

RECOVER (GA101091375)

Practical obstacles and legal issues in the implementation of the Regulation no. 1805/2018

Country report. Romania

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1) On the basis of the official statistics in Your country, how many are the cases of application of the Regulation no. 1805/2018 (thereinafter: REG)?

Prosecutor's Offices: 72.

Courts: 54.

2) How many are the cases as issuing authority and how many as executing authority?

Prosecutor's Offices: issuing authority – 10, executing authority – 62.

Courts: issuing authority – 2, executing authority – 24.

It should be noted that the difference of 28 cases (54 cases in which the courts applied the provisions of the Regulation - 26 cases in which the courts were actually the issuing or executing authorities) is represented by cases in which the courts ruled on the appeals against the seizure orders, which were recognised by the prosecutors as executing authorities.

3) With which States? (please, provide the total number of cases handled with each State, taking care to specify whether these are as issuing or executing authority)

Prosecutor's Offices - issuing authority - total 10: Germany – 3, Lithuania – 2, Belgium – 1, France – 1, Italy – 1, the Netherlands – 1, Spain – 1.

Prosecutor's Offices - executing authority - total 62: France – 16, Italy – 11, Germany – 9, Spain – 7, Hungary – 6, Belgium – 5, Austria – 3, Lithuania – 1, Luxembourg – 1, the Netherlands – 1, Slovenia – 1, Sweden – 1.

Courts - issuing authority - total 2: Italy - 2.

Courts - executing authority - total 24: Slovenia – 5, Italy – 4, Germany – 4, France – 3, Austria – 2, Sweden – 2, Belgium – 1, Bulgaria – 1, Croatia – 1, Spain – 1.

- the number of confiscation orders received from another State and recognised – total 9: Germany – 2, Sweden – 2, Belgium – 1, Slovenia – 2, Croatia – 1, Austria – 1.
- the number of confiscation orders received from another State and partially recognised – total 2: France – 2.
- the number of confiscation orders received from another State and refused – total 2: Italy – 1, Bulgaria – 1.
- the number of confiscation orders received from another State and withdrawn – total 1: Slovenia – 1.
- the number of seizure orders received from another State and recognised – total 7: Italy – 2, Slovenia – 2, France – 1, Austria – 1, Germany – 1.
- the number of seizure orders received from another State that and refused – total 1: Spain – 1.
- the number of seizure orders received from another State and refused by the Prosecutor's Offices – total 1: Italy – 1.
- the number of requests for withdrawal of the seizure order recognised by the Romanian authorities because the measures in the issuing State were also withdrawn – 1.

Courts - appeals against seizure orders recognised by prosecutors as executing authorities:

Belgium – 9, France – 7, Spain – 7, Germany – 3, Italy – 2.

- appeals dismissed: 26.
- appeals partially admitted: Belgium – 1.
- appeals totally admitted: Germany – 1.

Observation: As regards seizure orders sent to prosecutors for recognition, although we have all the statistics, we cannot present the reasons for refusal because we do not have access to the relevant documents. Therefore, it is mainly at the stage of criminal investigation that seizure orders are recognised. We do not have access to those files.

As far as seizure and confiscation orders sent to the courts for recognition are concerned, we note that it has been difficult to collect data. This is because the courts do not keep clear records of this type of case. Throughout this period, the courts have not provided the Ministry of Justice with clear statistics on the number of cases in which recognition of seizure and confiscation orders has been requested.

However, we have access to all judicial decisions in electronic form, and by using search *criteria* such as ‘2018/1805’, ‘2.018/1.805’, ‘1805/2018’, ‘1.805/2.018’ - regulation number - we were able to identify all judgments in which the courts referred to Regulation 2018/1805.

4) Which model of freezing (seizure) order or confiscation order (direct confiscation, confiscation of the equivalent value, confiscation against third parties, extended confiscation, confiscation without conviction) based the issuance of the certificate in these cases (both as issuing authority and as executing authority)?

ANABI: As explained in point 3, we did not have access to the content of the seizure orders issued by the Prosecutor's Offices.

Courts: With regard to confiscation orders recognised by judges, we note that:

- The confiscation model is special confiscation - direct confiscation and extended confiscation.
- All confiscation orders issued by foreign authorities and recognised by Romania are based on convictions, with one exception.

5) In the praxis have you ever had cases in your country concerning a freezing or confiscation certificate unrelated to a conviction, for example on the basis of a confiscation ordered also if the crime is statute barred or in case of the offender death or because the perpetrator remained unknown? Yes / No. If yes, please provide more details.

Courts: All confiscation orders issued by foreign authorities and recognised by Romania are based on convictions, except in one case where the confiscation of movable property (bicycles) was ordered in the absence of a conviction. In this case, the crime of theft was under investigation and the perpetrator remained unknown.

6) Which types of crime were the basis for issuing the certificates? Please, provide a detailed answer.

Prosecutor's Offices: fraud, setting up of an organised criminal group, theft, aggravated theft with particularly serious consequences, theft in an organised group, money laundering (laundering of the proceeds of crime), money laundering in connection with types of fraud such as undeclared work, social security fraud or smuggling of migrants, trafficking in human beings for the purpose of sexual exploitation, prostitution, unlawful detention, offences against public health, extortion, tax evasion, embezzlement involving a loss of 1,306,115.16 lei, exploitation through undeclared work.

Courts: theft, aggravated theft, fraud, trafficking in human beings for the purpose of sexual exploitation, embezzlement, robbery.

7) What type of assets were the subject of the seizure (freezing order)/confiscation underlying the certificates? Please, provide a detailed answer.

- Movable property: cars, bicycles, sky jets.
- Land with an area of 500 square metres, land with an area of 231 square metres.
- Residential property (apartments, houses, outbuildings).
- Amounts - Euro, Dollar, Lei - Romanian Currency.
- Shares and corporate assets, social parts of a legal entity.

8) In order to identify the asset to be seized/confiscated, have specific investigations been carried out beforehand? Yes / No. If yes, was a European Investigation Order or other mutual assistance instrument used for this purpose? Please, provide a detailed answer.

Prosecutor's Offices: Yes. Here are some specific situations reported by the public prosecutors in the country:

PT Sibiu - the assets had a GPS tracking system and the location was provided by the German judicial authorities. The assets were identified by the Romanian law enforcement authorities in a shop specialising in the sale of bicycles.

PT Maramureş - checks were carried out at the Real Estate Publicity Office and on-the-spot checks were carried out by the police.

PT Argeş - a European Investigation Order was previously executed by another Prosecutor's Office; the assets in question were identified during the searches.

PT Constanța - two relevant examples of cooperation with Spain and France:

- Spain - seizure order - crimes committed: trafficking in human beings for the purpose of sexual exploitation, prostitution, illegal detention, money laundering and crimes against public health - assets requested to be seized: Mercedes S500 and Porsche Panamera - the assets were in the custody of the National Police in Oviedo - Asturias, Spain and the seizure order requested the Romanian authorities to register in Romania the strict prohibition to dispose of, sell, strike or alienate the said vehicles.
- France - seizure order - crimes committed: theft in an organised criminal group - property to be confiscated: a 231 square metres plot of land and a building in the town of Medgidia - the property was identified by the French authorities through a request for international judicial cooperation.

PT Caraș Severin - the necessary investigations were carried out by the judicial police bodies, consisting of checks in the existing databases and concrete steps to detect the targeted car in traffic.

PT Alba - in most cases, the assets were identified as accurately as possible by the issuing authority, but when the assets were recognised and executed, the public prosecutor asked the criminal investigation authorities to carry out certain verifications in order to confirm the figures provided.

PT Bucharest - in some cases the seizure certificate was accompanied by a European Investigation Order; in other cases the European Investigation Order was first issued for the purpose of carrying out preliminary checks and a seizure certificate was subsequently sent.

PT Dâmbovița - specific investigations were carried out at banking units.

PT Timiș - specific investigations were carried out with the support of ANABI to identify the assets.

PT Braşov - specific investigations were carried out and the assistance of ANABI was requested.

PT Buzău - checks in the Company Register accessible online.

PT Satu Mare - prior checks were carried out on the basis of a European Investigation Order.

PT Mureş - a European Investigation Order was issued and criminal investigation bodies were mandated to carry out specific investigations; addresses were made to the Land Register, the City Hall, banks.

PT Sălaj - checks were carried out to identify the bank accounts held by the defendants.

PT Bihor - a European Investigation Order was used to obtain details of the perpetrators and their assets.

From the analysis of the answers, it is possible to mention the following 3 directions used by the prosecutors to identify the assets, and they are mostly used together:

- International police cooperation instruments. In this sense, the ARO of Romania (ANABI), which carries out its activities on the basis of the following instruments, plays an important role:
 - Law no. 318 of 11 December 2015 on the setting up, organization and activity of the National Agency for the Management of Seized Assets (ANABI) and on amending and supplementing other legal regulations.
 - Council Decision 2007/845/JHA of 6 December 2007 concerning cooperation between Asset Recovery Offices of the Member States in the field of tracing and identification of proceeds from, or other property related to, crime.

- Council Framework Decision 2006/960/JHA of 18 December 2006 on simplifying the exchange of information and intelligence between law enforcement authorities of the Member States of the European Union.
- European Investigation Order sent on the basis of information obtained through police cooperation - Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters.
- Upon receipt of the request for recognition of the order, identification of the assets through the use of national databases (property register, bank account register, company register, vehicle register) and through direct identification by the investigating authorities.

Courts: During the recognition procedure of the seizure/confiscation order, the courts requested information directly from the authorities holding the relevant database: land register, bank account register, company register, vehicle register.

9) Both as issuing authority and as executing authority, which are the main obstacles to mutual recognition deriving from the type of seizure/confiscation or the type of seized/frozen asset? Please, provide a detailed answer.

Prosecutor's Offices:

- In the case of sums of money, it is preferable to specify that the measure of seizure transmitted concerns the sums of money existing in the specified accounts or the sums of money that will be paid into the bank account in the future - it is suggested to specify a *maximum* amount up to which the sum will be seized.

- Lack of effective identification by the authorities of the issuing State of the property that is the subject of the seizure measure.
- Receipt of incomplete certificates of seizure, requiring further correspondence, resulting in an extension of the deadline for execution of the order.

Courts: Problems have arisen in particular with the recognition of confiscation orders relating to immovable property.

- Sometimes it is difficult to identify precisely the persons who may have an interest in the property that is the subject of the confiscation order. For example, a confiscation order issued by Austria was recognised, confiscating an apartment which, according to the land register and the contract of sale, belonged to the convicted person. In the course of the procedure for the sale of the apartment, the ex-wife of the convicted person, who did not participate in the procedure for the recognition of the confiscation order, submitted a request for division, invoking the fact that she was a co-owner of the apartment. In this regard, she proved that, although she was not mentioned in the land register or in the contract of sale, she was married to the convicted person at the time of the purchase of the apartment. According to civil law, property acquired during the marriage is presumed to have been acquired jointly by both spouses, even if only one of the spouses is mentioned in the contract of sale. The civil court found that the apartment was jointly owned, established the share of each of the ex-husbands at 50% and awarded the apartment to the wife, with the obligation to pay the enforcement authorities the equivalent of the 50% share that belonged to her ex-husband. It can be seen that the civil action removed 50% of the value of the originally confiscated apartment. Although this may seem a disadvantageous situation, it should be noted that the value taken into account by the

civil court was the market value. However, it is very likely that in the event of a forced sale of the apartment, the amount obtained would still be around 50% of the market value. Conclusion: It is very important that the courts entrusted with the recognition of a confiscation order carry out all the necessary checks in order to identify all the persons who may subsequently claim any right or interest in the property. Disputes in which other persons who have not been notified claim rights in relation to confiscated assets are very problematic.

- A second example concerns the way in which the judge decides on the method of division of the confiscated property, with reference to the provisions of Article 31, paragraph (7) of the Regulation. For example, a Romanian court, after recognising a confiscation order issued by a French court, stated that once the building was sold, the amount would be divided equally between the Romanian State and the French State, 50% - 50%. The court took into account the fact that the market value of the building was more than 10,000 euros. However, the property was not sold at the market price, but at a much lower value, below the 10,000 euros threshold. In this context, ANABI filed an appeal against the first decision, arguing that the sums received no longer needed to be divided and should be transferred to the Romanian State's property. The appeal was rejected by the first instance court on the grounds that it violated the principle of *res judicata*. Following the exercise of the right of appeal, the appeal was granted by the higher court.

10) In how many cases has recognition been refused (both as executing authority and as issuing authority)?

Prosecutor's Offices: 1 case as an executing authority.

Courts:

- the number of confiscation orders received from another State and refused – total 2:
Italy – 1, Bulgaria – 1.
- the number of confiscation orders received from another State and partially recognised – total 2: France – 2.
- the number of confiscation orders received from another State and withdrawn – 1
Slovenia.
- the number of seizure orders received from another State and refused – 1 Spain.
- the number of seizure orders received from another State and refused by the Prosecutor's Offices – 1 Italy.
- the number of requests for withdrawal of the seizure order recognised by the Romanian authorities because the measures in the issuing State were also withdrawn: Germany – 1.
- the number of seizure orders recognised by the Prosecutor's Office and where the appeal to a judge was accepted – total 2: Belgium – 1 partially admitted, Germany – 1 totally admitted.

11) Which grounds for refusal are applied?

Prosecutor's Offices - executing authority: the fact that the act that is the subject of the criminal investigation has no counterpart in Romanian legislation.

Courts – executing authority – confiscation orders:

- Italy - Recognition was refused because the Romanian court found that the preventive confiscation measure was not final in the issuing State. In its analysis of the Italian court's request, the Romanian court noted that the confiscation order was not final and that the requesting authorities had sent a certificate of seizure, although

the analysis of the order showed that the measure that should have been recognised was confiscation, since the assets had previously been seized in the same case. The national court requested the assistance of Eurojust in this case.

- Bulgaria - Recognition of the confiscation order was refused on the grounds that the asset had been sold in the requesting State before the confiscation order was issued. The asset had not previously been seized by the authorities of the requesting State, which once again underlines the importance of ordering seizure measures from the outset of a criminal investigation and of their prompt recognition.
- France - An interesting case was one in which the national court partially recognised a confiscation order, the reason for the refusal being the constitutional principle of more favourable criminal law. The security measure of extended confiscation is highly repressive. As it is a criminal sanction, it is subject to the more favourable provisions of criminal law. In the case law of the Romanian Constitutional Court, it has been established that the provisions on extended confiscation are constitutional to the extent that extended confiscation does not apply to property acquired before the entry into force of Law No. 63/2012. In this context, the Romanian court partially did not recognise the extended confiscation ordered by the French court in the case where one of the immovable assets mentioned in the confiscation certificate was acquired before 2010.
- France - Unfortunately, we found one case that we consider problematic. A Romanian court partially recognised the confiscation order issued by a French court, basing its refusal on the provisions of Article 19, paragraph (1), letter e). In particular, on the basis of the evidence presented in the case, the national court re-analysed the fact that certain sums of money could not be the subject of extended confiscation and that the person concerned, who had been convicted in France of several counts of qualified theft, had a legitimate source for those sums. In our view, these defences

should have been raised by the convicted before the French courts, without the national court having jurisdiction to re-examine the case. Thus, according to Article 33, paragraph (2) of the Regulation, «the substantive reasons for issuing the freezing order or confiscation order shall not be challenged before a court in the executing State». In such situations, the principle of mutual trust, which underpins international cooperation at EU level, is severely compromised.

Courts – executing authority – seizure orders:

- Spain – According to national legislation, victims are parties to criminal proceedings. Victims also have the right to claim compensation for their losses. In this sense, they can go to the civil court or claim compensation directly in the criminal proceedings, after which the criminal court will resolve both the criminal and the civil aspects of the case. Furthermore, the rule is that the assets that can be the subject of restitution to the victim cannot be confiscated.

In a case where the Romanian court was asked to recognise a seizure order issued by the Spanish authorities, it was found that: «the Spanish authorities have not requested the recognition and enforcement of a seizure order issued in accordance with European standards, namely on the basis of Regulation (EU) 2018/1805, thereby unjustifiably extending its applicability to a completely different scenario, that of the enforced execution of civil obligations arising from a final conviction for committing a crime. Of course, the provisions of the Regulation do not affect the rules on compensation and restitution of assets to victims in national proceedings, but this does not mean that the legal frameworks applicable to each scenario overlap.

Or, in the present case, according to the certificate of seizure presented to the Romanian judicial authority, it is requested that an enforcement procedure be

initiated against the defendant, in favour of the victim of the crime committed by him, in order to ensure the reparation of the damage caused by the convicted person to a natural person, a Spanish citizen (damage amounting to 15,815.25 euros, plus interest and enforcement costs amounting to 4,800 euros). In the present case, the Spanish judicial authorities have not issued a seizure order in accordance with the provisions of the abovementioned Regulation and have therefore wrongly resorted to the present procedure, which is not capable of ensuring the enforcement of the provisions of the final judgment concerning the payment of compensation to the victim; the victim still has the right to have access to the national legal instruments in order to start the enforcement against the convicted person, even if the procedure to be followed would require certain peculiarities, determined by the presence of an element of foreignness (the circumstance that the defendant currently resides on the territory of Romania)».

Courts – executing authority – seizure orders recognised by prosecutors and where appeal to judges has been allowed:

- Belgium - the appeal was partially upheld in relation to a single account whose number had changed since the seizure order was issued by the Belgian authorities, which would have led to an unjustified extension of the seizure measure.
- Germany - accounts seized under the seizure order recognition procedure actually belonged to another person. As a result of the court's discussions with the authorities of the issuing State, the German authorities indicated that they would no longer request seizure in this situation, for which the appeal was granted.

12) Which problems have arisen in these first years of REG application? E.g., difficulties in identifying the competent authority as executing State, inconveniences related to the translation of the certificate or of the orders to be applied, difficulties in identifying the assets to be confiscated, problems connected to the guarantee of the right to effective legal remedies (art. 33), impossibility to execute orders (art. 22), multiple orders for the same person or asset.

Prosecutor's Offices:

- receipt of incomplete certificates or certificates issued on the basis of other cooperation instruments, which required further correspondence and led to an extension of the deadline for the execution of the order.
- problems related to the length of time taken to receive a response from the enforcement authority.

Courts:

- Particular attention should be paid to the competence of the authorities that recognise seizure orders. Thus, the recognition of seizure orders is carried out by the competent authorities of the requested State in accordance with national law. According to Romanian national law, during the criminal investigation phase, the seizure order is issued by the prosecutor, which means that he also has the competence to recognise a seizure order issued by foreign authorities, even if, according to the legislation of certain States, such an order is under the jurisdiction of an examining magistrate - Belgium.
- With regard to translation costs, if the Romanian courts wanted to translate the confiscation order as well as the certificate, the costs would be covered by the public budget. There is no specific provision to this effect, but the general provisions providing for the payment of all translation costs by the State apply.

- National legislation is not very clear on how to appeal against the decision to recognise the confiscation order. Some courts allow an appeal to be lodged within 10 days of notification, while others allow an appeal to be lodged within 3 days of notification. The difference arises as a result of the fact that, according to the general regulation, the appeal is granted when substantive aspects of the criminal law legal relationship (deed, guilt) are in question and the challenge is when the analysed aspects concern matters related to the criminal law legal relationship (preventive measures, precautionary measures).

13) Have you ever applied the REG on the mutual recognition of freezing and confiscation orders? Yes / No

ANABI: Not directly, but ARO, which is part of ANABI, had duties in the judicial proceedings that required the application of Regulation 2018/1805. Thus, ARO is the office that transmits information on the basis of police cooperation, information that can either be transmitted directly as evidence or that can later be the basis for issuing a European Investigation Order. On the basis of the evidence thus obtained, the judicial authorities will carry out the recognition procedure under the Regulation.

ANABI is also competent under national law to notify the executing court of the completion of the procedure for recognition of a confiscation order at the enforcement stage. The request for recognition of the confiscation order sent by Romania to Italy was made on the basis of a request from ANABI.

14) If yes, how many times? Once / From 1 to 5 times / More than 5 times

ANABI: We have not applied the Regulation directly.

15) Have you applied the REG as executing or issuing authority?

ANABI: We have not applied the Regulation directly.

16) Have you had doubts about the application of the REG to the case at issue? Yes / No. If yes, were the doubts related to the scope of the Regulation with regard to the other involved State(s) and/or with regard to the type of measure to be recognized and enforced?

ANABI: We have not applied the Regulation directly.

17) Which authorities in your State are competent to issue a freezing certificate pursuant to Article 2(8) of the REG?

The public prosecutor in the criminal investigation phase and the court in the trial phase, in accordance with Article 327¹, paragraph (1) from Law No. 302/2004.

18) Which authorities in your State are competent to execute a freezing certificate pursuant to Article 2(9) of the REG?

The Prosecutor's Office of the Tribunal in the investigation phase, or DNA/DIICOT if the facts fall within its jurisdiction, and the Tribunal in the trial phase, in accordance with Article 327¹, paragraph (3) of Law No. 302/2004. The territorial jurisdiction of the executing authority is determined according to the location of the asset for which the seizure order was issued, or according to the domicile or registered office of the natural or legal person presumed to derive income in Romania.

19) Which authorities in your State are competent to issue a confiscation certificate pursuant to Article 2(8) of the REG?

Only the courts, pursuant to Article 327¹, paragraph (2) of Law No. 302/2004.

20) Which authorities in your State are competent to execute a confiscation certificate pursuant to Article 2(9) of the REG?

The Tribunals, according to Article 327¹, paragraph (5) of Law No. 302/2004. The territorial jurisdiction of the executing authority is determined according to the location of the property for which the confiscation order was issued, or according to the domicile or registered office of the natural or legal person presumed to receive income in Romania.

21) Do you know the legal basis of this competence?

- Regulation (EU) 2018/1805 of the European Parliament and of the Council of 14 November 2018 on the mutual recognition of freezing orders and confiscation orders.
- Law No. 302/2004 on international judicial cooperation in criminal matters.
- The Civil Procedure Code, the Fiscal Procedure Code, the Criminal Procedure Code and Law No. 318 of 11 December 2015 on the setting up, organisation and operation of the National Agency for the Management of Seized Assets on the amendment and completion of certain normative.

22) In order to identify the competent authority for issuing or executing a freezing or confiscation order in another EU Member State, to whom did you ask for information (or in practice to whom the competent authorities in your country ask for

information)? EU Commission / EU Council / European Judicial Network / Eurojust / Ministry of Justice / Colleagues

Prosecutor's Offices: Eurojust, Ministry of Justice, European Judicial Network, European Judicial Atlas, colleagues working in international cooperation units.

Courts: Ministry of Justice, Eurojust, European Judicial Atlas, National Network of Judicial Cooperation in Criminal Matters.

23) Was the information received complete and correct? Yes/No. Please, provide a detailed answer.

Yes, the information provided was complete and correct.

ANABI: It is worth noting that we worked closely with the Liaison Magistrate in Italy when issuing the seizure order and confiscation order to Italy. The liaison magistrate thus attempted to identify precisely the procedure in Italy, in the context of which the executing court, at the enforcement stage of the final judgment and in the absence of a prior seizure order, sent a confiscation certificate together with a seizure certificate. In this context, due to the division of jurisdiction at the level of Italian legislation, there have been certain obstacles in determining the precise jurisdiction of the judicial bodies that must recognise the seizure and confiscation order. The liaison magistrate also kept ANABI informed of the progress of the case. Unfortunately, more than a year after ANABI's first step, the confiscation order has still not been recognised in Italy. Only the seizure order has been recognised and is currently under appeal to the Italian Supreme Court.

24) According to your experience or to the available studies and data, are the competent authorities in your country aware of the practical tools for judicial cooperation (in particular "Judicial Atlas", "Judicial Library" and "Compendium")

available on the website of the European Judicial Network? Yes / No. Have you ever used one or more of the above mentioned "tools"? Yes / No. If yes, have you faced difficulties in using them? Yes / No / Please provide a detailed answer.

In particular, the Judicial Atlas is a well-known and frequently used tool by both judges and prosecutors. The other tools mentioned are known in particular by prosecutors who have issued/executed European Investigation Orders.

It should be mentioned that several practical activities presenting the benefits of the tools, in particular the use of the Judicial Atlas, are included in the professional training of judges and prosecutors within the National Institute of Magistracy. In addition, they attend a series of workshops where they can obtain certificates for different types of international cooperation.

25) According to your experience, in your country are the issuing and executing authorities aware of the role which is played by Eurojust in the application of the REG?

Yes. The answers of the prosecutors show that they cooperate with Eurojust. The analysis of court decisions also shows that the courts have asked Eurojust for clarification.

26) Which channels the issuing authorities in your country use to transmit the freezing or confiscation order? Ministry of Justice / Eurojust / Liaison Magistrate / Direct transmission to the foreign executing authority / Other / Not applicable

Prosecutor's Offices: In most cases, the direct transmission to the foreign authority takes place on the basis of the information contained in the Judicial Atlas. The authorities may also contact the Ministry of Justice, Eurojust, the liaison magistrate or the Prosecutor General's Office.

Courts: The two seizure and confiscation orders were sent directly by the executing court.

27) By which channels the executing authorities in your country receive the freezing or confiscation orders? Ministry of Justice / Eurojust / Liaison Magistrate / Direct transmission from the issuing foreign authority / Other / Not applicable

Orders were received through Eurojust or directly from the issuing foreign authority. The Ministry of Justice is also the central authority for confiscation and seizure orders issued during the trial phase. For seizure orders issued during the investigation phase, the Prosecutor General's Office is the central authority.

28) In the application of the REG as issuing authority, have problems arisen in relation to the lack of transmission of the order (national judicial decision)? Or to the lack of translation of the order (national judicial decision)? Has the translation been required into the official language of the executing State or into another language which that State has formally accepted? Yes / No. If yes, by whom and on which legal basis? By the foreign executing authority / by the central authority of the executing foreign State / by the Ministry of Justice / by Eurojust / On the basis of the Regulation / On the basis of the national law of the executing State / On the basis of the customary law principle of international comity with assurance of reciprocity

No such problems have arisen regarding the transmission of the order or its translation.

29) Is the reimbursement of translation costs asked to the executing State? Yes / No

No.

30) Has any difficulty arisen because of the lack, incompleteness and/or insufficient quality of the translation of the certificate and/or of the underlying national measure?

Yes / No. If yes, how has it been solved?

Yes, there have been some difficulties with the incomplete certificates. The judicial authorities have asked for clarifications, usually through Eurojust.

31) Whether as issuing or as executing authority, have you ever had experience of cases where, due to the urgency of the freezing or confiscation, the translation of the certificate into English was requested/accepted (instead of the translation into the official language of the other State or into another language(s) which that State has formally declared to accept)? Yes / No. If yes, please provide a detailed answer.

No.

32) Whether as issuing or as executing authority, have you ever had experience of cases where, due to the urgency of freezing (seizure) or confiscation, the execution of the certificate was preceded by the freezing of the asset on the basis of the cooperation with police authorities or FIUs (Financial Intelligence Units)? Yes / No. If yes, please provide a detailed answer

No such cases have been identified. With the implementation of the Directive (EU) 2024/1260 of the European Parliament and of the Council of 24 April 2024 on asset recovery and confiscation, ARO will be able to have such powers, particularly in the situation of international cooperation, to cover precisely the period between the moment when the ARO has the necessary information to issue the seizure/confiscation order and the moment when

such an order is issued. As a result, ARO will be able to order immediate action from the first moment it has knowledge of the assets.

33) Which are the major, theoretic and/or practical, difficulties you have faced in identifying the competent authority to issue or execute a freezing or confiscation certificate?

From a practical point of view, no problems were identified.

From a theoretical point of view, we appreciate that the application of Article 19, paragraph 3 of the Regulation may be problematic in practice, considering the obligation to inform the person against whom the seizure measure has been ordered, in a context where Romanian law establishes, as a matter of principle, that the taking of the seizure measure is done in relation to the assets of suspect, procedural quality, which must be brought to his attention in the shortest possible time.

We also refer to the case where the Romanian court refused to recognise a seizure order issued by the Spanish authorities - question 11. The definition of a seizure order refers only to the situation of assets that may be subject to confiscation. However, in some Member States, including Romania, the victim can apply for civil compensation directly to the criminal court. Once such a claim is made, the assets in question cannot be confiscated, but are used to compensate the victim. Contrary to the legislation of other countries, in Romania it is not possible to order the return of confiscated property to the victims, since the confiscation measure makes the property the private property of the State. Although the Regulation mentions that seized assets may be returned to the victim, it does not explicitly allow assets to be seized in order to protect the interests of victims. Thus, according to the definition in Article 1, 'disposal order' means a decision issued or validated by an issuing authority to prevent the destruction, transformation, removal, transfer or disposal of property with a view

to its confiscation. However, if the victim seeks compensation in the criminal proceedings, certain assets that could have been confiscated will no longer fall into this category and will be returned to the victim. Strictly speaking, in this case the procedure for recognition of the seizure order cannot be carried out because the seizure is not carried out to obtain a confiscation measure but to cover the victim's damages.

34) When problems arose and the proceeding ended with the recognition of the freezing or the confiscation, how were these problems solved? Please, provide a detailed answer.

On the occasion of the execution of a recognised seizure order, the subject matter of which was the funds in the accounts, the bank asked the public prosecutor to clarify whether the order concerned only the existing funds in the respective accounts or also future funds. The Prosecutor's Office clarified that the measure applies to amounts up to a certain value specified in the order imposing the seizure measure, without distinguishing according to the time when the funds arrived or will arrive on the account.

35) Have any additional documents or information been provided? Yes / No. If yes, please provide a detailed answer

In certain situations where clarification has been requested, the certificate has been supplemented with the relevant information.

In another situation, after the Romanian executing authority had notified the execution of the order, it was the issuing authority that requested additional information on the amounts available in the bank account subject to the confiscation measure and was informed of the reply that the executing authority had received from the bank. In the same case, as there was information that the person concerned had been detained at a certain point in time, the

executing authority requested additional information on whether the person concerned was still subject to the preventive measure. The notification from the Romanian authority was sent by e-mail via Eurojust to the issuing State.

36) Were there any meetings with the competent authorities? Yes / No. If yes, please provide a detailed answer, specifying whether representatives of the central authorities, Eurojust and/or Liaison Magistrates attended the meetings.

In Romania, judges and prosecutors are required to attend ongoing training courses organised by the National Institute of Magistracy. Each magistrate is required to choose 3 such courses per year from a list that covers many areas of interest, including topics related to international cooperation. Each magistrate is then selected on the basis of *criteria* such as: number of courses attended, seniority, professional qualifications, specialisation. For example, the last course on cooperation in criminal matters organised by the National Institute of the Magistracy in October 2002 was attended by the ANABI magistrate on secondment. The meeting analysed aspects of the applicability of the Regulation. The Romanian liaison magistrate from Italy gave a presentation on the subject.

Meetings were also held between the Italian and Romanian judicial authorities, with the participation of magistrates, police officers and representatives of Eurojust. The meeting was held in the Netherlands with a view to establishing a procedure for lifting the seizure of certain assets which, at the time of their seizure, were actually in the possession of bona fide third parties.

At the same time, the Hungarian authorities travelled to Romania to hand over a watch subject to a seizure order.

Finally, a network for judicial cooperation in criminal matters has been set up at the level of the Ministry of Justice, involving judges and prosecutors from across the country.

37) How and where did the above-mentioned meetings take place? By videoconference on an online platform/ In presence at the premises of the issuing authority / In presence at the premises of the executing authority / In presence at the headquarters of the central authority of the issuing State / In presence at the headquarters of the central authority of the executing State / In presence at the premises of Eurojust / In hybrid format

The meetings referred to in the previous point took place in person. In addition, judges from other countries often attend the training courses organised by the National Institute of the Magistracy via videoconference.

38) If you are an issuing authority and you have had experience in issuing certificates, which are the difficulties encountered in filling in the freezing or confiscation certificate (in particular with regard to certificates issued on the basis of confiscations without conviction)? Please, provide a detailed answer.

No difficulties encountered.

39) In your opinion are the information contained in the model of the freezing or confiscation certificate complete, clear and precise? Please, provide a detailed answer.

Prosecutor's Offices: Yes, but only if the information is properly completed, with appropriate details of the facts retained by the issuing authorities.

40) In your opinion are there any necessary or appropriate changes and/or additions to the model of the freezing or confiscation certificate? Please, provide a detailed answer.

No.

41) If you are an executing authority and you have had experience in executing certificates, which are the deficiencies and/or mistakes made by the foreign issuing authority in filling in the freezing or confiscation certificate? Please, provide a detailed answer.

Prosecutor's Offices: There were gaps in the certificate, particularly in relation to the assets subject to the seizure order.

42) In your opinion are the information contained in the model of the freezing or confiscation certificate complete, clear and precise? Please, provide a detailed answer.

The Romanian authorities have assessed that there are no obstacles to recognition in cases where the certificates are fully completed. Moreover, there are few situations where clarifications have been requested.

43) In your opinion are there any necessary or appropriate changes and/or additions to do in the model of the freezing or confiscation certificate? Please, provide a detailed answer.

No.

44) Are you aware, both as issuing authority and as executing authority, of cases where the identification and/or location of the property to be frozen / confiscated has taken place through prior consultations among the competent authorities of the two States, or has been preceded by targeted investigations? Please, provide any useful details, with particular regard to any instrument of judicial cooperation (European Investigation Orders - EIOs, rogatory letters, Joint Investigation Teams) and of police cooperation (INTERPOL o other) used in the above mentioned investigations as well as with regard to the involvement of AROs (Asset Recovery Offices) and/or existing networks in this field (as StAR - Stolen Asset Recovery and CARIN - Camden Asset Recovery Interagency Network).

In some cases, data was initially requested through police cooperation channels, the asset was seized as a result of an *ex officio* notification by the police authorities, after which a seizure order was issued and transmitted on the asset in question. In other cases, the seizure order was preceded by a European Investigation Order, which was used to identify the bank accounts, existing funds or assets of the persons under investigation.

In most cases, information obtained through police cooperation is used first, followed by the execution of European Investigation Orders and, after obtaining the necessary evidence, the seizure of the identified assets.

In certain files, the assistance of ARO-ANABI was requested for the identification of assets located on the territory of Germany and Spain, and in the case of assets located on the territory of Spain, research was carried out through the Centre for International Police Cooperation.

The National Agency for the Management of Seized Assets (ANABI) is designated as the National Asset Recovery Office in accordance with Council Decision 2007/845/JHA of 6 December 2007 concerning cooperation between Asset Recovery Offices of the Member

States in the field of tracing and identification of proceeds from, or other property related to, crime.

To this end, the Agency shall have the task of facilitating the tracing and identification of property derived from the commission of criminal offences and other property connected with such offences which may be the subject of a seizure or confiscation order issued by a competent judicial authority in the course of criminal proceedings.

In the field of asset identification, the Agency has the following tasks:

- a) cooperates with asset recovery offices or authorities with similar functions in other Member States of the European Union, ensuring the exchange of data and information;
- b) cooperates with the competent Romanian authorities and institutions for the purpose of identifying and tracing assets that may be subject to precautionary measures in the course of judicial proceedings in criminal matters, special confiscation or extended confiscation, by transmitting data and information to which it has direct or indirect access;
- c) ensures Romania's representation at the level of the Camden Asset Recovery Inter-Agency Network (CARIN) and exchanges data and information for this purpose, including at the level of other similar networks.

The checks carried out under this type of cooperation precede the issuing of a European Investigation Order. Therefore, information obtained under this type of cooperation cannot be used as evidence in criminal proceedings without the consent of the transmitting State.

45) If you are an issuing authority and you have had experience in issuing certificates, have you ever received the refusal of the execution without prior consultation with the foreign executing authority pursuant to Art. 8(2) and 19(2) of the REG? Yes / No. If yes, have there been cases where the refusal was due to the incompleteness of the

certificate with regard to the description / location of the asset to be frozen or confiscated? Please, provide a detailed answer.

The representatives of the prosecutor's offices stated that this was not the case. The analysis of court decisions did not reveal such a situation.

46) If you are an executing authority and have had experience of receiving certificates, have you ever refused the execution of a certificate without prior consultation of the issuing foreign authority pursuant to Art. 8(2) and 19(2) of the REG? Yes / No. If yes, have there been cases where the refusal was due to the incompleteness of the certificate with regard to the description / location of the asset to be frozen or confiscated? Please, provide a detailed answer.

The representatives of the prosecutor's offices stated that this was not the case. The analysis of court decisions did not reveal such a situation.

47) Both as issuing authority and as executing authority, have you ever deal with cases of concurrence of certificates concerning the same asset? Yes / No.

The representatives of the prosecutor's offices stated that this was not the case. The analysis of court decisions did not reveal such a situation.

48) Both as issuing authority and as executing authority, have you ever deal with cases of concurrence of certificates concerning several assets, which were located in one single State or in different States? Yes / No. If yes, was there the need to coordinate the execution of the certificates? Yes / No. If yes, how was the need for

coordination met? Was Eurojust involved? Were the central authorities of the issuing and/or executing State involved? Please, provide a detailed answer.

The representatives of the prosecutor's offices stated that this was not the case. The analysis of court decisions did not reveal such a situation.

49) Did the type of seizure/freezing order cause any particular problem? In particular, how was the problem resulting from the absence of a subsequent confiscation order solved? Please, provide a detailed answer.

The representatives of the prosecutors' offices stated that this was not the case. A court lifted a seizure order at the request of the person subject to the order, on the basis of evidence that all seizure measures had been lifted in the issuing State – Germany.

50) Please, provide detailed guidelines on the practical implementation of the REG in light of your experience.

We can give a standard example that could lead to the efficiency of the activity of establishing precautionary measures: As we have mentioned in previous responses, in order to achieve an enforceable confiscation solution, it is necessary that law enforcement agencies take all measures to identify assets that may be subject to a confiscation order from the outset of a criminal investigation.

At the beginning of a criminal investigation, information obtained through police cooperation can be a real help. For this purpose, the law enforcement agencies can directly contact the ARO offices. In Romania, the ARO office is part of ANABI. The information obtained may form the basis for the preparation and execution of a European Investigation Order, which may provide the necessary evidence to justify the issuance of a seizure order.

We note that certain information may be transmitted directly as evidence by the ARO offices, if the State transmitting the information expresses its agreement to this effect.

Once the seizure order has been issued under national law, the procedure for its recognition under the Regulation must be followed. The relevant tools that can be used to complete the recognition procedure are the Judicial Atlas and the assistance provided by Eurojust. In order to speed up the recognition procedure, it is necessary to complete the certificates in as much detail as possible and, if possible, to send a translation of the seizure order in a known international language.

It is necessary to pay more attention to files containing such extraneous elements, after which the enforcement authorities are informed of any other events that may occur up to the moment of obtaining the confiscation order - the revocation, restriction, extension of the seizure order, as well as requests that may relate to the anticipated sale of the assets that are the subject of the seizure order. In this sense, we mention that in Romania the seized assets can be sold in advance. There is an online platform for the sale of movable assets and, from 2022, the sale of real estate can be carried out, with the mention that in this case the consent of the owner is required. In Romania, the management and sale of seized assets is carried out by ANABI.

Once the confiscation order has been obtained, effective communication between the authorities is necessary in order to recognise the order and ultimately reach a sharing agreement between the states.

51) Please, provide detailed reform proposals of national law to better guarantee the application of the REG in the praxis.

Prosecutor's Offices: There is a weakness in the application of the provisions of the Regulation concerning the information of the interested parties, even if such information is deferred, in the context where, in real estate matters, the law provides for the publication of seizure measures on penalty of unenforceability towards its third parties. Therefore, the risk

cannot be excluded that a simple consultation of the registers in which such forms of publicity are carried out could lead to the person concerned becoming aware of the measure in question. We understand that the legislation relating to the possible investigative tactics and the taking of seizure orders must provide for coordination with the steps necessary to prove the minimum suspicion of involvement of the person concerned in the facts that may lead to the taking of such measures, in such a way that the disclosure of the procedural quality and the measure of seizure, taken under the conditions of the law, to protect the stolen assets from the power of the measure, at the same time guaranteeing the right of defence of the suspected person.

Courts: There is a need for an express provision on the national remedy available in the event of recognition of a confiscation order. As mentioned in point 12, national legislation is not very clear on the remedies available against a decision to recognise a confiscation order. Some courts grant a right of appeal, which can be lodged within 10 days of notification, while others grant a right of opposition, which can be lodged within 3 days of notification.

The issuing State should also have a right of appeal against a refusal to recognise a confiscation order. This aspect is not explicitly dealt with in the Regulation. Even if it were accepted that they would have such a right of appeal, there is the question of the very short deadlines within which such appeals must be formulated. Perhaps an express provision on this matter, possibly with an obligation on the executing State to communicate the solution to the issuing State at least in a commonly used language, would be welcome.

ANABI: The purpose of the Recommendation is to oblige Member States to clearly indicate which authorities are competent to conclude sharing agreements on amounts obtained as a result of the execution of the confiscation order. We also recommend that this issue be addressed more broadly - for example, in the simple seizure and confiscation of a bank account containing a large sum of money, it may sometimes seem unjustified for the executing State to retain 50%.

52) Please, provide detailed proposals of harmonization to better guarantee the application of the REG in the praxis.

ANABI: We believe that the exercise we are undertaking in RECOVER should be extended to all Member States. Firstly, there would be a database on the confiscation models in place at each state level. The existence of specificities in relation to different types of confiscation models determined most of the problems. Secondly, an analysis of the whole system will be carried out. This will help to identify concrete solutions for the future. For example, due to the fact that Romania did not have any files in which it had the status of requesting State in the case of confiscation orders, the institutional mandate of ANABI was extended in 2022. In this sense, ANABI has acquired the competence to notify the executing courts to follow the procedure of recognition of confiscation orders as issuing authorities. Finally, we hope that more Member States will join this effort to create a real European network of practitioners in this field.

53) Please, provide detailed reform proposals of the REG and of EU soft law explicative instruments for its implementation.

As we indicated in question 33, we believe that the definition of an order of non-disposal should be amended to cover the situation of assets that could be returned to the victim or used as guarantees to cover the damages to be determined by the national criminal courts. Victims would thus see a real benefit in the existence of guarantees in the form of non-disposal orders in criminal proceedings, an aspect that would encourage them to claim damages in criminal proceedings, if the legislation of the Member State allows such a possibility.

54) Please, provide detailed policy recommendations in light of the collected data in order to improve the REG application

As an instrument of international cooperation, the Regulation is, in our opinion, very well drafted. However, we can see that its application is not very high, although it is clear that the criminal phenomenon with cross-border elements is constantly present in the Member States of the European Union.

We believe that one of the reasons why the Regulation is not applied very often is the lack of the other component at the same level, namely a relevant instrument in the matter of confiscation. At the time of filling the questionnaire - It is well known that the proposal for a directive on asset recovery and confiscation is currently under negotiation. The initial proposal of the European Commission was ambitious and was constantly supported by the national experts from Romania. However, the outcome of the negotiations is in many respects not very different from Directive 2014/42.

The three main elements which would significantly contribute to strengthening criminal policy, and which have been substantially modified by successive compromises, concern the following articles of the proposal for a directive on asset recovery and confiscation:

Article 11, paragraph 4: “Freezing – immediate action”

Arguments in favour of giving the ARO responsibility for immediate action:

- The ARO has access to the national registers containing the assets and the freezing of these assets for a short period could be carried out immediately, precisely as a result of a single procedure carried out by a single institution;
- In terms of international cooperation, it would remove administrative barriers caused by a lack of communication between the competent authorities of different Member States. The ARO structures have developed secure and constant communication

channels over time, which is a real advantage in terms of providing the fastest possible support;

- Furthermore, with regard to international cooperation, if the financial information provided by the ARO structures on the basis of Articles 6 and 9, immediate action against the assets just identified during the cooperation is the option that ensures the greatest coherence of the entire architecture underlying the financial investigation.

Although the negotiations were close, in the end Member States will not be obliged to recognise this competence of the ARO. Instead, they have this option.

Article 9 – “exchange of information”

It should be noted from the outset that, in very few cases, Member States' AROs, when exchanging information, allow the requesting ARO to use the information obtained as evidence in criminal proceedings.

Therefore, paragraph 4 in its present form does not represent any progress compared to the current Regulation, which is the result of the Swedish initiative - Decision 2006/960/JHA. We appreciate that the Commission's proposal was more appropriate to avoid duplication of judicial cooperation activities through the creation of mutual assistance committees.

Our arguments in favour of the information transmitted being admissible as evidence by the judicial authorities of the requesting State are as follows:

Firstly, the information provided by the AROs can be directly used as evidence if it is objective and the intrusion resulting from access to the databases is proportionate to the objective pursued, which is to conduct a criminal investigation quickly and obtain as much evidence as possible in the shortest possible time.

Second, it's a question of efficiency.

In order to illustrate how Articles 6, 9 and 11 will operate simultaneously in practice, the following example may be relevant: a prosecutor in Romania requests, via the ARO, information and immediate action concerning the assets of a person under investigation in Member State X. The ARO in Romania will contact the ARO in Member State X and request, on the basis of the prosecutor's request, the following 3 elements: identification of assets that could be seized (Article 6), transmission of information on the identified assets to the ARO in Romania (Article 9) and immediate action in relation to those assets (Article 11). If the ARO of Member State X identifies a vehicle, it shall transmit the vehicle data to the ARO of Romania. At the same time, the ARO of Member State X will take immediate action against the vehicle. After receiving the information, ARO Romania will send it to the Prosecutor's Office for the issuance of a seizure order. Once the order is issued, it must be recognised in Member State X in accordance with Regulation 2018/1805. If the information about the vehicle is not submitted with the possibility for the prosecutor to use it as evidence, the prosecutor will not have the necessary evidence to issue a seizure order and go through the recognition procedure under Regulation 2018/1805. In this case, after obtaining information that cannot be used as evidence, the prosecutor should use other cooperation tools (EIO) to obtain the same information as evidence, i.e. vehicle identification data. However, the execution of the EIO may take a considerable period of time, which may be longer than the period during which the ARO in Member State X ordered the immediate action. And this will have an impact on the seizure procedure. In conclusion, it is appropriate for the ARO in Member State X to provide the information so that it can in any event be used as evidence by the competent authorities in their seizure or confiscation proceedings.

On the other hand, judicial authorities may wonder why they should contact an ARO if the information used cannot later be used as evidence. It is therefore clear that it would be extremely useful to be able to use information obtained as a result of cooperation between

AROs directly as evidence in criminal proceedings, thus avoiding duplication and ensuring the speed of criminal proceedings.

Thirdly, mutual legal assistance in criminal matters between EU countries usually involves direct cooperation between criminal justice authorities, which can sometimes be problematic because it requires a good knowledge of international law aspects. Without excluding this form of cooperation, the assistance that the ARO would provide to the judicial authorities by facilitating the gathering of evidence would be important in a context in which the close links that already exist between the ARO structures in the Member States will greatly help the timely transmission of information, thus avoiding the need for judicial authorities to specialise in European judicial cooperation in cases with extraneous elements.

Article 26 – “Establishment of centralised registers of seized and confiscated assets”

Unfortunately, the obligation to establish a national register of all seizure and confiscation orders has been rejected by most Member States. Romania is currently implementing a unique electronic register called ROARMIS - Romanian Asset Recovery and Management Integrated System. It will contain real-time data on seizure and confiscation orders. The system also provides efficient management of unavailable assets. At the same time, the system will make it easier to identify assets that have been made unavailable or confiscated under the Regulation's recognition procedure, as it will have functions to identify files with an element of extraneousness. We presented this system at the meetings in Brussels when we negotiated the Confiscation Directive. However, the creation of such an electronic register must remain a possibility, according to the majority of Member States.

If the substantive part, represented by the new Directive on this subject, were to reach the same level of consolidation as the Regulation, European cooperation in criminal matters would become a normal part of the work of any practitioner of criminal law.

55) Do you have some data about the gender of the person affected by freezing and confiscation orders? Have you faced any genders issue in applying the REG?

No.