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WP3

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

### Abbreviations

CJIB	-	Centraal Justitieel Incassobureau (Central Judicial Collection Agency)
DCC	-	Dutch Criminal Code
DCPC	-	Dutch Criminal Procedure Code
EC	-	European Commission
ECO	-	European Confiscation Order
EIO	-	European Investigation Order
EFO	-	European Freezing Order
ILC	-	International Legal Centers of the Public Prosecution Service (IRC, Internationaal Rechtshulp Centrum)

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)?

#### European Freezing Orders (EFO):

2021 – 218

2022 – 211

#### European Confiscation Orders (ECO):

2021 – 41

2022 – 73

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

#### EFO incoming:

2021 – 93

2022 – 89

#### EFO outgoing:

2021 – 125

2022 – 122

#### ECO incoming:

2021 – 29

2022 – 63

#### ECO outgoing:

2021 – 12

2022 – 10

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)

<b>EFO incoming</b>	<b>2021</b>	<b>2022</b>
Austria	0	2

Belgium	18	24
Czech Republic	1	2
Denmark	1	1
Estonia	1	4
Finland	4	2
France	7	5
Germany	40	24
Hungary	1	0
Italy	5	2
Lithuania	0	1
Luxembourg	2	0
Poland	3	5
Portugal	4	8
Romania	3	0
Slovenia	0	1
Spain	3	7
Sweden	0	1
<b>Total</b>	<b>93</b>	<b>89</b>

<b>EFO outgoing</b>	<b>2021</b>	<b>2022</b>
Austria	2	2
Belgium	25	17
Bulgaria	1	5
Croatia	2	2
Cyprus	2	3
Czech Republic	4	0
Estonia	0	1
Finland	10	0
France	2	1
Germany	30	18
Hungary	0	1
Ireland	6	3
Italy	0	2
Lithuania	6	7
Luxembourg	4	4
Malta	4	3
Poland	1	1
Portugal	0	1
Romania	3	0
Spain	22	51
Sweden	1	0
<b>Total</b>	<b>125</b>	<b>122</b>

<b>ECO incoming</b>	<b>2021</b>	<b>2022</b>
Austria	0	1
Belgium	18	50
Denmark	0	1
Estonia	0	1
Finland	1	0
France	0	1

Germany	10	9
<b>Total</b>	<b>29</b>	<b>63</b>

<b>ECO outgoing</b>	<b>2021</b>	<b>2022</b>
Belgium	1	0
Bulgaria	1	0
Czech Republic	0	1
France	1	1
Germany	2	1
Luxembourg	4	2
Portugal	0	1
Romania	1	0
Slowakia	0	1
Spain	2	4
<b>Total</b>	<b>12</b>	<b>10*</b>

\*One case in 2022 was sent to two member states, therefore the total of the ECO in 2022 is 10, not 11.

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)?

### **EFO**

We have no statistics on how many European Freezing Orders (EFO) freezing are ordered for object based confiscation (freezing on the basis of art. 94 Dutch Criminal Procedure Code (DCPC)) or value based confiscation (freezing on the basis of art. 94a DCPC). In general we can say that the EFO is used for both forms of freezing orders. Also, in The Netherlands it is possible to freeze an object on two titles (art. 94 (with a view on object confiscation) and art. 94a (with a view on value confiscation) DCPC) at the same time. Therefore, it is also possible that in some cases an EFO is send for both types of freezing at the same time.

Nor can we distinguish in how many cases confiscation against third parties or extended confiscation is at hand. Freezing of property of third parties is, under conditions, possible for both models of freezing. In general we can say that this is not often requested via an EFO. Extended confiscation is often applied in value confiscation cases for more severe forms of crimes. It is likely that in a substantive number of cases where an EFO is used to freeze property for value based confiscation for these forms of crime, also extended confiscation is applied.

### **ECO**

There are no specific numbers available regarding the model of confiscation. In general we see mainly confiscations of the equivalent value (value confiscations). We have not yet dealt with confiscation without conviction under the Confiscation Regulation.

In 2021 only ECO concerning value confiscations were send abroad. In 2022 two of the cases that were send concern object confiscation.

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.

Under the regulation regarding freezing certificates: We don't know. We have no knowledge of such cases.

Under the regulation regarding confiscation certificates : No

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

<b>EFO incoming</b>	<b>2021</b>	<b>2022</b>
Corruption	1	3
Fraud	18	6
Forgery of documents	2	1
Illicit trafficking in narcotic drugs and psychotropic substances	28	36
Computer-related crime	11	9
Laundering of the proceeds of crime	18	20
Swindling	27	27
Theft	4	0
Burglary/theft with use of explosives (ploffkraak)	0	2
Street robbery	0	1
Environmental crime	2	0
Terrorism	1	0
Forgery of means of payment	0	1
Trafficking in human beings (smuggling of human beings)	1	0
Facilitation of unauthorised entry and residence	0	2
Participation in a criminal organisation	0	2
Trade/possession of illegal weapons	0	3
Serious/organised crime with ideological motives	0	1
Other	5	9

<b>EFO outgoing</b>	<b>2021</b>	<b>2022</b>
Extortion	1	0
Corruption	0	1
Fraud	18	16
Forgery of documents	15	16
False identity documents	0	1
Illicit trafficking in narcotic drugs and psychotropic substances	26	34
Illicit trafficking in medicaments	3	1
Computer-related crime	3	6
Laundering of the proceeds of crime	95	71
Swindling	31	22
Theft	2	3
Embezzlement	2	2
Trade in stolen goods	1	0
Street robbery	0	1
Environmental crime	0	3

Trafficking in human beings (smuggling of human beings)	3	1
Facilitation of unauthorised entry and residence	1	0
Participation in a criminal organisation	0	4
Trade/possession of illegal weapons	3	0
Serious/organised crime with ideological motives	0	1
Murder/manslaughter	1	2
Acts of violence against persons	0	1
Kidnapping, illegal restraint or hostage-taking	1	0
Other	2	11

<b>ECO outgoing</b>	<b>2021</b>	<b>2022</b>
Participation in a criminal organisation	3	2
Illicit trafficking in narcotic, drugs and psychotropic substances	3	3
Fraud	2	6
Laundering of the proceeds of crime	1	5
Computer related crime	1	0
Swindling	2	3
Forgery of administrative documents and trafficking therein	1	2
Forgery of means of payment	1	0
Crimes within the jurisdiction of het International Criminal Court	1	0
No list fact/various	12	10

Note: the total of (list)facts does not correspond with the total sent cases due to the fact that 1 case can contain more (list)facts.

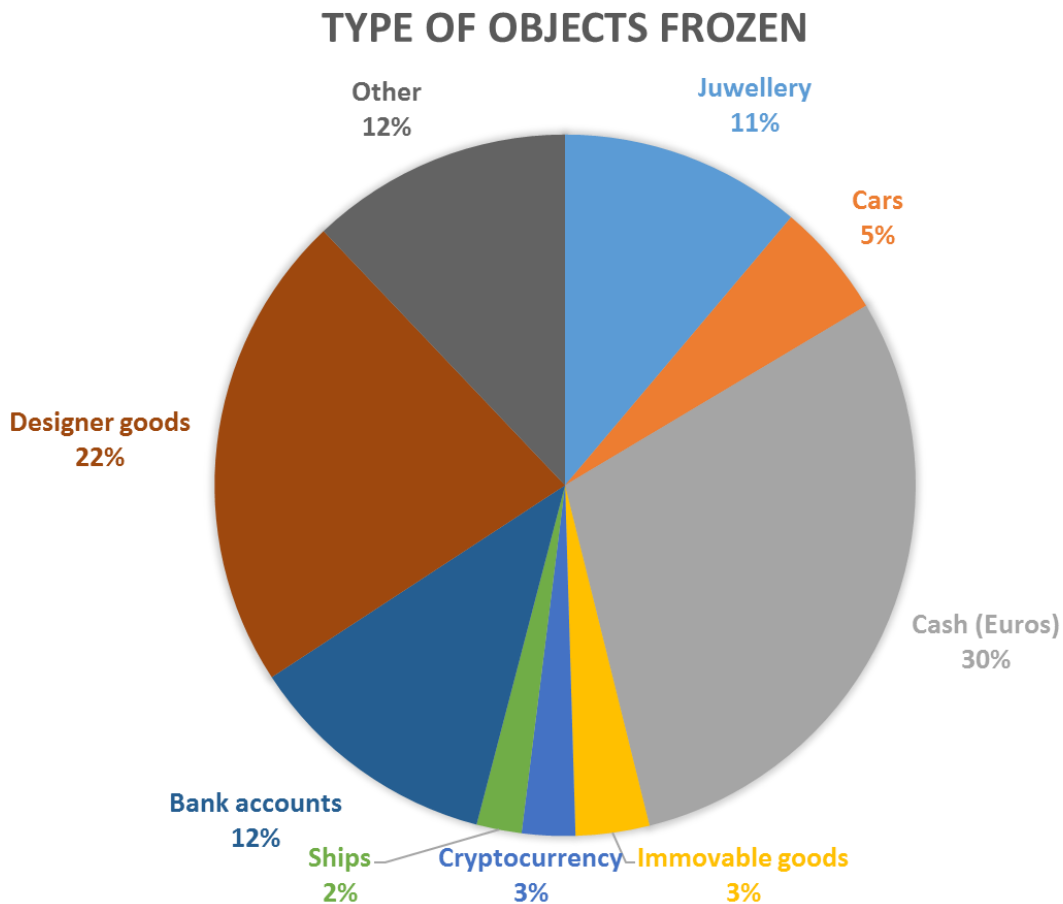
<b>ECO incoming</b>	<b>2021</b>	<b>2022</b>
Participation in a criminal organisation	7	7
Trafficking in human beings	0	1
Illicit trafficking in narcotic, drugs and psychotropic substances	19	53
Illicit trafficking in weapons, munitions and explosives	0	1
Corruption	0	1
Fraud	2	4
Laundering of the proceeds of crime	3	6
Computer related crime	1	2
Swindling	3	4
Forgery of administrative documents and trafficking therein	1	0
Trafficking in stolen vehicles	1	0

Note: the total of (list)facts does not correspond with the total received cases due to the fact that 1 case can contain more (list)facts.

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

### EFO (incoming):

The circle diagram shows the type of assets subject to an EFO executed in The Netherlands, in the period from 2021 – now. The percentage does not represent the value of the assets, but the percentage per type of assets of the total of assets frozen (521) on the basis of an EFO (nb. per EFO more than one object/asset can be frozen). The category ‘designer goods’ contains goods like shoes, designer cloths and bags, the category ‘other’ contains goods like fitness devices, trailers and motorbikes.



There are no statistics available regarding the type of assets subject to EFOs from The Netherlands sent to other Member States.

### ECO

There are no statistics available regarding the type of assets seized and confiscated. However, we do have information available on the amount of money executed in 2021 and 2022. Note: this also includes cases sent to the Netherlands before 2021 (thus both framework decision as Regulation).

#### 2021

Amount collected in the Netherlands in incoming ECOs: € 2.629.056,84

Amount collected in other Member States in outgoing ECOs from the Netherlands: € 183.640,80

#### 2022

Amount collected in the Netherlands in incoming ECOs: € 343.700,72

Amount collected in other Member States in outgoing ECOs from the Netherlands: € 351.970,65

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.

### **EFO:**

#### ***ARO request***

In many cases we advise to send an ARO request first, to get information on property registered in the name of the suspects, prior to sending an EFO. The ARO request is a very quick and efficient way to obtain, on police-police basis, valuable information on assets in the name of the suspect(s). This includes information about which bank accounts are registered in the name of the suspect(s) (on basis of article 3 (1) of Directive 2019/1153<sup>1</sup> AROs also have the competence to access and search their national centralised bank account registry<sup>2</sup>). An ARO request is thus very useful instrument to acquire up to date information on if the suspect(s) have (valuable) assets in a certain Member State in order to decide if it is expedient to send an EFO.

#### ***Financial investigation under EFO***

When receiving EFOs, especially in case of EFOs concerning value confiscation, a check can be done to investigate which property is registered in the name of the suspect(s). The EFO itself is sufficient basis for such financial investigation. It is not necessary to accompany the EFO with an European Investigation Order (EIO) if the only goal is to trace the assets to be frozen. For example, the central portal for bank accounts is checked, as well as the vehicle registration register, the Kadaster (for immovable property) and the Handelsregister (chamber of commerce) to look for other property then already indicated in the EFO.

Also, when an EFO is received for the freezing of a bank account a check will be done if that bank account is still active and if the suspect might also have other bank accounts in The Netherlands.

The Netherlands has interpreted article 7 of Regulation 2018/1805 (Regulation) in the way that the EFO itself forms a basis to conduct investigations to all seizeable goods in The Netherlands. Since this would also be done in case of a Dutch freezing order. Because we have experienced that this is not the practise in all Member States, we have verified with the European Commission (EC) if we interpreted article 7 of the Regulation correctly. The EC has confirmed that article 7 of the Regulation is intended to also form the basis for conducting financial investigations after receiving an EFO from another Member State.

### ***EIO***

Since we have experienced that not yet all Member States apply article 7 of the Regulation in this way, in some cases we do use/need the European Investigation Order (EIO) to request investigations into the existence of valuable property in the other Member State. The problem with this is that the execution of an EIO can still take quite a long time and valuable time is lost when waiting for the response. Especially with bank accounts and crypto currency it is important to receive information without any delays in order to be able to freeze the assets as soon as possible.

### **ECO:**

Incoming: Not often. It is possible to send an ARO request prior to sending an ECO. However, besides Belgium not many Member States make use of this possibility prior to sending an ECO to The

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<sup>1</sup> DIRECTIVE (EU) 2019/1153 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 20 June 2019 laying down rules facilitating the use of financial and other information for the prevention, detection, investigation or prosecution of certain criminal offences, and repealing Council Decision 2000/642/JHA

<sup>2</sup> Most Member States now have implemented this obligation from directive 2019/1153. Ireland is not bound by Directive 2019/1153. In Italy, Luxemburg, Portugal and Sweden – up to now – the ARO still have no access to the national centralised bank account registry.

Outgoing: Netherlands. The Netherlands does often first send an ARO request prior to sending an ECO to another Member State. Especially in cases with Belgium and Spain.

Belgium also sometimes sends an EFO in the execution phase prior to or simultaneous to sending an ECO certificate.

Problem is that, other than the ARO request, there is no effective way to perform cross-border financial investigations once the confiscation order has become irrevocable. In many Member States financial investigations are not possible after final conviction. Via an ARO request hidden assets are not found. And in most cases the assets will be hidden after final conviction, therefore, an effective instrument to also trace hidden assets in the execution phase of a confiscation order is lacking. The EFO under the regulation might be able to form part of the answer to this problem, if all Member States make the use of the EFO possible in the execution phase and make effective use of the possibility of article 7 of the Regulation.

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.

### **EFO:**

#### **Victim compensation**

- As issuing authority we often receive questions from Dutch prosecutors and investigators who want to freeze assets for the purpose of victim compensation. Since this is not a form of confiscation and freezing for the purpose of victim compensation is not covered by the Regulation, it is not possible to send an EFO for just this purpose. In those cases we always look if there is also a ground to freeze assets for the purpose of confiscation. If this is the case the EFO will be send, if not we have to advise that it is not possible to send an EFO.
- As executing authority we sometimes receive EFOs that contain requests to freeze assets for the purpose of procedural costs, victim compensation and/or fines. In those cases the issuing authority will be consulted to discuss if it is possible to adjust the EFO so that the (main) purpose for the freezing is confiscation. If the EFO is adjusted it will be executed. If it is not possible for the issuing authority in the case at hand to issue the EFO for the purpose of confiscation in most cases the EFO will be withdrawn by the issuing authority.

#### **Type of confiscation**

- Since national systems of Member States differ a lot it is not always clear how part D of the certificate should be filled in order to request the right type of seizure in the executing Member State. Also it is not always clear from how part D of the certificate is filled out by the issuing authority in another Member States, what type of confiscation (object based and/or value based) is at hand and what type of seizure we need to apply according to the Dutch national system to execute the EFO correctly.

#### **Balance check**

- Within the EU a quick way to check the balance of a bank account in another Member State is lacking. To receive information about the balance in most cases an EIO should be send. However, when aiming for the freezing of a bank account there is no time to first send an EIO. In many cases we thus have to send EFOs for freezing of bank accounts without knowing if there is actually money in the bank account. This means that in some cases time and costs (f.i. for translation) are wasted in both the issuing and executing Member State when after execution of the EFO it becomes clear that there was no balance on the account. Best practise: In some Member States AROs also have access to information on the balance of bank accounts and in some cases also to information on bank transactions. The ARO is a quick channel to receive information and therefore it would be very valuable if in all Member States AROs would get access to this information.



### Consultation/contact between competent authorities

- When issuing an EFO communication with the executing authority can be difficult, especially with the Member States where the judges/courts are the competent authority. In some Member States courts are less inclined to first consult the issuing authority and ask for additional information before refusing an EFO. Also the difference in language can make the consultation of the authority in the other Member State difficult. And differences in the national legal systems sometimes make it difficult to explain / understand what exactly is requested and how it should be executed.

### Restitution to a victim

- When receiving an EFO to freeze assets, which is combined with a request to return frozen property to a victim – it can be difficult that in the current legal system in The Netherlands this restitution is only possible in case of freezing for the purpose of object confiscation and when an asset is actually retained by the public prosecution service after freezing it. In most cases a request to return assets after freezing concerns money in a bank account. In The Netherlands after freezing a bank account, the money remains with the bank. Therefore, the return of money frozen at a bank account is only possible when the bank is willing to cooperate with that procedure. In many cases this will be possible, however in some cases it can be a quit complicated and cumbersome process in connection with the bank's civil liabilities.

### **ECO**

- Knowing where the assets are in case of value based confiscation. Without the possibility to perform cross-border financial investigations once the confiscation order is irrevocable it is not always possible to know where to send the ECO in order to come to a full execution of the court order.
- When an incomplete certificate is received in some cases even after multiple requests the missing information is not provided / the certificate is not supplemented, leading to a refusal of the request.
- Still in some cases the wrong certificate (FD 2006/783/JHA) is used. In those cases the issuing authority will be requested to send a certificate based on Regulation 2018/1805. In most cases this mistake will be corrected making recognition of the request possible.
- The confiscation decision was not made by a Court.

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

### **EFO**

In the period 2021-2022 under Regulation 2018/1805 only one incoming EFO has been refused. In that same period two outgoing EFOs were refused by other Member States.

### **ECO**

In the period 2021-2022 under Regulation 2018/1805 only one incoming ECO has been refused. In that same period no outgoing ECOs were refused by other Member States. However, not in all cases a decision about recognition was received. Thus it is not known if those cases are recognized or not.

11) Which grounds for refusal are applied?

### **EFO**

The ground for refusal of the incoming EFO was “the freezing certificate is incomplete or manifestly incorrect and has not been completed following the consultation”.

The two outgoing EFOs were refused, without prior consultation, because the certificate was incomplete and/or the freezing order was not received together with the certificate.

### **ECO**

The incoming ECO was refused because the confiscation decision was not made by a court.

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...

#### **EFO:**

- Knowledge of the Regulation by practitioners in the Member States. Not in all Member States practitioners know how to deal with requests under the Regulation. Especially the possibilities under article 7 of the Regulation are not used to their full potential.
- Knowledge of practitioners in Member States about the national process of freezing assets. F.i. in Spain the freezing of immovable goods is not always successful because sometimes the court order does not contain all information that is needed for the property registers to execute the freezing order of the court. So even if the EFO is actually recognized and the court orders the freezing of the immovable good, the order will not be executed in practice. In those cases it is sometimes necessary to issue a second EFO to request for the freezing of the immovable good again.
- Language barriers between practitioners in different Member States still make it difficult to cooperate efficiently.
- In case of urgency, it is desirable that the freezing order can be addressed directly to the executing authority. Sometimes, after receipt within the executing country, freezing orders are forwarded to other authorities and the authority to which the freezing order has been sent is not the authority executing the freezing order. Valuable time can be lost as a result.
- If property of a suspect is spread within different regions of a Member State in many cases more than one EFO has to be sent to one Member State to freeze all the separate assets.
- If the competent authority for recognition of a freezing order is not competent for performing/ordering financial investigations this can lead to problems in the execution of the freezing order.
- It may also be desirable to create a 24/7 freezing channel and/or a central authority, for example in connection with the seizure of cryptocurrencies and bank accounts.
- Not all Member States accept certificates in English. Translation to other, less common, EU languages can take more time than drafting or translating a certificate in English. Translation to less common languages in the EU take more time than translations to f.i. English. Especially in case of urgent requests these translations costs undesirable delay. It would be good if all Member States would, at least in urgent cases, accept and be able to act upon certificates in English.
- Not in all Member States national law is in alignment with the Regulation. Although the Regulation prescribes that property subject to a freezing order shall remain frozen until a confiscation order is transmitted or the issuing authority withdraws the freezing order (art. 12 Regulation), some Member States still have standard periods after which the freezing needs to be renewed or otherwise the freezing is lifted. Member States do not always actively inform the issuing authority about these terms.
- It is not always communicated if an EFO is executed and if so, what property was actually frozen and what the value of that property is. Also, when we do receive an answer about the execution of the freezing order it is sometimes difficult to understand what exactly was the result of the execution. If, where and in name of which suspect property was frozen. Especially in cases where an EFO was accompanied by an EIO we sometimes receive comprehensive paper files in response, because of which frozen assets in the other Member State can easily be overlooked. If frozen assets in the other Member State are not registered in the national case file the consequence can be those assets are not included in the decision on confiscation in the case.

- Sometimes we receive certificates that are still drawn up according to the old freezing order (COUNCIL FRAMEWORK DECISION 2003/577/JHA of 22 July 2003 on the execution in the European Union of orders freezing property or evidence). Not all issuing authorities are aware of the new freezing order under the Regulation. The issuing authority would then have to be asked to draw up a new freezing order, potentially wasting valuable time.
- The executing authorities also sometimes require more information about the object to be seized (as was prescribed in the freezing order pursuant to the Framework Decision), while this is no longer necessary under the Regulation.

## ECO

- Lack of knowledge of the Regulation 2018/1805. There are competent authorities within other member states which do not know how to deal with the regulation in their country and thus do not know how to deal with a request for recognition and execution of a confiscation order. Also lack of knowledge about the seizing/freezing process in other member states (for instance can a property be sold even though it is seized);
- The inability to send a freezing order once the confiscation order has become irrevocable according to the law of the decision State;
- The inability to apply article 18(5) of the Regulation (when it is not possible to send a freezing order once the confiscation order has become irrevocable) in the execution Member State. In most Member States the convicted will be informed that a request for recognition of a confiscation order is received and the convicted has the opportunity to express his view on the request (f.i. if he thinks that one of the grounds for refusal is applicable) prior to the competent authority deciding on the recognition of the request. This also gives the convicted the opportunity to hide the assets he has in the requested Member States prior to execution of the confiscation order. Therefore it is essential that Member States have the possibility to freeze assets prior to recognition of a confiscation order. The most efficient way to do so is via the possibility of article 18 (5) of the Regulation, since in that case it is not necessary to also send an EFO next to the ECO.
- Many Member States do not decide on the recognition within the period of 45 days which is prescribed by art. 20 of the Regulation.
- One Member State has requested a translation of the underlying confiscation order several times. Despite the Regulation is clear that only the certificate has to be translated.

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

Yes. We are not a competent authority ourselves. However, as national experts on asset recovery, freezing and confiscation one of our main tasks is assisting public prosecutors in the application of the Regulation.

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

More than 5 times

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

In assisting the public prosecutor as executing and 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? Yes.

## EFO

In the national legal system of The Netherlands it is not possible to apply a value based confiscation procedure in tax cases. Not all Member States have this same system, thus in other Member States value confiscation can be possible in tax cases and thus sometimes we receive EFO's from other Member States in such cases. At the start it was complicated for us how to deal with such EFOs since according to our national system we would not be able to freeze or confiscate assets for value based confiscation in such cases. Whenever in the certificate one of the offences of article 3 is indicated in part E the EFO will be recognized and executed.

When receiving an EFO from another Member State it is not always clear whether the purpose for which the freezing is requested falls within the definition of a confiscation order under the Regulation. There have been several cases in which the issuing authority mentions procedural costs, victim compensation and/or financial penalties as reason for issuing the freezing order. In those cases the issuing authority will be requested to provide additional information and confirm that according to the law of the issuing state the purpose falls within the definition of a confiscation order. If the issuing authority confirms this is the case, the EFO will be recognized and executed. The experience is that in most cases such requests will be withdrawn by the issuing authority.

### **ECO**

One case was sent to the CJIB (central authority) which didn't concern a court decision but a decision made by a public prosecutor. After consultation it became clear that it also did not concern a non-conviction based confiscation. In the end was concluded that it did not concern a confiscation order as meant under article 2 of the Regulation.

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

Public prosecutor. Article 5.5.9 Dutch Criminal Procedure Code

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

Public prosecutor. Article 5.5.15 Dutch Criminal Procedure Code

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

Minister of Justice and security, and on his behalf the CJIB.

Article 5 Wet wederzijdse erkenning en tenuitvoerlegging geldelijke sancties en beslissingen tot confiscatie jo article 63d Organisatiebesluit Ministerie van Justitie en Veiligheid jo Takenbesluit CJIB

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

Recognition ECB: public prosecutor

Execution: Minister of Justice and security, and on his behalf (taakbesluit) CJIB

Article 4 Wet wederzijdse erkenning en tenuitvoerlegging geldelijke sancties en beslissingen tot confiscatie jo article 63d Organisatiebesluit Ministerie van Justitie en Veiligheid jo Takenbesluit CJIB

21) Do you the 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

In The Netherlands the EFOs will be send via the International Legal Centers of the Public Prosecution Service. In many cases they make use of the EJN Atlas – or the notifications of the Member States on the EJN website to determine the competent authority for executing an EFO in another Member State. In cases where EFOs are send to more than one Member State at the same time sometimes Eurojust will be requested to send the EFOs via the national desks to the competent authorities in the different Member State. Also in some cases – f.i. when urgency is requested – the ARO network will be used to identify and get in contact with the competent authority in the other Member State.

Further, The Netherlands has liaison magistrates in Spain and Italy in some cases they are contacted to identify the correct competent authority and to give support in the contact between the issuing authority and the competent executing authority.

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

Yes

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 information is not always complete/correct/fully up to date. Also in the atlas it is sometimes difficult to find the competent authority using just a place name or postal code.

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?

Every public prosecutor is competent for issuing an EFO in The Netherlands. Not every individual prosecutor will be fully aware of the role which Eurojust can play in the application of the Regulation. However, the International Legal Centers of the Public Prosecution Service (ILC) are appointed as central authority for sending the EFOs to another Member State. These ILCs are aware of the role of Eurojust and can advise prosecutors about this.

The execution of incoming EFOs from other Member States is done by prosecutors working at these ILCs and therefore they will be aware of the role that Eurojust can play in the application of the Regulation.

However, we have experienced that especially in more complex cases under the Regulation the knowledge about financial investigations, asset recovery, freezing and confiscation procedures within Eurojust is not always sufficient. In those cases our advice would be to involve the experts from the ARO / CARIN network as well. They can assist issuing and executing authorities and/or Eurojust with their specialized knowledge.

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

EFO: the International Legal Centers of the public prosecution service are central authority for transmitting and receiving freezing orders. In specific cases Eurojust or liaison magistrates will be used (see also question 22).

ECO: the CJIB is the central authority for transmitting and receiving confiscation orders.

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

See above (question 26)

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

In general no. The Netherlands has declared under article 4, paragraph 2, of the Regulation it wishes to receive the original freezing order or a certified copy thereof, when receiving a freezing certificate. And made a declaration under article 14, paragraph 2, of the Regulation that The Netherlands wishes to receive a certified copy of the confiscation order when receiving a confiscation certificate.

When, as executing state, we receive a certificate without the national judicial order we will contact the issuing authority with the request to also send the underlying national order. No translation is needed, as long as a translation of the certificate in English or Dutch is provided.

As issuing state The Netherlands will always include a freezing order with the freezing certificate and a certified copy of the confiscation order with the confiscation certificate.

### **EFO**

However, in practice it can occur that the freezing order gets separated from the certificate in the executing State. In one case this led to, without prior consultation, a refusal in the executing State of the freezing order/certificate because the freezing order was missing from the file.

In case of freezing orders we often voluntarily translate both the order and the certificate. To ease procedures in the receiving Member State, translation of the freezing order makes it easier for the receiving authority to check if the certificate is correct. In our experience this can speed up the procedure of recognition and execution in some cases. Especially in urgent cases this can be important.

### **ECO**

The colleagues from the Dutch central authority experienced twice that Luxembourg has requested for translation of the confiscation order. In both cases Luxembourg took care of the translation themselves.

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?

Via consulting the issuing authority and requesting additional information.

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.

### **EFO**

The Netherlands accepts certificates in Dutch and in English. Thus urgency or not, English is always accepted.

Including The Netherlands nine Member States have declared to officially accept certificates in English. Two Member States have declared to accept English in case of urgency. Further, although we have not found a notification from Malta that it accepts certificates in other languages than Maltese, we have experienced that Malta also accepts and executes certificates in English.

Germany has declared to only accept certificates in German and Lithuania has declared to only accept certificates in Lithuanian. However, with both Member States we experienced executing authorities to be willing to already start the necessary preparatory steps for executing an EFO after receiving the certificate and freezing order in Dutch, so that they directly could start the recognition and execution after receiving the formal translation.

### **ECO**

No.

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

### **EFO**

In urgent cases, for instance when investigators come across information about bank accounts/transactions during house searches, the FIU channel is sometimes used to freeze the bank accounts/transactions prior to sending an EFO. However, the issue with the FIUs is that they in general can only act when there is a recent suspicious transaction. When tracing assets with the aim for value confiscation it can concern both legal and illegal assets. Still when coming across bank accounts and/or crypto currency it can be urgent to be able to freeze the assets, preventing them from absconding, although there might not be a recent transaction. The proposal for the introduction in the new confiscation directive of freezing by an interim measure, in our view, is therefore an essential measure in urgent cases.

Also, until now the Dutch FIU does not have the power to freeze bank accounts/suspicious transactions. Therefore, nationally we have no experience with freezing of assets by the FIU prior to the execution of an EFO. Currently in exceptional urgent cases the execution of an EFO can be

preceded by a freezing based on a national judicial order, if there is sufficient information to initiate a national criminal investigation. A proposal for legislation to award the Dutch FIU with the power to freeze bank accounts is in procedure.

### ECO

No.

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?

No major difficulties.

### ECO

When seized objects are located in different areas it is sometimes complicated to determine which court is competent. In those cases usually an EJNI contact point is contacted for assistance.

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.

### EFO

In practice most problems regarding the recognition of freezing orders arise because the information in the certificate is not complete or not clear. Consulting with the issuing authority for clarification or supplementing the information in the certificate in most cases is sufficient to enable the requested authority to recognize the freezing order.

When there is a language barrier between the issuing and requested authority in some cases the assistance of an liaison magistrate or Eurojust can be used. Also in some cases the experts within the ARO/CARIN network can be of assistance in tackling problems concerning the understanding of each other's systems and the possibilities and procedures for executing the requested freezing of assets.

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

### EFO

Yes, as mentioned under question 34, in most cases via providing additional information (or documents) the problems at hand can be solved.

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.

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

N/a



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.

### EFO

- In The Netherlands we have two separate forms of freezing orders. One form of freezing is used for object confiscation, the other for value confiscation. In The Netherlands it is also possible that assets are frozen on both types of freezing at the same time. It is not always easy to fill out section D of the certificate in a way that we can indicate for which form of confiscation the assets need to be frozen. Nor does the certificate contain a section in which can be indicated that the assets need to be frozen on two titles of freezing at the same time.
- Article 7(1) of the Regulation states that the executing authority for the execution of the freezing order shall take “necessary measures in the same way as for a domestic freezing order issued by an authority of the executing State”. The certificate however does not contain a section where this measures can be explicitly requested.

N.b. The Netherlands has no form of confiscation without conviction to which the Regulation is applicable. Therefore, we have no experience in issuing certificates for this type of confiscation. Further, to our knowledge up to now we have not received any freezing or confiscation certificates issued on the basis of confiscation without conviction under Regulation 2018/1805.

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.

### EFO

- Especially section D of the certificate is not really clear. At least from the perspective of the Dutch system it can be difficult for practitioners to understand how to fill out this part of the certificate.

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.

### EFO

- See question 39

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.

### EFO

- It is not always clear what type of confiscation procedure (object/value based) is ongoing in the issuing Member States. This information is necessary to know what type of freezing should be applied to execute the EFO.
- The freezing order is not always provided with the certificate.
- Sometimes the certificate only contains a request to freeze assets with a view to return the assets to a victim and no reference is made to a connected confiscation procedure.
- If the assets to be frozen are not registered in the name of the suspect, it is not always explained that it is the intention of the issuing authority to freeze the assets under the suspect which are registered in the name of a third person. Although the court in The Netherlands has ruled<sup>3</sup> that it is up to the issuing authority to check if the legal conditions are met to freeze assets in the name of a

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<sup>3</sup> ECLI:NL:RBAMS:2023:5807

third person, for correct execution of the freezing order it is important that the executing authority is aware that it is the intention of the issuing authority to freeze assets in the name of a third person. This to assure that the correct legal basis can be chosen for the execution of the freezing order. Also, in practice it appears that the issuing authority not always has the intention to freeze assets in the name of a third person, sometimes it is just not familiar with in whose name property is registered.

- Sufficient information about the suspicion, the role of the suspect in the offense and the requested seizure is regularly lacking. In order to be able to properly execute the freezing order, a request for additional information must first be made, resulting in a loss of time.
- We sometimes still receive certificate on the basis of Framework Decision 2003/577/JHA. In those cases we have to first request for the correct certificate before the freezing order can be recognized and executed.
- Article 7(1) of the Regulation states that the executing authority for the execution of the freezing order shall take “necessary measures in the same way as for a domestic freezing order issued by an authority of the executing State”.

In addition to freezing the objects mentioned in the certificate, the executing state can therefore examine whether other objects belong to the suspect and freeze them for confiscation purposes. However, it is often not clear whether, in addition to the objects included in the certificate, other objects must also be frozen with a view to the value confiscation.

It is desirable that the certificate clearly states whether, in addition to the objects mentioned, other objects belonging to the suspect should also be frozen and whether this should take place with a view to object confiscation and/or value confiscation.

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.

### **EFO**

- Section D of the certificate contains information about the objects covered by the freezing order. There are three options: 1) a sum of money, 2) a specific item, and 3) items of equal value. The Dutch system has two forms of seizure. First of all, seizure that can be levied with a view to (among other things) forfeiture (object confiscation). In addition, a prejudgment confiscation/freezing can be imposed to preserve the right of recovery for a confiscation measure to be imposed (value confiscation). Prior authorization from the examining magistrate is required in order to be able to levy this prejudgment confiscation. It is often not or insufficiently apparent from the certificate whether the assets should be frozen with a view to object confiscation and/or value confiscation. This should then be checked with the issuing authority. This causes delays in implementation. It is therefore desirable that the certificate clearly states whether an seizure of prejudgment freezing should be made with a view to object confiscation and/or value confiscation.
- It would be more clear if the certificate would also contain a part in which the issuing authority can request for financial investigations to identify all valuable assets of the suspect in the executing Member States.

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.

### **EFO**

- Section D should include a question whether the freezing is requested for the purpose of object of value confiscation.
- A section should be added in which the issuing authority can explicitly request the executing authority to take all necessary measures in the same way as for a domestic freezing order issued by

an authority of the executing State (art. 7 Regulation) to identify all assets of the suspect that possibly could be frozen under the EFO.

- Section H should state whether the freezing order relates to a previous order or request. Currently in the certificate it is not requested to state in this section whether an ARO request has also been made prior to the freezing order under the Swedish Framework Decision (COUNCIL FRAMEWORK DECISION 2006/960/JHA of 18 December 2006 on simplifying the exchange of information and intelligence between law enforcement authorities of the Member States of the European Union). By including this, direction can be given to research into assets in the executing country. In addition, before issuing a freezing order, the requesting country will be prompted to make an ARO request first. This may prevent freezing orders from being issued in cases where seizure is not possible or no longer desirable.

## ECO

- For the execution of the confiscation order the expiration date of the execution of the confiscation order is relevant information. However, the certificate does not ask for this information. It would be useful to add this to the certificate.

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).

There is no registration on if ARO requests are followed by an EFO. We however always advice to first send an ARO request prior to sending an EFO. In an increasing number of cases this possibility is used. Also, in urgent cases we often seek direct contact with the competent authorities in the other Member States, sometimes via the ARO / CARIN network. Sometimes via liaison magistrates/officers or Eurojust.

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.

One EFO which was send to Bulgaria was refused without prior consultation because the underlying national freezing order was missing. However, this national order was actually send together with the certificate. Possibly the national order went lost along the way. This could have easily be repaired if the Bulgarian court had consulted the issuing authority prior to refusing the case, also preventing unnecessary extra work and time loss. Now, after receiving the decision to refuse the EFO (six months after sending the EFO) a new EFO had to be drafted and send to Bulgaria to have the EFO executed after all.

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.

No

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.

In the Netherlands it is possible to freeze assets on different titles at the same time (object/value confiscation), in the same investigation. This is not possible in all Member States. Even in Member States where different types of freezing exist, in many cases with priority objects will be frozen with the aim of object confiscation. And only if this is not possible, or only freezing with the aim of value confiscation is requested, the assets can be frozen with the aim of value confiscation. The problem with this is that in The Netherlands the procedure for value confiscation is a separate procedure next to the criminal procedure. The decision of the court in the value confiscation procedure is not necessarily made at the same moment as the decision of the court on the criminal conviction. Decisions about object confiscation are made in the decision on the criminal conviction. As a consequence, if the court does not order object confiscation and the decision on criminal conviction becomes irrevocable, all assets that are only frozen with the aim of object confiscation have to be returned to the suspect/convicted if they are not also frozen with the aim of value confiscation or a subsequent request to freeze the assets with the aim of value confiscation has to be send to the executing state. Problem with that is that competent authorities in other Member States will not always understand these subsequent EFOs as the assets are already frozen in that Member State.

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

## EFO

- It is important to be able to quickly get up to date information on assets in other Member States (nb. the use of the EIO does not suffice, since it takes too long to get the necessary information).
  - competent authorities should be encouraged to send an ARO request prior to sending an EFO
- Accept EFOs in English, at least in urgent cases.
- If an EFO needs to be executed on a specific date, it is important that the EFO is sent in time to the competent executing authority. And not at the last minute.
- All Member States should make sure that national legislation and practise is in line with the Regulation.
  - F.i. some countries still have standard periods after which a seizure will be lifted if the EFO is not renewed in time.
  - Member States should align their national legislation and train their practitioners in order to make effective use of the possibilities under article 7 of the Regulation.
  - Authorities competent for recognition of EFOs should also be competent to perform (or order) financial investigations to (1) investigate the whereabouts of the assets, (2) to trace and identify other assets of the suspect, and to f.i. perform house searches to find the assets of the suspect.

- Member States which have the possibility of interlocutory sale, should apply this more often when freezing assets.

- It should be more standard for issuing authorities to seek contact with the receiving / executing authority – even prior to sending an EFO – to discuss the case and what information the executing authority needs to be able to execute the EFO as quickly as possible – and also to discuss certain specific needs/requests of the issuing authority.
- It would be practical if in each MS there would be an expert centre/central authority that could assist the national competent authorities with, and f.i. provide guidelines on, both issuing and executing EFOs. And could also act as an intermediary in cross-border cases. This role could f.i. be fulfilled by the AROs.
- It would be practical/desirable if frozen assets would be managed by specialized asset management offices.
- It would be very useful to have standardized forms under the Regulation to communicate certain information/decisions to the issuing authority. F.i. a confirmation of receipt, the decision of recognition or refusal of the EFO, a notification of the result of executing the EFO (which property was frozen, including the estimated value), etc. (Under Directive 2014/41/EU and Framework Decision 2005/214/JHA the use of standardised forms proved to be very useful).
- Training for practitioners, on the possibilities under and the application of the Regulation, but also language courses for practitioners.
- It would be helpful that the EU provides more information/guidelines on how to apply the Regulation in practise.

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

### **EFO**

- Also introduce the possibility to transfer an EFO for freezing orders in the execution phase.
- Accept EFOs in English, at least in urgent cases.
- Remove time limits for the duration of a freezing order from the national law.
- Empower the competent authorities with a competence to perform or order financial investigations.
- AROs should get access to information on bank transactions and balances.

### **ECO**

- Make it possible to freeze property prior to recognition of a confiscation order, without requiring a separate EFO (art. 18, par.5, Regulation).
- Introduce the possibility to search for assets/perform financial investigations once a confiscation order has become irrevocable, prior to recognition of a confiscation order. Both nationally as on request of another Member State.

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

- Harmonization on rules to assure that money transferred by victims of cybercrime/online/bank fraud can be quickly frozen en restituted to the victims.
- Harmonization on non-conviction based confiscation (ncbc) to assure that competent authorities in the Member States become more acquainted with this type of confiscation and more comfortable with the application of the Regulation in case of ncbc.
- Harmonization on the possibilities of financial investigations once a confiscation order has become irrevocable.

- In order to prevent the fruitless use of the EFO it should become possible to quickly check the balance of bank accounts in another Member State. This could for instance be via granting the AROs with the competence to access this information and provide this information in response to an ARO request.
- Also, clear harmonized rules are needed on how to order/obtain information from electronic money institutions, PSPs, crypto-asset service providers and issuers which can operate within the whole EU on an 'European passport' once they acquired a license in one Member State. In order to become more effective and use the limited available resources as efficient as possible, it should at least be possible to directly order/obtain information on transactions and balance from these institutions.
- Introduce the possibility of a soft freeze/urgent freezing measure to enable the (temporary and) quick freezing of assets prior to issuing a formal freezing order. This should be possible in national cases, but also in cross-border cases. In relation to electronic money institutions, PSPs, crypto-asset service providers and issuers which can operate within the whole EU on an 'European passport' once they acquired a license in one Member State it should be possible to order such a soft freeze directly to these institutions, even if the main office of the institution is located in another Member State. (Subsequently the formal EFO should be send to the competent authorities of that Member State.)

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

### **EFO**

- Introduction of standardized forms for communication between authorities under the Regulation. F.i. a standardized form for receipt of an EFO, recognition of the EFO and reporting back to the issuing authority which assets were frozen on the basis of the EFO and the value of those assets.
- Extending the application of the Regulation to also freeze assets with the purpose of compensation of victims.
- Extending the application of the Regulation to also freeze assets for the purpose of out of court confiscation orders (f.i. settlements/transactions with a confiscation component).
- The EU should come with an explanatory note on how to interpreted and apply article 7 (1) “... and shall take the measures necessary for its execution in the same way as for a domestic freezing order...”
- Initiate international courses for practitioners, where they both learn about the application of the Regulation and meet colleagues from other Member States who also work with the Regulation.
- Support specialized language courses English for practitioners/competent authorities.

### **ECO**

- Extending the application of the Regulation to also transfer the enforcement of out of court confiscation orders (settlements, transactions).

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? No

Have you faced any genders issue in applying the REG? No