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## 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)?

On the basis of the official statistics available to the French Ministry of Justice from the Annual Reports of the French Public Prosecutor, that gathers the datas collected by the jurisdictions on cooperation with EU countries applying direct transmissions (excluding Denmark and Ireland) for the year 2022 : there has been 113 freezing certificates in total (both delivered and received), and 11 confiscation certificates in total (both delivered and received).

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

Regarding freezing certificates :

-As issuing authority : 89 freezing orders issued by the french jurisdictions

-As executing authority : 24 freezing orders issued by the EU jurisdictions

Regarding confiscation certificates :

-As issuing authority : 6 confiscation orders issued by the french jurisdictions

-As executing authority : 5 confiscation orders issued by the EU jurisdictions

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)

For freezing orders : essentially with Germany (9 issued, 6 received), with Belgium (10 issued, 3 received), with Spain (25 issued, 3 received), Portugal (15 issued, 3 received), Poland (8 issued, 3 received).

For confiscation orders : with Belgium (1 issued, 1 received), with Spain (idem), with Netherlands (idem), and with Romania (3 delivered).

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)?

We don't have precise statistical datas regarding the models of freezing orders or confiscation orders for 2022.

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.

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

We don't have an answer for all the freezing or confiscation orders but it appears from the data available that the certificates are usually issued in the context of the fight against tax fraud and economic and financial crime, and organised crime, particularly with regard to so-called lucrative crime.

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

From the tendencies observed at the EU level, the seizures are usually requested for real estates, bank assets, or valuable objects for movable property.

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.

As the European Investigation Orders (EIO) are transmitted directly between the competent requesting and requested judicial authorities, meaning that the EIO are not transmitted to our Office, we are not able to precise if specific investigations have been carried out beforehand.

However, it appears that in many cases, an EIO is delivered first in order to identify the assets that could be seized, to investigate on the origins of the assets, on the origins of the transactions, on the bank accounts for instance, on the accounts holders, etc, before the delivery of a freezing certificate.

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.

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

11) Which grounds for refusal are applied?

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...

Regarding the positive points of the Regulation 2018/1805, especially with regard to requests for mutual criminal assistance in combating tax fraud and economic and financial crime, some public prosecutors' offices report that the simplification of freezing requests from one judicial authority to another has made it possible to act more effectively in blocking sums transferred to foreign bank accounts, often with rebound accounts within the European Union.

However, it has been noted that the processing time for these cases is problematic, given the speed of the transfers made by the suspects, so that the request for seizure of the sums held in these foreign accounts may prove ineffective. This difficulty is compounded by the need to translate the freeze certificate and, in some cases, the order of the liberty and custody judge, which delays the official transmission of the freeze certificate by several days. This formality runs the risk of dissipating the sums involved in the freeze. However, this observation is tempered by the fact that some countries allow the request to be sent provisionally in French or English and, thanks to the intervention of EUROJUST, the sums can be safeguarded.

In order to solve this problem, many public prosecutors suggests that translation difficulties could be reduced if high-performance automated translation tools were made available to all judicial authorities within the European Union.

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?

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

In France, in accordance with article 695-9-30-1 and following of the code of criminal procedure, the public prosecutor, or the liberty and custody judge seized by the public prosecutor, or either the investigative magistrate can order seizures and issue freezing certificates.

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

According to this same article, the prosecutor or the investigative judge receives and executes the freezing certificate issued by the competent authority of the requesting State.

In case when there is no clear determination of the localisation of the account or of the assets to be seized, it is the judicial authority of Paris who receives first the freezing certificate.

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

The Prosecutor's office delivers the confiscation certificate, on the basis of the judgement ordering the confiscation.

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

According article 707-1 of the French code of criminal procedure, the Prosecutor's office that is territorially competent receives the confiscation certificate issued by the competent authority in the requesting country, and forwards it with its opinion to the criminal court, which issues an exequatur ruling so that the confiscation can be carried out in France. In the light of this decision, the public prosecutor is responsible for enforcing the confiscation.

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

See above.

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

The french judicial authorities often ask for information to the Office for Mutual Legal Assistance of the French Ministry of Justice in order to identify the competent authority for issuing or executing a freezing or confiscation order in another EU Member State.

Our Office also have guidelines to help the french judicial authorities in redacting and transmitting the certificates

We do not know if the French judicial authorities also contact other practitioners in this regard.

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

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.

The french judicial authorities are rather aware of the practical tools for judicial cooperation available on the website of the European Judicial Network, but still needs indications or precisions for identifying the competent authority for issuing a freezing or confiscation order.

There is a real difficulty to identify the competent judicial authority requested when the french requesting authority doesn't know the location of the asset to be seized, or on which bank account for instance

This is less a difficulty for confiscation orders as the location and the competent judicial authority is already identified.

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?

Yes, see above.

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

As the certificates are transmitted directly between the competent authorities according to the Regulation, the French Ministry of Justice don't receive these certificates and if so, we invite the french judicial authorities to transmit it directly according to the Regulation.

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

We do not have perspective on this question. However, at the stage of confiscation, the procedures are normally advanced enough to permit direct transmissions as the competent requested authority is usually already identified.

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

See above.

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

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?

See above.

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.

**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

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?

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.

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

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.

To our knowledge, we have not been involved in such meetings.

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

To our knowledge, we have not been involved in such meetings

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.

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.

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.

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.

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.

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.

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).

As indicated before, the EIO can be delivered first in order to identify the assets that could be seized, to investigate on the origins of the assets, on the origins of the transactions, on the bank accounts for instance, on the accounts holders, etc, before the delivery of a freezing certificate.

Joint Investigative Teams can also lead to the elements that can allow to deliver a freezing certificate.

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.

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.

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.

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.

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.

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.

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

See above

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

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?