Reform proposals for the application of the Reg. (EU) 2018/1805

to legal persons

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1) **Create a common EU register for freezing and confiscation orders to enhance cross-border cooperation**.

Bulgaria proposes the establishment of a common register for all EU countries, designed to encompass both freezing orders and confiscation orders, aiming to streamline and unify the process across the European Union. This register would serve as a central database, facilitating the quick and efficient sharing of information among member states, thereby enhancing the effectiveness of asset recovery efforts across borders.

2) **Refine legal frameworks to assess third-party good faith and target illicit gains more effectively.**

France focuses on refining legal frameworks to better assess the good faith of third parties in asset ownership scenarios. This includes enhancing mechanisms for the confiscation of assets that do not have a proven lawful origin, thus targeting illicit gains more effectively and ensuring that assets obtained through unlawful activities can be confiscated and returned to the rightful owners or the state.

3) **Harmonise national laws with EU directives for consistent execution of freezing and confiscation orders.**

Germany discusses the necessity for further harmonization of national laws with EU directives and regulations, particularly concerning the mutual recognition and execution of freezing and confiscation orders across member states. **This effort would involve establishing clearer guidelines on the treatment of legal persons in cross-border cases and the execution of orders in jurisdictions with differing legal principles regarding corporate liability.** Such harmonisation is crucial for ensuring a seamless and efficient process for the enforcement of orders throughout the EU.

4) **Regulate seized shares management by insolvency practitioners for asset preservation during legal proceedings**.

Romania proposes that the administration of seized shares should be regulated more clearly, recommending that such shares be managed by an insolvency practitioner overseen by a specialised insolvency court. This would ensure that the assets are managed effectively and transparently while legal proceedings are ongoing, safeguarding their value for potential restitution or confiscation.

5) **Designate the Public Prosecutor as the single point of contact for a streamlined asset recovery process**.

Spain's proposed reform takes a comprehensive and innovative approach to enhancing the efficiency of asset recovery processes within the context of combating organised crime. By suggesting the designation of the Public Prosecutor as the single point of contact (SPoC) for receiving both seizure and confiscation certificates, Spain aims to streamline the procedural framework significantly. This approach aligns with the broader objectives outlined in the new Directive 2024/1260 on confiscation and recovery of assets, highlighting the necessity of making the asset recovery mechanism more effective as a deterrent against organised crime. The rationale is grounded in the understanding that by strengthening the capabilities of the Public Prosecutor's Office, the judicial system can respond more swiftly and decisively in the early phases of the asset recovery cycle. One of the core challenges identified in the current framework is the procedural complexity and potential delays associated with the execution of freezing orders. Under the existing system, the issuance of a European Investigation Order (EIO) and the accompanying freezing certificate necessitates separate processing paths when Directive and Regulation need to be coordinated. This "twofold process" can introduce inefficiencies, including the risk that the freezing order must be subsequently shipped to a different judicial authority, potentially delaying its execution, and increasing the risk of asset dissipation. Spain's solution to this problem involves a legal reform that would empower the Public Prosecutor to directly receive freezing certificates from the issuing authority. This change is anticipated to enhance operational efficiency by leveraging existing cooperation contacts and consultation procedures with the issuing Member State. Furthermore, it simplifies the decision-making process for the issuing authority regarding which judicial authority should receive the certificate, thus optimizing reception timing. Moreover, the designation of the prosecutor as SPoC in relation to freezing certificates is seen as a way to address the current dysfunctions arising from the need to coordinate between multiple judicial authorities. By centralizing the receipt and processing of these certificates within the Public Prosecutor's Office, the proposal aims to eliminate confusion and improve the

coordination necessary for the effective execution of these instruments at the national level. Spain's proposal also touches upon the importance of maintaining precise and reliable statistics related to asset seizure and confiscation. By centralizing the receipt of freezing and confiscation certificates within the Public Prosecutor's Office, it becomes feasible to integrate these resolutions into the PPO's case management system, thereby enhancing the accuracy of data collection and reporting. This approach not only supports compliance with regulatory requirements but also provides a foundation for evidence-based policy making and resource allocation within the framework of international cooperation and asset recovery. In summary, Spain's perspective and proposed legal reforms highlight a strategic and holistic approach to improving the asset recovery process. By addressing procedural inefficiencies, centralizing key functions within the Public Prosecutor's Office, and ensuring a more streamlined and effective coordination among various judicial authorities, Spain aims to fortify the legal and operational framework against organised crime, ultimately ensuring that crime does not pay.

6) Grant the Public Prosecutor authority to execute freezing orders to enhance judicial response.

Spain advocates for significant reforms within the framework of the Law on Mutual Recognition of Judicial Decisions (LRM), specifically aiming to augment the efficiency and efficacy of the Spanish judicial authorities during the initial stages of the asset recovery cycle. The proposed reform centres around granting the Public Prosecutor's Office (PPO) the authority to execute freezing orders in urgent cases, thereby enhancing the national cohesion and coordination of Spain's judicial system. This initiative is seen as a vital complement to previous proposals, highlighting Spain's commitment to reinforcing its legal and procedural

arsenal against organised crime and financial malfeasance. The essence of Spain's proposal is to not only recognise the Public Prosecutor's Office as the receiving authority for freezing and confiscation orders but also to empower it with the execution of these orders. This approach extends the scope of mutual recognition, drawing inspiration from Article 53 of Spanish Law 9/2021, which already bestows similar powers on the Spanish European Delegate Prosecutor to freeze assets. Additionally, Spain's initiative aligns with the directives outlined in Article 11 of the new Directive 2024/1260. This directive underscores the necessity for Member States to implement mechanisms that enable the rapid and, when necessary, immediate freezing of illicit assets to prevent their dissipation. Spain recognises the critical role of Asset Recovery Offices (AROs) in these processes and proposes that, given the ARO's non-judicial status within the Ministry of Justice, the Public Prosecutors should be pre-emptively granted the competency to take urgent freezing measures. Spain's rationale for this reform is rooted in a clear understanding of constitutional principles, supported by precedents such as Supreme Court judgment no. 986/2006 of June 19. This judgment affirms that the freezing of assets for the purpose of confiscation does not infringe upon fundamental rights, as long as it adheres to the principles of effective judicial protection, due process, and defence. Thus, Spain advocates for a legal reform that would see specific amendments to Articles 144(2) and 158(2) of the Law 23/2014 (LRM), clearly delineating the procedures and responsibilities of the PPO in handling freezing and confiscation certificates from other EU Member States. In urgent scenarios, the PPO would be authorised to recognise and execute freezing certificates immediately upon their receipt and registration. Following the execution of these urgent orders, the PPO is tasked with informing affected individuals about the decree of recognition and execution, ensuring compliance with legal standards and facilitating prompt communication. Should any individual contest a freezing order recognised by the PPO, the protocol mandates immediate communication of the decree to the First Instance Criminal Court within a maximum

timeframe of twenty-four hours. It then falls upon the Criminal Judge to issue a reasoned decision, either revoking or confirming the decree within seventy-two hours. Spain's push for these reforms underscores its proactive stance in enhancing its judicial framework for asset recovery. By proposing a streamlined, centralised approach to the execution of freezing and confiscation orders, Spain aims to bolster its capabilities in the fight against organised crime, ensuring that the judicial system is equipped to act swiftly and effectively in safeguarding assets against illegal activities. This approach reflects Spain's broader commitment to strengthening its asset recovery operations, demonstrating a strategic and integrated response to the challenges posed by cross-border crime within the European Union.

7) **Clarify that the Regulation covers each form of confiscation of the proceeds or instruments of crime**.

Lithuania highlights the significance of incorporating provisions for civil confiscation, particularly concerning unexplained wealth, within the regulatory framework following the adoption of the new Directive 2024/1260 on Asset Recovery and Confiscation (Article 16). This step is crucial for enhancing the clarity and effectiveness of regulations concerning asset recovery and confiscation, ensuring that the scope of the Directive is comprehensively addressed. **In this direction, it is important to stress, in any case, that the Regulation covers each form of confiscation which regards the proceeds or instruments of crime, also if it is considered civil in the Member State; the proceeding is considered in criminal matter if it is connected to a crime (it regards the proceeds or instruments of crime).**

8) Ensure a greater harmonization in the perspective of the re-educational function of punishment of corporations in order to avoid the so-called forum shopping.

In Italy, the whole sanctioning system is aimed to induce the corporation to adopt adequate organisational models in order to prevent the risk of commission of criminal offences in the future, pursuing the re-educational function. In this perspective confiscation also represents a sort of essential prerequisite in order to realise the re-educational and special-preventive purposes with reference to the corporation (as well as to the individual offender). As a matter of fact to prevent the offender/corporation from taking advantages from the crime is a *condicio sine qua non* in order to assure the preventive effectiveness also of the other afflictive sanctions; otherwise, if the corporation could take advantage from the crime, it would be convenient for it to assume the risk of the other sanctions in light of a cost-benefit analysis. Indeed, in a re-educational logic, in the Italian legal system, the initiative of the corporation in this direction is fostered through the restitution of profit, by which according to Article 17 the disqualification sanctions can be avoided. On the basis of this approach, then, in which the overall special-preventive logic of the sanctioning system of Legislative Decree No. 231/2001 prevails, confiscation correctly gives way to the restitution of the price or profit to the injured party and to the protection of the rights of the third parties in good faith (according to Article 19, co. 1: "except for the part that can be returned to the injured party. This is without prejudice to rights acquired by third parties in good faith"); in particular the restitution to the injured party will allow the corporation to face and solve the consequences of the caused offense, trying first of all to remedy them in this minimum form (however it should be specified that, as affirmed by the Supreme Court and expressly provided for in foreign jurisdictions, not only the existence of the injured party's claim but also its actual exercise are necessary in order to exclude the application of confiscation). In doctrine the strictly *reparative* logic of the confiscation of profit (in particular the confiscation by equivalent

of the profit with primary restitution to the injured person) is also highlighted as the idea that "the crime does not pay" is part of a reparative program which is not vindictive, but restorative; this sanction could be particularly significant and virtuous if it were conceived as a reparative instrument in favour of the victim, and not against the author simply when the related amount is ungenerously collected by the State. Therefore, the affirmation of the re-educational function also with respect to corporations would also be appropriate at the EU level as the best strategy to guarantee the area of freedom, security, and justice, which the EU should represent. So far, the jurisprudence of the Court of Justice has always sought to establish the principle of proportionality in the matter of penalties, which is a fundamental prerequisite in order to aim this function, in affirming the administrative-punitive liability of corporations.

The supranational instruments, while largely imposing the responsibility of corporations, provide for the mandatory nature only of the pecuniary sanction and merely optional of the listed disqualifying measures on the model of the previous Regulation (88) 83; furthermore, they impose that in any case these sanctions must be effective, dissuasive and proportionate sanctions, but without indicating the function to be pursued.

It would therefore be appropriate, on one side, a greater harmonization to avoid the so-called forum shopping and, in particular, the harmonization of remedial conducts and organisational models, of compliance in a re-educational key. On the other side, there is a need for harmonization and implementation of the guarantees of "criminal matters" provided for by the ECHR when, regardless of the formal qualification, a punitive regime is applied with regard to corporations (principles of legality, principle of culpability – in the form of corporate culpability – , principle of proportionality of punishment and its rehabilitative function, presumption of innocence, the rights of the defence on the basis of the principle *nemo tenetur se ipsum accusare*, *ne bis in idem*, as well as the right to legal assistance),

even if of course there is the need to adapt these principles to the particular nature of the corporation.