



EUROJUST

Application Regulation Mutual Recognition of Freezing and Confiscation Orders EUROJUST experience

RECOVER Project (GA 101091375)
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Eurojust support to Asset Recovery

- Eurojust Report on Asset Recovery
[Report on Eurojust's casework in asset recovery | Eurojust | European Union Agency for Criminal Justice Cooperation](#)
- Eurojust Report on Money Laundering
[Eurojust Report on Money Laundering | Eurojust | European Union Agency for Criminal Justice Cooperation \(europa.eu\)](#)
- 1st Eurojust Meeting on Money Laundering and Asset Recovery, June 2023
<https://www.eurojust.europa.eu/news/eurojust-organises-first-expert-meeting-money-laundering-and-asset-recovery>
- 2nd Eurojust Meeting on Money Laundering and Asset Recovery, June 2024
<https://www.eurojust.europa.eu/news/eurojust-leads-efforts-step-judicial-response-money-laundering-and-asset-recovery>

Eurojust support to Asset Recovery

- ▶ In 2023 alone, one of Eurojust's operational outcomes was the seizure/freezing of **1.1 billion Euro**;
- ▶ Outcome Report Eurojust Meetings on Money Laundering and Asset Recovery 2023-2024 (approved 5 Nov 2024)

Eurojust support to Asset Recovery

▶ **Judicial Focus Group on Money Laundering and Asset Recovery** (established 5 Nov 2024)

Composed of prosecutors or judges (Contact Points) who in a consistent manner will be the linking pin between the judiciary and a multidisciplinary hub of experts at national level involved in both the investigation and prosecution of money laundering and addressing asset recovery, such as asset recovery offices, asset management offices, law enforcement, financial intelligence units, financial accountants, and crypto experts. Representatives of EU institutions and relevant EU agencies/partners and international organisations could be observers.

Judicial Focus Group on Money Laundering and Asset Recovery

- ▶ The **Judicial Focus Group** will give judicial authorities **guidance** on specific matters such as post-conviction financial investigations, **exceptional costs** concerning the execution of **freezing and confiscation orders**, and guidance on **restitution to or compensation of victims**.
- ▶ **Eurojust** is uniquely placed to bridge the gap between the **multidisciplinary national hubs** by creating this international platform represented by the judiciary.

Judicial Focus Group on Money Laundering and Asset Recovery

- ▶ Blind spot between money laundering and asset recovery that requires bridging, such as, familiarizing judicial practitioners with **anti-money laundering measures, financial investigations, the new powers of asset recovery offices, registers of beneficial ownerships, freezing and confiscation measures, restitution and compensation to victims, management of assets, and costs of execution of freezing and confiscation certificates.**

Judicial Focus Group on Money Laundering and Asset Recovery

Judicial Focus Group on Money Laundering and Asset Recovery

- Members: Prosecutors/Judges from Member States and partner third countries



National level

- Prosecutor
- Judge
- FIU
- ARO
- AMO
- Financial accountant
- Central Bank rep.
- Crypto expert
- etc.

- Observers



Legal and practical issues

- **Direct applicability:** problems in some countries because of misunderstanding as to nature of a Regulation (as opposed to, say, a Directive), irrespective of whether any changes in national legislation are needed.

Legal and practical issues

- **Scope:** the fact it encompasses “proceedings in criminal matters” is welcomed by practitioners. Exceptionally, some difficulties with this concept. Support of Eurojust in clarifying matter in concrete cases – for instance in relation to the Italian antimafia preventive non-conviction based confiscation.

Legal and practical issues

- **Restitution to victims:** strong step forward but still issues (art 29 and 30):
 - Amount of seized money is significantly lower than the claims brought by the victims – no clear rules on how to split the money
 - when there are several victims in several jurisdictions;
 - when the executing authority of freezing orders requires confiscation order before restitution of property (moveable) to victims;

Legal and practical issues

- Some jurisdictions use civil proceedings;
- In some countries confiscation serves state interests, once confiscated the money is not for victim compensation. A solution would be within Article 29 Regulation, or change the objective of confiscation.

Legal and practical issues

- when executing authority of a freezing order makes **distinction between restituting money in a bank account and any other type of property [29(2)]**.

E.g. In its **Art 29**, the regulation foresees the restitution of frozen assets to the victim, even in the investigative stage of the proceedings. However, according to the current legal framework of some MSs, in the investigative stage it is only possible to return tangible objects to the victim, but not intangible assets (such as money in a bank account). The restitution of bank deposits can be ordered in a final court verdict against the account holder. In many fraud cases, the perpetrator is never identified or the account holder (as a straw-man) is never charged, so there is no final verdict against this person. Therefore, a return of bank deposits to the victim is not possible in many cases.

Practical application

- **Article 30 Regulation** also poses difficulties, the distinction between **restitution and compensation** is not clear.

In one case example, the judge ruled 'you are granted damages'. In the judgment, the judge referred to money within that state that belonged to the victim and a small damage. The judge did not use the term restitution. In order to solve this, there should be a uniform interpretation of this term.

Legal and practical issues

- **Diverse levels of awareness of the novelties of this instrument.**
- **Transmission of national confiscation order not accompanied by confiscation certificate:** Specially problematic in urgent situations. EJ was requested to ask for confiscation certificate, to inform issuing authority that assets were still frozen and to verify purpose of freezing of assets: confiscation of compensation of victims.

Legal and practical issues

- **Transmission of freezing certificate not accompanied by national freezing order.** Specially problematic in urgent situations.
- **Freezing of businesses-** possible in some countries but in others not. *I.e*, not only the freezing of the assets of a company, but the actual business for which a judicial administrator is needed (**Art.28.2**). E.g. Eureka case – divergences in national laws and different powers of judicial administrators in the Member States (e.g. the judicial administrators only take care of the financial management, but the daily management of the restaurants continues to be carried out by the suspects/their relatives).

Legal and practical issues

- **Differences in imposing time limits for maintaining freezing orders-** despite the Regulation not imposing a time limit for the validity of the freezing, some issuing countries still, under their national law, re-issue a freezing order every XX months, or the other way around – some executing authorities countries require, under their national law, that the issuing country re-issues the freezing order.

Legal and practical issues

- ▶ **Exceptional costs** – cases of, *e.g.* maintain a racing horse in the executing country, maintaining a plane. Under the Regulation, where appropriate, Eurojust could exercise a coordinating role within its remit in order to avoid excessive confiscation. (**Article 31**).

Legal and practical issues

- **Freezing of cryptocurrencies:** divergent experiences at national level. E.g. In some insufficient technological skills at law enforcement level when managing frozen crypto wallets, resulting in the crypt wallet being hacked and emptied before it was confiscated.
- **Affected persons:** in some countries the affected persons are unable to invoke the arguments re the freezing order. They can only challenge execution. How much information can an executing authority disclose?

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