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

Grant Agreement No. 101091375

Practical obstacles and legal issues arising in the implementation of REG

BULGARIA

(the point of view of the Prosecutor's Office)

Bulgaria has practical experience in implementing Regulation (EU) 1805/2018 as well as the other EU acts on the mutual recognition of freezing and confiscation orders **mainly as an executing country.**

Before pointing out some of the problems arising in the practice of the Bulgarian judicial authorities, it is necessary to present in general the way in which the Regulation is implemented in Bulgaria.

At the time of the entry into force of Regulation (EU) 1805/2018 two separate laws for the recognition of orders of competent judicial authorities of other Member States were already effective in Bulgaria – one in relation to freezing orders and the other in relation to confiscation orders and other financial sanctions.

The implementation of Regulation (EU) 1805/2018 has been carried out by the Bulgarian legislator by amending:

- the Recognition, Execution, Issuance and Transmission of Property Freezing Orders Act (the Freezing Orders Act) and
- the Recognition, Execution, Issuance and Transmission of Orders of Confiscation or Forfeiture and Decisions Imposing Financial Sanctions Act (the Confiscation Orders Act)

model of freezing (seizure) order or confiscation order :

According to the practice of the Bulgarian courts (both as an issuing and executing authority) the order for direct confiscation of property is most often applied.

However there are cases of recognition of freezing or confiscation orders against third parties.

Cases of extended confiscation or non-conviction based confiscation are much less common.

the types of criminal offences:

Most often the types of crimes for which foreign judicial authorities send confiscation orders to the Bulgarian courts are:

fraud,
tax crimes and
human and drug trafficking.

the types of assets :

The types of assets that have been subject to confiscation (freezing order) are diverse.

Most often it is a matter of movable property – money in bank accounts.

A common case in practice is when the holder of the bank account is a legal entity whose manager has been convicted of a tax crime – tax evasion through fictitious transactions.

There are also cases of execution of orders issued for the confiscation of real estate.

Difficulties in the process of executing certificates/orders:

- identification of the competent court;
- Proper translation of the certificate and/or the order;
- delay of the procedure when the certificates are not accompanied by the confiscation order;
- problems related to the right to effective legal remedies

Difficulties :

1. As an executing state a significant problem and cause of delay is the determination of the competent court to conduct the proceeding of recognition.

According to the law, the criteria are the location of real estate or the place of registration of the legal entity or the place of residence of the individual.

In some cases, the information in the certificate or in the decision of freezing/confiscation from the issuing country is incomplete.

When the various real estates, subject to the certificate, are located in different cities, the respective district courts argue over who should conduct the proceeding.

Such difficulties also arise when legal entities whose properties or bank accounts are subject to confiscation change their headquarters by registering at an address in a different city.

- Pursuant to Article 44, paragraph 1 of the Criminal Procedure Code, jurisdiction disputes between courts are solved by the Supreme Court of Cassation.

The procedure delays the process and if the property is not seized creates time frame for disposal or concealment of the property which is subject to confiscation or serves as collateral.

2. There are often difficulties due to the quality of the translation of the Certificates, in some cases the translation is inaccurate and incomprehensible. For example it cannot be established from the translated text whether the request is to freeze property in pending criminal proceedings, or to recognize and execute a final decision of confiscation, or it concerns confiscation that has been ordered in civil proceedings.

In order to be clarified this issue the respective order is requested.

Sometimes difficulties arise because of the misunderstanding of the legal terminology used in the certificate.

Even if the translation is accurate, differences in national legal systems leave it doubtful whether the exact meaning of the expressions used is understood.

Therefore, the court request additional clarifications from the issuing country. This leads to an unjustified (from the point of view of the issuing authority) delay.

3. Lack of documents enclosed to the Certificate.

Cases have been reported in which the issuing country does not provide the order for seizure or confiscation as well as the translation of these documents.

The Bulgarian court grants the issuing country a reasonable period of time to prepare the translation and provide the documents. Communication is usually carried out through EUROJUST or through the Ministry of Justice.

4. Problems arise regarding some orders for confiscation when has been found out that the property is subject to seizure in pending criminal proceedings conducted on the territory of Bulgaria.

Pursuant to the Regulation and the national Confiscation Orders Act the court may postpone the execution of the confiscation order when it could harm a pending criminal proceedings.

... There is no mechanism for interaction between the court and the prosecutor's office regarding the exchange of information.

It is not clear who is obliged to check whether the criminal proceedings are competed within the territory of the Republic of Bulgaria.

... Furthermore it is not regulated whether the postponement of the execution is carried out according to the already issued certificate or a new one must be submitted.

5. problems related to the right to effective legal remedies

Thank you for your attention!

Questions