



REG (UE) 1805/2018, two Spanish hard cases

Recover, Milan, 29th and 30th November 2023



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CASE ONE- FACTS

- Lithuanian criminals constitute a scam scheme
- They convince German victims to sign contracts to invest in a real state Project in Málaga. The victims transfer more than 1'3 million EUR to accounts located in Spain, Greece and Hungary

CASE ONE

- On March 2021, Lithuanian FIU notifies to Spanish FIU (SEPBLAC) a suspicious operation
- SEPBLAC informs Audiencia Nacional's PPO (art. 48 bis. 6 Anti money laundering and trafficking act) that due to the Lithuanian notification, they have requested the Bank for the immediate suspension of the transaction

CASE ONE

- Audiencia Nacional's PPO contacts Vilnius PPO
- The very same day (15th March) Vilnius' PPO issues the certificate
- Audiencia Nacional's PPO immediately forwards through CRIs the certificate to the specialised Málaga's PPO on international cooperation

CASE ONE

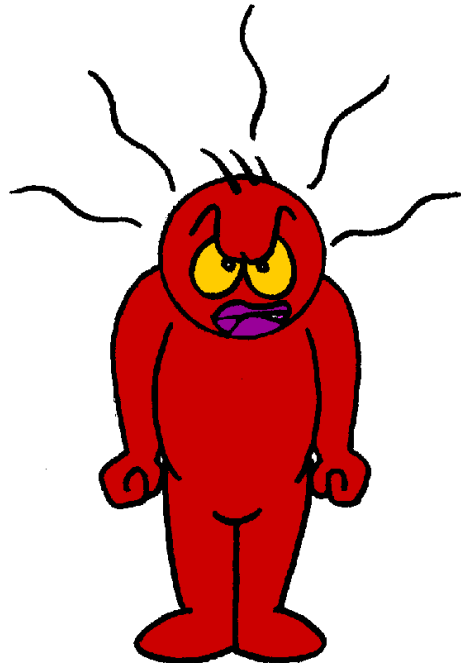
- Málaga's PPO submits the certificate before Málaga on duty Investigating Court on 18th March together with the mandatory report and warns the Judge that it is urgent, because according to the previously mentioned Anti money laundering and trafficking act, the suspension would end on 8th April

CASE ONE THE SITUATION AT THE INVESTIGATING COURTS REGARDING THE REG CERTIFICATES (I)

- The (internal) Judiciary Council REG about case distribution (so called *normas de reparto*) among the Investigating Courts, does not consider the freezing order certificates as an urgent matter.
- As a consequence, most of the Judges forwards the certificates to a Central Office in order to distribute them

CASE ONE THE SITUATION AT THE INVESTIGATING COURTS REGARDING THE REG CERTIFICATES (II)

- In this case, the certificate was executed for the Malaga Investigating Court 9 on 16th April
- The funds had been withdrawn and the account cancelled once the suspension was lifted



Spanish PPO as receiving authority_SpOC (Art. 187 (2) LRM)

ES Spanish (Spain, Traditional Sort) Correction Help

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Country: Spain (ES) [\(Select another country\)](#)

Measure: Tracing and interception of (tele) communications
Interception and recording of other forms of communication (103) [\(Select another measure\)](#)

Offence involved: Any other matter [\(Select another option\)](#)

Legal instrument: [Convention of 19 May 2000 on Mutual Assistance in Criminal Matters between the Member States of the European Union](#) [\(Rectification details\)](#)

Authority Type: R-Oficina Decanato / Servicio Común para su registro y reparto a los Juzgados de Instrucción (Regional)

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LESSONS TO BE LEARNT AND MODIFICATION PROPOSALS

- The (internal) Judiciary Council REG should be modified in order to consider the certificates forwarded by the PPO as an urgent matter.
- As already happening with EIOs (since 2018), PPO should be the only competent authority to receive all the incoming freezing certificates
- PPO should have power of freeze bank accounts at least in urgent cases

CASE TWO- FACTS

- Milan's PPO investigated in 2013 the crimes of tax fraud and asset stripping
- Properties and vehicles sized in Spain through some MLA requests issued by Milan's PPO to Spanish Anticorruption PPO

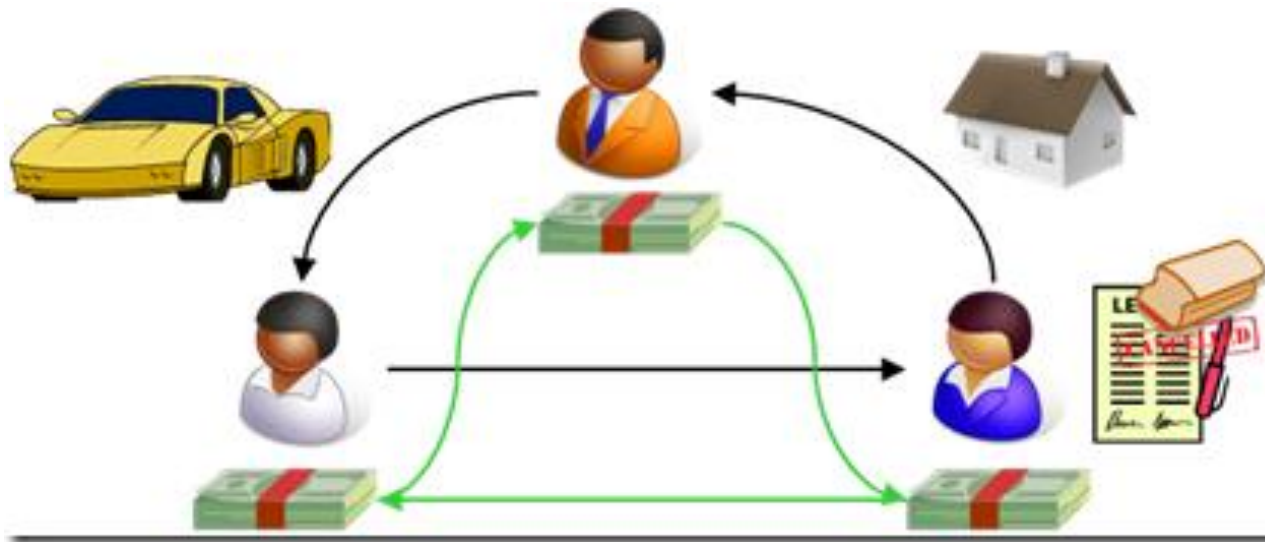
CASE TWO

- Final Judgment in Italy, 2019, confiscation of the value of all the seized assets up to 36 million EUR
- As art. 4 of the FD 2006 did not provide the value-based confiscation, Italian authority indicated in Section k) 1 that regarding to specific assets, the confiscation should have the form of an order to pay an amount corresponding the value

CASE TWO- EXECUTION IN SPAIN

- The problem (already existing nowadays despite the REG) with the freezing of the real state.
- The problem with the mortgage/s and the real state.
- Problem of the competent court for the confiscation
- Third parties in good faith
- Companies as formal owners

CASE TWO- SHARING AGREEMENT (UNDER REG)



CASE TWO-LESSONS LEARNT

- The Spanish Procedural Criminal Code needs to be reformed
- The Spanish mortgage act needs to be reformed
- As stated before, PPO should be empowered as executing authority, because PPO is specialised. Other option would be mandatory specialisation of some Judges in the matter.

Thank you!

**International Cooperation Unit
(UCIF)**

Fiscalía General del Estado

Internacional.fge@fiscal.es

