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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)?

Prosecutor's offices: 72.

Courts: 54.

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

Prosecutor's offices: issuing authority - 10, executing authority - 62.

Courts: issuing authority - 2, executing authority - 24.

We note that the difference of 28 files (54 files in which the courts applied the provisions of the Regulation - 26 files in which the courts were actually the issuing or executing authorities) is represented by files in which the courts decided on the appeals against the freezing orders, which were recognised by the prosecutors as executing authorities.

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)

Prosecutor's offices - issuing authority - total 10: Germany - 3, Lithuania - 2, Belgium - 1, France - 1, Italy - 1, Netherlands - 1, Spain - 1.

Prosecutor's offices - executing authority - total 62: France - 16, Italy - 11, Germany - 9, Spain - 7, Hungary - 6, Belgium - 5, Austria - 3, Lithuania - 1, Luxembourg - 1, Netherlands - 1, Slovenia - 1, Sweden - 1.

Courts - issuing authority - total 2: Italy - 2.

Courts - executing authority - total 24: Slovenia - 5, Italy - 4, Germany - 4, France - 3, Austria - 2, Sweden - 2, Belgium - 1, Bulgaria - 1, Croatia - 1, Spain - 1.

- the number of confiscation orders received from another state and recognized - total 9: Germany - 2, Sweden - 2, Belgium - 1, Slovenia - 2, Croatia - 1, Austria - 1.
- the number of confiscation orders received from another state and partially recognized - total 2: France - 2.
- the number of confiscation orders received from another state and refused - total 2: Italy - 1, Bulgaria - 1.

- the number of confiscation orders received from another state and withdrew - total 1: Slovenia - 1.
- the number of freezing orders received from another state and recognized - total 7: Italy - 2, Slovenia - 2, France - 1, Austria - 1, Germany - 1.
- the number of freezing orders received from another state that and refused - total 1: Spain - 1.
- the number of freezing orders received from another state and declined to the prosecutor's office - total 1: Italy - 1.
- the number of requests to dismiss the freezing order which was recognized by Romanian authorities because the measures in the issuing state have also been dismissed - total 1: Germany - 1.

**Courts - appeals against the freezing orders which were recognized by the prosecutors as the executing authorities - total 28:** Belgium - 9, France - 7, Spain - 7, Germany - 3, Italy - 2.

- appeals dismissed: 26.
- appeals partially admitted: Belgium - 1.
- appeals totally admitted: Germany - 1.

**Observation:** Regarding freezing orders sent to prosecutors for recognition, although we have all the statistics, we cannot present the reasons for refusal because we do not have access to the relevant documents. Therefore, it is mainly at the stage of the criminal investigation that freezing orders are recognised. We do not have access to these files.

As far as freezing and confiscation orders sent to the courts for recognition are concerned, we note that it has been difficult to collect data. This is because the courts do not have a clear record of this type of case. Throughout this period, the courts have not provided the Ministry of Justice with clear statistics on the number of cases where recognition of freezing and seizure orders has been requested.

However, we have access to all judicial decisions in electronic form, and by using search criteria such as "2018/1805", "2.018/1.805" "1805/2018" 1.805/2.018" - regulation number, we were able to identify all judgments in which the courts referred to Regulation 2018/1805.

**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)?**

**ANABI:** As presented in point 3, we did not have access to the content of the freezing orders from Prosecutor's offices.

**Courts:** Regarding confiscation orders recognized by judges, we note:

- The confiscation model is special confiscation - direct confiscation and extend confiscation.
- All confiscation orders issued by foreign authorities and recognized by Romania are based on convictions, except for one.

**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.

**Courts:** All confiscation orders issued by foreign authorities and recognised by Romania are based on convictions, except in one case where the confiscation of movable property (bicycles) was ordered in the absence of a conviction. In this case, the crime of theft was being investigated and the perpetrator remained unknown.

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

**Prosecutor's Offices:** fraud, establishment of an organized criminal group, theft, aggravated theft with particularly serious consequences, theft in an organized gang, money laundering (laundering the proceeds of crime), money laundering related to types of fraud such as related to undeclared work, improper welfare benefits or related to migrant smuggling, human trafficking for sexual exploitation, prostitution, illegal detention, crimes against public health, blackmail, tax evasion, embezzlement with damage of 1,306,115.16 lei, exploitation through labor without legal forms.

**Courts:** theft, aggravated theft, fraud, human trafficking for sexual exploitation, embezzlement, robbery.

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

- movable assets: cars, bicycles, sky jets.
- land with an area of 500 square meters, land with an area of 231 square meters.
- residential real estate (apartments, houses, annexes).
- sums of money - euros, dollar, lei - Romanian currency.
- shares and corporate assets, social parts of a legal entity.

**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.**

**Prosecutor's offices:** Yes. In the following, we present some concrete situations transmitted by the prosecutor's offices in the country:

**PT Sibiu** - the assets had a GPS tracking system and the location was communicated by the German judicial authorities. The assets were identified by the Romanian criminal investigation bodies in a shop specializing in the sale of bicycles.

**PT Maramureş** - checks were carried out at the Real Estate Publicity Office; also, verification have been made in the field by the police.

**PT Argeş** - a European Investigation Order was previously executed by another prosecutor's office; the assets in question were identified during the searches.

**PT Constanţa** - two relevant examples of cooperation with Spain and France

- **Spain** - freezing order - crimes committed: human trafficking for the purpose of sexual exploitation, prostitution, illegal detention, money laundering and crimes against public health - assets requested to be seized: Mercedes S500 and Porsche Panamera - the assets were in the custody of the National Police in Oviedo - Asturias, Spain and the freezing order requested the Romanian authorities to register in Romania the strict prohibition to dispose of, sell, strike or alienate the said vehicles.

- **France** - freezing order - crimes committed: theft in an organized criminal group - assets to be seized: a 231 m2 plot of land and a building in the town of Medgidia - the assets were identified by the French authorities through a request for international judicial cooperation.

**PT Caraş Severin** - the necessary investigations were carried out by the judicial police bodies, consisting of the checks in the databases held and the concrete steps to detect the targeted car in traffic.

**PT Alba** - in most cases, the assets were identified as precisely as possible by the issuing authority, but when the assets were recognised and executed, the public prosecutor asked the criminal investigation authorities to carry out certain verifications in order to confirm the figures provided.

**PT Bucharest** - in some cases, the freezing certificate was accompanied by European Investigation Order; in other cases, the European Investigation Order was initially issued for the performance of preliminary checks and subsequently a freezing certificate was sent.

**PT Dâmboviţa** - specific investigations were carried out at banking units.

**PT Timiş** - specific investigations were carried out for the identification of the assets with ANABI support.

**PT Braşov** - specific investigations were carried out and the support of ANABI was requested.

**PT Buzău** - checks in the register of legal entities that can be accessed online.

**PT Satu Mare** - prior checks were carried out through house searches, based on a European Investigation Order.

**PT Mureş** - a European Investigation Order was issued and criminal investigation bodies were delegated to carry out specific investigations; addresses were made to the real estate register, town hall, banks.

**PT Sălaj** - checks were carried out to identify the accounts held by the defendants at the banks.

**PT Bihor** - a European Investigation Order was used to find out details about the perpetrators of the crime and their assets.

From the analysis of the answers, it is possible to mention the following 3 directions that are used by the prosecutors in order to identify the assets, and they are mostly used together:

- International police cooperation instruments, in this sense the ARO office in Romania - ANABI, which carries out its activity based on the following instruments, has an important role:
  - Law no. 318 of 11 December 2015 on the setting up, organization and activity of the National Agency for the Management of Seized Assets (ANABI) and on amending and supplementing other legal regulations.
  - COUNCIL DECISION 2007/845/JHA of 6 December 2007 concerning cooperation between Asset Recovery Offices of the Member States in the field of tracing and identification of proceeds from, or other property related to, crime.
  - 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.

- European investigation order sent with consideration of information obtained as a result of police cooperation - DIRECTIVE 2014/41/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 3 April 2014 regarding the European Investigation Order in criminal matters.
- After receiving the request for the recognition of the order, identification of the assets by using national databases (real estate register, bank account register, register of legal entities, motor vehicle register) and by direct identification by investigative bodies.

**Courts:** On the occasion of the recognition procedure of the order of freezing / confiscation, the courts requested direct information to the authorities that hold the relevant database: real estate register, bank account register, register of legal entities, motor vehicle register.

**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.**

**Prosecutor's offices:**

- In the case of sums of money, it is preferable to specify the measure of freezing transmitted concerns the sums of money existing in the indicated accounts or the sums of money that will enter the bank account in the future - it is proposed to indicate a maximum level up to which the sum will be frozen.
- Lack of effective identification by the authorities of the issuing state of the asset that is the object of the measure of freezing.
- Receiving incomplete certificates of freezing, requiring further correspondence, which leads to the extension of the time period for the execution of the order.

**Courts:** Problems have arisen in particular with the recognition of confiscation orders relating to immovable property.

- Sometimes, it is difficult to accurately identify the persons who may have an interest in relation to the property subject to the confiscation order. Thus, a confiscation order issued by Austria was recognized, confiscating an apartment which, according to the real estate register and according to the sales contract, belonged to the convict. During the procedure for the sale of the apartment, the ex-wife of the convicted person, who did not participate in the procedure for the recognition of the confiscation order, submitted a request for sharing, invoking the fact that she is the co-owner of the apartment. In this regard, she proved the fact that, although she was not mentioned in the real estate register nor in the sales contract, at the time of the purchase of the apartment she was married to the convict. According to civil law, assets acquired during marriage are presumed to be jointly acquired by both spouses, even if only one of the two spouses is mentioned in the contract of sale. The civil court found that the apartment is common property, establishing the share of participation of each of the ex-husbands at 50%, assigned the apartment to the wife, with her obligation to pay the enforcement bodies the equivalent of the 50% share that it belonged to her ex-husband. It can be seen that through a civil action, 50% of the value of the originally confiscated apartment was removed. Even if it may seem like a disadvantageous situation, it should be noted that the value considered by the civil court was that of the market. However, it is very likely that, in the event of a forced sale of the

apartment, the amount obtained would still be around 50% of the market value. Conclusion: it is very important that the courts that are invested with the recognition of a confiscation order make all the necessary checks to identify all the persons who could later justify any right or interest in relation to that asset. The disputes in which other persons who have not been notified to claim rights in relation to assets which were confiscated are very problematic.

- A second example relates to the manner in which the judge pronounces on the method of sharing the confiscated property, by reference to the provisions of art. 31 paragraph (7) of the Regulation. Thus, after recognizing a confiscation order issued by a court in France, a court in Romania noted that, after the sale of the building, the amount will be divided between the Romanian state and the French state equally, 50% - 50%. The court took into account the fact that the market value of the building was over 10,000 euros. However, the good was not sold at the market price, but at a much lower value, below the threshold of 10,000 euros. In this context, ANABI filed a contestation against the initial decision, considering that the amounts obtained no longer need to be shared and need to be transferred in the Romanian state's patrimony. The contestation was rejected by the first court on the grounds that the res judicata authority is violated. Following the exercise of the right of appeal, the contestation was admitted by the higher court.

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

**Prosecutor's offices:** 1 case as an executing authority.

**Courts:**

- the number of confiscation orders received from another state and refused - total 2: Italy - 1, Bulgaria - 1.
- the number of confiscation orders received from another state and partially recognized - total 2: France - 2.
- the number of confiscation orders received from another state and withdrew - 1 Slovenia.
- the number of freezing orders received from another state that and refused - 1 Spain.
- the number of freezing orders received from another state that and declined to the prosecutor's office - 1 Italy.
- the number of requests to dismiss the freezing order which was recognized by Romanian authorities because the measures in the issuing state have also been dismissed: Germany - 1.
- the number of freezing orders recognized by prosecutors and where the appeal before judges was admitted - total 2: Belgium - 1 partially admitted, Germany - 1 totally admitted.

#### 11) Which grounds for refusal are applied?

**Prosecutor's Offices - executing authority:** the fact that the act that forms the object of the criminal investigation has no counterpart in Romanian legislation.

**Courts - executing authority - confiscation orders:**

- **Italy** - The recognition was rejected as a result of the fact that the Romanian court found that the measure of preventive confiscation was not definitive in the issuing state. Analysing the request made by the Italian Court, the Romanian court assessed that the confiscation order is not final and that the requesting authorities sent a certificate of freezing, although, from the analysis of the order, it follows that the measure that would have been necessary to be recognized was the confiscation, the assets having been previously frozen in the same case. The national court requested help in this case from Eurojust.
- **Bulgaria** - Recognition of the confiscation order was rejected on the grounds that the asset had been sold prior to the ordering of the confiscation measure in the requesting state. The asset has not been previously seized by the authorities of the requesting state, an aspect that once again underlines the importance of ordering freezing measures from the beginning of criminal investigation, as well as urgent recognition of them.
- **France** - An interesting case was that in which the national court partially recognized a confiscation order, the reason for refusal being represented by the constitutional principle of the more favourable criminal law. The security measure of extended confiscation is highly repressive. Since it is a criminal law sanction, it is subject to more favourable criminal law provisions. In the case law of the Romanian Constitutional Court, it has been established that the provisions relating to extended confiscation are constitutional insofar as extended confiscation does not apply to property acquired before the entry into force of Law No 63/2012. In this context, the Romanian Court did not recognize partially the extended confiscation ordered by the French Court in the context where one of the immovable assets indicated in the confiscation certificate was acquired before 2010.
- **France** - Unfortunately, we found a case that we consider problematic. Thus, a Romanian court admitted in part the recognition of the confiscation order issued by a French court, the refusal being based on the provisions of art. 19 paragraph 1 lit. e). Specifically, the national court reanalysed on the basis of the evidence administered in the case that certain sums of money cannot be subject to extended confiscation, the person concerned, convicted in France for several acts of qualified theft, proving a proper lawful origin of these sums. We consider that these defences should have been invoked by the convicted before the French courts, without the national court having the competence to re-judge the said case. Thus, according to art. 33 paragraph 2 of the Regulation, *the substantive reasons for issuing the freezing order or confiscation order shall not be challenged before a court in the executing State*. In such situations, the principle of mutual trust, which is the basis of international cooperation at the EU level, is strongly affected.

#### Courts - executing authority - freezing orders:

- **Spain** - According to national legislation, victims are parties to the criminal proceedings. Victims also have the right to request coverage of the damage. In this sense, they can go to the civil court or directly request the damage in the criminal process, following that the criminal court will solve both the criminal side of the case and the civil side. Also, the rule is that the assets that can be the subject of restitution to the victim cannot be confiscated.
- In a case in which the Romanian court was charged with a request to recognize a freezing order issued by the Spanish authorities, the following was found: *the Spanish authorities did not request the recognition and execution of a freezing order issued according to European norms, respectively on the basis of Regulation (EU) 2018/1805, unjustifiably extending its applicability in a completely different scenario, that of the forced execution*

*of civil obligations derived from a final conviction for committing a crime. Obviously, the provisions of the regulation do not affect the rules on compensation and restitution of assets in favour of victims in national proceedings, but this does not mean an overlap of the normative framework applicable to each scenario.*

*Or, according to the attachment certificate submitted to the Romanian judicial authority, in the present case it is requested to start a forced execution procedure against the respondent, for the benefit of the victim of the crime committed by him, in order to ensure the reparation of the damage caused by the convicted person to a natural person, a Spanish citizen (damages amounting to 15,815.25 euros, to which are added interest and enforcement expenses in the amount of 4,800 euros). In the case under review, the Spanish judicial authorities did not issue a freezing order in accordance with the rules of the above-mentioned Regulation, so they wrongly resorted to the present procedure, as it is not capable of ensuring the enforcement of the provisions of the final judgment regarding payment of compensation to the victim; however, the victim is still entitled to access the national legal instruments to start enforcement against the convicted person, even if the procedure to be followed would require certain particularities, determined by the incidence of an element of foreignness (the circumstance that the respondent currently lives on the territory of Romania).*

**Courts - executing authority - freezing orders recognized by prosecutors and where the appeal before judges was admitted:**

- **Belgium** - the appeal was partially admitted in relation to a single account whose number was changed compared to the freezing order issued by the Belgian authorities, which would have led to an unjustified extension of the freezing measure.
- **Germany** - accounts frozen through the freezing order recognition procedure actually belonged to another person. As a result of the discussions conducted by the court with the authorities of the issuing state, the German authorities mentioned that they no longer request the freezing in this situation, for which the appeal was admitted.

**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 asset.**

**Prosecutor's Offices:**

- receiving incomplete certificates or issued on the basis of other cooperation instruments, requiring further correspondence, which led to the extension of the time period for the execution of the order.
- problems related to the length of time of receiving a response from the enforcement authority.

**Courts:**

- Particular attention must be paid to the competence of the bodies that recognize the freezing orders. Thus, the recognition of freezing orders is carried out by competent authorities from the requested state according to national law. According to Romanian national law, during the criminal



investigation phase, the freezing order is disposed by the prosecutor, which implies that he also has the competence to recognize a freezing order issued by foreign authorities, even if, according to the legislation of certain states, such an order it is under the jurisdiction of an instruction judge - Belgium.

- Regarding translation costs, if the Romanian Courts wanted to translate the confiscation order as well, and not just the certificate, the costs were covered by the public budget. There is no specific provision to this effect, but the general provisions that provide for the payment by the State of all translation costs are applicable.
- The national legislation does not specify very clearly what is the appeal against the decision to recognize the confiscation order. Some of the courts grant the right of appeal, which can be filed within 10 days of notification, other courts grant the right of appeal, which can be filed within 3 days of notification. The difference arises as a result of the fact that, according to the general regulation, the appeal is granted when substantive aspects of the criminal law legal relationship (deed, guilt) are in question and the challenge is when the analysed aspects concern matters related to the criminal law legal relationship (preventive measures, precautionary measures).

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

**ANABI:** Not directly, but the ARO office, which is part of ANABI, had duties in the judicial proceedings that required the application of Regulation 2018/1805. Thus, the ARO Office is the one that transmits information based on police cooperation, information that can either be transmitted directly as evidence or that can later be the basis for issuing a European Investigation Order. On the basis of the evidence thus obtained, the judicial authorities will carry out the recognition procedure under the Regulation.

The ANABI is also competent, under national law, to notify the executing court of the completion of the procedure for recognition of a confiscation order at the enforcement stage. The request for recognition of the confiscation order sent by Romania to Italy was drawn up on the basis of a request made by ANABI.

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

**ANABI:** we did not directly apply the Regulation.

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

**ANABI:** we did not directly apply the Regulation.

**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?**

**ANABI:** we did not directly apply the Regulation.

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

The prosecutor in the criminal investigation phase and the court in the trial phase, according to art. 327<sup>1</sup> par. (1) from Law no. 302/2004.

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

The prosecutor's office next to the Tribunal in the criminal investigation phase or DNA/DIICOT if the facts are within their jurisdiction and the Tribunal in the trial phase, according to art. 327<sup>1</sup> par. (3) from Law no. 302/2004. The territorial jurisdiction of the executing authority is determined depending on the location of the asset for which the order of freezing was issued or depending on the domicile or headquarters of the natural or legal person believed to be generating income in Romania.

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

Only the courts, according to art. 327<sup>1</sup> par. (2) from Law no. 302/2004.

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

The Tribunals, according to art. 327<sup>1</sup> par. (5) from Law no. 302/2004. The territorial jurisdiction of the executing authority is determined depending on the location of the asset for which the order of confiscation was issued or depending on the domicile or headquarters of the natural or legal person believed to be generating income in Romania.

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

- 1805/2018 REGULATION (EU) 2018/1805 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 14 November 2018 on the mutual recognition of freezing orders and confiscation orders.
- Law 302/2004 on international judicial cooperation in criminal matters.
- The Code of Civil Procedure, the Code of Fiscal Procedure, the Code of Criminal Procedure and Law no. 318 of 11 December 2015 on the setting up, organization and activity of the National Agency for the Management of Seized Assets (NAMSA) and on amending and supplementing other legal regulations.

**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**

**Prosecutor's Offices:** Eurojust, Ministry of Justice, European Judicial Network, European Judicial Atlas, colleagues who are part of the international cooperation departments.

**Courts:** Ministry of Justice, Eurojust, European Judicial Atlas, National network of judicial cooperation in criminal matters.

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

Yes, the information was complete and correct.

**ANABI:** It is worth mentioning that we had an intensive co-operation with the Liaison Magistrate in Italy during the issuance of the freezing order and the confiscation order to Italy. Thus, the Liaison Magistrate attempted to make a precise identification of the proceedings in Italy in the context in which the enforcement court, being in the enforcement phase of the final court decision and in the absence of a prior freezing order, sent a confiscation certificate together with a freezing certificate. In this context, as a result of the division of jurisdiction at the level of Italian legislation, there have been certain obstacles in determining the precise jurisdiction of the judicial bodies that must recognise the freezing order and the confiscation order. The liaison magistrate also kept ANABI informed of the progress of the proceedings. Unfortunately, more than a year after ANABI's first step, the confiscation order has still not been recognised in Italy. Only the freezing order has been recognised and is currently under appeal to the Italian Supreme Court.

**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 particular, the Judicial Atlas is a well-known and frequently used tool by both judges and prosecutors. The other tools mentioned are known in particular by prosecutors who have issued/executed European Investigation Orders.

It should be mentioned that several practical activities presenting the benefits of the tools, in particular the use of the Judicial Atlas, are included in the professional training of judges and prosecutors within the National Institute of Magistracy. In addition, they attend a number of workshops where they can obtain certificates for different types of international cooperation.

**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. From the answers provided by the prosecutors it emerged that they are cooperating with Eurojust. Also, from the study of court decisions, it follows that the courts requested clarifications through Eurojust.

**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**

**Prosecutor's Offices:** In most cases, the direct transmission to the foreign authority takes place based on the information indicated in the Judicial Atlas. The authorities also call on the Ministry of Justice, Eurojust, the Liaison Magistrate or General Prosecutor's Office.

**Courts:** The two freezing and confiscation orders were transmitted directly by the enforcement court.

**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**

Orders were received through Eurojust or directly from the issuing foreign authority. The Ministry of Justice is also the central authority for confiscation and freezing orders issued during the trial phase. For freezing orders issued during the investigation phase, the Prosecutor General's Office is the central authority.

**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**

No such problems have arisen regarding the transmission of the order or its translation.

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

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?**

Yes, there have been some difficulties with the incomplete certificates. The judicial authorities have asked for clarifications, usually through Eurojust.

**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.**

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**

No such cases have been identified. Under the proposal for a directive on asset recovery and confiscation, the ARO will be able to have such powers, particularly in the situation of international cooperation, precisely to cover the period between the moment when the ARO has the necessary information for the issuing of the freezing/confiscation order and the moment when such an order will be issued. As a result, the ARO will be in a position to order immediate action from the first moment it has knowledge of the assets.

**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?**

From a practical point of view, no problems were identified.

From a theoretical perspective, we appreciate that the application of art. 19 para. 3 of the Regulation can be problematic in practice, considering the obligation to inform the person on whom the freezing measure was ordered, in the context where Romanian law establishes, in principle, that the taking of the freezing measure is done with regard to the assets of suspect, procedural quality that must be brought to his attention in the shortest possible time.

We also make a reference to the case where the Romanian court rejected the recognition of a freezing order issued by the Spanish authorities - question 11. The definition of freezing order refers only to the situation of the assets that could be subject to confiscation. But, in certain member states, including Romania, the victim can claim civil compensation directly before the criminal court. Once such a request is made, the respective assets can no longer be confiscated, but will serve to repair the victim's damage. Unlike the legislation of other states, in Romania it is not possible to order the restitution of confiscated assets to the victims, because with the measure of confiscation, the assets become the private property of the state. Although the Regulation mentions that the frozen assets will be able to be returned to the victim, it does not explicitly allow to freeze the assets in order to protect the interests of the victims. Thus, according to the definition from art. 1, "disposal order" means a decision issued or validated by an issuing authority in order to prevent the destruction, transformation, removal, transfer or disposal of property with a view to the confiscation thereof. However, if the victim requests damages in the criminal process, certain assets, which could have been subject to confiscation, will no longer fall into this category, and will be returned to the victim. In a strict interpretation, in this case, the procedure for recognizing the freezing order cannot be carried out because the freezing will not be instituted in order to obtain a confiscation measure, but in order to cover the victim's damages.

**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.**

On the occasion of the execution of a recognised freezing order, the subject matter of which was the funds in the accounts, the bank asked the public prosecutor to clarify whether the order concerned only the existing funds in the respective accounts or also future funds. The public prosecutor's clarification was that the measure applied to the amounts up to a certain value specified in the order imposing the freezing measure, without distinguishing according to the time at which the funds arrived or will arrive on the account.

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

In certain situations where clarification was requested, the certificate has been supplemented with the information in question.

In another situation, after the Romanian executing authority had notified the execution of the order, it was the issuing authority that requested additional information on the amounts available in the bank account subject to the confiscation measure, and was informed of the reply that the executing authority had received from the bank. In the same case, as there was information that the person concerned had been detained at a certain point in time, the executing authority requested additional information on whether the person concerned was still subject to the preventive measure. The communication from the Romanian authority was made by e-mail via Eurojust to the issuing State.

**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.**

In Romania, judges and prosecutors have an obligation to be constantly involved in training courses organised by the National Institute of Magistracy. Each magistrate is required to choose 3 such courses per year from a list that covers many areas of interest, including topics related to international cooperation. Each magistrate is then selected according to criteria such as: number of courses attended, seniority, professional qualification, specialisation. For example, the most recent course organised by the National Institute of the Magistracy in October 2002 about cooperation in criminal matters was also attended by the ANABI magistrate on secondment. At the meeting, aspects of the applicability of the Regulation were analysed. The Romanian liaison magistrate from Italy gave a presentation on the subject.

Meetings were also held between the Italian and Romanian judicial authorities, with the participation of magistrates, police officers and representatives of Eurojust. The meeting took place in the Netherlands with the aim of establishing a procedure to unfreeze certain assets which, at the time of their seizure, were actually owned by bona fide third parties.

At the same time, the Hungarian authorities travelled to Romania in order to hand over a watch that was the subject of an execution freezing order.

Finally, a network for judicial cooperation in criminal matters has been set up at the level of the Ministry of Justice, involving judges and prosecutors from across the country.

**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**

The meetings referred to in the previous point have taken place in person. In addition, judges from other states often participate by videoconference in the training courses organised by the National Institute of the Magistracy.

**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.**

No difficulties were encountered.

**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.**

**Prosecutor's Offices:** Yes, but only if the information is properly completed, with appropriate details of the facts retained by the issuing authorities.

**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.**

No.

**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.**

**Prosecutor's Offices:** There were blanks in the certificate, particularly in relation to the assets which were the subject of the freezing order.

**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.**

The Romanian authorities have assessed that, in the situation where the certificates are completed in full, there would be no obstacles to recognition. Moreover, there are few situations in which clarifications were requested.

**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.**

No.

**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).**

In some cases, data were initially requested through police cooperation channels, the asset was seized as a result of ex officio notification by the police bodies, after which a freezing order was issued and transmitted regarding the respective asset. In other cases, freezing orders were preceded by European Investigation Order used to identify the bank accounts, existing sums of money or assets owned by the persons under investigation.

In most cases, initially the information obtained as a result of police cooperation is used and, subsequently, it continues with the execution of European Investigation Orders, and after obtaining the necessary evidence, the freezing orders of the identified assets are issued.

In certain files, the support of ARO-ANABI was requested for the identification of assets from the territory of Germany and Spain, and in the case of assets from the territory of Spain, research was carried out through the Centre for International Police Cooperation.

The National Agency for the Management of Seized Assets (ANABI) is designated as the national office for asset recovery, o COUNCIL DECISION 2007/845/JHA of 6 December 2007 concerning cooperation between Asset Recovery Offices of the Member States in the field of tracing and identification of proceeds from, or other property related to crime.

In this sense, the Agency fulfils the function of facilitating the tracing and identification of assets resulting from the commission of crimes and other assets related to the crimes and which could be subject to a freezing order or a confiscation order emitted by a competent judicial authority during criminal proceedings.

In the field of identification of assets, the Agency fulfils the following duties:

- a) cooperates with other asset recovery offices or with authorities with similar powers from other member states of the European Union, by ensuring the exchange of data and information;
- b) cooperate with the competent Romanian public authorities and institutions in order to identify and trace assets that may be the object of freezing measures during criminal judicial proceedings, of special or extended confiscation, by transmitting the data and information to which it has direct or indirect access;
- c) ensures the representation of Romania at the level of the Camden Interagency Network for Debt Recovery (CARIN) and exchanges data and information for this purpose, including at the level of other similar networks.

The checks carried out in the framework of this type of cooperation are prior to the issuance of a European Investigation Order. Thus, the information obtained within this type of cooperation cannot be used as evidence or evidence in the criminal proceedings without the consent of the state which transmit the information.

**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.**

The representatives of the prosecutor's offices mentioned that this was not the case. From the analysis of court decisions, no such situation resulted.

**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.**

The representatives of the prosecutor's offices mentioned that this was not the case. From the analysis of court decisions, no such situation resulted.

**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 representatives of the prosecutor's offices mentioned that this was not the case. From the analysis of court decisions, no such situation resulted.

**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 representatives of the prosecutor's offices mentioned that this was not the case. From the analysis of court decisions, no such situation resulted.

**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 representatives of the prosecutor's offices mentioned that this was not the case. A court revoked a freezing order following a request made by the person subject to the order, it being proven that in the issuing state all freezing measures had been revoked - Germany.

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

We can provide a standard example that could lead to the efficiency of the activity of establishing precautionary measures: As we have mentioned in previous answers, in order to reach an enforceable confiscation solution, it is necessary that the criminal prosecution bodies to take all measures to identify assets that could be subject to a confiscation order from the beginning of the criminal investigation.

At the beginning of the criminal investigation, a real support can be the information obtained on the basis of police cooperation. For this purpose, the criminal investigation bodies can directly address to ARO offices. In Romania, the ARO office is part of ANABI. The information obtained can be the basis for the preparation and execution of a European investigation order through which the necessary evidence can be obtained to justify the issuance of a freezing order. We note that certain information can be transmitted directly as evidence by the ARO offices, in the situation where the state transmitting the information expresses its agreement in this regard.

After issuing the freezing order according to the national legislation, it is necessary to go through the procedure for its recognition according to the Regulation. The relevant tools that can be used

to complete the recognition procedure are the Judicial Atlas and the help provided by Eurojust. In order for the recognition procedure to be fast, it is necessary to complete the certificates in as much detail as possible and, as far as possible, to send a translation of the freezing order in a known international language.

It is necessary to pay more attention to files that have such extraneous elements, following that the enforcement authorities are informed about any other incidents that may occur until the moment of obtaining the confiscation order - the revocation, restriction, extension of the freezing order, as well as requests that may refer to the anticipated selling of the assets that are the subject of the freezing order. In this sense, we mention that in Romania the frozen assets can be sold in advance. There is an online platform for the sale of movable assets, and, starting from 2022, the sale of real estate can be carried out, with the mention that in this case the owner's consent is required. In Romania, the administration and selling of frozen assets is carried out by ANABI.

After obtaining the confiscation order, effective communication between the authorities is necessary to recognise the order and ultimately arrive at a sharing agreement between the states.

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

**Prosecutor's Offices:** There is a vulnerability in the application of the provisions of the Regulation regarding the information of the affected parties, even if such information is postponed, in the context where in real estate matters the law provides for the publication of measures of freezing under the penalty of unenforceability towards its third parties. Thus, the risk cannot be excluded that upon a simple consultation of the registers in which such forms of publicity are carried out, the person concerned will become aware of the measure in question. We appreciate that the legislation related to the possible investigative tactics and the taking of the freezing orders must provide for the coordination with the steps necessary to prove the minimum suspicion of involvement of the person concerned in the facts that can lead to taking such measures in such a way that the disclosure of the procedural quality and respectively of the measure of freezing, taken under the conditions of the law, to shelter the stolen asset from under the power of the measure, at the same time as guaranteeing the right of defense of the suspected person.

**Courts:** An express provision is required regarding the national remedy granted in the case of the recognition of a confiscation order. As we mentioned in point 12, the national legislation does not specify very clearly what is the remedy against the decision to recognize the confiscation order. Some of the courts grant the right of appeal, which can be filed within 10 days of notification, other courts grant the right of contestation, which can be filed within 3 days of notification.

Also, if recognition of a confiscation order is refused, the issuing state should have the right to appeal. Such an aspect is not expressly regulated in the Regulation. Also, even if it were to be appreciated that they would have such an appeal, there is the question of the existence of very short terms in which such appeals must be formulated. Perhaps an express provision in this matter, possibly with the obligation of the executing state to communicate the solution to the issuing state at least in a frequently used language would be welcome.

**ANABI:** the recommendation aims to establish an obligation for member states to clearly designate which authorities have the capacity to conclude sharing agreements of sums obtained as a result of the execution of the confiscation order. We also recommend that a more extensive provisions

of this matter be carried out - for example, for the simple freezing and confiscation of the sums from a bank account in which a substantial sum is located, it may sometimes seem unjustified to retain 50% by the state of execution.

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

**ANABI:** We believe that the exercise we are undertaking in RECOVER should be extended to all Member States. Firstly, there would be a database on the confiscation models which are in place at each state level. The existence of peculiarities in relation to different types of confiscation models determined most of the problems. Secondly, an analysis of the whole system will be carried out. This will help to identify concrete solutions for the future. For example, due to the fact that Romania did not have any files in which it had the status of requesting state in the case of confiscation orders, the institutional mandate of ANABI was extended in 2022. In this sense, ANABI acquired the competence to notify the executing courts to go through the procedure of recognition of confiscation orders as issuing authorities. Finally, we hope that more Member States will join this effort, thus creating a real European network of practitioners in this matter.

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

As we indicated in question 33, we are of the opinion that the definition of the order of non-disposal should be modified in the sense that it could also cover the situation of assets that could be returned to the victim or that could be used as guarantees to cover the damages that will be determined by the national criminal courts. Victims would thus see a real benefit in the existence of guarantees in the form of non-disposal orders in criminal proceedings, an aspect that would encourage them to claim damages in criminal proceedings, if the legislation of the Member State allows such a possibility.

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

As an instrument of international cooperation, the Regulation is, in our opinion, very well drafted. However, we can see that its application is not very high, although it is clear that the criminal phenomenon with cross-border elements is constantly present in the Member States of the European Union.

We believe that one of the reasons why the Regulation is not very often applied is the lack of the other component at the same level, namely a relevant instrument in the matter of confiscation. It is known that the proposal for a directive on asset recovery and confiscation is currently under negotiation. The initial proposal of the European Commission was ambitious and was constantly supported by the national experts from Romania. However, the outcome of the negotiations is in many respects not very different from Directive 42/2014.

The three major elements that would significantly contribute to the strengthening of criminal policy, and which have been significantly modified by successive compromises, concern the following articles of the proposal for a Directive on asset recovery and confiscation:

**Art. 11 para. 4: Freezing - immediate measures**

Arguments in favour of conferring jurisdiction on the ARO for immediate measures:

- ARO has access to the national registers containing the assets and the freezing of these assets for a short period could be carried out immediately, precisely as a result of a single procedure carried out by a single institution;
- In terms of international cooperation, it would eliminate administrative obstacles caused by the lack of communication between the competent authorities of different Member States. The ARO structures have, over time, developed secure and constant channels of communication, which are a real advantage in terms of providing the fastest possible support;
- Furthermore, in terms of international cooperation, if the financial information is provided by the ARO structures on the basis of Art. 6 and art. 9, taking immediate action on the assets just identified during the cooperation is the option that ensures the greatest coherence of the entire architecture underlying the financial investigation.

Although the negotiations were close, in the end the Member States will not be obliged to recognise this competence of the ARO. Instead, they will only have this option.

### **Art. 9 - exchange of information**

It should be noted from the outset that, in very few situations, the AROs of the Member States, when exchanging information, allow the requesting ARO to use the information obtained as evidence in criminal proceedings.

Therefore, in its current form, para. 4 does not represent any progress compared to the current regulation, which is represented by the Swedish initiative - Decision 2006/960/JHA. We appreciate that the Commission's proposal was more opportune to avoid duplication of judicial cooperation activities through the creation of mutual legal assistance committees.

Our arguments in favour of the fact that the information transmitted can be used as evidence by the judicial authorities of the requesting state are the following:

Firstly, the information provided by the AROs can be directly used as evidence if it is of an objective nature and the interference determined by the access to the databases is proportionate to the purpose pursued, namely the speedy conduct of the criminal investigation and the obtaining of as much evidence as possible in the shortest possible time.

Secondly, it's a question of efficiency.

To illustrate how Articles 6, 9 and 11 will operate simultaneously in practice, the following example may be relevant: a prosecutor in Romania requests, via the ARO, information and immediate measures concerning the assets of a person under investigation in Member State X. The ARO in Romania will contact the ARO in Member State X and request, on the basis of the prosecutor's request, the following 3 elements: identification of assets that could be seized (Art. 6), communication of information on the identified assets to the ARO in Romania (Art. 9) and immediate measures in relation to those assets (Art. 11). If the ARO in Member State X identifies a vehicle, it will communicate the vehicle's data to the ARO in Romania. At the same time, the ARO of Member State X will take immediate action against the vehicle. After receiving the information, ARO Romania will send it to the Public Prosecutor for issuing a freezing order. Once the order is issued, it must be recognised in Member State X in accordance with Regulation 2018/1805. If the information on the vehicle is not submitted with the possibility for the prosecutor to use it as evidence, the prosecutor will not have the necessary evidence to issue the freezing order and go through the recognition procedure under Regulation 2018/1805. In this case, after obtaining information that cannot be used as evidence, the prosecutor should use other cooperation tools (EIO) to eventually obtain the same information as evidence, i.e. vehicle

identification data. However, the execution of the EIO may take a considerable period of time, which may be longer than the period during which the ARO in Member State X ordered the immediate measures. And this will have an impact on the freezing procedure. In conclusion, it is appropriate for the ARO in Member State X to provide the information so that it can in any event be used as evidence by the competent authorities in their freezing or confiscation proceedings.

On the other hand, judicial authorities may wonder why they should contact an ARO if the information used cannot later be used as evidence. It can therefore be seen that it would be extremely useful to be able to use information obtained as a result of cooperation between AROs directly as evidence in criminal proceedings, thus avoiding duplication of proceedings and ensuring the speed of criminal proceedings.

Thirdly, mutual legal assistance in criminal matters between EU countries usually involves direct cooperation between criminal justice authorities, which can sometimes be problematic because it requires a good knowledge of international law aspects. Without eliminating this form of cooperation, the support that the ARO would bring to the judicial authorities by facilitating the gathering of evidence would be important in a context in which the close links that already exist between the ARO structures in the Member States will help greatly in the timely transmission of information, thus avoiding the situation in which judicial authorities would have to specialise in European judicial cooperation in cases with extraneous elements.

#### **Art. 26 - Establishment of centralised registers of frozen and confiscated assets**

Unfortunately, the obligation to establish a national register of all freezing and confiscation orders has been rejected by most Member States. Romania is currently implementing a unique electronic register called ROARMIS - Romanian Asset Recovery and Management Integrated System. It will contain real-time data on freezing and confiscation orders. In addition, the system provides for efficient management of non-available assets. At the same time, the system will make it easier to identify assets that have been made unavailable or confiscated following the recognition procedure in the Regulation, as it will have functions to identify files with an element of extraneousness. We presented this system at the meetings held in Brussels when we negotiated the Confiscation Directive. However, the creation of such an electronic register must remain a possibility, according to the majority of Member States.

If the part relating to substantive law, represented by the new Directive on this subject, were to reach the same level of consolidation as the Regulation, European cooperation in criminal matters would become a normal part of the work of any practitioner of criminal law.

**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?**

No.