

REGULATION (EU) 2018/1805 of the European parliament and of the Council on the *mutual recognition of freezing orders and confiscation orders*

A land registry approach

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Mutual cooperation in criminal matters:

implementation of the mutual recognition of *freezing and confiscation orders*

- **Tampere** European Council (1999) and **Stockholm Program** (2009): the cooperation in criminal matters of the UE Member States
- **Framework Decisions** (Council) 2003/577/JHA and 2006/783/JHA: the mutual recognition of freezing orders and confiscation orders
 - Implementation: *“not fully effective”, “insufficient mutual recognition and sub-optimal cross-border cooperation”* (Commission)
- **Directive 2014/42/EU** establishing minimum rules on the freezing and the confiscation of property: freezing of property with a view to possible subsequent confiscation
 - Implementation: the European Agenda on Security (Commission, 28 April 2015) recalled the *“need to improve the mutual recognition of freezing orders and confiscation orders”*

Mutual cooperation: Regulation (EU) 2018/1805

Finally, the new option:

the **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***

- An **act of the Union** which is “legally binding and directly applicable” in the Member States
- Goal: the mutual recognition “without further formalities”
- *Recognition and Execution* of these orders
- Entry into force: 19 december 2020 (Article 41)

Orders and Offences

The Regulation 2018/1805 envisages:

- The mutual recognition of:
 - **Freezing orders** (Article 2.1)
 - **Confiscation orders** (Article 2.2)
- A list of criminal offences (Article 3):
 - Inside the list: application **without verification** of double criminality [**AML** Art.3.1) 8 and 9]
 - Outside: application **subject to condition** of constituting a criminal offence according to the law of the executing State

Procedure

- What's the idea?
 - *The mutual recognition of freezing orders and confiscation orders “without further formalities” (Recital 12)*
 - ... *“execution in the same way as for a domestic order” (Art. 7)*
- Procedure
 - **Issuing Authority /Executing Authority**
 - Essentially, a Court of a MS to a Court of other MS
 - Transmission of a **standard certificate** (the tool)
 - Standard form: annexes 1 and 2
 - Time limits for recognition and execution (Article 9)
 - Same speed and priority as for a domestic case
 - Immediate if the property in question may be removed or destroyed, maximum 48 hours

Land registry implications (1)

INFORMATION for purposes of these proceedings

- Immovable properties are included (Art. 2.3, Annexes)
- The standard certificate includes relevant land register information
 - About the position of the affected person, distinguishing
 - person **against whom** the order is directed
 - person **that owns** the properties (owner, proprietor)
 - About the description of the properties
 - especially location, but not only

Land registry implications (2)

REGISTRATION EFFECTS stemming from the recognition and execution of the freezing and confiscation orders

- Restitution the property to the victim (Art. 29, recital 46)
 - Subject to conditions of bona fides third parties
 - Potentially the execution will lead to a new registration
- Execution of a confiscation (Art. 30)
 - In accordance of the Law of the State of execution
- The registration of both orders in accordance of the law applicable (the State of execution, the *lex registrationis*)

Proposal for ELRN: research

In view of such implications (information and registration), and the fact that they are decided by the national applicable law-*lex registrationis*, **we may suggest that ELRN carries out a study on the national procedures** related to the features of the procedures existing in the Member States about:

- How to provide the land register **information** in these cases
- Specifics of **registrations** that may take place by virtue of
 - The freezing and confiscation *orders* as such, to warn third parties
 - The due restitution, especially if it is issued against a registered owner

Thank you very much
for your attention

