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RECOVER

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

Grant Agreement No. 101091375

INTERNATIONAL SEMINAR

MUTUAL RECOGNITION OF
FREEZING AND CONFISCATION ORDERS
BETWEEN EFFICIENCY AND THE RULE OF LAW
REGULATION (EU) 2018/1805

MILANO 30 NOVEMBER 2023

MICHELE FINI
MAGISTRATE – ITALIAN MINISTRY OF JUSTICE

TRANSMISSION, RECOGNITION AND EXECUTION OF FREEZING AND CONFISCATION ORDERS

- As regards Chapters II and III of the Regulation, it can be preliminarily noted how the procedures outlined in the aforementioned Chapters respond to criteria and conditions typical of cooperation procedures based on the principle of mutual recognition. This principle implies a generally unconditional recognition of decisions pronounced by the national Judicial Authorities of the Member States of the European Union, with the consequence that the competent Authority of the executing State is called upon to recognize and execute the decision pronounced in the issuing State with minimal formalities, and may refuse recognition and/or execution only where one of the limited and expressly provided reasons for refusal exists

THE CERTIFICATE

Annexes 1 and 2 – Articles 6 and 17

- - to be signed by the issuing Authority
- - to be translated into an official language of the executing State (or into a language accepted by the same State)
- - to be transmitted in a way which permits to keep a written record and which allows the executing Authority to ascertain its authenticity
- - to be filled in with all the information necessary for the recognition and execution of the freezing or confiscation order

THE CERTIFICATE

Annexes 1 and 2 – Articles 6 and 17

- - transmission of the freezing and confiscation orders (originals or certified copies – Declaration according to art. 4, para 2, e 14, par 2)
- - information on the assets to be frozen or confiscated (Section D)
- - information on grounds for freezing and confiscation (Sections E and F)

THE CERTIFICATE

Instructions for the compilation

Circular of the Italian Ministry of Justice

Non-conviction-based Confiscation

- *The seizure/confiscation measure transmitted was adopted pursuant to Legislative Decree no. 159/2011, which provides for the seizure and subsequent confiscation - not necessarily based on a conviction - of assets that are believed to be the proceeds of criminal activities, or assets purchased with the proceeds of such criminal activities. In particular, it is envisaged that assets in the direct or indirect availability of individuals who are suspected of having committed serious crimes can be first seized and then confiscated, when the value of such assets is disproportionate to the income or economic activity carried out, as well as when such goods are found to be of illicit origin or constitute the reuse of illicit profits. Likewise, it is envisaged that assets in the direct or indirect availability of individuals, in relation to whom it must be considered - on the basis of specific circumstances, including the confirmed commission of crimes - that they habitually live, at least in part, with the proceeds of criminal activities, may be first seized and then confiscated, when the value of such assets is disproportionate to the income or economic activity carried out, as well as when the assets themselves are of illicit origin or constitute the reuse of illicit profits*

THE PROCEDURE

- Principle of mutual recognition (Articles 7, para 1, and 18, para 1)

The executing Authority shall recognise a freezing or confiscation order transmitted in accordance with Articles 4/14 and shall take the measures necessary for its execution in the same way as for a domestic freezing or confiscation order issued by an authority of the executing State, unless the executing authority invokes one of the grounds for non-recognition and non-execution provided for in Article 8/19 or one of the grounds for postponement provided for in Article 10/21.

- Mandatory consultations (Articles 8, para 2, and 19, para 2)

In any of the cases referred to in paragraph 1 of Article 8 and 19, before deciding not to recognise or execute the freezing or confiscation order, whether wholly or partially, the executing authority shall consult the issuing authority by any appropriate means and where appropriate, shall request the issuing authority to supply any necessary information without delay

GROUNDS FOR NOT RECOGNITION AND EXECUTION (Articles 8, para 1, and 19, para 1)

- *ne bis in idem* (a)
- privilege or immunity under the law of the executing State – freedom of expression (b)
- certificate incomplete or manifestly incorrect (c)
- criminal offence committed, wholly or partially, outside the territory of the issuing State and, wholly or partially, in the territory of the executing State and the conduct in connection with which the freezing or confiscation order was issued does not constitute a criminal offence under the law of the executing State (d)
- rights of *bona fide* thirds (e) – only for confiscation
- double criminality (e/f) – not applicable for the so called “*eurocrimes*”
- decisions *in absentia* (g) – only for confiscation based on conviction
- manifest breach of a relevant fundamental right (f/h)

RECOGNITION AND EXECUTION OF FREEZING AND CONFISCATION ORDERS

- - in absence of grounds for refusal, the executing Authority shall recognise and execute the freezing or confiscation order, taking all the necessary measures
- - the executing Authority shall promptly provide the issuing Authority with information on the outcomes of the execution (written record)
- - the executing Authority may freeze the property concerned of its own motion in accordance with its national law with a view to subsequent execution of the confiscation order (art. 18, para 5)

POSTPONEMENT OF RECOGNITION AND EXECUTION

The executing Authority may postpone the execution of a freezing or confiscation order (Articles 10 and 21) in the following cases:

- possible damage to ongoing criminal investigation
- existing previous national freezing or confiscation order
- legal remedy invoked according to Article 33 (only for confiscation)
- as regards a confiscation order concerning an amount of money, the executing Authority considers that there is a risk that the total amount obtained from the execution of that confiscation order might considerably exceed the amount specified in the confiscation order because of the simultaneous execution of the confiscation order in more than one Member State (only for confiscation)

OTHER PROVISIONS

- Time limits for recognition and execution of freezing or confiscation orders (Articles 9 and 20)
- Impossibility to execute a freezing or confiscation order (Articles 13 and 22)
- Transmission of a freezing or confiscation order to one or more executing States (Articles 5 and 15)