



EUROJUST

Eurojust support in asset recovery cases

29 November 2023

Conference Hard cases in Implementation of EU Regulation 1805/2018

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Recover – Grant Agreement No. 101091375

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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

Eurojust support

- ▶ Assist competent authorities in the EU Member States to effectively recover criminal assets and to contribute to the fight against transnational crime.

International cooperation is essential

**Asset
Tracing**

Asset
identification

Freezing

securing assets

Confiscation

conviction, or
non-conviction

Return/compensation,
restitution
of victims/

sharing of assets

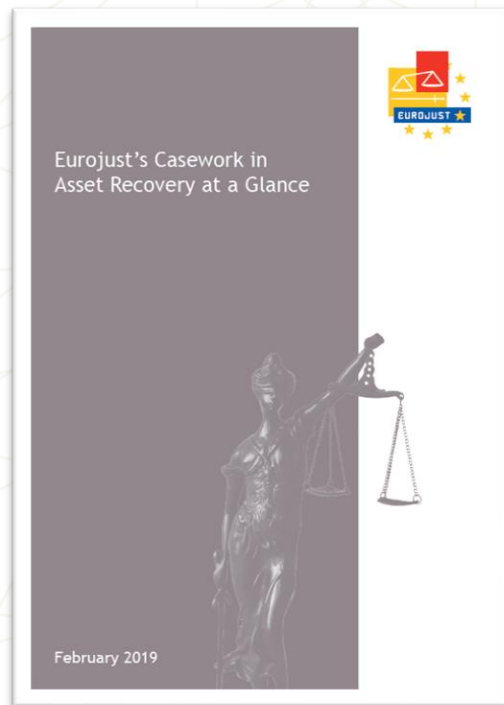
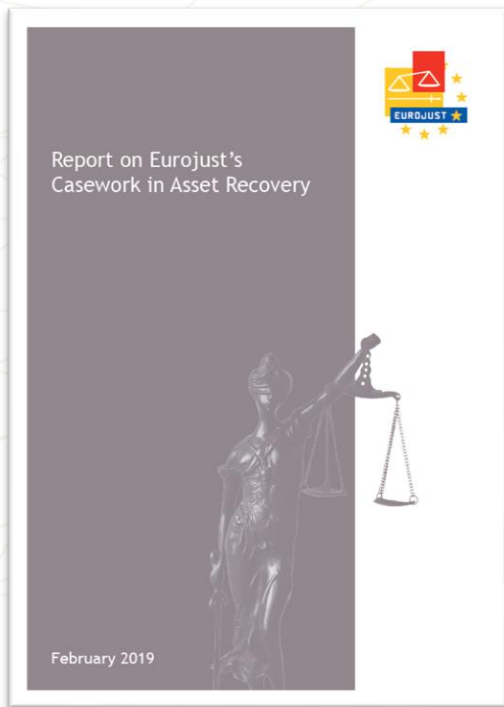
And re-use?

Challenges to International Cooperation

- ▶ Coordination and collaboration with domestic agencies and ministries in multiple jurisdictions with **different legal systems and procedures**
- ▶ **Complexity and variety of international instruments**
- ▶ Different views of interpretation on terms and international instruments
- ▶ Civil - Common Law Jurisdictions
- ▶ **Civil - Criminal Model**
- ▶ Concern about exchange of information for civil enquiries
- ▶ **Recognition and enforcement of civil confiscation orders**
- ▶ Limitations on Disclosure
- ▶ **Admissibility of Evidence**
- ▶ Security and Data Protection
- ▶ **Special invest. techniques + skills to “follow the money” beyond borders**
- ▶ **Ability to act quickly to avoid dissipation of the assets**
- ▶ Questions regarding asset sharing ...



Report Eurojust casework in Asset Recovery



- ▶ Overview legal/practical issues
- ▶ Support provided by Eurojust throughout whole asset recovery process
- ▶ Main judicial cooperation instruments used
- ▶ Best practice
- ▶ 2014-March 2018
- ▶ *At a Glance* (abbreviated version)

Asset Tracing

▶ Benefit of:

- **identifying the appropriate** corresponding competent national authority;
- concluding such an enquiry **prior** to seeking assistance;
- using **specialised forensic accountants** to both assist in the investigation of the financial information and serve as potential expert testimony,
- a **multi-disciplinary approach** to asset tracing at EU level, especially in larger cases, combining the skills of specialist authorities in the Member States;
- raising awareness among national practitioners on the statutory responsibilities of the **Asset Recovery Offices (AROs)** and **Financial Intelligence Units (FIUs)**;
- requesting a **full investigation** by the Asset Recovery Offices; and
- including a **financial enquiry** as an objective in **all joint investigation team agreements**.

Freezing and Confiscation

▶ Benefit of:

- **early consultation** between the competent authorities in the countries involved to avoid difficulties caused by the differences in national approaches to the Regulation;
- a **comprehensive understanding** of the breadth and limitations of EU and international legal instruments as a necessary guide to the correct choice of instrument, for instance, when seeking recognition of a freezing order or if the assets sought to be frozen are both criminal proceeds and evidence;
- **anticipating** questions relative to **the rights of third parties**;
- instigating a **parallel investigation** or setting a up a **joint investigation team** when the information contained in a freezing order or Letter of Request may identify criminality in the executing/requested State; and
- **understanding the distinctions in the ultimate confiscation instrument to be applied**, *e.g.* value-based, extended confiscation, non-conviction-based and unexplained wealth orders.

Asset disposal

- ▶ **Benefit of:**
 - **anticipating** potential causes for delay to **avoid unnecessary loss of value**, such as **early clarification of whether the assets were confiscated as a proceed of crime**, which may be sold, or as **evidence**, which may not be sold;
 - **anticipating** requirements **such as provisions for compensation**, compliance with notice provisions and **potential appointment of a judicial administrator for a company (liquidator)**, all of which can be burdensome and create delays;
 - considering, if possible, the **early sale of assets** to avoid both loss in value and high management costs; and
 - **reassessing the value of a confiscation order** to take into account the ultimate realisation value of a sold property, as difficulties often occur due to **significant differences between the estimated value and the value realised**.

Eurojust support

- ▶ **Benefit of:**
 - the **coordination** of a joint investigative strategy and intelligence activities;
 - the **exchange of relevant information** on the extent and limitations of relevant domestic, EU and international remedies;
 - **clarification of domestic requirements** between issuing/requesting and executing/requested authorities;
 - the **ability to harmonise and resolve** contrasting views of the effect and requirements of EU and international legal instruments;
 - providing a **channel of communication** between the concerned Member States and third States through Liaison Prosecutors at Eurojust and Eurojust contact points;
 - the **coordination of the transmission and execution** of EIOs and LoRs, freezing and confiscation certificates between competent authorities in complex cases and ongoing parallel investigations;
 - the assistance in **drafting** EIOs and LoRs and freezing and confiscation certificates;
 - **advice** on the requirements for official translations;
 - the potential for an ongoing case review, including **links between parallel investigations**; and
 - the **ability to augment mutual trust between investigators and prosecutors**.

Example of a Eurojust case (1/2)

- ▶ Eurojust assisted in the coordination of an action day in the countries involved through its coordination centre at Eurojust, during which various freezing orders in different countries, among many other investigative measures, **were simultaneously executed**, and during which requests/orders were promptly supplemented, as needed.
- ▶ Eurojust's support with regard to the freezing of assets **during a coordination centre at Eurojust**, in that case, included:
 - **In the course of the searches**, bank transfers appeared to have been made to two other MSs and a third State in amounts totalling approximately **EUR 3 million**;
 - This situation led to a **new LoR** being issued by one of the involved MSs **during the coordination centre by the prosecutor of that MS (MS A) attending the coordination centre** to the third State seeking the freezing of the money, and Article 9 certificates being issued to MS B and MS C in relation to the identified bank accounts;
 - Eurojust also confirmed to the prosecutor of MS A attending the coordination centre the **language requirements** for MS B and MS C as executing MSs in the framework of the execution of freezing orders, *i.e.* the languages accepted in these MSs;

Example of a Eurojust case (2/2)

- Eurojust assisted with the **translation** of the Article 9 certificates into the languages of the executing States;
- The translated Article 9 certificates and the respective national freezing order (not translated due to urgency) were **transmitted via Eurojust** (also via FIUs) to the executing MSs;
- **Subsequent transmission of additional information by the prosecutor of MS A attending the coordination centre** to MS B, **via Eurojust**, regarding the role of one of the main suspects in the OCG, his link to the bank accounts in question, and confirmation that a freezing order from MS A had been issued;
- Authorities from MS B informed the relevant parties, via Eurojust, that the freezing order from MS A would be executed **the next day** and that the translated freezing order accompanying the already translated Article 9 certificate **was required without delay**; and
- A total of approximately **EUR 3 million were frozen** in execution of two freezing orders and of an LoR to a third State **issued during the coordination centre by the prosecutor attending the coordination centre**.

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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