

Policy recommendations on the practical implementation of the Reg. (EU)***2018/1805*****(ed. A.M. Maugeri, University of Catania)**

- 1) The introduction of a ***“uniform system at national level where the relevant information on the application of the Regulation is recorded”*** (Germany: “This can be seen as a systemic problem stemming from the federal system in place in Germany”¹; Portugal: “It would be essential for states to collect precise statistics on the application of the Regulation, with reference at least to the number of requests sent and received and the offences involved. This is not currently the case in Portugal, where no statistics are collected on the regulation”; Romania: “Introducing the art. 26 of Directive proposal 2022 Art. 26 – Establishment of centralised national registers of frozen and confiscated assets”) (See reform proposal 19).

¹ “Our hypothesis is confirmed in the latest response from the statistics department of the federal office of justice from 07.11.2023: “In order to collect the data for Regulation (EU) 2018/1805, the corresponding standardised federal statistical regulation had to be adapted. This adaptation requires reprogramming of the specialised IT applications in the federal states and training of the data collection centers. Obviously, this training cannot be carried out on a large scale in the short term. As a large number of changes are made to the statistical regulations every year, it usually takes some time for new features to become established. In this respect, the Federal Statistical Office also assumes that data collection in the justice administrations is not yet “well-rehearsed”. An interesting information we got was that the Federal Ministry of Justice (BMJ) seems to be in Germany the responsible authority for transmitting the relevant statistical data to the Commission in accordance with Art. 35 of the Regulation but as the statistics department of the federal office of justice reaffirmed “no further statistical data on Regulation (EU) 2018/1805 are available there” to their knowledge.

After sending requests to the general prosecutor's offices separately and in particular to their specialised confiscation departments (*Generalstaatsanwaltschaften – Zentralstellen für die Vermögensabschöpfung*), the only information we have at present comes from Bavaria and Lower Saxony....”

The new Directive 2024/1260 has adopted this rule in art. 27, but only in relation to the management of assets: “For that purpose, Member States shall establish efficient tools of management of the frozen or confiscated property, such as *one central register or other registers* of property frozen and confiscated pursuant to this Directive”.

2) Improving the use of ARO to identify assets that could be subject to a confiscation order (See Guidelines 2,3,4 and Reform Proposal 16 and 26;

Netherlands: “In order to reach an enforceable confiscation solution, it is necessary that the criminal prosecution bodies take all measures to identify assets that could be subject to a confiscation order from the beginning of the criminal investigation. At the beginning of the criminal investigation, a real support can be the information obtained on the basis of police cooperation. For this purpose, the criminal investigation bodies can directly address to ARO offices. In Romania, the ARO office is part of ANABI. The information obtained can be the basis for the preparation and execution of a European investigation order through which the necessary evidence can be obtained to justify the issuance of a freezing order. We note that certain information can be transmitted directly as evidence by the ARO offices, in the situation where the state transmitting the information expresses its agreement in this regard”; *Spain:* “Actual identification of the assets abroad and the use of AROs, including in relation to value-based confiscation orders, that raise jurisdictional issues as the issuing authority does not know to which MS send the order. Difficulties in persuading the executing authority to conduct enquiries,

and, in some cases, insufficient awareness of the existence of AROs and their role”)

This means, first of all, *to implement the rules on AROs provided for by the new Directive 2024/1260* which has improved their role (Chapter II and, in particular, art. 5)

- 3) Each Member State **must clearly establish** which models of confiscation fall within the scope of the Regulation.
- 4) Each MS will have to determine whether it is sufficient **to send the certificate** (this should be the rule) or whether it is necessary **to send the copy of the freezing order** (the same for the confiscation order) - Art. 4(2).
- 5) Each MS must determine **which are the accepted languages for the freezing certificate – Art. 6 (3)**.
- 6) **Establishing English as the accepted language at the EU level** for the certificate and for the translation of the original order (*Lithuania*: “The freezing certificates received without a translation into Lithuanian are not applied, even though the Republic of Lithuania has declared that it accepts these only in Lithuanian”; France “some public prosecutors' offices report that the simplification of freezing requests from one judicial authority to another has made it possible to act more effectively in

blocking sums transferred to foreign bank accounts, often with rebound accounts within the European Union. However, it has been noted that the processing time for these cases is problematic, given the speed of the transfers made by the suspects, so that the request for seizure of the sums held in these foreign accounts may prove ineffective. This difficulty is compounded by the need to translate the freeze certificate and, in some cases, the order of the liberty and custody judge, which delays the official transmission of the freeze certificate by several days. This formality runs the risk of dissipating the sums involved in the freeze. However, this observation is tempered by the fact that some countries allow the request to be sent provisionally in French or English and, thanks to the intervention of EUROJUST, the sums can be safeguarded. ***In order to solve this problem, many public prosecutors suggest that translation difficulties could be reduced if high-performance automated translation tools were made available to all judicial authorities within the European Union***”).

- 7) **In more complex cases “to involve the experts from the ARO / CARIN network as well”**; “they can assist issuing and executing authorities and/or Eurojust with their specialized knowledge” (*Netherlands*: “However, we have experienced that especially in more complex cases under the Regulation the knowledge about financial investigations, asset recovery, freezing and confiscation procedures within Eurojust is not always sufficient. In those cases our advice would be to involve the experts from the ARO / CARIN network as well. They can assist issuing and executing authorities and/or Eurojust with their specialized knowledge”).

8) **Issuing guidelines for the implementation of the Regulation in order to overcome difficulties in its interpretation** (*Poland*: “In the opinion of the enforcers, it appears that the REG provisions are largely too vague and hence interpretation problems arise during their application”; *Netherlands* “It would be helpful that the EU provides more information/guidelines on how to apply the Regulation in practise”).

9) **Issuing guidelines to harmonize the practice of filling in the freezing certificate** (which is not sufficiently clear in practice for Member States) (*Lithuania*).

10) **Improving the communication about the execution of the EFO by the executing authority to the issuing authorities, also in order to avoid that the frozen assets in the other Member State, which are not registered in the national case file, “are not included in the decision on confiscation in the case”** (*Netherlands*: “It is not always communicated if an EFO is executed and if so, what property was actually frozen and what the value of that property is. Also, when we do receive an answer about the execution of the freezing order it is sometimes difficult to understand what exactly was the result of the execution. If, where and in name of which suspect property was frozen. Especially in cases where an EFO was accompanied by an EIO we sometimes receive comprehensive paper files in response, because of which frozen assets in the other Member State can easily be overlooked. **If frozen assets in the other Member State are not registered in the national case file the consequence can be those assets are not included in the decision on confiscation in the case**”).

11) **Raising awareness of the role of Eurojust among competent authorities** (*Portugal*: “*Yes, all prosecutors should be aware of the existence of EUROJUST and its role in this*”).

area. However, they make less use of this body than would be desirable. Relating to judges the situation is may be perhaps worse. In both cases there are no reliable data”).

12) **Training of the competent authorities** on the best **implementation** of the Regulation 1805/2018 and its procedure (Sometimes it is not clear to the authorities whether they can apply the foreign orders directly or whether they have to ask the competent national authorities for a corresponding order in order to implement the foreign order. *Lithuania*: “There are cases where the competent judicial authorities of the European Union still use the form set out in Council Decision 2003/577/JHA of 22 July 2003 on the execution of freezing orders against property or evidence in the European Union instead of the Regulation's freezing certificate”; *Netherlands*: “Sometimes we receive certificates that are still drawn up according to the old freezing order (COUNCIL FRAMEWORK DECISION2003/577/JHA of 22 July 2003 on the execution in the European Union of orders freezing property or evidence). Not all issuing authorities are aware of the new freezing order under the Regulation. The issuing authority would then have to be asked to draw up a new freezing order, potentially wasting valuable time”; *Portugal*: “More training is needed among public prosecutors and judges and also among the investigative authorities” The main problem is the lack of knowledge. If the law enforcement authorities don't know the importance of freezing and confiscation at national level, how they are going to do it abroad. Even so, the experience reported by the prosecutors involved in this area points to the lack of adequate know-how on the distinction between the application of the Regulation and the EIO. There are seizure requests that arrive via the EIO”).

- 13) **Improving international courses for practitioners**, where they can both learn about the application of the Regulation and meet colleagues from other Member States who are also working with the Regulation.
- 14) MS should support **specialized English language courses** for practitioners/competent authorities (*Netherlands*).
- 15) (Each MS **has to clarify who is the national competent authority in order to issue or execute a foreign freezing and confiscation order on the basis of the REG** (art. 2(9) and if there is a central authority according to **Art. 24 (2) (about issuing authority Portugal**: “*There are some doubts in Portugal about this issue. The understanding we have is that they can be issued by the Public Prosecutor’s Office or by the judge, depending on what is at stake*”; *Poland*: “a significant problem in the application of this instrument is the inconsistency of legal systems regarding procedures for securing property (enforcement). Indeed, there are difficulties in identifying the competent enforcement authority in Poland, which often results in the inability to determine the prosecution unit competent locally to execute the freezing order”).

This issue has been solved because on the basis of art. 24 each Member State **has to share to the competent authorities these information** (competent authorities, models of confiscations covered by the Regulation for each MS) which are **already easily found in the European Judicial Network (EJN) Atlas**. See also EJN

11.1.2023 Summary of declarations and notifications from each MS on Competent authorities, necessary documents and languages accepted according to notifications made by the Member States pursuant to Article 24 of the Regulation (EU) 2018/180