, please provide a detailed answer

The type of difficulties we described above do not require additional documents from the issuing country.

36) Were there any meetings with the competent authorities? Yes / No. If yes, please provide a detailed answer, specifying whether representatives of the central authorities, Eurojust and/or Liaison Magistrates attended the meetings.

The Bulgarian competent authorities do not report such cases in their practice

37) How and where did the above mentioned meetings take place? By videoconference on an online platform/ In presence at the premises of the issuing authority / In presence at the premises of the executing authority / In presence at the headquarters of the central authority of the issuing State / In presence at the headquarters of the central authority of the executing State / In presence at the premises of Eurojust / In hybrid format

According to the answers to the previous two questions, there is no information to provide in this regard.  
38) If you are an issuing authority and you have had experience in issuing certificates, which are the difficulties encountered in filling in the freezing or confiscation certificate (in particular with regard to certificates issued on the basis of confiscations without conviction)? Please, provide a detailed answer.

The Bulgarian competent authorities do not report any difficulties encountered in filling in the freezing or confiscation certificate in their practice.

39) In your opinion are the information contained in the model of the freezing or confiscation certificate complete, clear and precise? Please, provide a detailed answer.

The information contained in the specimen attachment or confiscation certificate is complete, clear and largely accurate. It is possible to complete the certificate with very few details.

40) In your opinion are there any necessary or appropriate changes and/or additions to the model of the freezing or confiscation certificate? Please, provide a detailed answer.

According to suggestions given in connection with a survey conducted among our colleagues, the freezing or confiscation certificate should be supplemented with data on the limitation period for execution according to the legislation of the issuing State. In addition, should be supplemented with information about measures of execution, if such have been taken, as well as what measures have been taken by the relevant authorities of the executing State.

41) If you are an executing authority and you have had experience in executing certificates, which are the deficiencies and/or mistakes made by the foreign issuing authority in filling in the freezing or confiscation certificate? Please, provide a detailed answer.

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 Member States, as well as to translation problems. Difficulties mainly arise in relation to the description of the criminal offence in the model, for which recognition and execution of the order is requested, i.e. difficulties arise when assessing whether there is double criminality or whether the criminal act falls within the scope of Article 3 of the Regulation, respectively whether it falls within the scope of Article 14 of the Recognition, Execution and Transmission of Confiscation or Seizure Orders and Decisions Imposing Financial Penalties Act. 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/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.

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 the reason for that was. The clarification of these facts and circumstances is important with a view to the ruling of refusal to recognize the decision, when it is explicitly noted in the Certificate that the affected person did not appear in person at the trial and there is no indication whether the conditions for conducting the *in absentia* proceedings are met.

42) In your opinion are the information contained in the model of the freezing or confiscation certificate complete, clear and precise? Please, provide a detailed answer.

Please see the answer to question No 39.

43) In your opinion are there any necessary or appropriate changes and/or additions to do in the model of the freezing or confiscation certificate? Please, provide a detailed answer.

Please see the answer to question No 40.

44) Are you aware, both as issuing authority and as executing authority, of cases where the identification and/or location of the property to be frozen / confiscated has taken place through prior consultations among the competent authorities of the two States, or has been preceded by targeted investigations? Please, provide any useful details, with particular regard to any instrument of judicial cooperation (European Investigation Orders - EIOs, rogatory letters, Joint Investigation Teams) and of police cooperation (INTERPOL or other) used in the above mentioned investigations as well as with regard to the involvement of AROs (Asset Recovery Offices) and/or existing networks in this field (as StAR - Stolen Asset Recovery and CARIN - Camden Asset Recovery Interagency Network).

Considering that only the court has competence in this regard we could share experiences of proceedings in which a prosecutor is a party to the proceedings. There have been no reported cases where the court has required an investigation to establish the assets to be confiscated. We had no information whether the authority of the issuing country used any of the instruments of judicial cooperation to obtain the relevant information. However, the prosecutor's office has received EIOs from the judicial authorities of other EU member states in pending criminal proceedings with a request to establish property and bank accounts of persons who are accused or defendants, with a view to take security measures or with a view to impose a confiscation penalty.

45) If you are an issuing authority and you have had experience in issuing certificates, have you ever received the refusal of the execution without prior consultation with the foreign executing authority pursuant to Art. 8(2) and 19(2) of the REG? Yes / No. If yes, have there been cases where the refusal was due to the incompleteness of the certificate with regard to the description / location of the asset to be frozen or confiscated? Please, provide a detailed answer.

We are not aware of such cases in Bulgaria.

46) If you are an executing authority and have had experience of receiving certificates, have you ever refused the execution of a certificate without prior consultation of the issuing foreign authority pursuant to Art. 8(2) and 19(2) of the REG? Yes / No. If yes, have there been cases where the refusal was due to the incompleteness of the certificate with regard to the description / location of the asset to be frozen or confiscated? Please, provide a detailed answer.

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 freezing property or confiscation to have been refused on the grounds of Article 19, paragraph 1 of the Recognition, Execution and Transmission of Confiscation or Seizure Orders and Decisions Imposing Financial Penalties Act (which allows refusal if the certificate is not presented, is incomplete or clearly does not comply with the decision).

47) Both as issuing authority and as executing authority, have you ever deal with cases of concurrence of certificates concerning the same asset? Yes / No.

The Bulgarian competent authorities do not report such cases in their practice.

48) Both as issuing authority and as executing authority, have you ever deal with cases of concurrence of certificates concerning several assets, which were located in one single State or in different States? Yes / No. If yes, was there the need to coordinate the execution of the certificates? Yes / No. If yes, how was



the need for coordination met? Was Eurojust involved? Were the central authorities of the issuing and/or executing State involved? Please, provide a detailed answer.

The Bulgarian competent authorities do not report such cases in their practice

49) Did the type of seizure/freezing order cause any particular problem? In particular, how was the problem resulting from the absence of a subsequent confiscation order solved? Please, provide a detailed answer.

The Bulgarian authorities do not report any cases in which a Certificate of confiscation received for execution was preceded by proceeding for recognition of a freezing order in regards of the same property.

50) Please, provide detailed guidelines on the practical implementation of the REG in light of your experience.

51) Please, provide detailed reform proposals of national law to better guarantee the application of the REG in the praxis.

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 Criminal Procedure Code are met.

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

53) Please, provide detailed reform proposals of the REG and of EU soft explicative instruments for its implementation.

As a result of the conducted survey, among the Bulgarian authorities there were proposals for supplementing the Regulation with provisions regarding:

- possibility to terminate the proceedings, if in the meantime the property subject to confiscation or confiscation dies and to automatically initiate a new procedure for awarding its market value;
- a procedure, uniform for all countries, for the management of property subject to confiscation or confiscation;
- the possibility of issuing and sending for execution a new certificate (upon learning of new facts) after the acceptance and execution of a previous certificate for the same property has been refused for the same case. This proposal is conditioned by a case of, according to colleagues, an incorrect interpretation of the "ne bis in idem" principle.

54) Please, provide detailed policy recommendations in light of the collected data in order to improve the REG application

55) Do you have some data about the gender of the person affected by freezing and confiscation orders? Have you faced any genders issue in applying the REG?

In the proceedings conducted under Regulation no. 1805/2018, no data is recorded regarding the gender of the person concerned and accordingly we have not encountered any gender-related issues when implementing the regulation. The identification data that are collected include full name, address, criminal record, place of birth, citizenship, date of birth, unique identification number, and about a legal person – seat and registered office, person with representative authority and unique commercial company identification number. In this regard, it should be noted that datum about the gender of the person is

irrelevant for the application of the Regulation, but if restrictions or privileges are introduced in this regard, there is a risk of allowing discrimination based on gender.