

RECOVER
CRIME DOESN'T PAY



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RECOVER

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

Grant Agreement No. 101091375



Project objectives

General one → Improving judicial cooperation in the recovery of illicit assets

Specific ones

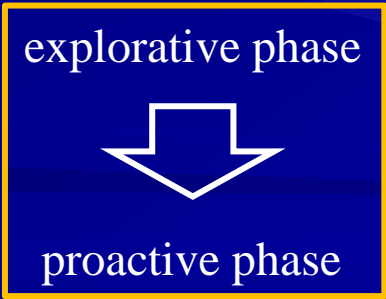
1. To remedy to the lack of knowledge on the EU cooperation instruments for freezing and confiscation
2. To fill the gap of harmonized rules and practices
3. To ease cooperation regarding freezing and confiscation orders



Project Phases

**The path to the realization of FORCE
Common Standards and Recommendations**

April 2022-March 2024



Explorative phase

Two main activities

1 Desk Research
regarding all MS



Comparative Report on Desk Research

2 Interviews with
selected practitioners



**Report on confiscation and
freezing practical issues**

For more information see
<https://projectforce.eu/>

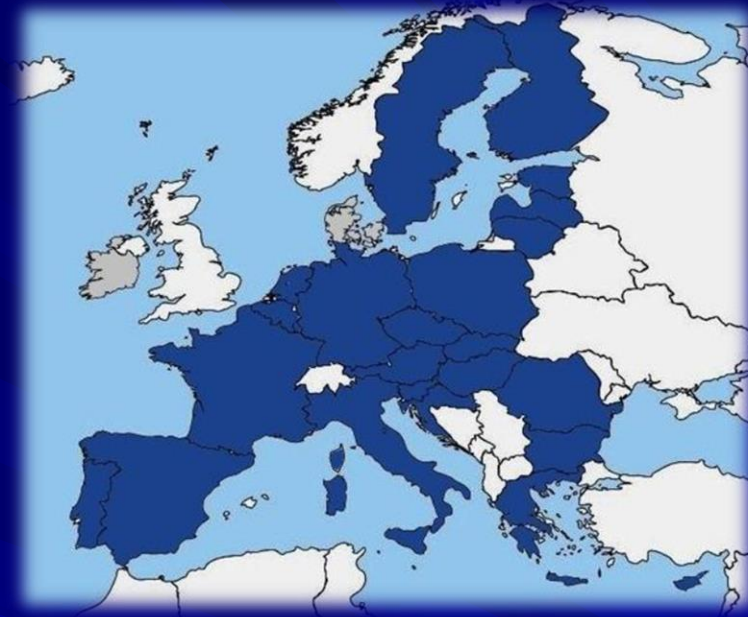


Proactive phase

Three main results

- ❖ An **online database** offering information on national freezing/confiscation procedures
- ❖ A **Massive Online Open Course (MOOC)** and **podcasts** in order to enhance awareness of the Regulation 2018/1805 and to train practitioners on its use
- ❖ A **set of recommendations** about concrete issues for an effective and efficient cooperation → *Force Common Standards and Recommendations*

First Milestone



MS involved

25 Countries (Ireland and Denmark not bound)

Staff involved

Staff of the partners + subcontractors for languages we do not understand directly

Comparative Report on Desk Research

Report Structure

- Introduction
- Implementation strategies
- Instructions on specific subjects
- Summary of the national legal frameworks



Direct applicable without the need to be implemented

However almost all MS felt the need to introduce additional internal rules or amend the existing laws

Objectives →

- 1) To prepare the domestic legislative framework to host the Regulation
- 2) To facilitate the application of the Regulation



Most common implementation strategies

- introduction of **special laws** implementing the Regulation
- introduction of **laws amending Codes** (Criminal Code/Code of Criminal Procedure)
- introduction of **both** special laws and laws amending the Codes
- introduction of **laws amending other national laws**, such as laws devoted to the prevention and suppression of money laundering activities or laws regarding mutual cooperation in criminal matters
- introduction of **soft law documents**, i.e. internal judicial instructions covering legislation's gaps

Problem: different implementation strategies could generate cooperation shortcomings



Most common areas of intervention

Document contents and accepted channels of transmission

- Sometimes, law indicated the **details to be inserted** in the request

- Declarations regarding the necessity to transmit also **a copy of the original order**, together with the freezing or confiscation certificate

- Chosen **communication channels**: e-mail, telefax, electronic mail or other secure technical means, postal service, secure telecommunications system of the European Judicial Network or Eurojust; SIENA

Competent authorities for the issuing, the recognition and the execution of the orders

- Indication of the Ministry of Justice (or other **central authorities**) as a sorter for the subsequent forwarding to the competent internal authorities
- Suggestions or obligation to use the **contact points** of the European Judicial Network (EJN) established for each Member States
- Creation and/or indication of a **specific authority** as the receiver of the orders (e.g. an “Asset Recovery Offices”)

Languages admitted and required translations

➤ The only language accepted for the translation of the certificate is often **the language of the executing authority** and sometimes also English or other vehicular languages (German, French)

➤ For a few MS, in **urgent cases** a translation into English is acceptable, subject to the condition of reciprocity

➤ Translation of the **original order** is usually not required, even if its transmission is required (sometimes translation is required whether the information in the certificate are not considered enough)

Timing

- For procedure regarding freezing order indication of a decision to be taken “without delay”, or “**no later than next working day**”
- Regarding freezing certificate, a decision must be taken within **24 hours** by its receipt
- Sometimes procedure for freezing are formally considered always urgent, or at least a **priority**

Grounds for non-recognition and non-execution of orders

➤ **Duty to consult** issuing authority before deciding not to recognize or execute the order

➤ **Notification** of the refusal without delay

➤ Introduction of **new grounds**. See for example Malta: “the foreign confiscation order is based on a manifest error of law or of fact”

➤ Some MS (badly) **reproduced only some grounds** in the domestic laws

➤ Provisions for **connecting internal rules** with the Regulation’s grounds, or stating that the **violation of the internal rules**, reproducing regulation provisions, causes the refusal

➤ A few MS implemented some refusal grounds based on **lacking or wrong contents** of the request or on **the lack of remedies** for the affected persons

Interviews phase and consultation sessions

Second Milestone

MS involved

- **15 MS** → partners' States and others according to the desk research results
- **63 interviewees** → 51 magistrates and 11 lawyers

Modus operandi

- Two **different questionnaires**, one for judges and prosecutors, one for lawyers
- Interviewees contacted **on our own initiative**, or **suggested** by other interviewees

Operative hurdles

- Difficulty to **reach** practitioners
- **Reluctance** to be interviewed
- Reluctance to sign **privacy policy**
- Lack of knowledge of the Regulation due to **limited application**

Report on confiscation and freezing practical issues

Staff involved

Staff of the partners +
a few subcontractors

Consultation sessions

- Validation of Common Standard and Recommendations
 - Practitioners and academics
- Debate on mutual recognition topics

Findings in a nutshell

Lack of knowledge of the
Regulation among
practitioners

Application of the
Regulation once in a blue
moon

General findings

Practitioners believe that domestic **hard/soft provisions** are useful even if the source of law in issue is a Regulation: (i) better understanding of the Regulation; (ii) solving practical issues (e.g., notification to the affected persons; distribution of competence at the domestic level; jurisdiction issues)

- **EUROJUST** and **EJN** have been confirmed as important channels of communication
- No one reported issues regarding **double criminality** clause
- No one applied the **fundamental rights** non-recognition ground
- Not many experiences regarding **remedies** (7 up to 63). All appeals rejected
- **Channels used** → email, fax, eurojust, SIENA (importance of EJN website)
E-Codex Regulation (2022/850/EU)
Regulation digitalisation of Justice (2023/2844/EU)
- **No specific formalities but specific requests:** for example a specific date for the execution or a request of simultaneous execution
- An **appropriate measure** always exists → if the measure is requested in the application of the mutual recognition instrument, it exists

Problems experienced by the executing authorities:

- difficult to check the **maximum sentence** of the other State' offenses and the respect of the **double criminality principle**
- some parts of the certificate are often **uncompleted**
- there are problems in the **translation**
- mistakes in the certificate as for the **qualification** of the measure requested (EIO or confiscation instead of freezing)
- employment of a **certificate other than the official one**
- mistakes relating to the properties or their **location**
- **multiple orders** for the same group of assets, or orders with an enormous number of properties, sometimes related to more than one proceedings

BUT

before rejecting they try to talk, sometimes directly, sometimes with the intermediation of Eurojust

Relationship between judges and public prosecutors

- an application of the **public prosecutor** is generally required at the beginning of the relevant issuing/executing proceedings
- public prosecutors are more often responsible for the execution of incoming orders and in general for the freezing orders
- **judges** hold a crucial role as competent authorities in relation to confiscation orders and they often have to authorize public prosecutors' initiatives

Main obstacles for the cooperation

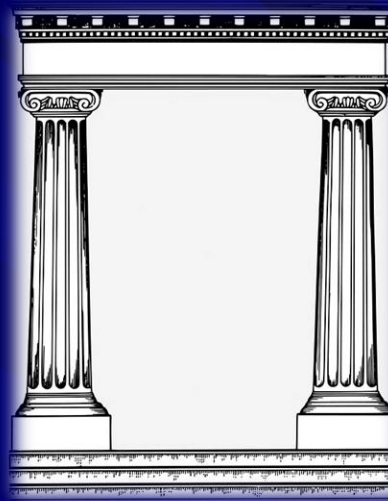
- too **rigid structure** of the certificate and lack of required information regarding the legislative and procedural framework of the issuing MS
- lack of relevant **information**
- authorities do not report back or report **late**
- communication/**coordination** issues among Member States
- double criminality **check**
- different approach and **practice** among Member States
- **language** issues (poor translation and lack of interpreters)
- lack of **meeting** among magistrates
- lack of **training** activities
- lack of **experience** → not so many cases per year (under 2k in 2 years)
- lack of specialized jurisdictions and offices
- **differences** among different MS (normative differences; holidays differences; different practices and approaches);
- **lack of uniform legal culture**
- **lawyers** often have **not clear** how mutual **recognition works**

- some lawyers want to **celebrate a new process** in contesting the recognition and execution of the order
- **lack of access to documentation** for lawyers
- need for a **time limit** of **freezing orders**
- assessing what it are **proceedings in criminal matters**
- Recognition of an order even if the measure does not exist under national law (**recital 13**)

Suggestions

- raising **awareness** among practitioners
- **training** for magistrates and police bodies
- drafting more specific **guidelines**
- fostering **communication** among MS authorities
- more opportunities and contexts to **exchange** experiences, opinions and practices
- **harmonising** the management of the assets

CSR Four Pillars



Minimum use of grounds for refusal



They should only be invoked as a last resort

Recognition of as many orders as possible



In order to grant cooperation to its maximum extent

Dialogue



It is the best way to prevent mutual distrust and lack of cooperation, as it allows to solve problems that could lead to a refusal

Necessity and proportionality



these principles characterise every mutual recognition instrument and want to avoid arbitrary use of FCO