

REGULATION (EU) 2018/1805

of the European parliament and of the Council
on the *mutual recognition of freezing orders
and confiscation orders*

Conclusions

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Framework: the European space area of Freedom, Security and Justice [TFEU, art.4 (j)]

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)

Regulation (UE) 2018/1805: execution

- In the scope of the Regulation (UE) 2018/1805, the judicial freezing and confiscation orders from the Member States shall be **executed** in other Member States
 - The execution may imply **their registration** whenever they affect immovable properties leading to registration, in the form of notices of freezing or confiscation.

ELRN Operating Rules: commitments

1st ELRN Operating Rule:

*1st To enhance the effective and practical application by Registrars of **Community instruments and Conventions in force** between Member States.*

*2nd To establish and maintain **an information system** for the members of the ELRN via an ELRN website.*

ELRN Fact Sheet

- ELRN Contact Points provide information on the **REQUIREMENTS** and **EFFECTS** of the freezing and confiscation orders in the LR systems of the MSs
- This information will become a new **ELRN Fact Sheet** to be consulted in www.elra.eu divided into 3 parts:
 1. Registry requirements
 2. Registry effects
 3. Final questions

1st Part: Registry requirements

- Q.1. Procedure to **lodge or present** these judicial orders in the Land Register.
 - Particularly electronic procedures.
- Q.2. Possibility of registering these orders in the event that who appears as the owner of a property according to the land register (“A”) is a **different person from the defendant** (or person “B”) who is issued a freezing or confiscation order against
 - Registry protection of 3rd parties bona fides (non-defendant parties)
- Q.3. **Type and duration** of the registration of these orders
 - Characteristics/Limited or indefinite duration

2nd Part: Registry effects

- Q.4. **Effects** of the freezing order once registered
- Q.5. **Effects** of the confiscation order once registered
 - In both cases, effects like:
 - Warning to 3rd parties
 - Prohibition or limitation of disposal
 - Possibilities of auction or forced sale
 - Any other envisaged by MSs legislation

3rd Part: Final questions

- Q.6. What is the registry proceeding and moment in which the **opening procedures** of freezing or confiscation are applied for registration?
 - What time the effects are in force
- Q.7. What are the **executing authorities** of these orders in this national system and what is the role of the land registers?

Relevant issues raised from the point of view of the land registration

1. Protection of *good faith* third parties
2. Registration of the **opening procedures**
3. The **role of the authorities of registration** in the matter of execution

1. Protection of good faith third parties

- Regulation 2018/1805 should be applied in accordance with the **European Charter** and the **European Convention** (see Recital 17 and 18) as for the Human Rights and Fundamental Freedoms
- Orders may concern properties that **belong to the non-defendants**, and consequently affect the rights of good faith third parties alien to the proceeding and not in accordance with the Charter and the Convention. Would the registration be acceptable in this case?
- The judgment of the European court (First Chamber) of 14 January 2021, case 393/2019 holds the criterion of **protecting the bona fides third parties**.
 - Authorities of execution may use updated and efficient LR info.
 - It is a sensitive issue to be discussed more in depth

2. Registration of the opening procedures

- It would be worth it to deepen in the possibility of the LR systems to enter the judicial decision of opening of the judicial proceedings in both cases (freezing order and confiscation order), so as to precise **what is the time** in which there can be an official warning to third parties by means of the land register

3. Executing authorities: role of the authorities of registration

- Article 2 (9) has a definition of “executing authority”.
- The land register authorities are involved in these procedures and deal with the registration of these as a part of the **enforcement** that such orders require.
 - Insofar as the registrars have a significant role in the enforcement of the orders —through the registration (or not) of them—, the relationship with the land register systems with the executing authorities —if registers are part of them or necessary collaborator— should be studied more extensively by ELRN.

Thank you very much for your attention

