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RECOVER

Dissemination of the 1st year's results of the RECOVER project on Mutual recognition of freezing and confiscation orders between efficiency and the rule of law- Regulation (EU) 2018/1805

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ROMANIA – ASSET RECOVERY OFFICE

National report on confiscation models, problems in the praxis
and best practices

Confiscation Models in the Romanian Legal System

Romanian criminal law provides for two types of confiscation:

1. Special confiscation
2. Extended confiscation

Both types of confiscation can be applied to third parties.

Special confiscation can also be applied in the **absence of a conviction (NCBC)**, while extended confiscation can only be applied as part of a conviction and after conviction.

To sum up, in Romania, special confiscation corresponds to direct confiscation, confiscation by equivalent, confiscation against third parties and non conviction based confiscation, while extended confiscation can be ordered both against the convicted person and third parties.

Legal nature of the confiscation

The legal regime of special confiscation and extended confiscation is regulated in the General Part of the Romanian Criminal Code, in Title IV, entitled "Security Measures".

Both special and extended confiscation are regulated as a security measure.

According to the Criminal Code the scope of security measures is to remove a state of danger and to prevent crimes from being committed.

Although these measures are intrusive to the rights of a person, they are not considered criminal sanctions.

For example, these measures are not registered in a person's criminal record.

Other freezing/confiscation

Freezing measures

- The Code of Criminal Procedure regulates the issue of freezing measures in the General Part, Title V, Chapter III, Articles 249-254.
- Freezing measures are procedural measures of real coercion consisting in the seizure of movable or immovable assets belonging to persons specified by law, by imposing an order of seizure on such assets.
- These procedural measures have only a precautionary and not a remedial function in relation to the civil action exercised in criminal proceedings.
- At the same time, they are procedural measures of a real nature. Their purpose is to guarantee the enforcement of the fine or the costs or the special/extended confiscation.

Freezing Orders

■ Issuing Authorities

Prosecutor (criminal investigation phase)

Preliminary chamber judge or the court (trial phase)

■ Executing Authorities

Prosecutor's offices attached to the tribunals (criminal investigation phase)

Tribunals in the territorial circumscription the assets are located, or depending on the domicile/headquarters of natural/legal person believed to be generating income in Romania (trial phase)

Confiscation Orders

- Issuing Authorities - Only Courts

- Executing Authorities - Courts

specifically the tribunal in whose district the asset subject to confiscation is located or depending on the domicile/headquarters of natural/legal person believed to be generating income in Romania)

Statistical data conclusions

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

Statistical data conclusions

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

Statistical data conclusions

- Unfortunately, the obligation to establish a national register of all freezing and confiscation orders has been rejected by most Member States – art. 26 new Directive.
- 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 freezing assets. At the same time, the system will make it easier to identify assets that have been made frozen 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.

Practical cases

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

Practical cases

- Regarding translation costs, if the Romanian Courts wants to translate the confiscation order as well, and not just the certificate, the costs are 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.

Recommendations

- 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.

Recommandations

- An express provision is required regarding the **national remedy** granted in the case of the recognition of a confiscation order.
- 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.

Recommendations

- 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.

The National Agency for the Management of Seized Assets

ANABI

ANABI's powers:

- During the investigation phase, ANABI provides information obtained through police cooperation, which can either be used directly as evidence or can form the basis of a European Investigation Order (EIO) at a later stage.
- Based on the evidence obtained, the competent authorities issue and recognise the freezing order in accordance with the Regulation.
- Legal basis: Article 3 of Law no. 318/2015: *The purpose of the ANABI is to facilitate the identification and tracing of assets that may be subject to precautionary measures in the context of criminal proceedings, special confiscation measures or extended confiscation measures.*

The National Agency for the Management of Seized Assets

ANABI

ANABI's powers:

- During the enforcement phase, ANABI has the power to submit the matter to the execution court regarding the procedure for recognition of an equivalent confiscation order, special or extended confiscation order.
- Legal basis: Article 24 of Law No. 318/2015:

(3) The Agency shall inform the executing court or, where appropriate, the judge in charge of execution, of the data and information obtained under the conditions for issuing and transmitting the confiscation order to the executing State.

The National Agency for the Management of Seized Assets

ANABI

ANABI's powers:

- ANABI has the legal authority to negotiate and facilitate the conclusion of asset-sharing agreements.
- Legal basis: Article 42 of Law No. 318/2015:

(2) The Agency is empowered to negotiate and facilitate the conclusion of bilateral agreements on the sharing of confiscated assets. With the approval of the Minister of Justice, the Agency may conclude bilateral agreements on the sharing of confiscated property.

The National Agency for the Management of Seized Assets

ANABI

ANABI's powers:

- When concluding asset-sharing agreements, ANABI has, in most cases, applied the general principle of equal sharing (50/50) of assets, which is stipulated in Article 30 of the Regulation.
- According to this principle, if the amount obtained from the execution of the confiscation order is equal to or less than EUR 10,000, it will revert to the State requested State. If the amount obtained from the execution of the confiscation order exceeds EUR 10,000, 50% of this amount will be transferred by the requested State to the issuing State.

Conclusions

- 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.

Thank you!

ANABI Team