



EUROJUST

Practical application of the Regulation Mutual Recognition Freezing Order and Confiscation Orders

Dissemination of the 1st Year's result of the RECOVER project on Regulation 2018/1805
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Content

- ▶ Eurojust support in asset recovery cases

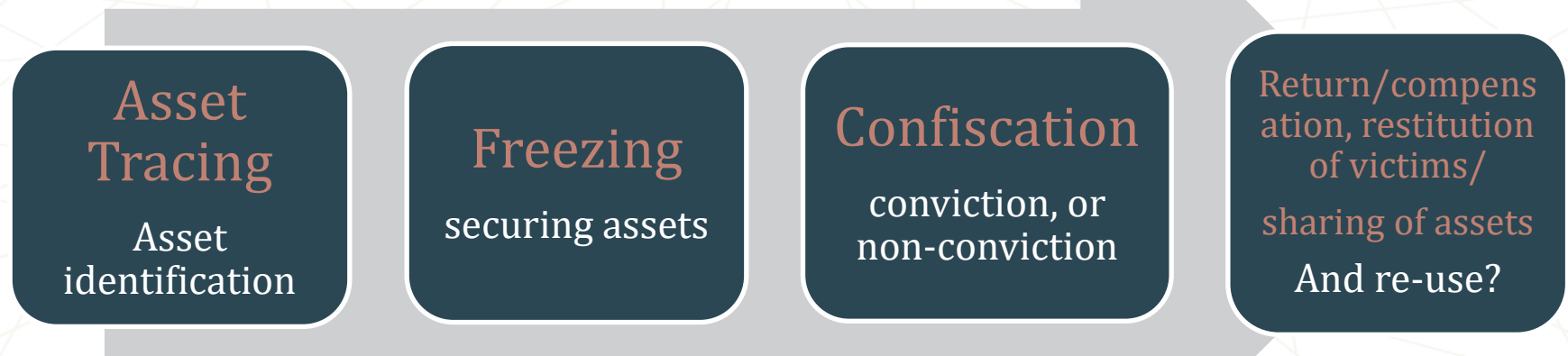
[Report on Eurojust's casework in asset recovery | Eurojust | European Union Agency for Criminal Justice Cooperation \(europa.eu\)](#)

[Eurojust Report on Money Laundering | Eurojust | European Union Agency for Criminal Justice Cooperation \(europa.eu\)](#)

- ▶ Eurojust experience in the practical application of the of the Regulation MR Freezing and Confiscation Orders

[Note on Regulation \(EU\) 2018/1805 on the mutual recognition of freezing orders and confiscation orders | Eurojust | European Union Agency for Criminal Justice Cooperation \(europa.eu\)](#)

International cooperation is essential



Project on the practical Application of the Regulation

- ▶ Ongoing
- ▶ Analysis of Eurojust cases
- ▶ Identification of legal and practical issues
- ▶ Identification of best practice
- ▶ Report due first part of 2024

1st Eurojust Meeting on Money Laundering and Asset Recovery

19, 20 June 2023. Some of the issues discussed:

Regulation MR Freezing & Confiscation Orders

- ▶ material scope of application of the Regulation
- ▶ direct applicability of the Regulation, namely in relation to domestic law
- ▶ restitution to victims
- ▶ affected persons' rights
- ▶ In the framework of the Regulation, have you encountered any issues regarding exceptional costs If so, how do you estimate them
- ▶ the freezing of cryptocurrencies

Cont.

- ▶ **Direct applicability:** problems in some countries because of misunderstanding as to nature of a Regulation (as opposed, say, to a Directive), irrespective of whether any changes in national legislation are needed.
- ▶ **Scope:** welcomed by practitioners the fact it encompasses “proceedings in criminal matters”. Exceptionally, some difficulties with this concept.

Cont.

- ▶ **Restitution to victims:** strong step forward but still difficulties when there are victims in several jurisdictions (art 29 and 30);
- ▶ **Exceptional costs:** there is a role for Eurojust in the Regulation (art 31). Guidelines could be created.
- ▶ **Concurrent certificates:** Art. 26 is based only in a single executing authority but in reality there can be more.

Cont.

- ▶ Support from participants to create dedicated **Focus Group on Money Laundering and Asset Recovery** organised by **Eurojust**.
- ▶ **Aim:** to increase national and cross-border **inter-institutional cooperation** between the **judiciary, law enforcement and other actors** involved in the fight against money laundering and the recovery of criminally gained assets, **in order to increase efficiency.**

Eurojust case example (1/3)

- Linked investigations into the activities of an OCG involved in transnational drug trafficking and related money laundering, active in MS A, MB, MS C There are two separate Joint Investigations Team (JIT) in this case: a JIT between MB-MA and a JIT between MSA-MSC. MS D has executed freezing orders and EIOs issued by MS B.
- Several Coordination meetings.

Issues:

MS D authorities froze a number of MS D companies (restaurants) in execution of MS B freezing certificates and appointed judicial administrators for their management. This is a first case of management of frozen assets under Regulation 2018/1805 for **MS D**, therefore several issues emerged due to:

Eurojust Case example (2/3)

- ▶ **divergences in the applicable national legislations and**
- ▶ **the lack of certain powers of judicial administrators in MS D as compared to in MS B**
- ▶ **MS B judicial administrators travelled to MS D to meet the MS D judicial administrators and discuss the way forward.**

Eurojust case example (3/3)

- ▶ Under MS C law it is **not possible to freeze a company/business as such** and formally close their activities, but **only the assets belonging to a company can be seized** in execution of a freezing certificate under **Regulation 1805/2018**.
- ▶ Under the law of MS B, the decision to sell the frozen goods belongs to the judge and an evaluation of the goods would be needed. However, it was clarified that under **Art. 28(2) of Regulation 1805/2018**, the executing State may autonomously decide to sell the seized good and the consent of the issuing State is not required.
- ▶
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Eurojust Report on Money Laundering

Structure covers very many topics, *inter alia*:

3. Financial and banking information:

- ▶ National bank register;
- ▶ FIUs;
- ▶ Confidentiality of banking information.

Eurojust Report on Money Laundering

Structure:

4.Asset Recovery:

- ▶ Regulation on the mutual recognition of freezing and confiscation orders;
- ▶ Restitution and compensation of victims;
- ▶ Asset management;
- ▶ Criminal vs civil recovery;
- ▶ Asset confiscation;
- ▶ Asset sharing.

Legal and practical issues (1/4)

- ML Report identified the **10 most relevant** legal and practical issues and best practices.
- Several of them were linked with asset recovery:
 1. Practitioners are still not sufficiently familiar with the **Regulation on the mutual recognition of freezing orders and confiscation orders**.
 2. Issues relating to determining **who is considered a victim in a given country, who** can apply for compensation and **how to ensure proportionate compensation of all victims** when the amount frozen **is not enough to be restituted to all victims**.

Legal and practical issues (2/4)

3. Difficulties arising from the use of **cryptocurrencies**. The use of this type of **digital currency makes it difficult to keep track of the assets** held by those under investigation. It is **essential to know the activity and mechanisms used to monetise or convert cryptocurrency into legal tender.**

4. Financial expertise and resources that are required to analyse data relating to **large amounts of cryptocurrency** that are used to launder money, and to ascertain whether they are relevant to the investigations in the other countries involved.

Legal and practical issues (3/4)

5. **Identification of the beneficial owner of the criminal assets**, which is made difficult by the existence and use of shell companies or letterbox companies, by the identification of extraneous elements in the companies' structures or by the fact that suspects usually do not act under their own name to hide the financial trail that would show the illicit origin of the money. Moreover, **the difficulties in and importance of establishing beneficial ownership in third-party confiscation.** This shows that **clarity in the rules on beneficial ownership is of the utmost importance in money laundering and other cases.**

Legal and practical issues (4/4)

7. Practitioners are still not sufficiently familiar with the **Regulation on the mutual recognition of freezing orders and confiscation orders**.

8. Issues relating to determining **who is considered a victim in a given country, who** can apply for compensation and **how to ensure proportionate compensation of all victims** when the amount frozen is not enough to be restituted to all victims.

9. Some cases show that the tracing of money transfers within the European Union is reasonably manageable, but when **cooperation is required from outside the EU it becomes difficult**, and sometimes authorities discontinue the pursuit of such cooperation.

Best practices (1/3)

Some of the **10 most relevant best practices** identified in the ML report are linked with asset recovery:

1. The use of **asset recovery offices**, even in the apparent absence of a criminal investigation, for the purpose of identifying assets from suspects in other countries.
4. The benefits of including the **consideration of asset recovery precautionary measures** within the framework of a joint investigation team.
5. Establishing a joint investigation team **solely for the purpose of conducting a financial investigation**, if such is possible under the law of the countries involved.

Best practices (2/3)

6. Cooperation between **public prosecutor's offices** and financial intelligence units is essential for an efficient system for tackling money laundering.

7. Where possible, and in accordance with the legal principles of each Member State, the adoption of an interpretation of a Member State's criminal code to allow a **civil recovery order** to be recognised with an undertaking by the given Member State's judiciary to cooperate internationally in criminal matters.

Best practices (3/3)

2. The use of **highly skilled experts** to perform house searches with **a focus on digital devices and to take copies of relevant electronic evidence**, with the aim of obtaining access to **crypto wallets belonging to the main suspect**.

8. The benefits of clarifying, via Eurojust, where appropriate, the valid legal basis to freeze funds for restitution to the victims.

Any Questions?

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