

# **RECOVER – Mutual recognition of freezing and confiscation orders between efficiency and the rule of law (GA 101091375)**

*D5.1 – Reports on the AROs in MS and management of frozen assets (Deliverable no. 13)*



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# 1. Structure and Functioning of Asset Recovery Offices

## 1.1. Introduction

The analysis of data on the implementation of Regulation (EU) 2018/1805 indicates a concerning situation. The following chart displays the orders of confiscation and freezing that EU member states have received from, and sent to, other member states, based on information from the European Commission's statistical office. Despite Article 35 of the Regulation mandating that member states must annually submit detailed statistics on its implementation, the data provided is notably fragmented. In particular, the format and detail of the data vary significantly. Some member states submit thorough details including the year of reference, the crime related to the order, the assets involved, and the result of the procedure. However, many others fail to report on these aspects or provide vague and incomplete data. This inconsistency hampers the ability to achieve a comprehensive understanding of how the regulation is applied across Europe.

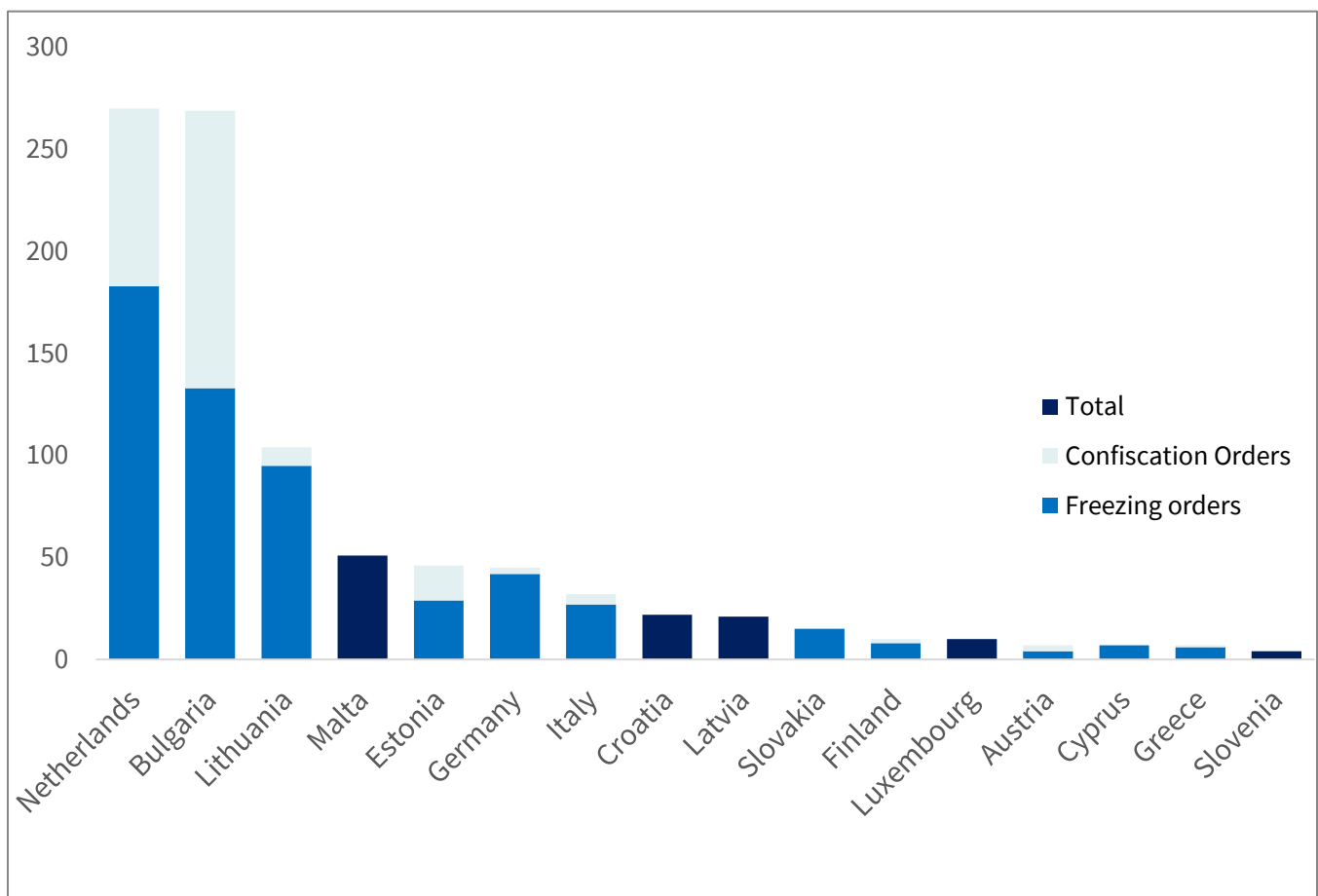
We have addressed the absence of clear and detailed data concerning the orders dispatched and received by each member state by broadening our information sources. Concentrating on the focus of this working package — which primarily involves the implementation of the regulation by the Asset Recovery Offices and the management of assets seized under the regulation — we have consequently compiled the following additional sources of information:

- Developed and distributed a comprehensive questionnaire to the project partners, primarily asset recovery offices and general prosecutor offices.
- Acquired alternative data on the structure and operations of the Asset Recovery Offices (AROs), and their collaborative efforts.
- Conducted interviews with internal experts at the AROs in member countries to gauge their awareness and utilization of the regulation.
- Benefited from the exchange of ideas and insights during two workshops we held, where partners and external experts discussed challenges with regulatory application and potential solutions.

Overall, the application and awareness of the regulation seem to be significantly lacking. We attribute this primarily to three factors:

1. Overlapping structures and pathways among AROs, stemming from the separation between judicial AROs and police AROs, which fall under different national administrative frameworks and often fail to communicate effectively.
2. A deficient culture among prosecutors and a weak inclination towards international cooperation.
3. Inadequate asset tracing activities at the state level.

**Figure 1 – Seizure and confiscation orders under Reg. (EU) 2018/1805 received by Member States in 2021 and 2022**



Source: Transcrime analysis based on data from the European Commission.

In **Figure 1**, light blue represents seizure orders, aqua indicates freezing orders, and dark blue denotes the sum of both types of orders for cases where detailed breakdowns were unavailable. The data provided by the commission does not reveal the outcomes of these proceedings, but rather the requests each member state has received. Consequently, we do not have information on how many of these orders were successfully executed. However, additional information concerning Italy

suggests that only a small fraction of these orders likely results in positive outcomes, with an even smaller number leading to the actual confiscation of assets.

The graph consolidates data for the years 2021 and 2022, as annual details were not available for several member states. Key observations from the graph include:

- **Low Volume of Orders:** The graph displays a relatively low number of orders, particularly when compared to the internal application of such orders by each member state. This suggests that the cross-border aspect of these orders may not be as extensively utilized or may lack effectiveness.
- **Small States Receiving More Orders:** Smaller states such as the Netherlands, Bulgaria, and Malta appear to receive a higher number of orders than larger European countries. This may reflect a greater level of cooperation with other states or specific legal or financial frameworks in these smaller states that facilitate involvement in such proceedings.
- **Predominance of Freezing Orders:** Freezing orders, shown in light blue, constitute a significant portion of the total orders. This implies that these temporary measures are more commonly requested than permanent confiscations, suggesting a preference for less permanent solutions that may require a lower legal threshold for issuance.
- **Data on Requests Only:** It is crucial to note that the data only represents the number of orders received, not those recognized or executed. Therefore, the graph highlights the activity in terms of requests but does not indicate the effectiveness or final outcomes of these orders, likely leading to a much lower actual implementation rate.

The goal of the first part of this report is to explore how Asset Recovery Offices (AROs) implement Regulation (EU) 2018/1805 and to what extent inefficient application depends on the inefficiencies in ARO cooperation across Europe. We will begin with a brief introduction to the role and structure of AROs in Europe.

## 1.2 The Legislative Framework of Asset Recovery Offices

Under the Council Decision 2007/845/JHA, the European Union mandated that all Member States must establish national Asset Recovery Offices (AROs). These offices serve as specialized institutions tasked with a critical role: tracing and identifying properties linked to criminal activities. Such properties may become subjects of judicial orders for freezing, seizure, or confiscation during criminal proceedings or, when permissible, civil proceedings. This initiative aims to enhance the effectiveness of law enforcement across the EU in dealing with proceeds from crime. Member States are permitted to establish up to two AROs to ensure comprehensive coverage and specialization, provided these offices have distinct and clearly defined roles to maximize operational efficiency.



AROs are pivotal in fostering cooperation among Member States, thereby enhancing the capability to trace and freeze criminal assets efficiently. These offices not only exchange vital information but also share best practices concerning asset recovery. This collaborative effort is particularly crucial for handling assets that span multiple jurisdictions. When an ARO in one Member State requests information from its counterpart in another, the request must include detailed explanations of the subject, purpose, and the legal context of the proceedings. This specificity helps to streamline the process and ensures that the response is both timely and pertinent.

The European Union has sought to standardize the approach to asset freezing and confiscation through the implementation of Directive 2014/42/EU. This directive was pivotal in establishing a framework for the confiscation of criminal proceeds and instrumentalities based on a final conviction, also mandating the creation of centralized offices dedicated to managing these assets. Building on this foundation, the EU introduced Directive 2024/1260 on April 24, 2024, which sets forth minimum rules for tracing, identifying, freezing, confiscating, and managing criminal proceeds. This newer directive underscores the importance of designating at least one ARO per Member State and introduces sophisticated tools for accessing a range of public databases and registers, such as those for real estate and commercial entities, thereby enhancing the investigative capabilities of AROs.

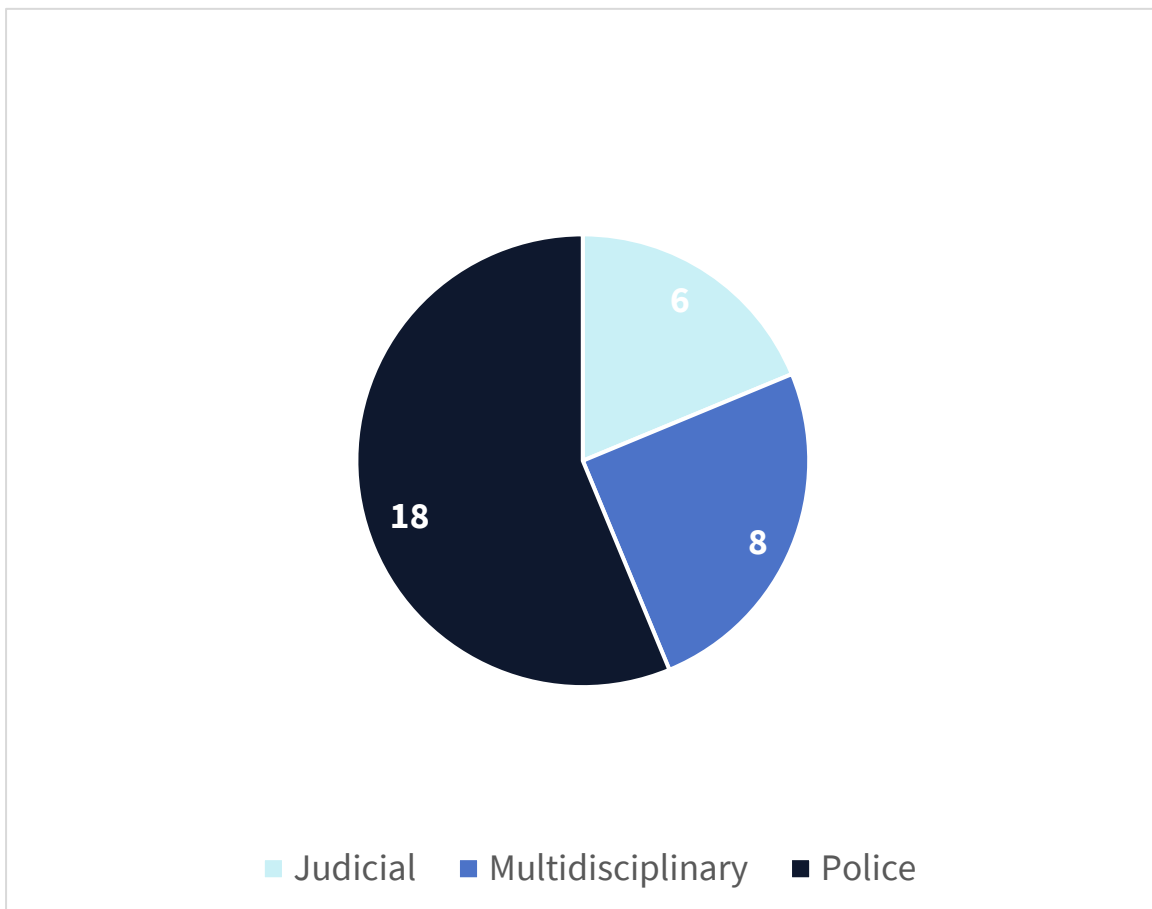
The 2007 Decision promotes the implementation of tools designed to facilitate robust information exchange between AROs across Member States. Efficient and legally compliant information exchange is vital for effective asset recovery operations. Requests for information must be meticulously detailed, outlining the object, relevance, nature of proceedings, and the specific criminal offenses involved, ensuring that the exchange is not only efficient but also secure. Directive 2024/1260 further advances this by enhancing access to data stored in national databases and registers, with strict controls to ensure that only designated and authorized personnel can access sensitive information. This directive also emphasizes the importance of training ARO staff to handle data securely and competently, thereby protecting national security and personal privacy.

Cooperation among AROs is stratified into three levels: national, within the EU, and with third countries. At the national level, effective cooperation is essential, especially in states with multiple AROs, which must coordinate closely to avoid overlaps and ensure comprehensive coverage of investigations. Internationally, AROs face challenges such as discrepancies in criminal laws between Member States, which can complicate the enforcement of cross-border asset recovery. Other hurdles include variations in procedural timescales and the handling of confidential information. The new directives aim to streamline these processes and set clear standards for cooperation and information exchange.

The EU emphasizes the social reuse of confiscated assets, promoting their deployment for public benefit or in support of third countries facing crises. The Directive 2024/1260 introduces innovative methods for the reuse of assets, ensuring that they contribute positively beyond their confiscation. It mandates the establishment of Asset Management Offices and designates competent authorities responsible for the disposal and management of these assets. This strategic framework is crucial for maintaining the economic value of frozen assets and preventing their illicit acquisition before final confiscation orders are issued. The directives collectively enhance the EU's capabilities in asset recovery, ensuring that Member States are equipped with the necessary tools and resources to manage assets effectively and support broader criminal justice objectives.

### 1.3. Structure of Asset Recovery Offices

*Figure 2 – Judicial, police, and multidisciplinary AROs in the EU*

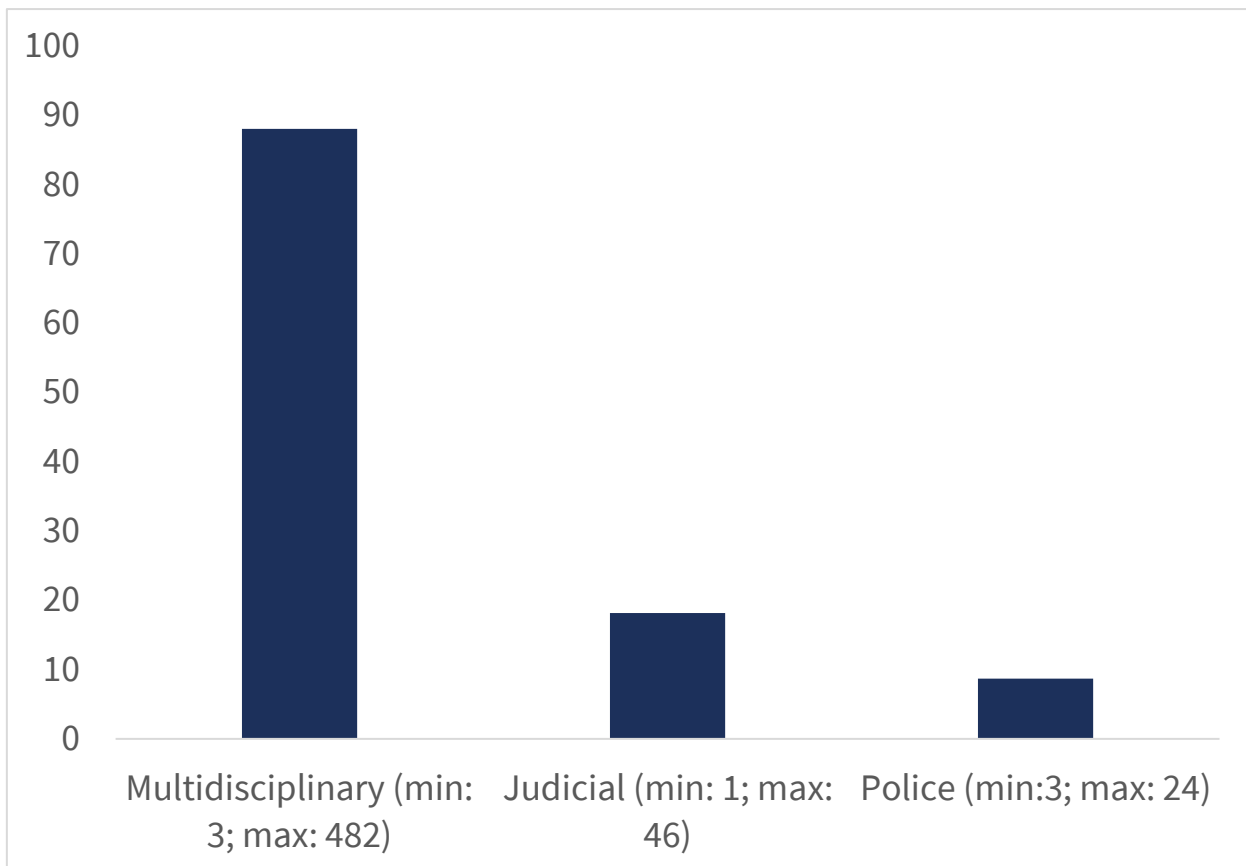


Source: Transcrime analysis based on data provided by the Criminal Analysis Service of the Department of Public Security of the Italian Ministry of the Interior



**Figure 2** categorizes the types of Asset Recovery Offices (AROs) within the European Union into three types: Police, Multidisciplinary, and Judicial. **Police AROs**, represented in dark blue, are the most common, with 18 offices throughout the EU. They are primarily situated within police departments or other law enforcement entities. Their main responsibilities involve operational aspects of asset recovery. They play a crucial role in asset tracing and maintain contact with other international law enforcement authorities. **Multidisciplinary AROs** (shown in medium blue) number 8 in total. These offices combine resources and expertise from both law enforcement and judicial branches, creating a hybrid approach that facilitates better coordination between different agencies. This model is particularly effective in navigating complex cases that require diverse skill sets. **Judicial AROs** (in light blue) are the least common, with only 6 such offices in the EU. These are typically part of or closely associated with the judiciary, focusing on the legal aspects of asset recovery. Relevant to our interests, they intervene in the coordination between judicial authorities to facilitate and assist in the execution of freezing and confiscation orders coming from abroad.

**Figure 3 – Average Staff per ARO category**

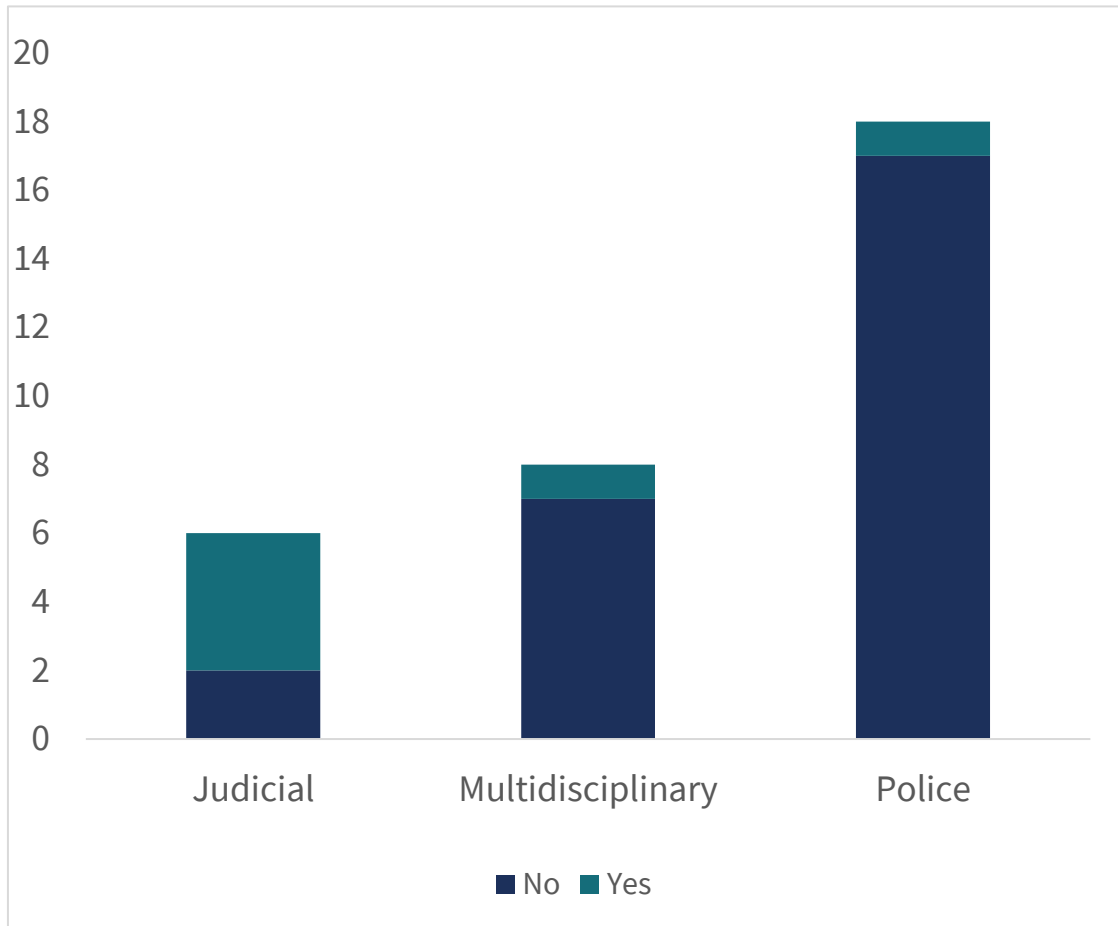


Source: Transcrime analysis based on data provided by the Criminal Analysis Service of the Department of Public Security of the Italian Ministry of the Interior.

**Figure 3** displays the average number of staff per ARO category within the EU, with additional details on the minimum and maximum staff size for each type. **Multidisciplinary AROs** show the highest average staff number at over 90, demonstrating a significant staffing level. The range in staff size varies from a minimum of 3 to a maximum of 482, indicating that some multidisciplinary AROs are quite large and possibly handle a broad scope of responsibilities. The high average suggests that these AROs combine resources from various sectors, necessitating more personnel to manage diverse tasks ranging from legal proceedings to operational enforcement. As regards **Judicial AROs**, the average staff number in this category is approximately 20. The staffing range is narrower, from 1 to 46, reflecting a more focused or perhaps less resource-intensive operation. **Police AROs** have the smallest average staff, around 10, with staff numbers ranging from 3 to 24. The relatively modest size suggests that these AROs are highly specialized, focusing primarily on the enforcement side of asset recovery.

Overall, the staffing variations among the ARO types likely reflect the differing focuses and operational scopes of each category. Multidisciplinary AROs, with their extensive staffing, may handle more complex and varied tasks, while Judicial and Police AROs might be more specialized, focusing on legal proceedings and enforcement actions, respectively.

**Figure 4 – AROs are central point for incoming MLA requests related to asset recovery**



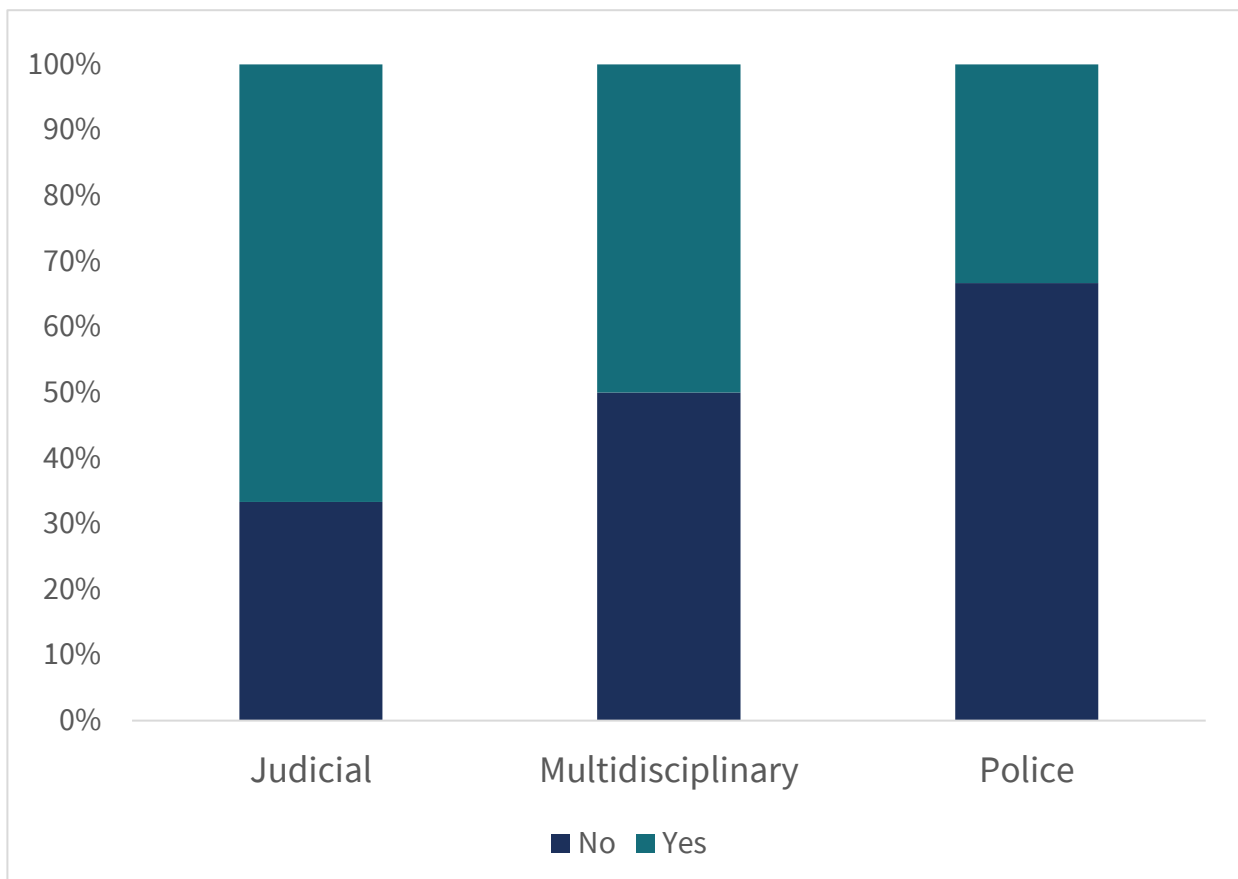
Source: Transcrime analysis based on data provided by the Criminal Analysis Service of the Department of Public Security of the Italian Ministry of the Interior.

**Figure 4** details how AROs within the EU function as central points for handling incoming Mutual Legal Assistance (MLA) requests related to asset recovery. It compares the information from Judicial, Multidisciplinary, and Police AROs. Out of a total of six Judicial AROs, four act as the central point for handling MLA requests, while two do not. This indicates a strong tendency for Judicial AROs to be involved directly in the management of international legal assistance, which aligns with their role in overseeing legal standards and procedural integrity. Among the eight Multidisciplinary AROs, only one serves as the central point for MLA requests, with the remaining seven not fulfilling this role. This suggests that while these AROs are designed to handle various aspects of asset recovery by combining resources from different sectors, they might not typically engage directly with international MLA processes, possibly due to their focus being spread across diverse operational areas.

It is standard practice for Police Asset Recovery Offices (AROs) not to serve as the primary contact for MLA requests, as their principal focus lies in operational activities and asset tracing rather than in judicial cooperation. Notably, among the 18 established Police AROs, only one is designated as the central point for handling MLA requests. This configuration may seem unexpected given the operational nature of police work, which might ostensibly qualify them for such roles. However, this indicates that MLA requests are likely managed by other specialized mechanisms or departments within the police force, or that these responsibilities are centralized in specific offices not included in the total count of Police AROs.

Overall, the trend shows that Judicial AROs are most likely to be involved in handling MLA requests, indicating their crucial role in international legal cooperation. In contrast, Multidisciplinary and Police AROs appear less involved in this aspect, highlighting a more focused or localized approach to asset recovery within these categories.

**Figure 5 – Aros Collecting relevant statistics on freezing and confiscation at a national level**



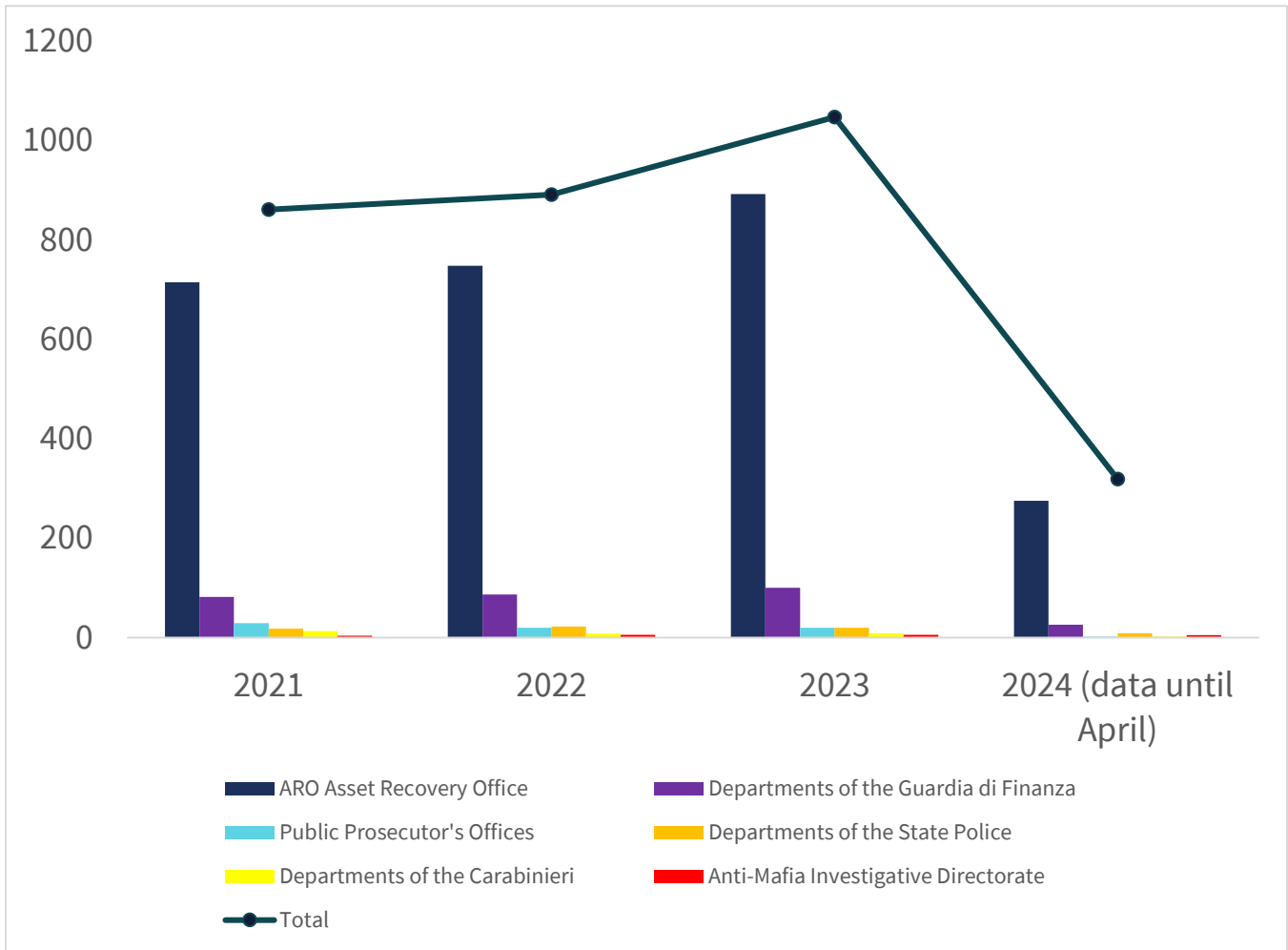
Source: Transcrime analysis based on data from the European Commission.

**Figure 5** details the percentage of AROs that are responsible for collecting relevant statistics on freezing and confiscation at a national level. Approximately 65% of Judicial AROs collect statistics on freezing and confiscation. This majority indicates a strong emphasis on data collection within these offices, which aligns with their role in overseeing the legal processes involved in asset recovery. However, it also suggests that a notable portion (35%) does not engage in this activity, possibly due to resource limitations or specific operational focuses that do not prioritize data aggregation. The chart suggests that about 50% of Multidisciplinary AROs collect these statistics. This balance likely reflects the diverse roles and responsibilities inherent in these offices, where data collection may vary significantly depending on the combination of disciplinary functions they encompass. Only 30% of Police AROs are involved in collecting statistics on freezing and confiscation, while 70% do not. This relatively low percentage could indicate that many Police AROs prioritize direct operational activities over the systematic collection of statistical data, or that other units within the police or law enforcement infrastructure might be tasked with data collection.

#### **1.4. Case study: Italy**

Regarding Italy, thanks to the kind cooperation of the Central Directorate of Criminal Police at the Italian Ministry of the Interior, which houses the Italian Asset Recovery Office (ARO), we have obtained more specific details about the requests for assistance received. These detailed insights will serve as a valuable case study to illustrate the operations and effectiveness of a European ARO. By examining these cases, we can better understand the role and impact of the ARO in facilitating cross-border cooperation and asset recovery efforts within the European Union.

Figure 6 – Requests for Assistance to the Italian ARO (2021-2024)



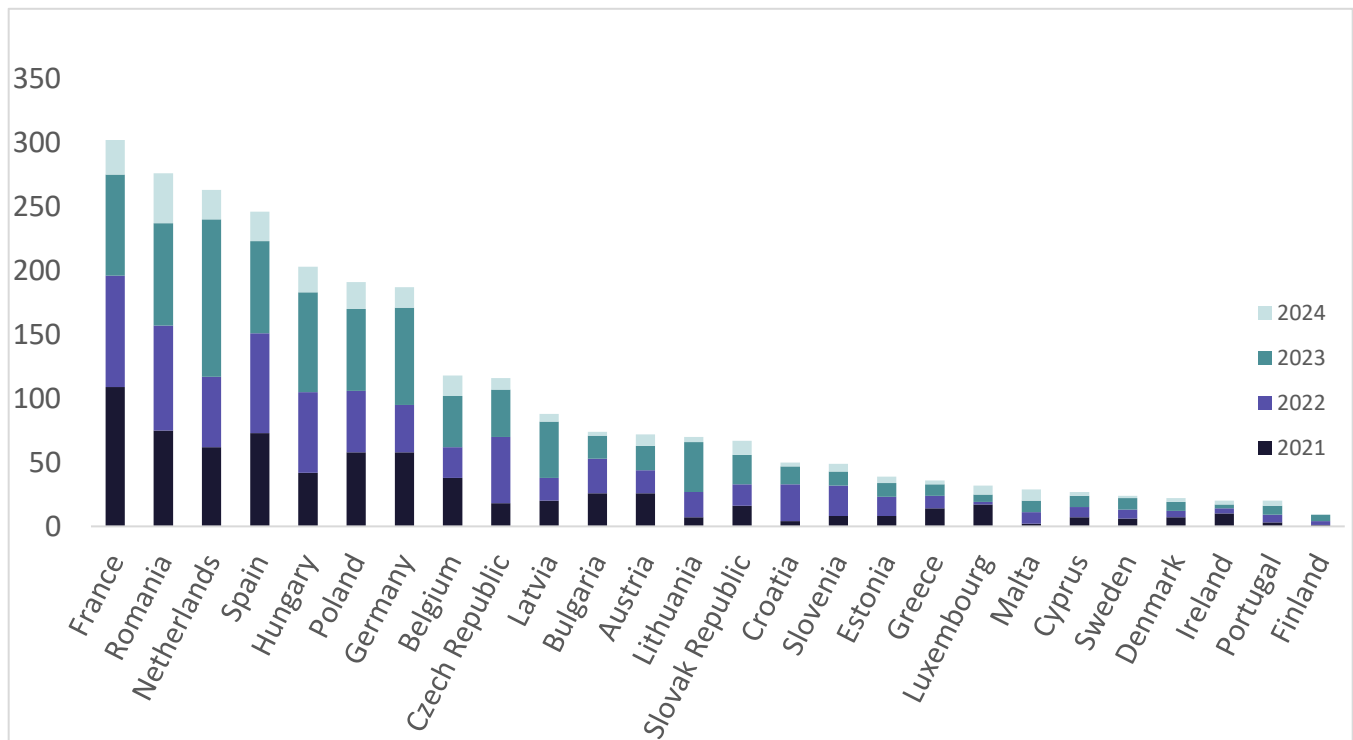
Source: Transcrime analysis based on data provided by the Criminal Analysis Service of the Department of Public Security of the Italian Ministry of the Interior.

**Figure 6** provides a detailed overview of the assistance requests received by the Italian ARO from 2021 through April 2024, with each bar color representing a different source. The data is categorized into several sources: the foreign AROs (blue), and the internal authorities, like the Public Prosecutor's Offices (purple), Departments of the Carabinieri (yellow), Departments of the Guardia di Finanza (purple), Departments of the State Police (orange), and the Anti-Mafia Investigative Directorate (red).

There is a noticeable upward trend in the total number of requests, as illustrated by the line graph. This suggests an increasing reliance or effectiveness of the ARO's role within both national and international jurisdictions. Requests from **other AROs abroad** highlight the international collaboration in asset recovery efforts. These are likely included within the blue bars representing the ARO Asset Recovery Office. **National requests** come from various Italian institutions like the Guardia di Finanza and Public Prosecutor's Offices, which deal with financial and legal aspects of crime and asset recovery. These are represented in the distinct colors for each department, showing a substantial internal contribution to the ARO's workload. The Guardia di Finanza and the Public Prosecutor's Offices show varying levels of activity over the years but remain critical contributors to the ARO's operations. The variability in their contributions could reflect changes in internal policies, focus areas, or specific large cases handled in different years.

The chart does not provide specifics on the nature of the assistance requests, such as the types of assets involved or the complexity of the cases. This information could significantly enhance the understanding of the ARO's operational focus and challenges.

Figure 7 – Countries of Origin of Foreign Requests to the Italian ARO



Source: Transcrime analysis based on data provided by the Criminal Analysis Service of the Department of Public Security of the Italian Ministry of the Interior.

**Figure 7** visualizes the number of assistance requests received by the Italian Asset Recovery Office (ARO) from various European countries over the years 2021 through 2024. Each bar represents a different country, with the colors blue, purple, green, and teal corresponding to the years 2021, 2022, 2023, and 2024, respectively.

**France** leads with the highest number of requests across all four years, indicating a significant level of collaboration or need for assistance in asset recovery operations involving Italian and French authorities. **Romania** and **Netherlands** follow, showing robust interaction with the Italian ARO. The substantial numbers from these countries might reflect either a high volume of mutual legal assistance cases or significant bilateral issues related to asset recovery. For many countries, such as **Germany, Belgium,** and the **Czech Republic,** there is a noticeable consistency in the number of requests over the years, suggesting ongoing, stable collaborations. In contrast, some countries like **Austria** and **Lithuania** show variations which might indicate fluctuating cases or specific incidents that required more intensive cooperation in certain years. Countries like **Luxembourg, Malta,** and **Cyprus,** despite their smaller size and presumably lesser volume of overall criminal activity involving asset recovery, still maintain a presence on the chart, underscoring the pan-European scope of asset recovery efforts. The data for 2024, shown in teal, indicates that the trend of requests from various countries is either continuing at a similar pace as previous years or slightly increasing, which can be seen in countries like **France** and **Romania.** This suggests ongoing reliance on and effectiveness of the ARO's services within the European legal and criminal justice framework.



## 2. Management of frozen and confiscated assets

### 2.1. Brief Overview on the Management of Frozen and Confiscated Assets in Europe

Effective management of frozen and confiscated assets is critical to preserving their value until a final confiscation order is issued. Historically, the European Union has seen variability in the implementation of common rules for asset management. The Directive 2014/42/EU established baseline guidelines requiring EU countries to adopt necessary measures to ensure adequate asset management processes (European Parliament, Council of the European Union 2014). Previously, frozen assets often remained idle for extended periods, leading to significant value depreciation before final confiscation.

To address these issues, several Member States implemented uniform rules governing the management of frozen and confiscated assets until their ultimate disposal. Building on this foundation, the Directive 2024/1260 introduced new tools aimed at enhancing these management processes (European Parliament, Council of the European Union 2024). Among the key measures introduced to prevent asset dispersion, deterioration, or loss of value, Member States may adopt the following strategies (Sakellaraki Anna 2022):

- **Pre-seizure planning** involves assessing the cost-effectiveness of seizure activities, specifically determining if the expenses to preserve an asset exceed its value (Milieu and European Commission 2021). Authorities are encouraged to conduct preliminary assessments of management costs and develop strategies to preserve and optimize the asset's value until its disposal (European Parliament, Council of the European Union 2024).
- **Interlocutory sales** permit the transfer or sale of assets under freezing orders before a final confiscation decision is made. This approach is particularly useful for assets that are perishable or likely to depreciate quickly, or when storage and maintenance costs are disproportionately high. It also applies to assets requiring special handling or expertise not readily available. Interlocutory sales have proven effective at a cross-border level, though EU States may regulate this practice to suit local conditions (European Parliament, Council of the European Union 2024).
- **Establishment of Asset Management Offices (AMOs):** Member States are tasked with defining the structure, competencies, and management techniques of AMOs. In some jurisdictions, these offices are responsible for managing both frozen and seized assets, while in others, they handle the management and disposal of confiscated assets. The new Directive encourages an efficient management process supported by cooperation with other competent authorities involved in asset tracing, freezing, and confiscation. It also promotes

cross-border cooperation for managing frozen and confiscated assets (European Parliament, Council of the European Union 2024).

Regarding the varied methods for asset management, most Member States designate specialized authorities to oversee frozen and confiscated assets. Techniques vary by country and asset type, with movable goods often subject to interlocutory sales. Management of unique properties, such as luxury items, collections, or building materials, requires more intricate processes (Milieu and European Commission 2021).

Asset management is decentralized in most EU countries, involving multiple authorities depending on the asset type and national framework:

- In some states, various authorities decide on the management of assets;
- Several offices may be tasked with managing different types of goods;
- Federal states often have decentralized frameworks tailored to their organizational structure;
- Typically, judicial authorities delegate management responsibilities to police, courts, or administrators.

The creation of central registries, as seen in Belgium, the Netherlands, and Romania, supports competent authorities by facilitating asset tracing and improving registration processes. For instance, the UK employs the Joint Asset Recovery Database (JARD), a central repository for seized asset information. However, many EU countries still lack a central registry, complicating the management and registration process (Milieu and European Commission 2021).

Additionally, establishing a central registry for assets that have been frozen or confiscated is crucial for enhancing international cooperation. While national cooperation functions smoothly, cross-border cooperation within the EU and with third countries often faces challenges, including procedural delays and difficulties in long-term asset management and disposal. International cooperation, particularly with neighboring or third countries, often incurs additional costs for asset management and disposal (United Nations 2003).

In terms of data collection, various studies have shown that AMOs typically handle statistical data collection tasks based on their role in asset management. Some countries have centralized data collection systems, while others use decentralized systems where multiple organizations manage and register their data independently. Judicial authorities responsible for managing frozen and confiscated assets generally do not collect data, leading to additional challenges in this area (Milieu and European Commission 2021).

## 2.2. Provisions by the Reg. (EU) 2018/1805

Management and disposal of frozen and confiscated property are governed by the laws of the executing State, which is tasked with maintaining the property's value and may sell or transfer it to prevent depreciation. The remaining proceeds or property after transactions are retained by the executing State until the necessary legal documents are processed and the related confiscation order is executed. The executing State is not obligated to sell or return items if they are cultural objects, ensuring no interference with obligations concerning the return of cultural objects. (REG 2018/1805, Art. 28; Directive 2014/42/EU, Art. 10; Directive 2014/60/EU).

Procedures for the restitution of frozen property to victims are detailed, requiring a decision from the issuing or another competent authority of the issuing State. This decision must be included in the freezing certificate or communicated to the executing authority. The executing authority must then ensure the property's prompt restitution to the victim, adhering to procedural norms and verifying that the victim's claim is uncontested and the property is not needed as evidence or infringing on others' rights. The executing authority must also inform the issuing authority when the property is directly transferred to the victim. If restitution conditions are not met, the executing authority consults with the issuing authority for resolution. (REG 2018/1805, Art. 29).

Procedures for the disposal of confiscated property or money from sales are specified, with the issuing authority making decisions on restitution or compensation. The executing authority must ensure prompt transfer of property or proceeds, possibly through the issuing State, and notify the issuing authority of direct transfers. If restitution of the property is not feasible, the monetary equivalent from the property's confiscation will be provided to the victim. Rules for disposing of remaining properties or proceeds include transferring funds or properties to the issuing State under certain conditions or using them for public or social purposes, with the issuing State's consent. Additionally, if the value from the execution of the confiscation order does not exceed EUR 10,000, it accrues to the executing State; if it exceeds EUR 10,000, 50% is transferred to the issuing State, unless otherwise agreed. (REG 2018/1805, Art. 30).

The obligation of the executing authority to inform affected persons about the execution of a freezing order or the recognition and execution of a confiscation order is emphasized. The notification should detail the issuing authority, available legal remedies, and the reasons for the order, with provisions for assistance from the issuing authority if needed. (REG 2018/1805, Art. 32).

Legal remedies available to affected persons in the executing State against the recognition and execution of freezing and confiscation orders are delineated. The right to challenge these orders in court is guaranteed, although substantive reasons for the orders cannot be contested. The issuing State must be informed of any legal remedy invoked. (REG 2018/1805, Art. 33).

Financial responsibilities related to damages caused by the execution of freezing or confiscation orders are addressed. The executing State, if liable for damages under its law, shall be reimbursed by the issuing State unless the damage was solely due to the conduct of the executing State. This reimbursement arrangement does not affect the rights under national laws of natural or legal persons to seek compensation for damages. (REG 2018/1805, Art. 34).

### **2.3. Case studies by partners**

As mentioned, Regulation (EU) 2018/1805 is poorly enforced, especially when it comes to managing assets confiscated or frozen abroad. Despite this, the various workshops held during the project have allowed us to gather several case studies, provided mainly by our partners, regarding the management of foreign assets. This section presents these cases.

#### **2.3.1. Asset Management and Legal Enforcement in Romania (ROMANIA - ANABI)**

On ANABI's request, an ARO provided data on the ownership of a vehicle by convicted persons and the conclusion of a rental contract worth €14,000 per year. Subsequently, ANABI referred the matter to the enforcement court, in order to go through the procedure for the recognition of the freezing and confiscation orders in accordance with Regulation (EU) 2018/1805. The Court accepted ANABI's request and initiated the procedure for the recognition of the freezing order and the confiscation order, and the requests were sent to the MS's courts. Following the recognition of the freezing order by the competent court in April 2023, the bank accounts of the convicted persons lodged a request for review in the first instance, which was rejected, and an appeal to the High Court of Cassation and Justice in the second instance, which has not yet been decided. The recognition of the confiscation order by the MS's authorities on the basis of the provisions of Regulation (EU) 2018/1805 and execution of the orders in accordance with the MS's national law were completed. If assets subject to confiscation are identified, Romania and the MS will conclude an asset-sharing agreement, the competence in this matter being vested, according to Law no. 318/2015, in the Minister of Justice and ANABI. According to Art. 42, ANABI is authorized to negotiate and facilitate the conclusion of bilateral agreements on the sharing of confiscated assets. With the approval of the Minister of Justice, ANABI may conclude bilateral agreements for the sharing of confiscated assets.

### **2.3.2. Challenges of Asset Management in Italy and Romania (ITALY - ANABI)**

The assets we have in administration under freezing orders recognized under the Regulation are not numerous. In relation to a vehicle, selling was requested to the prosecutor, but until this moment, we have not received an answer. If the prosecutor considers that the request is founded, he will have to refer it to a judge. Also, in a particular case, the Prosecutor's Office next to the Bucharest Court, which recognized a freezing order sent by the Italian authorities, informed us that the car under the administration of ANABI was confiscated by a court in Italy - the Court of Genoa. We approached the Romanian courts to find out if they had been notified of the recognition of the confiscation order. The national courts informed us that, until this moment, they had not received such a notification. The referral from the Prosecutor's Office next to the Bucharest Court was sent in November 2023.

### **2.3.3. Property Rights and Confiscation Challenges in Austria (AUSTRIA - ROMANIA)**

A confiscation order issued by Austria was recognized and an apartment in Romania was confiscated. According to the land register and the sales contract, the apartment belonged to the convicted person. In the procedure for the forced execution of the order, the ex-wife of the convicted person, who did not participate in the procedure for issuing and recognizing the confiscation order, submitted an appeal to the execution by which she requested the judicial division, citing the fact that she is a co-owner of the apartment. The ex-wife proved that, although she was not mentioned in the land register, nor in the sales contract, at the time of the purchase of the apartment she was married to the person targeted by the confiscation order. According to Romanian civil law, assets acquired during marriage are presumed to be jointly acquired by both spouses, even if only one of the two spouses is mentioned in the contract of sale. The civil court found that the apartment is a joint property, establishing the share of participation of each of the ex-husbands at 50%, assigned the apartment to the wife, with her obligation to pay the enforcement bodies the equivalent of the 50% share that belonged to her ex-husband. Even though it may seem like a disadvantageous situation, it should be noted that the value considered by the civil court was that of the market. Thus, it is very likely that, in the event of a foreclosure of the apartment through a public auction, the amount obtained would still have been approximately 50% of the property's market value. It is important that the courts that are invested with the recognition of a confiscation order make all the necessary checks to identify all persons who could subsequently justify a right or an interest in relation to the asset that is the subject of the confiscation.

### **2.3.4. Legislative Adjustments Required for Efficient Confiscation in Malta (MALTA - ROMANIA)**

In one case, a court in Malta ordered the value-based confiscation of a sum of money from a Romanian citizen. In the procedure to enforce the confiscation order, the Maltese authorities requested the help of ANABI to identify the assets and accounts held by the convicted person. ANABI communicated to the Maltese authorities the fact that the person has certain bank accounts. With the formulation of the confiscation certificate, Maltese authorities expressly indicated that they are only requesting the confiscation of the respective accounts and not of other assets. Also, recognition of a freezing order was not requested, the authorities only asked for recognition of confiscation order. In the procedure for recognition of the confiscation order, the Romanian court did not apply art. 18 para. 5 of the REG, establishing a term with the summoning of all interested persons in order to discuss the recognition of the confiscation order. In this context, although the court recognized the confiscation order for the sums of money expressly indicated by the Maltese authorities, because these sums of money had not previously been seized, they were withdrawn by the convicted person before the recognition became final confiscation order. Thus, on the occasion of the execution the recognized confiscation order according to the national legislation, it was found that the convicted person had withdrawn all the sums from the accounts and as the Maltese authorities only requested the confiscation of the sums of money from the expressly indicated accounts, it was not possible to continue the execution of other assets of the convicted person. Analysing this case and from the perspective of the legislation in Romania, it is found that a better information of the judicial authorities about the existence of art. 18 para. 5 of REG is needed. At the same time, an express provision is required at the national level, because, even in the situation in which art. 18 para. 5 were applied, the court would have had the obligation to order the freezing following a procedure in which the convicted person would have been summoned. Thus, in our opinion, the amendment should regulate a procedure by which, when it is referred to with the recognition of a confiscation order, which is not accompanied by a freezing order, the court in Romania will forward the file to a prosecutor so that he can analyse the appropriateness of the freezing of the assets until the confiscation order is recognized by the court. The efficiency of the provision would be given by the fact that, in this case, the prosecutor will can order the freezing without a summons before taking the measure, informing the convicted person only after the execution of freezing order. In the absence of such a provision, even if the national courts have the ability to freeze assets, such procedure can only be carried out with the summons of the persons concerned, which gives them the opportunity to create a fictitious state of insolvency until the moment of executing the confiscation order.

### **2.3.5. Challenges of Asset Division Following Confiscation in France (FRANCE - ROMANIA)**

After recognizing a confiscation order issued by a court in France, the court stated in the order that the amount obtained from the sale of the property will be divided between the Romanian state and the French state equally, 50% - 50%. The court held in its considerations that the market value of the building was over 10,000 euros. However, the good was by ANAF not sold at the market price, but at a much lower value, below the threshold of 10.000 euros. In this context, ANABI filed against the recognition sentence of the confiscation order, in order to justify the transfer of the value to the private property of the state < 10.000 euros. The file was rejected by the first court on the grounds that *res judicata* is violated. Following the appeal, the request was accepted by the higher court.

### **2.3.6. Restitution of Assets to Victims: German and French Cases (GERMANY & FRANCE - ROMANIA)**

There is a case of restitution of property to the victim under the Regulation. ANABI provided the necessary support to the court which recognized the order - Dâmbovița Court. Thus, although the disposition of the court was to recognize the confiscation order on a movable asset - a lawnmower Husquarna 400 type, the content of the certificate sent by the German authorities expressly stated that the lawnmower is intended to be returned to the victim of a theft, a German citizen. In this context, ANABI made the communication between the national court and the custodian (the police) who managed the lawnmower, so that it was transmitted to Germany. A similar case was before the Călărași Court. This time, the restitution order concerned an AUDI A6 car. Unfortunately, there are also negative examples, but from which we must learn. This is the case of the recognition of a confiscation order by a court in Romania. The confiscation order was sent by the French authorities and concerned a Maserati car. Although the Romanian court recognized the confiscation order, the custodian was not properly informed. This omission caused the car to be kept for more than 2 years in the police's crime scene room, although it had to be returned. However, the asset was not seized under Regulation 1805, but based on Framework Decision 2006/783/JAI. The car was seized 15 years ago.



### **2.3.7. Handling VAT Fraud and Money Laundering across European Borders (FRANCE)**

A case of VAT fraud and undeclared work: French public prosecutor was informed that a bank account connected to the tax fraud committed in France was frozen in Belgium from 2013. The public prosecutor sent a frozen order to the PPO of Tournai on the frozen amount (nearly € 1 million) in 2018. The criminal court sentenced the fraudster and ordered the confiscation of the seized amount, first in October 2018, then (in appeal) in April 2019. The Court verdict and a confiscation order were sent by the PPO of the Court of Appeal in 2019 to the Belgium ARO, which was not the authority in charge of the asset sharing. It was the local Belgium PPO. An asset sharing by half was agreed between the French ARO and the Belgium PPO through the help of the Belgium liaison magistrate via email exchange. Finally, the transfer of half of the money was effective in January 2022. A money laundering case where the assets were seized in France: 2 seizures of cash for more than € 400,000 in 2013 in France with German citizens. The inquiry in France ended with a transfer of proceedings to a German PPO. The confiscation of the amount of cash was ordered by the German Court in February 2017. The recognition of the decision was made in France in June 2020 on the request of the German PPO. Asset sharing was set up by an official agreement between the German PPO and the French ARO in March 2022. Half of the money was transferred to Germany by the ARO in July 2023 (10 years after the seizures!).

The compensation or restitution of assets to victims: Case of bank account details fraud: A company bookkeeper was deceived by fraudulent emails in order to transfer €4,4M on a Polish bank account in September 2021. Thanks to connection between the French police attaché in Poland and the Polish bank association, the money was frozen by the Polish bank waiting for the judiciary cooperation. A frozen order was issued rapidly by the PPO, asking for the restitution of the money to the company (section K) via the bank account of the French ARO. A restitution order was also issued a few days later by the PPO according to the French national law. The money was given back in February 2022 to the ARO, and to the French victim in April 2022, only 7 months after the fraud.

The division of proceeds from the sale of assets among Member States: Case linked to corruption and money laundering: In a nutshell, a Dutch citizen received more than €1,2M as illicit commission paid by a Dutch company. He was sentenced for corruption by the Court of the Hague in 2015. But the money he received illegally was transferred from a Swiss account to a French citizen in order to buy a house in France. So the Dutch authorities opened a new inquiry for money laundering and issued a frozen order to France in December 2015. The house was seized in February 2016 according to the frozen order by the investigating judge in France. According to the Dutch authorities, the value of the house was estimated at €400.000. Finally, the Dutch PPO made a deal with the defendant in September 2019: the deal was to sell the house and give all the proceeds of the sale to the State. The asset sharing by half was proposed by the Dutch ministry of justice to the French ARO. The French ARO was in charge of selling the house, but it was discovered in poor condition just before the signature of the sale in March 2021, and the price was already set for





€270,000. So it was agreed in the sale contract that the cost of renovation (€10,000) would be supported by the seller, ie the ARO, and deducted from the asset sharing. The asset sharing was eventually effective in September 2022.