

RECOVER Schema: the Reg. 2018/1805 in 10 Member States

Dissemination of the 1st year's results of the
RECOVER project (GA 101091375)

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RECOVER: context and aims

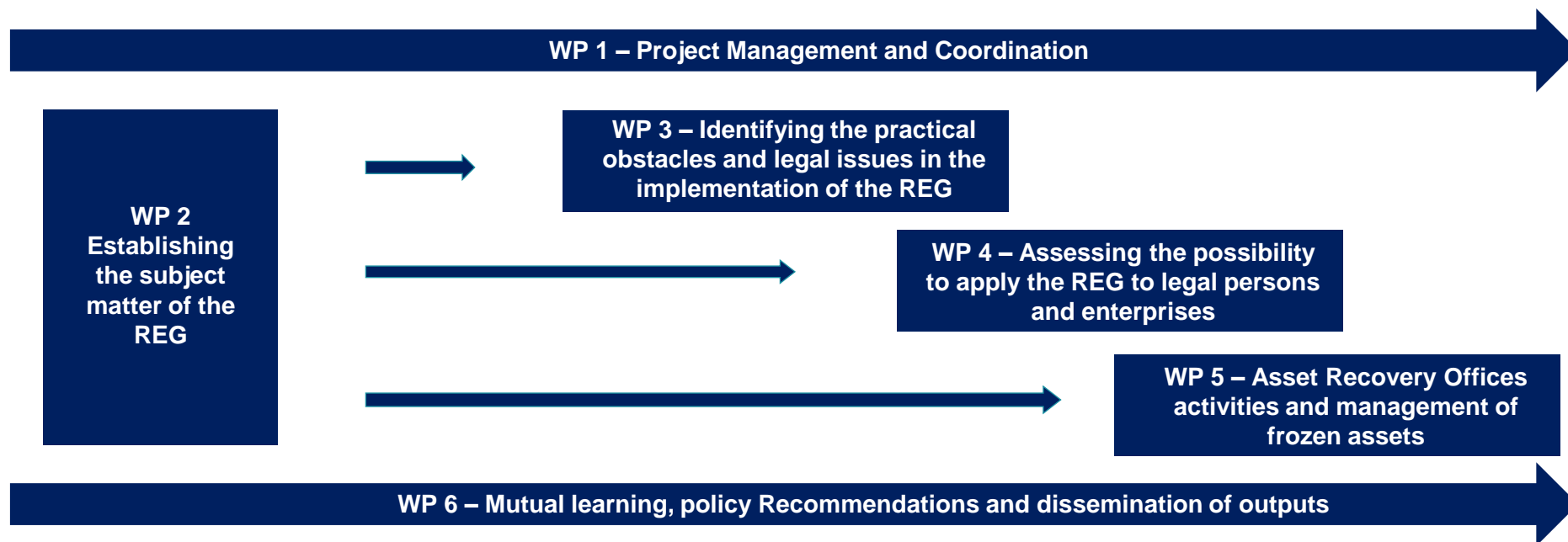
- › Crime, especially **transnational crime**, exploits **legal barriers between MS** to extend its reach and thrive. To counter this, the **harmonization of MS' legal systems is crucial**.
- › Scholars distinguish between **positive** and **negative harmonization** (Schroder, 2020):
 - **Positive harmonization** involves **approximating MS legislations**.
 - **Negative harmonization** is based on the **mutual recognition (MR)** of acts issued by authorities of other MS.
- › The RECOVER project addresses **both aspects**. On the one hand, it assesses the **harmonization of MS legal systems** on confiscation. On the other, it **evaluates** the implementation and **the effectiveness of mutual recognition among MS**.

RECOVER: context and aims/2

- › Furthermore, an effective European MR mechanism provides for **many additional benefits**:
 - **Efficiency of the judicial process:** MR **simplifies** the judicial process, avoiding duplications and expediting the return of illegally obtained assets, particularly in cases where the judicial process involves multiple jurisdictions.
 - **Prevention of capital flight:** MR contributes to preventing the flight of capital from one country to another to evade confiscation or freezing measures. This helps ensure that illegally obtained assets can be recovered and returned to victims.
 - **Protection of victims:** MR helps protecting the rights of victims of financial crimes. It ensures that they have a better chance of obtaining compensation, and confiscated assets are used to compensate for the damages suffered.
 - **Strengthening mutual trust:** MR contributes to strengthening trust between the legal systems of the involved countries. This is essential for promoting broader cooperation in justice and security among the European Union member states.

RECOVER: the structure

- › The aims of RECOVER, corresponding to its working packages, are:
 - **Establishing the subject matter of the Reg. (EU) 2018/1805** (the REG) *(December 2022 – May 2023)*.
 - **Identifying the practical obstacles and legal issues arising in the implementation of the REG** *(June 2023 – November 2023)*.
 - **Assessing the possibility to apply the REG to legal persons and enterprises** *(December 2023 – May 2024)*.
 - **Inquiring Asset Recovery Office’s activities and the management of frozen and confiscated assets** *(June 2024 – November 2024)*.



RECOVER: the Consortium

- › The Consortium of RECOVER is composed by **12 participating organizations (PO)**, representing **10 MS**:
 - Academia (3 PO).
 - High Government Authorities (4 PO).
 - Law-enforcement Agencies (5 PO).



Ministero della Giustizia



WP2 – Establishing the subject matter of REG (December 2022 – May 2023)

› **Fundamental steps:**

- Establishing the concept of “proceedings in criminal matters” (art. 1 REG).
- Identifying the national forms of freezing and confiscation orders covered by the REG.
- Establishing the safeguards required by the REG to MS proceedings in criminal matter.
- Elaborating Guidelines in the interpretation of the subject matter of REG.
- Elaborating proposals for harmonizing MSs’ legislation and amending Directive 2014/42/EU.

› **Research Tools:**

- Analysis of the REG and of the related documents.
- Questionnaire establishing the subject matter of the regulation: national confiscation models covered by the regulation no. 1805/2018. types, features and safeguards.
- Workshops on the subject matter of REG and on national confiscation models.

› **Outputs:**

- Reports on national confiscation models covered by the REG.
- Guidelines on the interpretation of the REG subject matter.
- Proposals of harmonization of MS legislation & reform of EU legislation.
- Workshops on the subject matter of REG and on national confiscation models.
- Set up of the RECOVER database, available at <https://recover.lex.unict.it/documents/recover-database/>

WP3 – Identifying the practical obstacles and legal issues arising in the implementation of REG (*June – November 2023*)

› **Fundamental steps:**

- Reports by MS on practical obstacles and legal issues.
- Workshops on the practical implementation of the REG and on hard cases.
- Guidelines on the REG practical implementation & reform proposals.

› **Research tools:**

- Questionnaire on the practical obstacles and legal issues arising in the implementation of REG
- Interview of national experts non partners MS.
- Questionnaire for national experts of MS not bound by the Regulation no. 1805/2018.
- Questionnaire on the application of the REG. (EU) 2018/1805 for Italian judicial authorities.
- Request to EC under art. 6 of the REGULATION (EC) No 1049/2001 to access statistical data.

› **Outputs:**

- Reports on practical obstacles and legal issues.
- Guidelines on the REG practical implementation & reform proposals.
- Workshop on practical implementation of REG; Workshop on hard cases.
- Update of the RECOVER database, available at <https://recover.lex.unict.it/documents/recover-database/>

RECOVER Schema: the Reg. 2018/1805 in 10 MS

- › RECOVER's Comparative Scheme is divided into **2 parts**:
 - National models of Confiscation and MS' issuing and executing authorities.
 - Statistical data on the use of the REG; normative issues, practical issues, and best practices in its application.
- › Sources:
 - National reports, results of the workshops, external sources (legislation and reports).
- › Utility:
 - **Law-enforcement authorities**: immediate comparative overview of the national models of confiscation.
 - **Research**: valuable tool for studying the REG and its application.
 - **Policy**: the scheme helps understanding **gaps and loopholes** in the application of the REG, as well as best practices and needed solutions for specific issues.
- › Issues:
 - **Data**

THANK YOU

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References

- › Schroeder, W. (2020) ‘Limits to European Harmonisation of Criminal Law’, *Eucrim*, 2, p. 144-148.

Country	National models of confiscation							Issuing and Executing Authorities			
	Direct Confiscation	Value Confiscation	Extended Confiscation	NCB Confiscation	Civil Confiscation	Conf. against third parties	Other freezing/confiscation	Freezing orders		Confiscation Orders	
								Issuing Authorities	Executing Authorities	Issuing Authorities	Executing Authorities
BULGARIA	Yes (Art. 53 (1,2) CC)	Yes (Art. 53 (1,2) CC)	Yes (Art. 142 Law for Combating Corruption and Illegal Assets Forfeiture (See Civil Conf.); Art. 44-46 CC).	Yes (Art. 53 CC: Confiscation of the object whose possession is forbidden by the law).	Yes (Art. 142 Law for Combating Corruption and Illegal Assets Forfeiture)	Yes (Art. 53(2) CC) /		<ul style="list-style-type: none"> Court of first instance (regional or district court) 	<ul style="list-style-type: none"> District court (recognition) Bailiff (execution) 	<ul style="list-style-type: none"> Court of first instance (regional or district court) 	<ul style="list-style-type: none"> District court (recognition) National revenue agency (execution)
FRANCE	Yes (Art. 131-21 CC)	Yes (131-21(5), 131-21(6))		The public prosecutor may decide to withhold seized property as "refusal to return the instrumentalities or proceeds of crime (art. 41-4		Yes (Art. 131-21(2,5,6))	Art. 131-21(7) CC: Confiscation of objects classified as dangerous or harmful by law or regulation, or which possession is unlawful	<ul style="list-style-type: none"> Public prosecutor The liberty and custody judge seized by the public prosecutor Investigative magistrate 	<ul style="list-style-type: none"> The prosecutor or the territorially competent investigating judge, of the place where any of the assets covered by the freezing order are located or, if this place is not specified, the Paris judicial authority 	<ul style="list-style-type: none"> PPO of the court that ordered the confiscation 	<ul style="list-style-type: none"> Prosecutor's office that is territorially competent receives the confiscation certificate issued by the competent authority in the requesting country, and forwards it with its opinion to the criminal court, which issues an exequatur ruling so that the confiscation can be carried out in France. In light of
GERMANY	Yes (Sec. 73(4), 74(5) StGB)	Yes (Sec. 73c(6), 73d(7), 74c(8) StGB; Sec. 29a OWiG)	Yes (Sec. 73a(12) StGB)	Yes (Sec. 76a StGB) /		Yes (Sec. 73b StGB, Sec. 29a(2) OWiG)	Pre-trial freezing of assets (Sec. 111b-111q CCP)	<ul style="list-style-type: none"> Public prosecution office 	<ul style="list-style-type: none"> Local court (amtsgericht) 	<ul style="list-style-type: none"> Public prosecution office 	<ul style="list-style-type: none"> Regional court (landgericht)
ITALY	Yes (Art. 240 CC)	Yes (Artt. 322ter, 600septies, 640quater, 644, 648quater CC; Art. 2641 Civ. C.)	Yes (Art. 240bis CC)	Yes (Art. 240 (2, n.2) c.p., preventive Confiscation: Art. / 24 and 34 leg. Decree 159/2011)		Yes (BUT just for "intrinsically dangerous assets", / art. 240(2, n.2) c.p.)		<ul style="list-style-type: none"> Public prosecutor Judge for preliminary investigations/judge who issued the freezing order in the criminal proceedings President of the court, court of first instance, Prosecutor's general office; Regional prosecutor's 	<ul style="list-style-type: none"> Public prosecutor of the court where the assets are located Judge for preliminary investigation If a preventive seizure is requested for confiscation purposes, Prosecutor's general office; Regional prosecutor's 	<ul style="list-style-type: none"> PPO attached to the executing judge; PPO attached to the court of first instance or to the court of appeal (in case of preventive seizure and confiscation); administrative Courts 	<ul style="list-style-type: none"> Court of appeal where the property is located or, in the case of confiscation of a sum of money, the place where the natural or legal person has assets or income is considered instead. If this place is unknown, jurisdiction is determined by the place of residence of the natural person or the registered office District court of the place of residence of a natural person in respect of whose property the confiscation order has been
LITHUANIA	Yes (art. 72 cc)	Yes (artt. 72, 72-3 cc)	Yes (art. 72-3, par. 5 cc)	Yes (artt. 72, 72-3 cc)	Yes (Law on the Civil Confiscation of Property, No.	Yes (artt. 72, 72-3 cc)					

NETHERLANDS	Yes (forfeiture with seizure, § 33 et seq. cc; forfeiture without seizure, § 34 cc)	Yes (art. 36e CC)	Yes (s.c. deprivation of unlawfully obtained gains, art. 36 e cc)	Yes (in certain circumstances, withdrawal from circulation, art. 36 b, subsection 1, 3, cc) /		Yes (forfeiture with seizure, § 33 a, subsection 2, cc; value confiscation)	Yes (withdrawal from circulation, art. 36 b cc, security measure)	• Prosecution office	• Prosecution office	• Ministry of Justice > competent for issuing confiscation order certificate > CJIB - Central Judicial Collection Agency = central authority for drafting and sending the	• Prosecution office (recognition) • CIJB - Central Judicial Collection Agency – Ministry of Justice (execution)
POLAND	Yes (art. 44 cc)	Yes (artt. 44 (4), 45, cc)	Yes (artt. 44 a, 45 §2 cc)	Yes (art. 45 cc) /		Yes (art. 44 § 7, 45 § 3 cc)		• Court in judicial proceedings or preparatory proceedings	• Court in judicial proceedings or in prosecutor preparatory proceedings	• Criminal court of first instance	• Court in the district where the perpetrator has property, income or residence (recognition) • Relevant tax office (execution)
PORTUGAL	Yes (artt. 109 (1), 110 (1)(a) and (b) pc)	Yes (artt. 109 (3) and 110 (4) pc)	Yes (s.c. unexplained wealth confiscation, art. 7, l. no. 5/2002)	Yes (artt. 109 (2) and 110 (5) pc) /		Yes (art. 111 pc)		• Prosecutor's office • Judge	• Prosecutor's office	• Criminal Judge	• Prosecutor's office, Judge (execution) ARO (enforcement)
ROMANIA	Yes (s.c. special confiscation, art. 112 cc)	Yes (s.c. special confiscation, art. 112 cc)	Yes (art. 112 (1) cc, law no. 228/2020, can be ordered against the convicted person; against third parties; as value confiscation)	Yes (s.c. special confiscation, art. / 112 cc)		Yes (s.c. special confiscation, art. 112 cc; extended confiscation art. 112 (1) cc, law no. 228/2020)	Yes (s.c. precautionary measures under art. 249 ccp)	• Prosecutor (criminal investigation phase) • Preliminary chamber judge or the court (trial phase)	• Prosecutor's offices attached to the tribunals in the criminal investigation phase • Tribunals in the territorial circumscription the assets are located, or depending on the domicile/headquarters	• Courts	• 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)
SPAIN	Yes (Art. 127(1,2) CC)	Yes (Artt. 127(3), 127-quater(1), 127-septies CC).	Yes (Artt. 127-bis, 127-quinquies, 127-sexies CC).	Yes (Art. 127-ter CC)	The NCBC and the third-party confiscation are civil in nature.	Yes (Art. 127-quater CC)	Pre-trial freezing of assets (Precautionary measure), Art. 127-cties CC.	• Investigative judge or the public prosecutor in charge	• Investigative judge or the public prosecutor in charge	• Criminal judges or courts	• Criminal judge of the place where the property is located

Country	Problems/best practices			Collected Statistical Data																			
	Normative/institutional Problems	Practical Problems	Good practices	Confiscation orders						Freezing orders													
				Issued			Received			Issued			Received										
				2021	2022	2023	2021	2022	2023	2021	2022	2023	2021	2022	2023								
GERMANY	<ul style="list-style-type: none"> Cooperation between FIUs of other MS or third countries. Reliability of data provided by public prosecution offices to statistical offices. Lack of a central register for some assets, such as real estate and boats. Difficulty in determining property ownership due to real estate organization. 	<ul style="list-style-type: none"> Lack of a central register for certain types of assets. Difficulty in identifying property owners. Challenges in managing assets and cooperation channels. Lack of specialized staff in prosecution offices for asset management. Time taken to respond to requests for cooperation. 	<ul style="list-style-type: none"> Federal Criminal Police Office (BKA) and State police personnel specialized in financial investigations. Federal Financial Supervisory Authority (BaFin) database on holders and beneficiaries of bank accounts, car holders, immovable property with real estate registers, and company registers. BKA intranet internal Wikipedia on asset recovery with tips and best practices. Establishment of AMOs and their cooperation at international and EU levels. 	16				3						47						42			
ITALY	<ul style="list-style-type: none"> Issue with the third bona fide coverage under Art. 174(3) L. 42/2004. Conflict potential with art. 19(1) lett. e REG. Uncertainty about the applicable tool and competent authority. Conflicting provisions between Art. 174(3) L. 42/2004 and art. 19(1) lett. e REG. 	<ul style="list-style-type: none"> Insufficient, incomplete, and incorrect filling out of the certificate. Absence of a proper location, identification, and description of the goods. Absence of the description of the grounds on which the measure is based. The need for extensive investigations before issuing the certificate. 	<ul style="list-style-type: none"> Conducting extensive investigations before issuing certificates. Setting up a Joint Investigation Team (JIT) for proper requests. Seeking communication and assistance from the national member correspondent and the Atlas EUN website. Utilizing police cooperation offices, AROs, and dedicated networks like CARIN and STAR initiative. 	73 (overall freezing and confiscation orders)	25 (overall freezing and confiscation orders)	1 (0 executed, 1 pending)	11 (4 recognised, 1 executed, 1 non executed, 9 pending)							73 (overall freezing and confiscation orders)	25 (overall freezing and confiscation orders)	15 (12 recognised, 3 pending)	34 (12 recognised, 11 executed, 1 non executed, 19 pending)						
LITHUANIA		<ul style="list-style-type: none"> Use of the outdated form in council decision 2003/577/JHA on the execution of freezing orders against property or evidence, repealed by the REG, instead of the freezing certificate (annex 1) Freezing certificates received without translation Sections e (1) and (2) of EFO –summary of facts, nature and legal classification of the criminal offence, applicable legal provision – are incompletely filled in, references to law of the issuing MS not always included 	<ul style="list-style-type: none"> Guidelines to harmonize the practice of filling in the certificate 	5	1		8 (1 executed, 1 denied)	4					25	35		81 (22 executed, 14 denied)	161						
NETHERLANDS	<ul style="list-style-type: none"> Not in all MS national law is aligned with the REG 	<ul style="list-style-type: none"> Issuing MS sometimes do not tick all the boxes in Received outdated confiscation certificate (FD 2006/783/JHA) Received outdated freezing order (FD 2003/577/JHA) Received confiscation decision not issued by a Court Lack of knowledge of the REG Requested translation of the underlying confiscation order (only the certificate has to be translated under the REG) Problems with collecting statistical data (no national database on the REG, prosecutors unwilling to share information on ongoing criminal investigations) Judicial ATLAS website is opaque and unintuitive, resulting difficulties in identifying the competent authorities In three cases, the local jurisdiction of the prosecutor's office was incorrectly identified on the basis of incorrect data in received certificate on bank's headquarters 	<ul style="list-style-type: none"> Translate both the order and the certificate, to ease/speed up procedures in the receiving MS, especially in urgent cases Section H freezing certificate should state whether the freezing order relates to a previous order or request Section D freezing certificate should include a question whether the freezing is requested for the purpose of object or value confiscation. In ECO certificate the expiration date of the execution of the confiscation order is relevant information, should be included in the certificate 	12	10		27 (27 recognised, 10 executed, 1 refused)	60 (9 executed, 1 refused)					125	122		94 (93 recognised, 1 refused)	89 (89 recognised, 64 executed, 1 refused)						
POLAND		<ul style="list-style-type: none"> Problems with collecting reliable statistical data (no national database on the reg, inquiry via direct questions to PPP) Lack of adequate know-how on the distinction between the application of the Regulation and the EIO Unclear how national issuing authorities should proceed when what is at stake is merely an extension of the previous, already executed certificate (new certificate/"informal" extension?) Being the competence for enforcement income 	<ul style="list-style-type: none"> Concept of frozen property under art. 29 of the REG and requirements under art. 29, par. 2 needs clarification Art. 31 REG (sharing of costs) is not enough to solve the uncertainty on which MS should bear the cost for returning the assets to the victim, especially when assets are involved Introduction of the distinction between "affected persons" in the certificate, useful to distinguish between defendants and third parties, could influence, for example, the type and timing of notifications in the state of execution It would also be useful for the form to include a topic on the moment of notification of the execution of the measure 																				
PORTUGAL	<ul style="list-style-type: none"> Problems relating to the return of property/assets to the victim (most of the outgoing and incoming certificates involve property crimes, i.e. there is an identifiable victim), executing states are demanding provisional confiscation measure to return assets to the victim (uncertain meaning) Which MS should bear the cost for returning the assets to the victim? Discrepancy between national competent authorities cause problems and delays in the execution (e.g. execution freezing order issued by Belgium, instruction judge, to be recognized by Romanian prosecutor) Lack of a specific provision in relation to translation costs of orders National legislation does not specify what is the appeal against 	<ul style="list-style-type: none"> Problems with collecting reliable statistical data (no national database on the reg, inquiry via direct questions to PPP) Lack of adequate know-how on the distinction between the application of the Regulation and the EIO Unclear how national issuing authorities should proceed when what is at stake is merely an extension of the previous, already executed certificate (new certificate/"informal" extension?) Being the competence for enforcement income 	<ul style="list-style-type: none"> Introduction of the distinction between "affected persons" in the certificate, useful to distinguish between defendants and third parties, could influence, for example, the type and timing of notifications in the state of execution It would also be useful for the form to include a topic on the moment of notification of the execution of the measure 																				
ROMANIA	<ul style="list-style-type: none"> Conflicting legislation in Spain derived from the FD of 2003 and 2006 that sometimes conflicts with the REG. Challenges in handling confiscation orders from common-law and civil-law systems. Territorial problems related to Denmark and Gibraltar. Uncertainty about which agreements to apply. 	<ul style="list-style-type: none"> Problems with collecting reliable statistical data (no national database on the REG, prosecutors unwilling to share information on ongoing criminal investigations at a preliminary stage) Incomplete certificates/ issued on the basis of other cooperation instruments Length of time for receiving a response from executing authority 	<ul style="list-style-type: none"> Introduction of the distinction between "affected persons" in the certificate, useful to distinguish between defendants and third parties, could influence, for example, the type and timing of notifications in the state of execution It would also be useful for the form to include a topic on the moment of notification of the execution of the measure 																				
SPAIN	<ul style="list-style-type: none"> Conflicting legislation in Spain derived from the FD of 2003 and 2006 that sometimes conflicts with the REG. Challenges in handling confiscation orders from common-law and civil-law systems. Territorial problems related to Denmark and Gibraltar. Uncertainty about which agreements to apply. 	<ul style="list-style-type: none"> Short deadlines for compliance, especially problematic for freezing real estate. Execution challenges in high-activity regions like the Costa del Sol. Handling freezing and confiscation certificates in a timely manner. Additional requirements for certificates in Spain, including the inclusion of relevant national legislation and underlying judicial decisions. Translation issues and requirements for 	<ul style="list-style-type: none"> Ongoing efforts to resolve conflicts in legislation with a new bill. Cooperation with other countries to address territorial and agreement-related issues. Emphasis on the need for a proportionality test and translation requirements for certificates in Spain. Compliance with required deadlines in the face of practical challenges. 	3	6		3	1					47	33		42	52						

Notes

The data are still to be received

Data on countries in the national report

Average period required for the execution of freezing and confiscation orders: 2021 = 253 days; 2022 = 303 days.
NB: The national report indicates 45 cases of application of the REG as an issuing authority between 2020 and 2023, and 88 cases of application of the reg as an executing authority between 2020 and 2023. It does not specify the year and if they are freezing or confiscation orders.

The national report

NB: The national report does not indicate the year of the orders or whether they were confiscation or freezing orders. It reports the following data:

Prosecutor's offices: issuing authority – 10, executing authority – 62.
Courts: issuing authority – 2, executing authority – 24.

In the last workshop

Details about countries and crimes in the national report.