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**Mutual recognition of freezing and confiscation
orders between efficiency and the rule of law**

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Hard cases in implementation of the Regulation (EU) 2018/1805

ROMANIA – ASSET RECOVERY OFFICE

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- At this workshop we will present three hard cases in which the provisions of Regulation 2018/1805 were applied.
 - 2 cases about **recognition** of confiscation orders;
 - 1 case about **execution** of confiscation orders.

HARD CASE 1 - FRANCE

- **Subject**: recognition of confiscation order
- **Summary**: The national court partially recognized a confiscation order, the reason for refusal being represented by the constitutional principle of the more favorable criminal law.
- Through the confiscation order issued by the Judicial Court from Paris on 01.07.2021, several assets belonging to a Romanian citizen were extended confiscated, including a property acquired in 2010 in Romania.
- The French authorities went through the procedure to recognize the order according to Regulation 2018/1805. In Romania the file was registered before the Cluj Court with the number 93/117/2022.

HARD CASE 1 - FRANCE

- The security measure of extended confiscation is highly repressive. Since it is a security measure, it is subject to more favourable criminal law provisions. In the case law of the Romanian Constitutional Court – Decision No 11/2015, 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.
- Law no. 63/2012 regulated for the first time in the Romanian legal system the institution of extended confiscation.

HARD CASE 1 - FRANCE

- In this context, the Romanian Court from Cluj did not recognize the extended confiscation ordered by the French Court in relation to the real estate that was purchased in 2010.
- Conclusion: In Romania, extended confiscation orders of assets acquired before the date 22 April 2012 cannot be recognized.

HARD CASE 2 - AUSTRIA

- **Subject**: execution of confiscation order
- **Summary**: Sometimes it is difficult to identify precisely the persons who may have an interest in relation to the assets subject to the confiscation order.
- A confiscation order issued by Austria was recognized and an apartment from Romania was confiscating. According to the land register and the sales contract, the apartment belonged to the convict person.
- In the procedure for the forced execution of the order, the ex-wife of the convicted person, who did not participate in the procedure for **issuing** and **recognizing** the confiscation order, submitted an appeal to the execution by which she requested the judicial division, citing the fact that she is a co-owner of the apartment.

HARD CASE 2 - AUSTRIA

- The ex-wife proved that, although she was not mentioned in the land register, nor in the sales contract, at the time of the purchase of the apartment she was married to the person targeted by the confiscation order.
- According to Romanian 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 a joint 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 belonged to her ex-husband.

HARD CASE 2 - AUSTRIA

- Even though it may seem like a disadvantageous situation, it should be noted that the value considered by the civil court was that of the market. Thus, it is very likely that, in the event of a foreclosure of the apartment through a public auction, the amount obtained would still have been approximately 50% of the property's market value.
- **Conclusion:** it is important that the courts that are invested with the recognition of a confiscation order make all the necessary checks to identify all persons who could subsequently justify a right or an interest in relation to the asset that is the subject of the confiscation.

HARD CASE 3 - FRANCE

- **Subject**: recognition of confiscation order
- **Summary**: The national court refused to recognize a confiscation order after establishing that the extended confiscation was wrongly ordered.
- 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). 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.

HARD CASE 3 - FRANCE

- We consider that these defences should have been invoked by the convicted person before the French courts, without the national court having the competence to re-judge this aspects.
- 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.
- **Conclusion:** In such situations, the principle of mutual trust, which is the basis of international cooperation at the EU level, is strongly affected.

HARD CASE 3 - FRANCE

- In this context, we appreciate that the Regulation should recognize the right of the issuing state to appeal the Court decisions.
- At the same time, it is a problem about 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.

Thank you!

ANABI Team