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Freezing Orders and Confiscation orders: Effort for common standards

D2.1 COMPARATIVE REPORT ON THE IMPLEMENTATION OF REGULATION (EU) 2018/1805

Title	D2.1 Comparative Report on the implementations of Regulation (EU) 2018/1805
Document description	All internal arrangements of each MS, based on desk research (T.2.1) were analysed in order to elaborate the comparative report. This collection brings to light the perceived issues in implementation, as well as the main hurdles that the Offices are struggling with at this initial stage.
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1. BACKGROUND AND SCOPE OF THE REPORT*

The purpose of this report is to provide a structured overview to the **national arrangements** on the implementation of 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, in 25 EU Member States (hereinafter MS)¹: **Austria, Belgium, Bulgaria, Cyprus, Croatia, Czech Republic, Estonia, Finland, France, Germany, Greece, Hungary, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain and Sweden.**

Ireland and Denmark are not taking part in the adoption of this Regulation and are not bound by it or subject to its application.

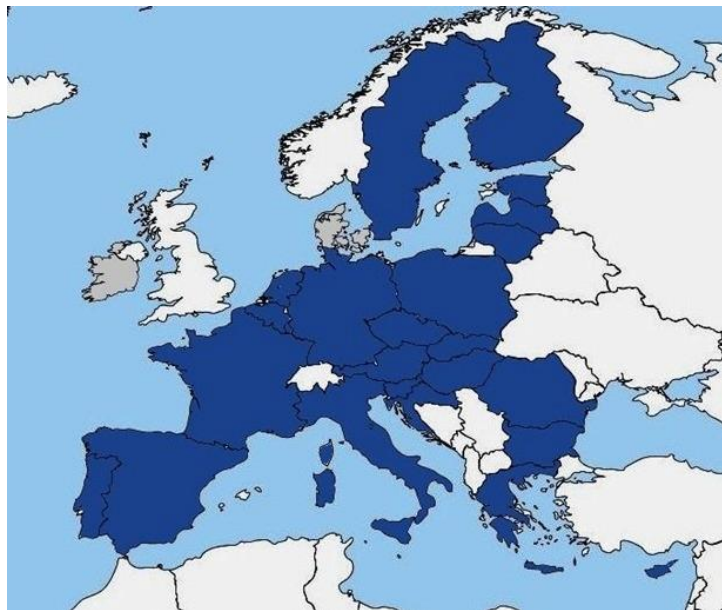


Figure 1. EU MS implemented Regulation EU 2018/1805 of the European Parliament and of the Council of 14 November 2018 on the mutual recognition of freezing orders and confiscation orders - PE/38/2018/REV/1

¹*The Report is updated to 20.11.2022. The report is based on desk research conducted by researchers and scholars for each MS.

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, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32018R1805>.

The Regulation (EU) 2018/1805 introduced common rules about freezing and confiscation orders, together with standardised forms. The last scope of this Regulation is to strengthen **judicial cooperation** through the **mutual recognition** of freezing and confiscation measures. Under the Regulation (EU) 2018/1805, when a competent authority in one EU member state needs to freeze or confiscate assets that are located in another member state, it submits the request by filling in a **standard form** for the freezing order or a standard certificate for the confiscation order. The authority in the requested state is bound to execute the freezing or confiscation order within a short time. It can only refuse the request based on a limited number of grounds set out in the Regulation. Member States are called to **recognise** and to **execute certificates** of freezing and confiscation orders even if an equivalent legal mechanism does not exist under their domestic law. For this reason, the Regulation **leaves room to different national implementation strategies** that are emerging. Not only national traditions and legal systems are different, but the deep-rooted internal procedures also vary strongly from one country to another. This might undermine the success of this new EU's strategy against cross-border crime. Every MS has its own specific rules, while presenting a challenge for the concept of **mutual trust** and ultimately the very possibility of **cooperation** based on **mutual recognition**.

Recent national efforts of implementation have produced several internal rules and practices that currently have not yet been disseminated across national borders, with the consequence of limiting foreign cooperating authorities pursuing the ultimate goal of the cross-border asset recovery. Practitioners are still not sufficiently familiar with the Regulation on the mutual recognition of freezing orders and confiscation orders². Each Member State has reached a very **different level of implementation maturity**.

For the 25 EU Member States, one practical issue is the need to implement at least **three parallel legal regimes** in order to: a) execute requests for mutual recognition with other regulation-bound Member States; b) to execute the same requests with Denmark and Ireland, based on Council Framework Decisions 2003/577/JHA and 2006/783/JHA; and c) to enforce requests from non-EU Member States.

For this reason, it is necessary to raise **awareness** between practitioners about this “new” legal instrument³. Reducing **national differences** and strengthening the **coordination** between national authorities in the early stages of the implementation are the key to the success of the

² <https://www.eurojust.europa.eu/sites/default/files/assets/eurojust-report-money-laundering-2022.pdf>

³ <https://www.eurojust.europa.eu/sites/default/files/assets/eurojust-report-money-laundering-2022.pdf>

Regulation. What is more, the **consciousness** of the additional **domestic rules** among practitioners is **essential**. This report therefore aims to highlight existing national provisions, to help **improve** the process by **building bridges** between legal systems that are not fully harmonised, and to **support** national authorities investigating and prosecuting cross-border crimes.

The main **goal** of the **FORCE project** is to shed light on **strengths** and **weaknesses** of this ongoing process and strengthen the mutual cooperation and understanding **between practitioners** who deal with the practical application of the Regulation.

It is noted that the information contained in the Report is based on desk researches conducted by scholars and researchers in the MS participating in Regulation (EU) 2018/1805. The analysis and the summary tables are merely **illustrative** of selected aspects of the national implementation of the Regulation emerging from the research. For further details, it is recommended to consult the Annex of this document and the European Judicial Network website⁴. The annex contains a **table** showing the **main national legal provisions**, giving the reader further details **on each MS's legal framework**.

⁴ <https://www.ejn-crimjust.europa.eu/ejn2021/Home/EN>

2. NATIONAL IMPLEMENTATION STRATEGIES

The implementation of Regulation EU 2018/1805 through the introduction of several internal rules is still ongoing.

Based on the legislative source, it is possible to observe some principal national trend lines:

- introduction of **special laws** implementing the Regulation (EU) 2018/1805 (e.g. the project de loi in **Luxembourg**);
- introduction of laws amending the national **Criminal Code** or the **Code of Criminal Procedure** (e.g. **Netherlands, Estonia, France**);
- introduction of both **special laws** implementing Regulation (EU) 2018/1805 and laws amending the national **Criminal Code** or the **Code of Criminal Procedure** (e.g. **Lithuania**);
- introduction of a law amending the other national laws, for example in the field of the prevention and suppression of money laundering activities or laws regarding the international mutual assistance in criminal matters (e.g. **Cyprus, Belgium, Hungary, Slovenia, Germany** or **Bulgaria**);
- introduction of additional relevant soft law documents, i.e. internal judicial circulars (e.g. **Italy, Latvia, Austria, Slovakia, Cyprus, Croatia**);
- introduction of relevant soft law documents and initiation of mere public consultation upon the eventual approval of domestic provisions on the implementation of the Regulation (EU) 2018/1805 (e.g. **Spain**).

With the exception of **Portugal** and **Poland**, all other MS introduced additional internal rules or amended the existing laws in order - at least - to facilitate the application of the Regulation (EU) 2018/1805. Some of those circumscribed the arrangements in order to transpose the general rules of the regulation, while others introduced rules focused to make the cooperation between MS more efficient.

3. MACRO AREAS OF MS IMPLEMENTATION STRATEGIES

Among the national strategic implementation procedures of the MS, following an extensive **desk research** conducted in 25 countries, it is possible to recognize **three macro thematic areas** in which the new internal rules operate in practice.

3.1 The secure transmission and the correct fulfilment of the freezing and confiscation certificates between national authorities

With regard to the **efficient transmission** and the **correct compiling of freezing and confiscation certificates** between competent authorities, on the one hand, **several MS** introduced **internal rules** amending the criminal procedure law; on the other hand, others MS introduced only special laws on this subject without amending directly the Criminal Code and Criminal procedural Code. In addition, in order to specify some practical aspects, almost all MS that implemented the Regulation (EU) 2018/1805 introduced specific soft law documents with some specific practical provisions.

Some Member States, as **Slovakia, Cyprus, Malta** and **Croatia**, opted to introduce **both hard and soft-law provisions** on the specific subject of the transmission and recognition of the orders and certificates. In general, the additional internal rules that MSs have adopted concern the **way** in which **certificates are transmitted** (e.g. via **email** or **telematics methods...**), the **languages** accepted and the **competent authorities** to receive or send the orders.

Slovakia introduced amendments to the section 4 of **Act No. 650/2005 Coll.**⁵, an hard law document, establishing the competence between the issuing and the executing authorities. The judicial authority of the State of origin and the judicial authority of the executing State shall interact directly. The judicial authority of the Slovak Republic shall take the necessary measures to identify the competent judicial authority in the executing State; for this purpose, it shall primarily use the contact points of the *European Judicial Network* (EJN) established for each Member States. More specifically, the order and other related documents may be sent or received by a MS by **postal service** or, more in general, in such **other secure form**. The sections 4 and 16 of **Act No. 316/2016 Coll.**⁶, another Slovak hard law document, regulate the manner of communication and sending of documents. The Court shall transmit the decision for its

⁵ The full text is available at www.zakonypreludi.sk.

⁶ The full text is available at www.zakonypreludi.sk.

recognition and enforcement in another MS through the Ministry, to which it shall send a copy of the decision with a duly completed certificate, the model of which is set out in Annex I of the Regulation (EU) 2018/1805. At the same time, the Court shall ensure the translation of the certificate into the language pursuant to § 17 Act No. 316/2016 Coll. Furthermore, the Ministry of Justice of the Slovak Republic, with the *“Notice 1/2021 on the declaration of the Slovak Republic to Regulation 2018/1805”*⁷, reasserted the competent judicial authority under the regime for restraint orders and what is the regime for property decisions.

Similarly, Cyprus, with the *“Declarations to the Commission for purposes of compliance with 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”*⁸, established that when a freezing certificate is transmitted with a view to the recognition and execution of a freezing order, the issuing authority has to transmit the original freezing order or a certified copy thereof together with the freezing certificate. In the same way, when a confiscation certificate is transmitted with a view to the recognition and execution of a confiscation order, the issuing authority has to transmit the original confiscation order or a certified copy thereof together with the confiscation certificate. For both measures, the document clarifies that Cyprus accepts certificates in Greek and English.

Malta, with the article 3 of the *“Mutual Recognition of Freezing Orders and Confiscation Orders Regulations, 2021 - Legal Notice 180 of 2021”*⁹, established that, a freezing or confiscation certificate transmitted to the Asset Recovery Bureau has to be accompanied by the original freezing order and a translation of the freezing certificate. In the entire process, a key role is played by the Asset Recovery Bureau¹⁰, an autonomous public institution that has been established under Legal Notice 357 of 2015 (known as the Asset Recovery Bureau Regulations or ARB). Furthermore, the Proceeds of crimes Act states that where the Director of the ARB receives a request by a judicial or prosecuting authority of any place outside Malta for the enforcement in Malta of a Confiscation order made by a competent Court of criminal or civil jurisdiction in that place, the Director may bring an action in the civil Court (Asset Recovery

⁷ The text is available at <https://www.ejn-crimjust.europa.eu/ejn2021/Home/EN>.

⁸ *Declarations to the Commission for purposes of compliance with 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 (hereinafter “Declarations”)* retrieved from: <https://www.ejn-crimjust.europa.eu/ejn/libdocumentproperties/EN/3305>.

⁹ The text is available at <https://www.gov.mt/en/Government/DOI/Government%20Gazette/Court%20Notices/Pages/2022/09/CourtNotices1309.aspx>.

¹⁰ Hereinafter, ARB.

Section) by an application containing a demand that the enforcement in Malta of the foreign confiscation order be ordered. The Director has to attach to the application a copy of the foreign confiscation order, (and where such order is in a language other than Maltese or English, together with a translation of the order into Maltese or English) together with such documents in support of the demand and has to indicate in his application the names of all the witnesses to produce, stating in respect of each the proof to make.

In Croatia, as established with **“Zakon o pravosudnoj suradnji u kaznenim stvarima s državama članicama Europske unije”**¹¹, an hard law document on Judicial Cooperation in Criminal Matters with the Member States of the European Union, the competent county attorney’s office initiates the procedure for recognition and execution of freezing orders and confiscation orders after receiving from the issuing state: i. freezing certificates from Annex I of the Regulation, i.e. confiscation certificates from Annex II of the Regulation, translated into Croatian, and in urgent cases a translation into English is acceptable, subject to the condition of reciprocity; ii. the original or certified copy of the freezing order or confiscation order, which decision in accordance with Article 6, paragraph 2 of the Regulation does not have to be translated. With regard to the practical management of a confiscation order under art. 2 par. 2 of the Regulation (EU) 2018/1805, the county Court in charge of issuing, fills out the certificate from Annex II of the Regulation (EU) 2018/1805 and translates it into the language of the executing state. Then the certificate is sent it together with the decision on the confiscation directly to the competent authority of the executing State. So in practice, when it is necessary to initiate the procedure for recognition and enforcement of the decision on confiscation of assets under the art. 560(1) Criminal Procedural Act, i.e. the procedure for the enforcement of the decision on confiscation of assets located in another EU Member State (except Ireland and Denmark), the competent State attorney will initiate such proceedings at the county court as the competent authority, which will fill out and certify the content of the certificate from Annex 2 of Regulation EU 2018/1805. Furthermore, the **“Declarations pursuant to 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”**¹² established that when a freezing or confiscation certificate is transmitted to the Republic of Croatia with a view to the recognition and execution, the original freezing or confiscation order or a certified copy thereof must be transmitted together

¹¹ Official Gazette (*Narodne novine*) No. 91/10, 81/13, 124/13, 26/15, 102/17, 68/18, 70/19, 141/20 (AJCMSEU).

¹² Available at <https://www.ejn-crimjust.europa.eu/ejn/libdocumentproperties/EN/3304>.

with the freezing/confiscation certificate. Freezing and confiscation certificates should be translated into Croatian, but in urgent cases a translation into English will be accepted subject to reciprocity.

Sweden, in accordance with “*Law with Supplementary Provisions*”¹³, the original decision should be sent together with the freezing and confiscation certificates. The certificates can be provided in either Swedish or English¹⁴. The “*Law with Supplementary Provisions*” also envisages rules for what the executing authority is supposed to do with the confiscation/freezing order and the decision. The executing authority, within which the Swedish system is the Swedish Enforcement Authority (“*Kronofogdemyndigheten*”) for the confiscation order and a prosecutor for the freezing order, takes the decision on recognition and execution.¹⁵ This decision must contain the specific sum of money or item that is subject to the order,¹⁶ and the subject to the decision must be notified¹⁷.

In **Slovenia**, with regard the correct compiling of certificates, there is a general form requirement for freezing certificates and confiscation certificates contained in the article 224.d of the “*Zakon o sodelovanju v kazenskih zadevah z državami članicami Evropske unije*” (hereinafter *ZSKZDČEU-1*)¹⁸, an hard law document amending the Cooperation in Criminal Matters with the Member States of the European Union Act and establishing that the freezing and confiscation certificates must be issued on Annex I and Annex II of Regulation (EU) 2018/1805. The most important provision dealing with the secure and standardized transmission (of documents) is the article 6 *ZSKZDČEU-1*, systematically located under general provisions. Hence, this provision deals with communication between competent authorities in general and aims at all instruments of mutual recognition. It stipulates that the communication between the competent authorities needs to be direct, *i.e.* without intermediaries. However, if a MS has a central authority, such communication is done through that authority, which can be located via Eurojust, contact points of the *European Judicial Network* (EJN) or the Ministry of Justice. Article 6 requires that documents (in this regard the freezing and confiscation orders, certificates and their translations) should be transmitted to the executing authority via **mail, telefax, electronic mail** or

¹³ The text is available at <https://www.government.se/4a5a80/contentassets/467ef1335aac404c8840c29f9d02305a/act-containing-supplementary-provisions>.

¹⁴ Law with Supplementary Provisions 4:1 para. 2 and 5:1 para. 2.

¹⁵ Law with Supplementary Provisions 4:3 and 5:3 para. 1.

¹⁶ Law with Supplementary Provisions 5:3 para. 1.

¹⁷ Law with Supplementary Provisions 5:3 para. 3.

¹⁸ Zakon o sodelovanju v kazenskih zadevah z državami članicami Evropske unije, Uradni list RS, št. 48/13, 37/15, 22/18 in 94/21.

other secure technical means. Such means should enable the executing authority to verify the authenticity of the sender and the data and also have to ensure a level of protection appropriate to the risk of disclosure of personal data. In addition, during the transfer the documents must be illegible or unrecognizable. Moreover, if there are issues in sending or verifying the documentation that cannot be eliminated directly, the documentation can be sent through the Ministry of Justice. Currently, requests are mainly exchanged in written form by **regular mail**, and within the framework of the project, the conditions for digitalized cooperation of state prosecutors and other authorities will be provided.

In **Austria**, according to the sec. 43 par. 1 of the “*Federal law on Judicial Cooperation in Criminal Matters with the Member States of the European Union*” (hereinafter *EU-JZG*)¹⁹, the prosecution authority has to initiate proceedings to execute a freezing order, if another Member State transmits the freezing certificate (art. 6 Regulation EU 2018/1805) or if it can be assumed on the basis of certain facts that an asset for which an alert has been issued in the *Schengen Information System* is located within the Country. In the Explanatory Remarks on the provisions in the EU-JZG implementing Regulation EU 2018/1805²⁰, the legislator notes that Regulation does not replace or supersede other existing international treaties in this area. In particular, the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism²¹ and the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime²² continue to apply. The issuing authority therefore has the choice of sending either a freezing certificate or a request for MLA²³. If the prosecution authority executes the freezing order by giving the direction to the police to conduct a securing, the securing direction has to include the designated prosecution authority, the designated proceedings, the accused’s name, the crime the accused is suspected of having committed and its designated statutory provision and information concerning the rights of the person affected. The direction also has to include a statement of reasons showing the admissibility of the execution and a copy of the freezing certificate (**Sec. 43 para 6 EU-JZG**). It is

¹⁹ Federal law on Judicial Cooperation in Criminal Matters with the Member States of the European Union (EU-JZG), last updated by Federal Law Gazette I 2021/94.

²⁰ ErläutRV 808 BlgNR 27. GP (“Explanatory Remarks of the Legislator on the provisions in the EU-JZG implementing Regulation EU 2018/1805”).

²¹ CETS No. 198, FEDERAL LAW GAZETTE III 2020/148.

²² CETS No. 141, Federal Law Gazette III 1997/153.

²³ ErläutRV 808 BlgNR 27. GP 21.

not necessary to include a description of the investigative measure to be carried out²⁴. The Court decides on the execution of a confiscation certificate with an order. The order has to include the designated issuing authority, the designated proceedings, a brief statement of the facts, including the place and time of the offence and the measures ordered, as well as the designated statutory provision (Sec. 52 para 7 *EU-JZG*). If the confiscation order concerns a sum of money, the amount to be enforced domestically shall be fixed at the amount stated in the order to be enforced.

In cases where the Austrian prosecution authority is the issuing authority for a freezing order, the prosecutor has to apply for a seizure at Court and cannot order a securing. The Court then issues and transmits the freezing certificate (Sec. 44 *EU-JZG*). This is a deviation from the national system of criminal procedure law in which the prosecutor is responsible to issue investigation measures. The Austrian legislator decided that in any case a freezing order by the Court is necessary to avoid time-consuming proceedings before the ECJ because in the past questions of doubt in the interpretation of the term “issuing authority” arose²⁵. About the secure and standardized transmission, the “*Introductory Decree*”²⁶ only states that freezing orders shall be handled in the **electronic filing system** and the confiscation orders should be handled like cases concerning the enforcement of sentences²⁷.

In **Finland**, both freezing and confiscation orders²⁸, must be forwarded to the Finnish state translated into Finnish, Swedish or English, and the original decision may be accompanied by a translation into one of these languages. The section 3 of the hard law document entitled “*Tanja Jäädyttämis- ja konfiskaatioasetusta (EU 2018/1805) täydentävä lainsäädäntö Lausuntotiivistelmä*”²⁹ also states that the prosecutor in charge of the measure or the Legal Register Centre in the particular case may follow up with the document issued in a different language if there is no other obstacle for acceptance. Finally, it will be possible for the competent authority to translate the certificate into the official languages in Finland, *i.e.* both Finnish and Swedish³⁰. Currently also, according to §8 of the Act, the prosecutors must notify the Legal

²⁴ ErläutRV 808 BlgNR 27. GP 22.

²⁵ ErläutRV 808 BlgNR 27. GP 23.

²⁶ BMJ, Einführungserlass vom 29. Oktober 2021 zum Strafrechtlichen EU-Anpassungsgesetz 2021 (StrEU-AG 2021), GZ: 2021-0.585.850.

²⁷ Einführungserlass 21.

²⁸ INNANEN, Tanja. Jäädyttämis- ja konfiskaatioasetusta (EU 2018/1805) täydentävä lainsäädäntö Lausuntotiivistelmä. Available: https://julkaisut.valtioneuvosto.fi/bitstream/handle/10024/162365/OM_2020_10_ML.pdf?sequence=1&isAllowed=y

²⁹ Available at https://julkaisut.valtioneuvosto.fi/bitstream/handle/10024/162365/OM_2020_10_ML.pdf?sequence=1&isAllowed=y.

³⁰ In this area, there was a change to include the acceptance of the certificate in languages other than the official languages in Finland. This is because, according to professionals heard on the the original project, by virtue of the experience of authorities in this area: "(...)seizure certificates and confiscation certificates arriving in Finland may, if necessary, also be accepted by non-Finnish authorities in the languages indicated(...).

Register Centre regarding the dispatch about a freezing order in criminal proceedings in which this same representative is acting and which needs to be enforced by another Member State, according also to the Finnish criminal proceedings. The prosecutors must also notify the Central Criminal Police, Customs and Border Guard Services who must inform the same prosecutors of the existence of any obstacle to the execution or postponement of the measure³¹.

In **Estonia**, in order to issue a European freezing certificate to the competent judicial authority of the State in which the property or evidence is located, both the certificate itself and a copy of the decision made by the competent judicial authority of the requesting state must be transmitted³². The form of the European freezing certificate is enacted by a regulation of the Minister in charge of the policy sector *i.e.*, the Ministry of Justice. The form is analogue with that described in the article 9 of Framework Decision of the Council of the European Union 2003/577/JHA³³.

Hungary, in order to introduce new rules, addresses the procedural and technical issues arising from the Regulation, adopted the “**Act No CL of 2020**” (Articles 10-14). The Act amended **Act No. CLXXX of 2012** on the international cooperation in criminal matters with the EU Member States (EUCOOP) and provides for that the execution of a decision of a Member State ordering a freezing order may be taken over if the Member State authority sends: a) the original or a certified copy of the decision of the Member State imposing the freezing order and b) the certificate set out in Annex I to Regulation (EU) 2018/1805 in Hungarian, English, French or German. The Member State decision and the certificate shall be received directly by the public prosecutor's office and

INNANEN, Tanja. Jäädyyttämis- ja konfiskaatioasetusta (EU 2018/1805) täydentävä lainsäädäntö Lausuntotiivistelmä. Available: https://julkaisut.valtioneuvosto.fi/bitstream/handle/10024/162365/OM_2020_10_ML.pdf?sequence=1&isAllowed=y, accessed on: 12 Sep 2022

³¹ These measures should respect the confidentiality and restricted use of information, respecting the right of access to information either in the event of a freezing decision delivered to the Finnish State or when issued by the competent authority of Finland. At the same time, the set of conditions and procedures of the State of origin must be observed. INNANEN, Tanja. Jäädyyttämis- ja konfiskaatioasetusta (EU 2018/1805) täydentävä lainsäädäntö Lausuntotiivistelmä. Available: https://julkaisut.valtioneuvosto.fi/bitstream/handle/10024/162365/OM_2020_10_ML.pdf?sequence=1&isAllowed=y, accessed on: 12 Sep 2022

³² Code of Criminal Procedure. – RT I, 22.12.2021, 45. In Estonian: <https://www.riigiteataja.ee/akt/120052016005?leiaKehtiv>.

³³ The form consists of eleven sections. Similar to the freezing certificates, section 508 explains that the issuing of confiscation certificates is left to either the Prosecutor's Office or the Court that conducts proceedings regarding the criminal offence that is to be the subject of a European certificate of confiscation. The certificate is then transmitted alongside a copy of the order on which the confiscation is based to the competent judicial authority of the state in which the property is located. The state to which the certificate is transmitted is either the one in which Estonia has reason to believe the person in whose respect the confiscation order was made has property or income in its territory or, if the aforementioned state is unable to be ascertained, the state which the person has made their principal residence or its registered office. Section 508 explains also that the certificate of confiscation may only be presented to one Member State at a time, unless one of the following requirements is fulfilled: Estonia has reason to believe that the property covered by the confiscation order is located in several states; confiscation of the property covered by the certificate requires the adoption of measures in several states; or Estonia has reason to believe that the property covered by the confiscation order is located in one of those states but its exact location is unknown. The form of the European certificate of confiscation, like the form of the European certificate of freezing, is enacted by a regulation of the Minister in charge of the policy sector, the Ministry of Justice, according to section 50833 of the Estonian Code of Criminal Procedure. The form is also, similarly to the form of the freezing certificates only available in Estonian.

there shall be direct communication between the Member State authority and the public prosecutor's office during the execution of the mutual legal assistance. The transmission of the certificate by the Member State authorities is made through the **secure telecommunications system** of the *European Judicial Network* or Eurojust or the direct transmission by a Member State authority present in Hungary. The public prosecutor's office shall make the decision specified in paragraph on the basis of the certificate. The decision of the Member State may be translated only if the decision cannot be taken on the basis of the certificate. The public prosecutor's office shall inform the Member State authority of the postponement of execution without taking a separate decision. Following the decision, the certificate set out in Annex I to Regulation (EU) 2018/1805 shall be issued: (a) during the investigation, by the public prosecutor's office, (b) after indictment, by the Court. The member of the Hungarian judicial authority issuing the certificate shall (a) sign it and stamp it with his/her official stamp, or (b) authenticate it by sealing it in another manner which cannot be altered without being noticed and thereby certify that its contents are accurate and correct.

If the certificate is to be forwarded to several Member States, the Hungarian judicial authority shall issue a separate certificate for each executing Member State in relation to the decision to seize (also sequestration seizure). The forwarding of the certificate to another Member State shall not prevent the Hungarian authorities from taking action or carrying out further procedural steps to search for the property or assets subject to confiscation or forfeiture which are the subject of the freezing or seizure order or sequestration seizure order.

Finally, in **Latvia, Italy and Romania** the most important practical provisions were provided by a soft law document. In **Latvia**, with the informative letter "*On the regulation of the European Parliament and the Council of 14 November 2018 (EU) 2018/1805 on freezing order and confiscation order mutual recognition*"³⁴ of the Ministry of Justice there is the description of the main points of the regulation, as well as requirements that certificates (Annex I and/or Annex II of the Regulation) have to be filled. The Ministry of Justice invited to familiarise with the provisions of the Confiscation Regulation and in case of confusion, contact the Ministry of Justice. The same idea is included in the text of Annotation to the amendments³⁵ of the **Criminal Procedure Law**. In this latter, chapter 83 provided only the introduction of the Article 880

³⁴ Available in Latvian: <https://www.tm.gov.lv/lv/media/4033/download>.

³⁵ Annotation to the amendments in the Criminal Procedure Law January 7, 2021, entered into effect January 20, 2021. Available in Latvian: <https://titania.saeima.lv/LIVS13/SaeimaLIVS13.nsf/0/2027499A991EE65CC22585C8003564FA?OpenDocument#B>

(Chapter 83) Paragraph (2)³⁶ which establishes that *«the decision to seize a property together with the freezing certificate shall be sent to the Office of the Prosecutor General which will send the abovementioned documents to a European Union Member State in accordance with the procedures specified in Regulation No 2018/1805. If the decision to seize a property must be sent to a European Union Member State that is not bound by Regulation No 2018/1805, the sending shall take place in accordance with the procedures specified in this Chapter».*

Italy, with the par. 8 of the soft law document **“Circular of the Ministry of Justice”** established the requirements of the certificate. Starting from passive procedures, the issuing authorities of other Member States have to transmit to the Italian executing authorities, together with the certificate, the original or the certified copy of the freezing or confiscation order. The issuing authorities of the other Member States have to transmit the certificates to the Ministry of Justice for subsequent forwarding to the competent Italian judicial authorities. As regards the active procedures, if the executing State also requires the transmission of the original or certified copy of the freezing or confiscation decision, only the certificate must be translated. In this case, the Italian issuing authorities will transmit the certificate through the Ministry of Justice which carries out the same administrative and assistance role that it performs for the execution of European arrest warrants.

As for the methods of transmission of the certificate, the Ministry of Justice stated that, based on the experience gained in relation to these instruments, freezing and confiscation certificates can be simply scanned and transmitted, in *pdf* format, as an attachment to an **ordinary e-mail**.

What emerges from the desk research conducted in **Romania** is that an important role to solve some practical issues is played by the **“Tools and Best Practices for International Asset Recovery Cooperation Handbook”**³⁷, published by the Advice on Individual Rights in Europe (AIRE) and Regional Anti-corruption Initiative (RAI). Several instructions are focused on how to complete the certificate or order and some specific instructions on their secure, standardized transmission. It is generally understood, however, that requests for assistance should, wherever possible: use the issuing authority’s headed notepaper, outline the domestic role of the authority making the request and confirm it has permission under domestic law to make the request, give full contact details of the authority making the request, supply one signed version of the request (also sealed

³⁶ Available: <https://likumi.lv/ta/en/en/id/107820-criminal-procedure-law>.

³⁷ The authors are from AML Consulting (Global) Ltd Experts (Jill Thomas, Lawrence Day, Fiona Jackson). This handbook is available in Albanian, Bosnian, Croatian, Serbian, Romanian and Macedonian.

if issued by a judge), and a translated version if required by the requested state, set out the purpose for which the assistance is sought. The requests should also identify clearly: the assistance requested (e.g. freezing and confiscation), the domestic offences charged or under investigation, and potential sentences or penalties, a copy of the domestic legislation criminalizing the conduct, a summary of the facts and the connection to the requested state, any sensitive information that cannot be disclosed to a Court or person, full details of the person (including legal persons), the clear connection between the freezing or confiscation requested and the offence under investigation or linked to proceedings, any relevant domestic Court hearing dates or reasons for urgency, the title of the treaty or Convention relied upon by the requesting state to seek the assistance, contact details for any enforcement agency or officers already familiar with the investigation in the requested state, details of any domestic media attention or sensitivities about the investigation or proceedings, where required by the requested state and relevant to the offence under consideration, assurance that a death penalty will not be carried out or will be commuted³⁸.

Through this legal instrument, there are also some recommendations regarding the **secure transmission** of the certificates. For example, it is mentioned the secure information exchange platform administered by Europol called SIENA. Terminals giving direct access to the SIENA exchange platform have been installed in most EU AROs, allowing direct exchange of information between AROs for the purpose of sending and receiving asset tracing requests. Also, the EGMONT Group is a global network of 159 Financial Intelligence Units (FIUs) that exchange financial information via the EGMONT secure web. The key focus for FIUs is anti-money laundering and terrorist financing. They are a particularly useful source of information relating to suspicious transaction reports and financial accounts such as bank accounts. FIUs use the EGMONT secure web to exchange information securely via an encrypted email system. If is the

³⁸ The document recommend in particular for requests relating to required freezing and confiscation orders, that the following detail should also be included where possible: confirmation that there is dual criminality, where required in the requested state, details of the ongoing investigation/proceedings and whether that is criminal or non-conviction based, the material facts, including of any freezing in the requested state with sealed copies of those orders, and any defence or explanation offered by the suspect/defendant, why there is reasonable cause to suspect that the suspect/defendant has benefitted by obtaining money or another asset from conduct, why there are reasonable grounds to suspect that the property may be needed to satisfy an order in the requesting state that has been or may be made, and the connection to the requested state, why the order is necessary, full details of the suspects or defendants and the property to be restrained, brief details of all other known property held by the suspect/defendant outside the requested state, so that the requested state can ensure (where appropriate) that only sufficient assets are restrained to meet the amount of any confiscation order that may be made, that the property in the requested state must be restrained because there are insufficient property/assets elsewhere, whether or not the requesting state objects to the requested state permitting access to restrained funds for living and legal expenses.

case, requests to trace assets and enforce orders for freezing and confiscation can also be sent via Liaison Officers or Embassies to guarantee their legal and secure transmission.

In the following table, an illustrative scheme of some of the several methods of transmission of certificates raised from desk researches conducted in the 25 countries and described in the paragraph 3.1

<i>EU Countries *</i>	<i>Methods of transmission of the certificates under the Regulation (EU) 2018/1805</i>
<i>HUNGARY</i>	Telecommunications system of the European Judicial Network (EJN) or Eurojust or the direct transmission by a Member State authority
<i>ITALY</i>	Ordinary email as an attachment simply scanned in pdf format
<i>ROMANIA</i>	SIENA exchange platform/ EGMONT secure web
<i>SLOVAKIA</i>	Postal service/other secure form
<i>SLOVENIA</i>	(postal) mail, fax, electronic mail or other secure technical means

Table 1. Methods of transmission of certificates

3.2. The dialogue between competent authorities on the fast and complete assessment of the order

With regard to the **fast and complete assessment** of the **order**, with a particular focus on the handling of **urgent cases**, several MS didn't adopt any further and explicit internal rules than those already laid down in the Regulation (EU) 2018/1805 (*i.e. Cyprus, Malta and Bulgaria*). However, there are other Member States that have specifically introduced or amended certain internal rules to make the dialogue between the competent authorities in these areas as efficient as possible (*i.e. Slovakia, Sweden or Slovenia*).

In **Slovakia**, according to the section 10 of the above-mentioned “**Act No. 650/2005 Coll.**”³⁹, the judicial authority of the Slovak Republic should recognise or refuse the order **within 24 hours** of receipt. If it is not possible to issue a decision within this time limit, the judicial authority of the Slovak Republic shall take a decision **without delay** after collecting the documents necessary for the decision. Pursuant to Section 8 of **Act No. 316/2016 Coll.**⁴⁰, the Ministry of Justice shall immediately submit the certificate together with the decision to the competent Court. Pursuant to Section 9 para. 3 of this last Act, the Court shall decide on the recognition of the property decision in a closed session after the written statement of the public prosecutor. Similarly, in **Croatia**, the procedures concerning freezing and confiscation orders between Croatia and other EU Member States are **always** considered **urgent** and the same is applicable to proceedings under the Regulation (EU) 2018/1805⁴¹.

In **Sweden**, when receiving an **urgent freezing order**, and there is reason to believe that the dispatch will be received at transport undertaking, the prosecutor may order that the dispatch shall be held until the freezing order can be executed⁴² (if the freezing order is not urgent, the Court can also issue such an order upon request by the prosecutor)⁴³. Besides this possibility, and the “built-in” functions for urgency existing in the national measures, there are no additional regulations for handling urgent cases. With regard to the fast assessment of the order, in **Slovenia**, the general rule which extends to all mutual recognition instruments can be found in Article 5 *ZSKZDČEU-1*, which stipulates that if the law of the Republic of Slovenia ascertains so in national matters of the same type, cooperation based on mutual recognition instruments must also occur swiftly and shall be always considered a priority. According to Article 502č of the Criminal Procedure Act,⁴⁴ the Court must be particularly swift in taking the decision on the proposal for ordering, extending, changing or withdrawing temporary securing. What is more, if temporary securing has been ordered by the Court, authorities in the pre-trial procedure must take particularly swift action and criminal proceedings shall be regarded with priority. This means that, contrary to the general rule of handling the case in the order that it arrives or is filled at the

³⁹ Available at www.zakonypreludi.sk.

⁴⁰ Available at www.zakonypreludi.sk.

⁴¹ Hržina, D., *Međunarodna pravna pomoć i pravosudna suradnja u kaznenim stvarima – teorijski i praktični aspekti*, Zagreb, 2021, available at https://www.pak.hr/cke/obrazovni%20materijali/ZPSKS-ZOMPO_DOCX, p. 39

⁴² Government bill 2019/20:198 Supplementary provisions to the EU regulation on the mutual recognition of freezing orders and confiscation orders p. 73.

⁴³ This measure is also available for strictly national seizures in accordance with the Swedish Code of Judicial Procedure 27:9 and 27:9a.

⁴⁴ Zakon o kazenskem postopku, Uradni list RS, št. 176/21 – uradno prečiščeno besedilo in 96/22 – odl. US.

courthouse, such criminal proceedings are by law allowed to skip the line and are handled before others. Hence, handling of freezing and confiscation proceedings in accordance with Regulation (EU) 2018/1805 also needs to be performed particularly rapidly and regarded with priority (since the freezing or confiscation order was already issued, albeit in another Member State).

In **Austria**, the *Explanatory Remarks* the Austrian legislator points out that the prosecution authority (or potentially the Court) shall before executing an incoming freezing order especially assess the non-recognition and non-execution grounds of Art 8 para 1 Regulation EU 2018/1805 and the grounds for postponement of the execution of Art 10 para 1 Regulation (EU) 2018/1805⁴⁵. The Ministry of Justice states that the **time limit** for urgent cases should be met and that it therefore might be necessary that those cases are handled by prosecutors and judges who are on-call⁴⁶.

In **Finland**, with regard to confiscation, the Legal Register Centre may decide to postpone the confiscation of the asset, as stated in art. 21 of the Regulation. The Finnish law is not so clear about the deadline for the execution of the measure. This is because it is not known whether the measures must be carried out within that period or whether it would be sufficient for the prosecutor to inform the police and officials within the stipulated time. While in **Malta**, under art. 56 (5) of the *Proceeds of crime Act*, the Court must specifically set down, without delay, the application for hearing at an early date, in any case no later than 30 days from the date of filing of the application, in **Lithuania**, the laws only provide for the deadlines for decisions. Art. 342 of the Code of Criminal Procedure provides that the Court transfers judgment for execution no later than in three days. Art. 152 Sec 4 requires that prosecutor's decision on freezing the assets would be transferred to the administrator of freezing orders register without delay and no later than next working day.

In **Estonia**, the section 508 of the *Code of Criminal Procedure*⁴⁷ states that a European freezing certificate must be considered without delay and a decision must be made **within 24 hours** by its receipt. A refusal to execute a European freezing certificate must be notified immediately to the competent judicial authority of the requesting state. Section 508 also states that a competent judicial authority of the requesting state of the circumstances relating to the

⁴⁵ ErläutRV 808 BlgNR 27. GP 22.

⁴⁶ Einführungserlass 19.

⁴⁷ Code of Criminal Procedure. – RT I, 22.12.2021, 45. In Estonian: <https://www.riigiteataja.ee/akt/120052016005?leiaKehtiv>. In English: <https://www.riigiteataja.ee/en/eli/527122021006/consolide>.

execution of, or refusal to execute, a European freezing certificate, or of certain other circumstances, must be notified without delay and the corresponding notification must be presented by letter, e-mail, or any other method reproducible in writing. The same timeframe of **24 hours** also applies to requesting supplementary information from the requesting state. The competent judicial authority of the requesting state must also be notified, according to subsection 7 of section 508, where it is not possible to execute a European freezing certificate for the reason that the property or evidence has been lost or destroyed, or that it is not possible to ascertain the location of such property or evidence even after consultation with the requesting state. The Prosecutor's office also notifies the competent judicial authority of the requesting state of postponing the execution of the European freezing certificate. When possible, the estimated duration of the postponement is also provided, and where the reasons for postponement have ceased to apply, the Prosecutor's Office takes measures to execute the freezing certificate without delay and will notify the competent judicial authority of the requesting state of this.

With regard to the confiscation certificates, the regulations in the Code of Criminal Procedure are similar. Every decision must be given without delay. The use of "without delay" as opposed to the 24-hour limit mentioned with regards to the certificates of freezing, is most likely due to how the execution of a European certificate of confiscation requires a hearing held by the Court. This hearing is attended by the prosecutor, the defence counsel of the convicted offender, and any third party or their authorised representative. It's the Office of the Prosecutor General that shall notify the competent judicial authority of the requesting state without delay if the execution of a confiscation order is postponed and of the expected duration of the postponement.

Concerning the fast and complete assessment of the order in **Belgium**, it is worth mentioning Articles 12 and 18 of the "*law on mutual recognition of criminal decisions (2006)*", as amended in 2021 (freezing orders) and Articles 30, 39 and 40 of the law on mutual recognition of criminal decisions (2006), as amended in 2021 (confiscation orders). The "*law for a more humane justice (2021)*" amends only two provisions of the law on mutual recognition of criminal decisions (2006) dealing with urgent cases, namely: **article 12**(§ 1er) of the law on mutual recognition of criminal decisions (2006), as amended in 2021, by which the *parquet fédéral* is competent for the execution of a freezing order, in case of «*extrême urgence*»; **article 29** of the law on mutual recognition of criminal decisions (2006), as amended in 2021, by which, whether there exists

the risk that the assets subject to confiscation may disappear, the Public Prosecutor may issue a preliminary seizure order (*saisie préalable*) in accordance with Belgian law.

In summary, for several MS, the time limit seems to be a key factor for the efficient handling of freezing and confiscation orders. The aim of an effective judicial cooperation depends on the duration of the proceedings for recognition and execution of the measures.

In the following table, an illustrative scheme of the MS implemented additional national rules about the handling of urgent cases, based on the desk researches conducted in the 25 countries and described in the paragraph 3.2.

EU MS	<i>Additional national rules regarding procedural aspects in the case of the handling of urgent cases under the Regulation (EU) 2018/1805</i>
Austria	✓
Belgium	✓
Bulgaria	X
Croatia	✓
Cyprus	X
Czech Republic	X
Estonia	✓
Finland	✓
France	X
Germany	X
Greece	X
Hungary	X
Italy	X
Latvia	X
Lithuania	✓
Luxembourg	X
Malta	✓
Netherlands	X
Poland	X
Portugal	X
Romania	X

Slovakia	✓
Slovenia	✓
Spain	X
Sweden	✓

Table 2. Additional national rules regarding procedural aspects in the case of the handling of urgent cases under the Regulation (EU) 2018/1805

3.3 Grounds for non-recognition and non-execution of orders

On the one hand, with regard to the grounds for non-recognition and non-execution of freezing and confiscation orders, several MS did not consider necessary to further specify what is already provided in the Regulation (EU) 2018/1805 (e.g. **Cyprus, Romania, Finland, Lithuania, Bulgaria**). On the other, others MS considering some **interpretative issues** on the **meaning** to be accorded to specific **grounds** listed in the Regulation, introduced more detailed national provisions (e.g. **Czech Republic, Slovakia, Austria, Finland, Sweden, Estonia Hungary and Slovenia**). It should also be noted that some internal provisions refer specifically to **procedural aspects** in the handling of non-recognition or non-executions cases between national authorities (e.g. in **Slovakia** or in **Finland**).

The following analysis divides the MS according to the different objectives achieved by domestic legislation with regard to the implementation of the grounds for non-recognition and non-execution of orders provided by the Regulation (EU) 2018/1805. In the next paragraphs, the report identifies the most relevant national provisions in this field.

3.3.1 National rules regarding procedural aspects in the case of non-recognition and non-execution of orders under Regulation (EU) 2018/1805

In **Slovakia**, the section 12 of “**Act No. 316/2016 Coll.**”⁴⁸ regulates the procedural aspects in the case of non-recognition or non-execution of an order. More in detail, the Slovak authority informs immediately the judicial authority of the State of origin about the refusal

⁴⁸ Available at www.zakonypreludi.sk

of recognition of a property judgment pursuant to Sec. 10 or about the termination of the enforcement of a recognised property judgment. Similarly in **Finland**, the §6 of **Law 895/2020** states that the **assigned prosecutor** shall render a decision on the recognition and execution of the freezing measure. In this manifestation, the prosecutor shall determine the execution of the seizure or forfeiture of collateral unless the same prosecutor fails to recognize the validity of the execution and seizure restrictive decision or even decides to postpone it, pursuant to Art. 10. The prosecutors must also notify the Central Criminal Police, Customs and Border Guard Services who must inform the same prosecutors of the existence of any obstacle to the execution or postponement of the measure⁴⁹. Thus, with regard to confiscation, the Legal Register Centre must decide on the recognition and execution of this measure, which will only not proceed if there is no recognition of the material validity of the request. The same rule applies when the penalty is imposed by the Finnish State and forwarded for recognition and enforcement by another Member State. In **Austria**, in the **Explanatory Remarks**⁵⁰, the legislator remarks that the prosecution authority (or potentially the Court) shall before executing an incoming freezing order especially assess the non-recognition and non-execution grounds of Art 8 para 1 Regulation (EU) 2018/1805⁵¹. In the same national document, the legislator notes that before deciding not to recognize or execute the freezing order, the prosecution authority shall consult the issuing authority and request them to supply any necessary information without delay. **Estonia** provides specific rules about the notification: a refusal to execute a European freezing certificate is notified to the competent judicial authority of the requesting state⁵². A competent judicial authority of the requesting state of the circumstances relating to the execution of, or refusal to execute, a European freezing certificate, or of certain other circumstances, must be notified without delay and the corresponding notification must be presented by letter, e-mail, or any other method reproducible in writing.

⁴⁹ These measures should respect the confidentiality and restricted use of information, respecting the right of access to information either in the event of a freezing decision delivered to the Finnish State or when issued by the competent authority of Finland. At the same time, the set of conditions and procedures of the State of origin must be observed. INNANEN, Tanja. Jäädyyttämis- ja konfiskaatioasetusta (EU 2018/1805) täydentävä lainsäädäntö Lausuntotivistelmä. Available: https://julkaisut.valtioneuvosto.fi/bitstream/handle/10024/162365/OM_2020_10_ML.pdf?sequence=1&isAllowed=y, accessed on: 12 Sep 2022

⁵⁰ ErläutRV 808 BlgNR 27. GP ("Explanatory Remarks of the Legislator on the provisions in the EU-JZG implementing Regulation EU 2018/1805").

⁵¹ ErläutRV 808 BlgNR 27. GP 22.

⁵² Code of Criminal Procedure. – RT I, 22.12.2021, 45. In Estonian: <https://www.riigiteataja.ee/akt/120052016005?leiaKehtiv>.

Hungary, with the section 141/B par. 5 of the “**Act No CL of 2020**”, specifies that immediately upon receipt of the certificate, the Court shall examine whether the conditions for the enforcement of the Member State decision are fulfilled under Hungarian law. If there is no ground for refusing enforcement, the Court shall comply with the decision of the Member State in its order deciding the case. If the ground for refusal arises after the decision, in the course of the execution, and the consultation with the Member State authority to overcome it has not led to any result, the public prosecutor's office shall immediately lift the seizure and return the seized property to the person from whom it was seized or lift the sequestration seizure (par. 92/C).

In **Czech Republic**, the *draft amendment bill*⁵³ states that the judicial authority shall decide on the recognition of the order and on securing its execution, or on the refusal to recognise it or to secure its execution, by a **resolution**. The judicial authority shall promptly decide on the recognition of the order and shall immediately ensure the execution of this decision in accordance with the procedure laid down in the Criminal Procedure Code⁵⁴. The judge shall also request the written opinion of the public prosecutor before making such a decision.

In general, the domestic rules concerning specific procedural aspects in the case of non-recognition and non-execution of orders added by some MS, in order to make more efficient the application of the Regulation (EU) are essentially aimed to the following directions: 1. immediate notifications to the issuing authorities; 2. competent authorities to refuse an order; 3. managing of orders based on grounds of non-recognition or non-execution subsequently arisen.

In the following table, an illustrative scheme of the MS implemented additional national rules about procedural aspects in the case of non-recognition and non-execution of orders, based on the desk researches conducted in the 25 countries.

⁵³ The government bill in its original wording, including the explanatory memorandum, is available online at: <https://www.psp.cz/sqw/text/historie.sqw?o=9&T=175>.

⁵⁴ I.e. in order to execute a freezing order issued by another Member State, an appropriate freezing order must be issued pursuant to Section 79a, 79g, 347 or 358b of the Criminal Procedure Code.

EU MS	<i>Additional national rules regarding procedural aspects in the case of non-recognition and non-execution of orders under the Regulation (EU) 2018/1805</i>
Austria	✓
Belgium	X
Bulgaria	X
Croatia	X
Cyprus	X
Czech Republic	✓
Estonia	✓
Finland	✓
France	✓
Germany	X
Greece	X
Hungary	X
Italy	X
Latvia	X
Lithuania	X
Luxembourg	X
Malta	X
Netherlands	X
Poland	X
Portugal	X
Romania	X
Slovakia	✓
Slovenia	X
Spain	X
Sweden	✓

Table 3. *Additional national rules regarding procedural aspects in the case of non-recognition and non-execution of orders under the Regulation (EU) 2018/1805*

3.3.2 National rules regarding interpretative issues of the grounds of non-recognition and non-execution of orders under Regulation (EU) 2018/1805

With regard the specific interpretative issues on the correct meaning of certain grounds of non-recognition and non-execution of the orders, the **Austrian** legislator made use of the discretion to implement the lack of double criminality as a non-recognition ground (Art 3 para 2 Regulation EU 2018/1805)⁵⁵. In the “*Introductory Decree*” the Ministry of Justice highlights that the fact that a comparable measure does not exist under national law is not a non-recognition ground⁵⁶. Similarly, in accordance with Article 3(2) of Regulation (EU) 2018/1805, **Slovenia** makes the recognition and execution of a freezing order or confiscation order relating to criminal offences other than those referred to in Article 3(1) of that Regulation subject to the condition that the acts giving rise to the order constitute a criminal offence under Slovenian law, whatever its constituent elements or however it is described under the law of the issuing State. This ground for non-recognition is regulated in **Article 224.b ZSKZDČEU-1**.

In **Belgium** several provisions of the “*law for a more humane justice (2021)*” deal with grounds for non-recognition. As per Article 6 of the law on mutual recognition of criminal decisions (2006), as amended in 2021, Belgium authorities may refuse to execute a decision in criminal matters, whether the facts for which this decision was pronounced do not constitute an offence under Belgian law. However—here lies the novelty—when a fraud against EU financial interests is at stake, Belgian authorities shall execute such a decision, provided the latter conduct is punishable in the issuing State by a maximum term of imprisonment of at least three years. As per Article 7/1 of the law on mutual recognition of criminal decisions (2006), drafted ex novo in 2021, where a freezing decision has been ordered with a view to subsequent confiscation of the property, execution of the seizure may be refused if, apart from the cases referred to in Article 6(§ 2), the facts cannot give rise to a confiscation penalty under Belgian law. As per Article 7/3 of the law on mutual recognition of criminal decisions (2006), drafted ex novo in 2021, the execution of the confiscation may

⁵⁵ In particular, the sec. 43 para 3 EU-JZG and the sec. 52 para 2 EU-JZG state that in cases that do not concern an offence listed in Art 3 para. 1 Regulation EU 2018/1805 double criminality has to be checked and if lacking is a non-recognition ground. The legislator also emphasizes that in cases that involve taxes, customs or exchange regulations, the recognition or execution of the freezing order cannot be refused on the grounds that the law of the executing Member State does not impose the same kind of taxes or does not provide for the same type of customs and exchange regulations as the law of the issuing Member State.

⁵⁶ Einführungserlass 18.

also be refused in the following cases: (i) the rights of any interested party, including bona fide third parties, make it impossible to execute the order; (ii) the confiscation order, in the opinion of the executing judicial authority, was issued under an extended power of confiscation that goes beyond the possibility provided for in Article 43-quater (§§ 1-3) CC. However, the confiscation order is executed within the limits allowed by Belgian law. Article 29 (§ 3) of the “*law on mutual recognition of criminal decisions (2006)*”, drafted ex novo in 2021, provides that ‘in the event of refusal to execute the confiscation order, the Public Prosecutor shall without delay inform the competent authority of his decision to grant the lifting of the act relating to the property’. Moreover, Article 30 (§ 4) of the “*law on mutual recognition of criminal decisions (2006)*”, drafted ex novo in 2021, sets forth that ‘whether the Public Prosecutor envisages non-execution of the decision on the basis of Article 7(1)(2), Article 7(2) or (3), Article 7(3)(1) or (2), or this Article, he shall first consult the competent authorities of the issuing State.

More detailed provisions come from **Estonia**, where the section 508 of the **Estonian Criminal Procedural Code** explains that the executing of a European freezing certificate may be refused if one of the following mentioned in the first subsection applies: **a)** the act which is the subject of the certificate is not punishable under the Penal Code of Estonia, except in situations provided for by section 489 of the Code of Criminal Procedure; **b)** in the Republic of Estonia, the person whose property is requested to be attached or preserved enjoys immunity or is privileged under an international treaty; **c)** it is clear from the certificate that execution of the request mentioned in section 508 is not permitted because the person has been finally convicted or acquitted on the same charges or, if the judgment was one of conviction, the sentence that was imposed has been served or, under the laws of the state that presented the certificate, it is not possible to mandate its enforcement; **d)** the certificate was not presented in the form provided for by section 508, is incomplete, does not correspond to the relevant order of the competent judicial authority of the requesting state on which it is based, or is not accompanied by such an order or a copy of such an order.

Regarding the execution of a European certificate of confiscation, the section 508 states that the execution of a confiscation order is permitted if the person concerned has been convicted of an offence which is punishable as a criminal offence under the Penal Code of Estonia and in relation to which, according to Estonian law, the ordering of confiscation is allowed. There is however an exception to this rule mentioned in the same section:

regardless of whether the act is punishable under the Estonian Penal Code, the execution of a confiscation order is permitted if it is in relation to offences provided in subsection 1 of section 489⁵⁷. In the context of freezing and confiscation orders, it is also important to note that subsection 1 of section 436 explains that unless provided otherwise by a statute or an international treaty, the Republic of Estonia may not decline international cooperation with a Member State of the European Union for the reason of regarding the criminal offence concerned as a political one, as one connected with a political offence or as one inspired by political motives.

The section 508 also mentions three circumstances under which recognition and execution of a confiscation order may be refused. These are: **a)** the corresponding European certificate of confiscation has not been presented or is incomplete or clearly does not correspond to the order; **b)** for the same offence, a confiscation order has been rendered and enforced in Estonia or in any other state; **c)** the order has been made with regard to a person who enjoys immunities or privileges under clause 2 of section 4 of the Code.

Lastly, in **Malta**, in order to guarantee a general protection of fundamental rights, under art. 56 (6) of the **Proceeds of crime Act**, the Court cannot order the enforcement of a foreign confiscation order if: **i.)** the respondent was not notified of the proceedings which led to the making of the relevant foreign confiscation order, and did not have an adequate opportunity to contest the making of the said order; **ii.)** the foreign confiscation order was obtained by fraud on the part of any person to the prejudice of the respondent; **iii.)** the foreign confiscation order contains any disposition contrary to the public policy or the internal public law of Malta; **iv.)** the foreign confiscation order contains contradictory dispositions; **v.)** the foreign confiscation order is based on a manifest error of law or of fact.

⁵⁷ The list of offences in the first subsection of section 489 of the Code of Criminal Procedure is as follows: participation in a criminal organisation, terrorism, trafficking in human beings, sexual exploitation of children and child pornography, illicit trafficking in narcotic drugs and psychotropic substances, illicit trafficking in weapons, ammunition and explosives, corruption, fraud, including that affecting the financial interests of the European Communities within the meaning of the Convention of 26 July 1995 on the protection of the European Communities' financial interests, money laundering, the counterfeiting of money, computer-related crime, environmental crime, including illicit trafficking in endangered animal species and endangered plant species and varieties, facilitation of unauthorised entry and residence, intentional homicide, grievous bodily injury, illicit trade in human organs and tissue, kidnapping, unlawful deprivation of liberty and hostage taking, racism and xenophobia, organised or armed theft or robbery, illicit trafficking in cultural goods, including antiques and works of art, criminal fraud, extortion, manufacturing of pirate copies and counterfeiting of products as well as trafficking in such copies and products, forgery of administrative documents and trafficking in such documents, forgery of means of payment, illicit trafficking in hormonal substances and other growth promoters, illicit trafficking in nuclear or radioactive materials, trafficking in stolen vehicles, rape, arson, criminal offences within the jurisdiction of the International Criminal Court, hijacking of an aircraft or a ship, sabotage.

With regard to the national rules regarding interpretative issues of the grounds of non-recognition and non-execution of orders under Regulation (EU) 2018/1805, several Member States seem to have focused mainly on the issue of double criminality and, more in general, the protection of the fundamental rights. Estonia stands out among the various Member States for having developed quite detailed domestic legislation aimed at resolving some of the most controversial issues in this area.

The following table, based on the information collected through the desk researches in the 25 MS, is merely illustrative of the MS presenting additional national rules regarding interpretative issues of the grounds of non-recognition and non-execution of orders under the Regulation (EU) 2018/1805.

EU MS	<i>Additional national rules regarding interpretative issues of the grounds of non-recognition and non-execution of orders under the Regulation (EU) 2018/1805</i>
Austria	✓
Belgium	✓
Bulgaria	X
Croatia	X
Cyprus	X
Czech Republic	✓
Estonia	✓
Finland	X
France	X
Germany	X
Greece	X
Hungary	X
Italy	X
Latvia	✓
Lithuania	X
Luxembourg	X
Malta	✓
Netherlands	X

Poland	X
Portugal	X
Romania	X
Slovakia	X
Slovenia	✓
Spain	X
Sweden	X

Table 4. Additional national rules regarding interpretative issues of the grounds of non-recognition and non-execution of orders under the Regulation (EU) 2018/1805

3.4 NATIONAL INSTRUCTIONS ON SPECIFIC SUBJECTS

3.4.1. The handling of cases involving legal persons

Not all Member States which implemented the Regulation (EU) 2018/1805 introduced new national instructions for the handling of cases involving legal persons. **Latvia** is one of the few MS that dedicated a **specific amendment** on the **Criminal Procedural Law** on this subject. In the Criminal Procedure Law the Section 83 (“*Sending of the Ruling on the Confiscation of Property for the Execution to a European Union Member State*”) has been modified⁵⁸, providing, specifically for a legal person, that if the ruling given in Latvia on the confiscation of property cannot be executed because the registered legal address is in another European Union Member State, the ruling on the confiscation of property together with the confiscation certificate shall be sent to the Ministry of Justice which will send the abovementioned documents for execution in accordance with the procedures specified in Regulation (EU) 2018/1805⁵⁹.

The **Polish** law, with the 22 of the “**Act on Liability of Collective Entities for Prohibited Acts**”⁶⁰, foresees that the provisions of the Code of Criminal Procedure shall apply *mutatis mutandis*

⁵⁸ Amendments in the Criminal Procedure Law January 7, 2021, entered into effect January 20, 2021.

⁵⁹ The same approach was followed by Hungary with the Act No CL of 2020 (Articles 10-14). Chapter IX/D, art. 52 E, par. 4, provides that the general rules on jurisdiction for the execution of the writ of execution shall apply, with the proviso that the place of the debtor's actual residence shall be deemed to include the place of the actual residence of the person interested in the property and the place of the legal person's registered office or place of business.

⁶⁰ The Act of of 28 October 2002 on Criminal Liability of Collective Entities for Prohibited Acts (consolidated text: Journal of Law of 2020, item 358, as amended).

to the proceedings in the matter of the liability of collective entities for acts prohibited under penalty, unless the provisions of this Act state otherwise. It follows that the provisions of the Criminal Procedural Code concerning the recognition of freezing orders and confiscation orders may, to an appropriate extent - complementing the provisions of the Regulation (EU) 2018/1805 - apply to cases involving collective entities⁶¹. **Slovakia**, merely specified in the national implementing legislation that the Regulation is equally applicable to legal persons without adding further specifications. **Sweden**, with the aim of identifying the competent Court for legal persons, refers directly to the national Code of Criminal Procedure. In **Slovenia**, some instructions on how to handle cases involving legal persons are contained in Article 224.c *ZSKZDČEU-1*, which stipulates that the territorial jurisdiction of a legal person is determined by its seat or the place of its subsidiary if it has one, if the jurisdiction cannot be ascertained by the place where the property that has to be confiscated or frozen is situated. In **Czech Republic**, the explanatory memorandum of the bill concerning the amendment to the "Act No. 104/2013 Coll."⁶² clarifies that "Article 30 of the Regulation only provides for victims' claims, while recital 45 of the Regulation leaves it to the Member States to decide whether to include legal persons under this concept. In the Czech Republic, a more general concept of victim has been chosen in accordance with national law, i.e. a legal person is also included. However, it is possible that some other Member States will apply Article 30 of the Regulation only to victims and will not satisfy the claims of other persons affected by a crime prosecuted in the Czech Republic"⁶³. In **Austria**, Sec. 43 para 4 *EU-JZG* and Sec. 52 para 3 *EU-JZG* regulate that in cases concerning legal persons the prosecution authority and the Regional Court where the legal person has its registered office, place of business or establishment shall be competent to execute a freezing or confiscation order. Finally, in **Estonia**, the sections of the Code of Criminal Procedure that discuss European freezing and confiscation orders and certificates provide that the form of the confiscation order mentioned in section 508³³ of the Code of Criminal Procedure does

⁶¹ Also in **Lithuania**, in general, the legal entities have equal rights in the criminal proceedings like any person whose rights and interests are considered in the proceedings (as third party or a defendant). Legal persons act in the proceedings through their representatives (Chapter 28 of the CCP [it provides specific provisions for the proceedings where a defendant is legal person] and Art. 55 Sec. 2 of CCP which describes who may be the representatives of a legal person).

⁶² The government bill, including the explanatory memorandum, is available online at: <https://www.psp.cz/sqw/text/historie.sqw?o=9&T=175>

⁶³ The explanatory memorandum to the Section 297k of the bill, p. 127. Available online at: <https://www.psp.cz/sqw/text/historie.sqw?o=9&T=175>

include a separate section to fill out when the person in regards to whom the order has been issued is a legal person. Assumedly, this is to mean again that the general rules of handling cases involving legal persons are to be followed.

The following table is based on the information collected through the desk researches in the 25 MS and it is merely illustrative of the Countries presenting additional national rules regarding cases involving legal persons under the Regulation (EU) 2018/1805.

EU MS	<i>National instructions for cases involving legal persons under the Regulation (EU) 2018/1805</i>
Austria	✓
Belgium	X
Bulgaria	X
Croatia	X
Cyprus	X
Czech Republic	✓
Estonia	✓
Finland	X
France	X
Germany	X
Greece	X
Hungary	✓
Italy	X
Latvia	✓
Lithuania	X
Luxembourg	X
Malta	X
Netherlands	X
Poland	✓
Portugal	X
Romania	X
Slovakia	✓

Slovenia	✓
Spain	X
Sweden	X

Table 5. *National instructions for cases involving legal persons under the Regulation (EU) 2018/1805*

3.4.2. The compliance with suspects', accused', and affected third parties' rights

Several compared countries established internal instructions protecting **accused' and third affected persons' rights**. Most of the provisions concern the possibility of challenging orders before the competent Court.

In **Slovakia**, according to the section 9 par. 4 of the “**Act No. 316/2016 Coll.**”, the person to whom the measure is applied, the public prosecutor or the Minister of Justice of the Slovak Republic may appeal the orders; the appeal shall have suspensive effect. An appeal may not challenge the grounds on which a property judgment given in another Member State has been recognised. The “*Act No. 650/2005 Coll.*” regulates the rights of the person affected by the order only marginally. For example, according to Section 7 para 1 of this Act, if the judicial authority of the Slovak Republic deems it necessary, the person directly affected by the seizure order shall be served with the order only after its execution by the judicial authority of the executing State. According to the section 18 of “*Act No. 650/2005 Coll.*”, a natural person or a legal person who is damaged or otherwise affected in respect of his or her rights by the order has the right to seek protection of his or her rights before a Court in the State of origin. Pursuant to Section 10 para 1 e) of “*Act No. 316/2016 Coll.*”, the Court shall refuse to recognise a property decision if the enforcement of such decision is prevented by the rights of third parties.

In **Sweden**, under the “*Law with Supplementary Provisions*” 4:10, the prosecutor must notify the person impacted by the measure when returning property to the victim. This specification in the “*Law with Supplementary Provisions*” is to clarify that Article 29(2) shall

be applied, not the similar national legislation in the Swedish Code of Judicial Procedure 27:4a⁶⁴.

In **Hungary**, with the art. 52/D, Chapter IX/D of the “**Act No CLXXX of 2012**” on the international cooperation in criminal matters with the EU Member States (EUCOOP) amended in 2021, it is provided that, in relation to the person concerned, the same rules of the HCCP applicable to the debtor or the person interested in property shall apply.

In **Slovenia**, the article 203 (7) **ZSKZDČEU-1** states that the decision on recognition of a freezing order must be served on persons whose property rights and legal interests are thereby impacted, and on a state prosecutor. Those persons may file an appeal against the decision within eight days of receiving the decision. The substantive grounds of the decision resulting from the decision on seizure or securing may not be contested by the appeal and the appeal does not suspend the execution of the decision. The articles 212 and 213 **ZSKZDČEU-1** deal with the procedure of recognizing and executing a confiscation order issued in another Member State. With regard to the compliance of Regulation (EU) 2018/1805 with affected persons rights the article 212 (2) **ZSKZDČEU-1** states that a national Court may invite the person whose property is subject to confiscation to make a statement at a hearing on the admissibility of execution, on the amount to be enforced, and on the already enforced confiscation. Thus, giving the affected person a chance to provide their information in regards to the property to be confiscated. Additionally, Article 213 **ZSKZDČEU-1** states in paragraphs 4 and 5 that the decision on whether a national Court shall issue an order on whether a decision is to be enforced or whether execution is refused shall be served on the person against whom confiscation is enforced, on persons whose rights are being impacted, and on the competent state prosecutor. The persons referred to may appeal the decision within eight days of the service of the order. The appeal may not challenge the subject-matter basis of the decision of a competent authority of the ordering State. In contrast to Article 203 **ZSKZDČEU-1**, Article 213 **ZSKZDČEU-1** stipulates that an admissible appeal filed within good time shall suspend execution of the decision until the decision on the appeal becomes final.

Similarly, in **Austria**, according to Sec. 52 para 6 **EU-JZG** the person concerned shall be served with the confiscation order and shall be heard on the conditions of the execution,

⁶⁴ Government bill 2019/20:198 Supplementary provisions to the EU regulation on the mutual recognition of freezing orders and confiscation orders p. 80.

provided that he or she can be summoned within the country. This should secure compliance with the affected person's right to a fair hearing.⁶⁵ The person affected (and the prosecution authority) have the right to challenge the Court order executing the incoming confiscation certificate with a complaint within 14 days from becoming aware of the violation of the personal right (sec. 88 para 1 StPO). The person affected is not only the sentenced person, but also other persons who have or claim a right to the assets.⁶⁶ The Higher Regional Court has jurisdiction to decide on the complaint and the complaint has a suspensory effect (Sec. 52 para 9 *EU-JZG*).

In **Malta**, the article 39 of the "***Proceeds of crime Act***" established that whether any person claims that he is the owner of any property subject to a seizing and freezing order - or claims that he has rights over such property - or claims that he is the owner of any property subject to confiscation, that person may apply to the Civil Court (Asset Recovery Section) to declare that the said property belongs to him, or that he has the rights claimed over such property. Under art. 55 (1) of the *Proceeds of crime Act*, this right is recognised also in case of a foreign confiscation order.

In **Estonia**, the section 508 of the Code of Criminal Procedure explains that the Country guarantees the rights of third parties to any property which they hold and which is the object of a European certificate of confiscation. In particular, an appeal against an order of the Prosecutor's Office, or against the actions of an investigative authority, connected to the execution of a European certificate of confiscation is filed before to the Harju District Court following the rules provided by subsection 2 of section 387 of the Code within three days following receipt of the order. It is important to note that the filing of an appeal does not usually stay the enforcement of the contested order, unless the authority to dispose of the dispute determines otherwise. The Prosecutor's Office is, however, required to notify the competent judicial authority of the requesting state of any appeals that are file in connection with the executing of the certificate of confiscation as well as the dispositions made when dealing with the appeals. If a concerned person should apply for this, subsection 2 of section 508 states that the Office of the Prosecutor General transmits this person the contact details to obtain information regarding contesting the certificate of confiscation in the requesting state.

⁶⁵ ErläutRV 808 B1gNR 27. GP 23.

⁶⁶ ErläutRV 48 B1gNR 23. GP 8.

In **Bulgaria**, the **art. 26 REDDPOA** establishes that any interested party, including a third party, may appeal the order for recognition of the act of seizure of property to the Court of Appeal in accordance with the Code of Civil Procedure within 14 days of becoming aware of its pronouncement. The appeal shall not stay execution. The persons referred to in par. (1) may also appeal under the Code of Civil Procedure against the execution of the security order within 14 days of becoming aware of it.

In **Belgium**, in general, no provision of the “*law for a more humane justice (2021)*”, in amending the law of 2006, specifically deals with the **compliance with affected persons’ rights** when the issuing/recognition of a freezing order is at stake. Nevertheless, one provision of the law for a more humane justice (2021), in amending the law of 2006, indirectly deals with this topic, namely Article 30, drafted *ex novo*. In particular, similarly to other MS, it establishes that the Public Prosecutor shall inform the person concerned and any interested third party of his decision by judicial letter or registered mail. Where the Public Prosecutor decides to execute the request anyway, he or she shall inform any person concerned and any interested third party of his or her decision by judicial letter or registered mail. The person concerned or the interested third party may appeal to the criminal Court by petition to the clerk’s office within fifteen days of the notification of the decision. The registry shall immediately inform the public prosecutor of the appeal and the date of the hearing. The Court’s decision may be appealed further at last instance.

The following schemes are based on information collected through the desk research in the 25 Member States.

The table, based on the information collected through the desk researches in the 25 MS, are just exemplificative of some crucial aspects of the additional legal framework on the respect of the rights of suspects, accused persons and third parties under the Regulation (EU) 2018/1805.

EU MS	<i>Additional national rules on the compliance with the rights of suspects, accused persons and affected third parties under the Regulation (EU) 2018/1805</i>
Austria	✓
Belgium	✓

Bulgaria	✓
Croatia	X
Cyprus	X
Czech Republic	X
Estonia	✓
Finland	X
France	X
Germany	X
Greece	X
Hungary	✓
Italy	X
Latvia	X
Lithuania	X
Luxembourg	X
Malta	✓
Netherlands	X
Poland	X
Portugal	X
Romania	X
Slovakia	✓
Slovenia	✓
Spain	X
Sweden	✓

Table 6. *Additional national rules on the compliance with the rights of suspects, accused persons and affected parties under the Regulation (EU) 2018/1805*

3.4.3. The compliance with the victim's rights

Several compared MS established internal instructions protecting the rights of **victims**. Most of the provisions concern the possibility to return of property to the person. In **Sweden**, the prosecutor must motivate a decision to halt the return of property to the victim⁶⁷. This is

⁶⁷ Law with Supplementary Provisions 4:4

demand for motivation is usually reserved for the Courts⁶⁸. The purpose of a freezing order is, within the Swedish legal system, typically not to secure a future confiscation, but to restore property that has been taken from someone through a criminal offence⁶⁹. In order to adapt to the EU Regulation, and expand the possibility of freezing orders to cover a future confiscation (in the victims interest), this purpose can be used even when Sweden is the executing state⁷⁰.

Cyprus, with the article 43 KA, Part IV-B of the *“Prevention and Combating of Money Laundering (Amendment) Law of 2021 is adopted by publication in the Official Gazette of the Republic of Cyprus in accordance with Article 52 of the Constitution, n. 13/2021”*, establishes that any **“aggrieved”** person shall be notified of the order. An aggrieved person may be informed, inter alia, in one or more of the following ways: **(α)** by registered post or courier service to his or her last known address; **(β)** through the competent authorities of the issuing State or any other State which may assist in transmitting the information; **(γ)** by any electronic means or by any other means reasonably offered by the technology concerned. Where, despite reasonable efforts, it has not been possible to obtain the notification of an aggrieved person, the Unit shall proceed to publish the notification on its official website for thirty consecutive days. A confiscation order shall be executed by the Unit if: **(α)** within thirty (30) days from the date on which the notification was received, the affected person has not taken any measure to annul or set aside the order for recognition and enforcement of the confiscation order, **(β)** within thirty (30) days from the first day of the publication of the notice, the person affected has not taken any action to annul or set aside the order for recognition and enforcement of the confiscation order.

In **Croatia**, specifically with regard to the restitution of frozen property to the victim, the issuing body will inform the competent county attorney's office that a decision has been made to return the frozen property to the victim. The local competent county Court will be notified of that decision so that it can make a decision in accordance with the provisions of the CPA, taking into account the circumstances under Art. 29(2) of the Regulation⁷¹. When

⁶⁸ Government bill 2019/20:198 Supplementary provisions to the EU regulation on the mutual recognition of freezing orders and confiscation orders p. 70.

⁶⁹ Government bill 2019/20:198 Supplementary provisions to the EU regulation on the mutual recognition of freezing orders and confiscation orders p. 62.

⁷⁰ Law with Supplementary Provisions 2:6.

⁷¹ Hržina, D., Međunarodna pravna pomoć i pravosudna suradnja u kaznenim stvarima – teorijski i praktični aspekti, Zagreb, 2021, available at <https://www.pak.hr/cke/obrazovni%20materijali/ZPSKS-ZOMPO.DOCX>

the county attorney's office, as the competent authority, receives such a certificate or notification, it will urgently initiate the process of recognizing the order so that the confiscated property is returned to the victim as soon as possible, if necessary through the issuing state.

In **Czech Republic**, an important aspect of the bill concerns the eventual return of the frozen property to the victim. In such a case, the judicial authority shall inform the authority of the other Member State of the decision to return the property to the victim, if it has been frozen in another Member State on the basis of a freezing order, as soon as that decision has become legally effective.⁷² The competent authority is the one in whose district the requested legal aid act is to be performed.⁷³ According to the section 238h(5) of the bill, a complaint without suspensive effect may be lodged against a decision recognising and enforcing a freezing order. However, the complaint cannot challenge the substantive grounds on which the freezing order was issued. This can only be challenged in another Member State. On the other hand, if the freezing order is not recognised, the person concerned may not have a right to complain, since there has been no interference with his or her rights, the explanatory memorandum states.⁷⁴ The bill also states that if another Member State issues a decision on the return of the frozen property to the victim and the conditions set out in the Regulation are met, the judicial authority shall decide on the return of the property to the victim in accordance with the procedure laid down in the Criminal Procedure Code. A complaint is admissible against the decision not to return the property.⁷⁵ If another Member State decides to return the victim's property, the Czech judicial authority shall independently assess whether the conditions for the return of the victim's property are met. If they are met, it shall decide by resolution on the return of the victim's property in accordance with Section 80 of the Criminal Procedure Code.⁷⁶ If the Member State concludes that the conditions for return are not met, it shall decide by resolution to place the item into custody or not to return it to the victim. The decision not to return the property to the victim shall be subject to a complaint without suspensive effect.⁷⁷ If the authority of

⁷² Section 238d(1) of the bill.

⁷³ Section 238e of the bill.

⁷⁴ The explanatory memorandum to the Section 238h of the bill, p. 118.

⁷⁵ Section 238k(1,2) of the bill.

⁷⁶ The explanatory memorandum to the Section 238k of the bill, p. 118.

⁷⁷ The explanatory memorandum to the Section 238k of the bill, p. 118-119.

another Member State informs that the confiscated or seized property is to be returned to the victim or that proceedings are pending for the return to the victim, the Court shall immediately inform the organ of the State referred to in section 297h(1) of that fact. If the result of the proceedings in another Member State is a decision on the return of the property to the victim, the sole judge shall proceed *mutatis mutandis* in accordance with section 297h(3) and at the same time decide on the return of the property to the victim. In doing so, the sole judge shall proceed reasonably in accordance with Section 80 of the Criminal Procedure Code. Section 297h(6) of the bill provides that if the sole judge is informed by an authority of another Member State of a decision by which a victim in another Member State has been awarded a claim for compensation for damage or non-pecuniary loss or for the recovery of unjust enrichment, or of the fact that proceedings are pending in that Member State in respect of such a claim by the victim, the sole judge shall forward that information to the Ministry of Justice and shall send it the final decision recognising the confiscation order for the purposes of the procedure under the Act on the use of funds from criminal penalties. The sole judge shall inform the Ministry of Justice of the account to which the relevant part of the property is to be sent and of other important facts. As far as legal persons are concerned, the explanatory memorandum states that the article 30 of the Regulation only provides for victims' claims, while recital 45 of the Regulation leaves it to the Member States to decide whether to include legal persons under this concept". In the Czech Republic, a more general concept of victim has been chosen in accordance with national law, i.e. a legal person is also included. However, it is possible that some other Member States will apply Article 30 of the Regulation only to victims and will not satisfy the claims of other persons affected by a crime prosecuted in the Czech Republic⁷⁸.

In **Finland**, according to the Regulation, the Article 30, § 4 of the Act⁷⁹, established that the amount of money given to Finland is transferred to the victim in accordance with the applicable provisions of Chapter 10, Section 11, Subsection 2 of the Criminal Code, while in **Hungary**, the Minister shall have the power to enter into an agreement with the issuing or executing Member State in respect of the transfer, use, division or return to the victim of the

⁷⁸ The explanatory memorandum to the Section 297k of the bill, p. 127.

⁷⁹ Coercive Measures Act. INNANEN, Tanja. Jäädättämis- ja konfiskaatioasetusta (EU 2018/1805) täydentävä lainsäädäntö Lausuntotiivistelmä. Available: https://julkaisut.valtioneuvosto.fi/bitstream/handle/10024/162365/OM_2020_10_ML.pdf?sequence=1&isAllowed=y

thing, property or their consideration following the making of a confiscation or forfeiture order.

Lastly, in **Slovakia**, the rights of victims are taken into account by the Court only marginally, for example, in the case of concurrent applications for recognition and enforcement of a property judgment (Sec. 13 of “Act No. 316/2016 Coll.”). The status of victims of crime is then also regulated in a special legal regulation⁸⁰. According to the section 18 of Act No. 650/2005 Coll., a natural person or a legal person who is damaged or otherwise affected in respect of his or her rights by the order has the right to seek protection of his or her rights before a Court in the State of origin. Pursuant to Section 10 para 1 e) of Act No. 316/2016 Coll., the Court shall refuse to recognise a property decision if the enforcement of such decision is prevented by the rights of third parties.

The following table, based on the information collected through the desk researches in the 25 MS, are just exemplificative of some crucial aspects of the additional legal framework on the respect of the rights of victims under the Regulation (EU) 2018/1805.

EU MS	<i>Additional national rules on the compliance with the victim's rights under the Regulation (EU) 2018/1805</i>
Austria	X
Belgium	X
Bulgaria	X
Croatia	✓
Cyprus	✓
Czech Republic	✓
Estonia	X
Finland	✓
France	X
Germany	X
Greece	X
Hungary	✓

⁸⁰ Zákon č. 274/2017 Z. z. o obetiach trestných činov a o zmene a doplnení niektorých zákonov. [eng. Act No. 274/2017 Coll. on Victims of Crimes and on Amendments and Additions to Certain Acts.]

Italy	X
Latvia	X
Lithuania	X
Luxembourg	X
Malta	X
Netherlands	X
Poland	X
Portugal	X
Romania	X
Slovakia	✓
Slovenia	X
Spain	X
Sweden	✓

Table 7. Additional national rules on the compliance with the victim's rights under the Regulation (EU) 2018/1805

EU MS	Additional legal remedies in executing procedure for suspects/accused persons/victims/third parties rights under the Regulation (EU) 2018/1805	Time-limit	Provisions on suspensive effect
Austria	✓	14 days from becoming aware of the violation of the personal right	✓
Belgium	✓	15 days from the notification of the decision	-
Bulgaria	✓	14 days from the notification of the decision	✓
Cyprus	✓	30 days from the first day of the publication of the notice	-
Czech Republic	✓	-	✓

Estonia	✓	3 days from the receipt of the order	✓
Malta	✓	-	-
Slovakia	✓	-	✓
Slovenia	✓	8 days from the receipt of the order	✓

Table 8. Additional legal remedies in executing procedure for suspects/accused/victims/third parties rights under the Regulation (EU) 2018/1805

4. CONCLUDING REMARKS

In general, cross-border crimes, asset recovery and the specific measures introduced to enhance the **judicial cooperation** are fields which have been receiving much legislative attention in recent years⁸¹, including the proposal for an anti-money laundering package published in June 2021⁸² and the proposal for a Directive on asset recovery and confiscation published in May 2022⁸³. The Regulation (EU) 2018/1805, which 25 EU Member States were mandated to apply starting on December 19, 2020, is one of the latest in a series of legal instruments aimed to apply the principle of mutual recognition in this field.

As mentioned at the beginning of the report, **practitioners** are still not sufficiently familiar with the **Regulation (EU) 2018/1805** on mutual recognition of freezing and confiscation orders and each Member State has reached a very different level of implementation maturity. From the analysis presented here, it can be concluded that it is possible to observe that the majority of countries are trying to find practical solutions to face, at the domestic level, the hardest difficulties produced by the application of the Regulation. In this sense, the **European Judicial Network (EJN)** and **Eurojust** play a key role for the facilitation of judicial cooperation in this matter.

Based on the desk research conducted in 25 MS, the report identifies the legal and practical challenges in the national implementation of the Regulation EU 2018/1805 and highlights the most relevant **domestic legislation** that practitioners should be **aware** of, supporting the **effectiveness** of the national justice systems in this area.

⁸¹ <https://www.eurojust.europa.eu/sites/default/files/assets/eurojust-report-money-laundering-2022.pdf>

⁸² [Anti-money laundering and countering the financing of terrorism legislative package \(europa.eu\)](https://eur-lex.europa.eu/eli/reg/2021/1633/oj)

⁸³ European Commission, *Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on asset recovery and confiscation*, COM(2022) 245 final - 2022/0167 (COD), 25 May 2022 (available at <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52022PC0245&from=EN>)

5. LIST OF FIGURES

Figure 1. *EU MS implemented 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 - PE/38/2018/REV/1*

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ANNEX I – SUMMARY OF THE NATIONAL LEGAL FRAMEWORK ON THE IMPLEMENTATION OF REGULATION (EU) 2018/1805



EU MEMBER STATES	NATIONAL LEGAL FRAMEWORK ON THE IMPLEMENTATION OF THE REGULATION (EU) 2018/1805
<p>Austria</p> 	<p>The Criminal Procedure Law Chapters 75, 81, 82 and 83 (Sections 793, 837, 860, 880) include norms of a general nature with reference to the Confiscation Regulation: a) Chapter 75 deals with Execution of a Confiscation of Property Applied in a European Union Member State; b) Chapter 81 deals with Execution of the Ruling Made in Latvia on the Recovery of a Financial Nature, on the Confiscation of Property and on an Alternative Sanction in a European Union Member State; c) Chapter 82 deals with Assistance to a Foreign Country in the Performance of Procedural Actions; d) Chapter 83 deals with Request to a Foreign Country Regarding the Performance of Procedural Actions. After the “Amendments in the Criminal Procedure Law January 7, 2021”, entered into effect January 20, 2021, there have been several adjustments to the Code of Criminal Procedure⁸⁴, in accordance with the procedures specified in Regulation 2018/1805.</p> <p>Ministry of Justice of the Republic of Latvia has prepared informative letter⁸⁵ “On the regulation of the European Parliament and the Council of 14 November 2018 (EU) 2018/1805 on freezing order and confiscation order mutual recognition”. The letter includes description of the main points of amended regulations, as well as indications that certificates (Annex I and/or Annex II of the Regulation) have to be filled. It is pointed out in the letter that the Regulation also provides for the use of special forms, namely forms "Certificate of Freezing" and "Certificate of Confiscation" forms, which are also available in Europe on the website of the Legal Cooperation Network. Considering that the Confiscation Regulation is directly applicable, the Ministry of Justice invites to familiarize with the provisions of the Confiscation Regulation and in case of confusion, contact the Ministry of Justice. The same idea is included in the text of Annotation to the amendments⁸⁶ of the Criminal Procedure Law. Text of Regulation and form of confiscation certificate is available in Latvian on the site of Ministry of Justice⁸⁷. More specific instructions are not publicly available.</p>

⁸⁴ For example, it is provided for in the Article 880 (Chapter 83) Paragraph (2)⁸⁴ - *The decision to seize a property together with the freezing certificate shall be sent to the Office of the Prosecutor General which will send the abovementioned documents to a European Union Member State in accordance with the procedures specified in Regulation No 2018/1805. If the decision to seize a property must be sent to a European Union Member State that is not bound by Regulation No 2018/1805, the sending shall take place in accordance with the procedures specified in this Chapter.*

⁸⁵ Available in Latvian: <https://www.tm.gov.lv/lv/media/4033/download>.

⁸⁶ Annotation to the amendments in the Criminal Procedure Law January 7, 2021, entered into effect January 20, 2021. Available in Latvian: <https://titania.saeima.lv/LIVS13/SaeimaLIVS13.nsf/0/2027499A991EE65CC22585C8003564FA?OpenDocument#B>

⁸⁷ <https://www.tm.gov.lv/lv/tiesiskas-palidzibas-lugumu-veidlapas>.

<p>Belgium</p> 	<p>It is noteworthy that, in 2021, the Kingdom of Belgium has approved a legislative act concerning <i>inter alia</i> the implementation of that provision within the domestic system⁸⁸. The “law for a more humane justice” (<i>Loi visant à rendre la justice plus humaine, plus rapide et plus ferme</i>) has been entered into force on 10th December 2021⁸⁹. The relevant provisions of the “law for a more human justice” concerning the implementation of Regulation (EU) 2018/1805 modifies the provisions of the “law on mutual recognition of criminal decisions”, entered into force in 2006 (“<i>Loi relative à l’application du principe de reconnaissance mutuelle des décisions judiciaires en matière pénale entre les Etats membres de l’Union européenne</i>”)⁹⁰. The latter piece of legislation, indeed, had been modified in 2011 by the “law which partially repealed several provisions of the law on mutual recognition of criminal decision”⁹¹ – this aspect is of relevance as, since that year, two distinct certificates for the mutual recognition of, respectively, freezing orders and confiscation measures are expressly foreseen in domestic law.</p>
<p>Bulgaria</p> 	<p>The rules under which the Republic of Bulgaria recognises and executes in its territory freezing orders and confiscation orders issued by another Member State within the framework of proceedings in criminal matters are fully regulated under Chapter III of the REDDPOA⁹². Competent authority and proceedings for recognition of a freezing order under Regulation (EU) 2018/1805, as art. 24. REDDPOA is «<i>the Court shall initiate proceedings and schedule the trial immediately upon receipt of the instrument and the certificate referred to in Article 6 of Regulation (EU) 2018/1805. The Court shall hear the case in a single judge sitting in closed session.(3) The Court shall make an order by which: 1. recognises the freezing order and sends it to the competent authority concerned for execution; 2. refuse recognition or enforcement of the attachment order; 3. recognise the attachment order and postpone its execution; 4. terminate the proceedings in the cases referred to in Article 13(3)(a) and (c) of Regulation (EU) 2018/1805; 5. stay the proceedings in the cases referred to in Article 13(3)(b), (d) and (e) of Regulation (EU) 2018/1805. (4) Proceedings stayed under par. (3) (5) shall be resumed in the cases referred to in Article 13(4) of Regulation (EU) 2018/1805. (5) In the cases referred to in Article 29 of Regulation (EU) 2018/1805 with the definition referred to in par. (3), the Court shall rule on the issue of the return of secured property to the victim of the</i></p>

⁸⁸ S. Bollens, *De grensoverschrijdende tenuitvoerlegging van verbeurdverklaringen binnen de EU: wijzigingen aan de wet van 5 augustus 2006 naar aanleiding van Verordening nr. 2018/1805*, in *Nullum Crimen*, n. 2/2022, pp. 94-113.



⁸⁹ Loi 28 November 2021 – *Loi visant à rendre la justice plus humaine, plus rapide et plus ferme*, published on *Moniteur Belge*, 30.11.2021, pp. 115153-115172, retrieved from: <http://www.ejustice.just.fgov.be/eli/loi/2021/11/28/2021034054/moniteur>.

⁹⁰ Loi 5 August 2006 – *Loi relative à l’application du principe de reconnaissance mutuelle des décisions judiciaires en matière pénale entre les Etats membres de l’Union européenne*, published on *Moniteur Belge*, 7.9.2006, pp. 45532-45551, retrieved from: https://www.ejustice.just.fgov.be/mopdf/2006/09/07_2.pdf#page=20.


⁹¹ Loi 26 November 2011 – *Loi modifiant la loi du 5 août 2006 relative à l’application du principe de reconnaissance mutuelle des décisions judiciaires en matière pénale entre les Etats membres de l’Union européenne*, published on *Moniteur Belge*, 4.4.2012, pp. 21060-21134, retrieved from: https://www.ejustice.just.fgov.be/mopdf/2012/04/04_2.pdf#page=6.

⁹² Recognition, Execution, Delivery and Dispatch of Precautionary Orders Act, in force since 01 January 2007, last amended and supplemented by SG No. 56 of 19 July 2022. Available in Bulgarian at < <https://www.lex.bg/laws/ldoc/2135532724>>.



	<p><i>crime and the manner of return, and shall send the order in this part to the Commission for Countering of Corruption and Confiscation of Illegally Acquired Property for execution.</i></p>
<p>Croatia</p> 	<p>In order to implement the Regulation (EU) 2018/1805 on the mutual recognition of freezing orders and confiscation orders, Croatia introduced amendments to the Act on Judicial Cooperation in Criminal Matters with the Member States of the European Union ("Zakon o pravosudnoj suradnji u kaznenim stvarima s državama članicama Europske unije"). The main purpose of the amendment was to define the authorities competent for the receipt and recognition as well as for issuing the freezing orders and confiscation orders in order to ensure the implementation of the Regulation. The legislative draft was introduced into the parliamentary procedure on 16 November 2020, which stated in the explanatory report that the provisions of the Regulation EU 2018/1805 replace transposition provisions of the Framework Decision 2003/577/JHA and Framework Decision 2006/783/JHA, except in relation to Ireland and Denmark to which the Regulation is not applicable. The amendment introduced the new Art. 1(3) AJCMSEU which explicitly declares that this Act ensures the implementation of the Regulation (EU) 2018/1805 on the mutual recognition of freezing orders and confiscation orders. The amendment further made a change in Art. 5(1)(3) AJCMSEU in order to define the authority competent for the receipt of the freezing orders and confiscation orders under the Regulation. The amendment entrusted this competence to the county state attorney offices based on the place where the property or objects are located or where the individual has their permanent or temporary residence and a legal entity has its registered headquarters.</p> <p>The next provision of the amendment of the Art. 5a(2) AJCMSEU declared the obligation of the Ministry of Justice to deliver statistical data to the "competent authorities of the European Union" i.e. the Commission in accordance with the obligation under the Article 35 of the Regulation EU 2018/1805. Then there are two amending provisions determining the authorities competent for issuing the freezing orders and confiscation orders in accordance with the Regulation. The first one is amendment of Art. 6(2) AJCMSEU designated the state attorney office and the Court in charge of the proceedings as the issuing authorities for freezing orders. The second one is amendment of Art. 6(4) AJCMSEU, which entrusts the authority to issue confiscation orders to the competent Court. The next provision amending Art. 7(3) AJCMSEU regulates the jurisdiction of county Courts to fill out and certify the content of confiscation orders, if objects are subject to confiscation. The amendment also introduced new Articles 49a and 76a of the AJCMSEU, which provide that the old provisions concerning the order to insure property (Section III of AJCMSEU) and decision to confiscate assets or seize objects (Section V of AJCMSEU) remain in force in relation to Ireland and Denmark. Finally, the amendment contained a provision on the date of entry into force (19 December 2020) and that the ongoing proceedings shall be completed under the old provisions concerning the order to insure property (Section III of AJCMSEU) and decision to confiscate assets or seize objects (Section V of AJCMSEU).</p> <p>The "Declarations pursuant to 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</p>



	<p>orders” establishes that when a freezing certificate is transmitted to the Republic of Croatia with a view to the recognition and execution of a freezing order, the original freezing order or a certified copy thereof must be transmitted together with the freezing certificate. Freezing certificates should be translated into Croatian, but in urgent cases a translation into English will be accepted subject to reciprocity. Also Confiscation certificates should be translated into Croatian, but in urgent cases a translation into English will be accepted subject to reciprocity. When a confiscation certificate is transmitted to the Republic of Croatia with a view to the recognition and execution of a confiscation order, the original confiscation order or a certified copy thereof must be transmitted together with the confiscation certificate.</p>
<p>Cyprus</p> 	<p>In May 1996 domestic legislation was enacted, namely “The Prevention and Suppression of Money Laundering Activities Law (No. 61(I)/96” which was adopted in line with the “United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances” (Vienna Convention) of 1990, the “Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime” (Strasbourg Convention) of 1995 and the “Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism” of 2007, the 40 Recommendations of the “Financial Action Task Force on Money Laundering” and the E.U. Council Directives. This Law was amended in 1995, 1998, 1999, 2000, 2003 and 2004 to include further international measures or to improve existing measures. In 2007 the Law was replaced by the “Prevention and Suppression of Money Laundering Activities Law”, No 188/2007, amending and consolidating the previous Laws. It has been further amended with Law No 58(I)/2010 and finally with the Law No 13/2021. This last introduced changes to the Law No 188/2007 with the purpose of (a) transposition at a national level of the 5th EU Anti-Money Laundering Directive (AMLD) (b) effective implementation of the Regulation (EU) 2018/1805 and (c) harmonisation with Article 3 of Directive (EU) 2019/2177. In particular, PART IV B of the Law provides norms about Cooperation with Member States of the European Union (EU) pursuant to Regulation (EU) 2018/1805: this part is the direct consequence of reform law No 13/2021. The provisions introduced are few and concise. In answering the following questions, the reference will be made to Part IV B.</p> <p>Furthermore, the “Declarations to the Commission for purposes of compliance with 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 establishes general principles for the implementation of the Regulation in Cyprus” as, for example, the language accepted for certifications and the competent issuing and executing authorities.</p>
<p>Czech Republic</p> 	<p>Despite the fact that the Regulation 2018/1805 came into force on 19th December 2020, a national implementing legislation has not been adopted by the Czech Parliament so far⁹³. The draft amendment bill was introduced in January 2020, then in March 2022 and is now in the legislative process. The draft law provisionally foresees an effective date of 1st January 2023. On</p>

⁹³ This text is being written in September 2022.

	<p>the other hand, the bill has already passed its first reading and its approval by the Czech legislature is expected in the coming months. The bill concerns in particular the draft amendment to the “Act No. 104/2013 Coll., on International Judicial Cooperation in Criminal Matters”, which, in addition to provisions on traditional legal aid, also contains provisions implementing procedural rules within the framework of the Europeanisation of criminal law, including mutual recognition and enforcement of decisions.⁹⁴ For this reason, it is not possible to discuss the adopted and legally effective implementing legislation in the Czech Republic, but only the aforementioned draft amendment to the Act on International Judicial Cooperation in Criminal Matters will be discussed. This is a hard law proposal aimed at ensuring effective and efficient implementation of the Regulation in the Czech Republic. The key provisions of the proposed amendment relating to the implementation of the Regulation will be discussed below.</p> <p>It is also worth mentioning that for the purposes of effective and efficient implementation of the Regulation in the Czech Republic, the Ministry of Justice (for Courts) and the Prosecutor General’s Office (for prosecutors) have issued internal recommendations (i.e. soft law) to be followed by judges and prosecutors when implementing the Regulation. These internal rules are to be followed by judges and prosecutors until the aforementioned amendment to the International Judicial Cooperation Act is adopted. However, it should be stressed that these internal recommendations are not publicly available and the author of this text has not been allowed by the Ministry of Justice or the Prosecutor General’s Office to gain access to these documents, publish them or disseminate them. Simply put, it is a recommended approach on how to apply the Regulation in conjunction with existing national legislation. As of 19th December 2020, the effective date of the Regulation, a certain legal vacuum has arisen in the Czech Republic as regards the application of the Regulation. The above-mentioned recommendations then set out a procedure to overcome this legal vacuum, at least temporarily, by applying the currently effective legislation. The recommendations also contain a description of the Regulation, its meaning and purpose and also mention the freezing and confiscation tools of Czech criminal law that fall within the scope of the Regulation.</p>
<p>Estonia</p> 	<p>In September of 2020, a draft law containing changes to be made to the Code of Criminal Procedure regarding the Regulation alongside its explanatory report were presented to the Government of the Republic of Estonia. Before moving on to the changes mentioned in the draft law, a terminological difference must be covered.</p> <p>The Estonian Code of Criminal Procedure uses the terms European certificate concerning the freezing of property and European certificate of confiscation in its sections 508–508. Meanwhile the Regulation talks of European freezing orders and European confiscation orders. The aforementioned certificates can be treated as formal applications while the freezing orders and confiscating orders themselves are of which the recognition and enforcement is being requested. Despite this, the explanatory report of the draft law explains, what is meant in the Code of Criminal Procedure is still the mutual recognition of European freezing orders and confiscation orders that have been submitted</p>

⁹⁴ The government bill in its original wording, including the explanatory memorandum, is available online at: <https://www.psp.cz/sqw/text/historie.sqw?o=9&T=175>


	<p>via European certificates concerning the freezing of property and certificates of confiscation. This explanatory report also explains that although the Regulation is directly applicable, some changes must still be made to the Code of Criminal Procedure to specify terminology and implement measures. For example, section 48953 of the Code of Criminal Procedure was added with this draft law and said section explicitly states that mutual recognition of European freezing orders and confiscation orders shall be done pursuant to the Regulation. Further specifics regarding what the Code of Criminal Procedure states on the Regulation is divided under the following subchapter.</p>
<p>Finland</p> 	<p>With the European Parliament's approval of the aforementioned Regulation EU 2018/1805, the mutual recognition of decisions issued by the judicial authorities of each of its signatories regarding the freezing and confiscation of assets and valuables arising from criminal actions was promoted from then on. From the introduction of the regulation, approved on November 14th, 2018, the Finnish government therefore sent a proposal to the legislature to adjust national legislation to the new EU guidelines. Despite the novelty of the topic, as soon as the proposal was forwarded for discussion, it was realized that the Finnish legislation already satisfactorily met the requirements imposed by the regulation, requiring, however, minor and punctual adjustments. In fact, a complementation became necessary in order to bring definitions specifically regarding the competent authorities responsible for the execution of restrictive measures, passing also through the necessary course of action for the processing and eventual appeals against these measures. Therefore, after intense discussions in the Finnish parliament, "Law No. 895/2020" was issued, which regulates and provides complementary provisions to the Regulation, specifically on the mutual recognition of freezing and confiscation orders in the European Union.</p> <p>The notification to the Directorate General for Justice and Consumers by the Permanent Representation of Finland ("ASETUSTA JÄÄDYTTÄMISTÄ JA MENETETYKSI TUOMITSEMISTA KOSKEVIEN PÄÄTÖSTEN VASTAVUOROISESTA TUNNUSTAMISESTA (EU) 2018/1805 KOSKEVA ILMOITUS ASETUKSEN (EU) 2017/1939 105 ARTIKLAN JOHDOSTA") establishes that Finland is competent to act as issuing authority as defined in point (8) of Article 2 of Regulation (EU) 2018/1805 for the purpose of issuing freezing orders and freezing certificates as defined in that Regulation.</p>
<p>France</p> 	<p>The law of 22 December 2021 ("Law no 2021-1729, 22 déc. 2021 pour la confiance dans l'institution judiciaire, JO 23 déc., no 2") transposed 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 by inserting of a <i>Section 5bis</i> in Chapter II of Title X of Book IV of the Code of Criminal Procedure. As mentioning in the "<i>Etude d'impact</i>" document, the direct application of the Regulation implies that the provisions of the Regulation are self themselves. Nevertheless, for reasons of legibility and intelligibility of the regulation, it appears necessary to make some adjustments to the Code of Criminal Procedure in order to expressly designate in the Code the magistrates responsible for applying freezing and confiscation orders and specify the applicable appeal procedures</p>

	<p>The Code of Criminal Procedure in Article 695-9-30-1 of Code of Criminal Procedure lists the authorities issuing and executing freezing orders as follows: the authorities issuing freezing orders are the public prosecutor, the investigating Courts, the liberty and custody judge and the trial Courts competent under this code; the authority responsible for executing freezing orders issued by the Courts of another Member State of the European Union is the territorially competent investigating judge, where applicable through the public prosecutor or the public prosecutor. The investigating judge with territorial jurisdiction is the judge in the place where one of the frozen assets is located or, failing that, the investigating judge in Paris.</p> <p>The article 695-9-30-2 refers for the implementation of Article 33 of 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 the conditions provided in Articles 695-9-22 and 695-9-24 of the Code of Criminal procedure which are included in Section V of Chapter II, Title X of Book IV of the Code of Criminal Procedure refers to the issuance and enforcement of freezing orders.</p>
<p>Germany</p> 	<p>Since 1982, an “Act on International Mutual Assistance in Criminal Matters” (<i>Gesetz über die internationale Rechtshilfe in Strafsachen – IRG</i>)* has been in force within German criminal justice system⁹⁵.</p> <p>In 2020, the “Sixth Law amending the Act on International Mutual Assistance in Criminal Matters” (<i>Sechstes Gesetz zur Änderung des Gesetzes über die internationale Rechtshilfe in Strafsachen</i>) has been approved⁹⁶. Notably, its Article 1 provides for the drafting <i>ex novo</i> of a Part XI within the “Act on International Mutual Assistance in Criminal Matters”, labelled as ‘<i>Provisions implementing 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</i>’. Accordingly, brand-new §§ 96a – 96e has been laid down therein. They deal respectively with:</p> <p>Jurisdiction and procedure involving incoming requests (§ 96b); Enforcement (§ 96c); Appeal (§ 96d); Outgoing requests (§ 96e).</p>
<p>Greece</p> 	<p>No soft and hard laws issued at the national level to ensure the smooth implementation of Regulation EU 2018/1805 have been identified. A series of shortcomings, bureaucratic processes and the institutional and legal gaps seem that can create difficulties in the implementation of the Regulation in practical level. For this reason, the Greek State (Ministry of Justice) set up a special</p>

* The updated version of the Act on International Mutual Assistance in Criminal Matters, as amended in 2020, is available, in English language, at the following URL: https://www.gesetze-im-internet.de/englisch_irg/.


⁹⁵ See the original version of the Law on the official website of the Official Journal of the Federal Republic of Germany (*Bundesgesetzblatt – BGBl.*): https://www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger_BGBl&jumpTo=bgbl182s2071.pdf#__bgbl__%2F%2F%5B%40attr_id%3D%27bgbl182s2071.pdf%27%5D__1663679123382.



⁹⁶ The German version is available at the following URL: https://www.bgbl.de/xaver/bgbl/start.xav#__bgbl__%2F%2F%5B%40attr_id%3D%27bgbl120s2474.pdf%27%5D__1663679716925.

	<p>legislative committee in order to harmonize the Greek legal framework with the provisions of the Regulation for its implementation in action. The Special Legislative Committee was set up according to the “Decision No.44570/03-09-2021” of the Minister of Justice.⁹⁷ According the particular decision, the Committee should have completed its work until 31.1.2022 but it is still in force and works on this. The Regulation has already started to be applied at the level of mutual recognition of freezing and confiscation orders.</p> <p>The L. 4478/2017 was a significant attempt to harmonize the EU legislation by incorporating the Directive 2014/42, but as we have witnessed there is always space of implementation gaps (Law in books – Law in action). Characteristic is the example of the establishment of new bureau that will be responsible for managing confiscated or frozen assets, according to article 5 of Law No. 4478/2017, which transposed article 10 of Directive 2014/42/EU on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union., new bureau shall be established that will be responsible for managing confiscated or frozen assets (Ministerial Decision 24296/29-03-2018).⁹⁸ In practice the body exists but the legal framework governing the management of the frozen and confiscated assets has not been defined yet. We hope that the above mentioned legislative Committee will contribute to the effective implementation of the examined Regulation by making specific proposals regarding the legal provisions (soft and hard law) that have to be introduced.</p>
<p>Hungary</p> 	<p>The necessary legislative acts came into force on 19 December 2020, introduced by the “Act No CL of 2020 (Articles 10-14)”. The Act amended Act No. CLXXX of 2012 on the international cooperation in criminal matters with the EU Member States (EUCOOP), and the new rules address the procedural and technical issues arising from the Regulation. The Act incorporates the directives based on the principle of mutual recognition (or framework decision), with an explicit reference in the final provisions to which EU instruments are concerned. As the law stands today, these are: 2002/90/EG; 2002/187/JHA; 2002/465/JHA; Convention on mutual legal assistance (2000 and protocols); Europol protocol (2022); 2002/584/JHA; 2002/946/JHA; 2003/577/JHA; 2005/214/JHA; 2006/783/JHA, 2006/960/JHA; 2007/845/JHA; 2008/909/JHA; 2008/947/JHA; 2009/299/JHA; 2009/371/JHA; 2009/426/JHA; 2009/829/JHA; 2009/948/JHA; 2011/99/EU; 2012/29/EU; 2013/48/EU; 2014/41/EU; 2017/541/EU; Reg. 2016/794; Reg. 2018/1805; Brexit agreement. The text of the Act contains around 182 articles.</p> <p>The law lays down the precise national procedure for each instrument, based on the text of the Directive or Framework Decision, additionally it regulates the necessary issues within the margin of discretion (of implementing) left to the MS by the directive or framework decision.</p> <p>The EUCOOP applies to all forms of cooperation in criminal matters with EU Member States. The HCCP is the background law, so unless otherwise provided for in the EUCOOP, the general criminal procedural law applies.</p>

⁹⁷ Σύσταση νομ/κής Επιτροπής για την αμοιβαία αναγνώριση των αποφάσεων δέσμευσης και δήμευσης - Καν. (ΕΕ) 2018/1805 του ΕΚ - LawNet

⁹⁸ See above in detail the role of GDFCU/SDOE

	<p>According to Article 1 “This Act shall be applied in cooperating with Member States of the European Union (hereinafter: Member State) in criminal matters and in surrender proceedings conducted under a European Arrest Warrant. If cooperation is provided under an international treaty, this Act shall not be applicable unless the executing Member State has recognized the binding force of that treaty.”</p> <p>The Court organization in Hungary has designated European legal coordinators who can be contacted if the EU instruments cause technical difficulties (for example, compiling or filling in any form). Given that the possibility of cooperation under the Regulation is quite recent, there have not yet been a significant number of such cases in Hungarian practice. For this reason, fine-tuning other than technical transposition has not yet been necessary. For this reason, there is no higher Court guidance, case law or prosecutorial directive that would provide soft law on these issues. The national expert is aware, however, that both the judges and prosecutors receive regular and thorough training in the application of EU legal instruments from their respective professional chambers and organizations. Thus, the concept of teaching and learning is applied in this regard, rather than soft law instruments.</p> <p>Articles 92/A-92/E EUCOOP contain the instructions in connection with a “freezing” decision i.e. in relation to legal assistance in ongoing criminal proceedings for executing coercive measures ordered in another MS or by Hungarian authorities. Article 52/E EUCOOP sets forth the eventual special rules for issuing and executing confiscation orders. Please consult the separated bilingual version of the text.</p>
<p>Italy</p> 	<p>In the Italian legal system, the Regulation (EU) 2018/1805 has so far been implemented only by soft law. In particular, the “Central Anti-Crime Directorate of Ministry of the Interior” issued a “circular on January 12th, 2021”, in order to update police headquarters on the implications of the new regulation. On the judiciary front, the Minister of Justice issued another “circular on February 18th, 2021 (Implementation of Regulation (EU) 2018/1805 on the mutual recognition of freezing and confiscation orders)”, setting specific rules on this matter, which consists of four parts. The first part explains the aims of the circular and the subjects, the second part specifies all the necessary steps of the process of mutual recognition and the authorities involved and the third part sets general provisions. The fourth is specific for property investigations abroad.</p> <p>However, the Parliament has just passed the ‘European Delegation Act 2021’ (Legge 4 agosto 2022, n. 127 “Delega al Governo per il recepimento delle direttive europee e l’attuazione di altri atti normativi dell’Unione europea” - Legge di delegazione europea 2021) with which the Government has been delegated to adopt a Legislative Decree in order to implement the Regulation EU 2018/1805 within some general principles. In particular, art. 12 states that the mutual recognition is possible only if the facts on which the freezing or confiscation order is based are considered crime by the Italian law. However, at the moment, the enacting decrees have not yet been approved.</p>
<p>Latvia</p>	<p>The Criminal Procedure Law Chapters 75, 81, 82 and 83 (Sections 793., 837., 860. un 880) include norms of a general nature with reference to the Confiscation Regulation: a) Chapter 75 deals with Execution of a Confiscation of Property Applied in a</p>

	<p>European Union Member State; b) Chapter 81 deals with Execution of the Ruling Made in Latvia on the Recovery of a Financial Nature, on the Confiscation of Property and on an Alternative Sanction in a European Union Member State; c) Chapter 82 deals with Assistance to a Foreign Country in the Performance of Procedural Actions; d) Chapter 83 deals with Request to a Foreign Country Regarding the Performance of Procedural Actions. After the “Amendments in the Criminal Procedure Law January 7, 2021”, entered into effect January 20, 2021, there have been several adjustments to the Code of Criminal Procedure⁹⁹, in accordance with the procedures specified in Regulation 2018/1805.</p> <p>Ministry of Justice of the Republic of Latvia has prepared informative letter¹⁰⁰ “On the regulation of the European Parliament and the Council of 14 November 2018 (EU) 2018/1805 on freezing order and confiscation order mutual recognition”. The letter includes description of the main points of amended regulations, as well as indications that certificates (Annex I and/or Annex II of the Regulation) have to be filled. It is pointed out in the letter that the Regulation also provides for the use of special forms, namely forms "Certificate of Freezing" and "Certificate of Confiscation" forms, which are also available in Europe on the website of the Legal Cooperation Network. Considering that the Confiscation Regulation is directly applicable, the Ministry of Justice invites to familiarize with the provisions of the Confiscation Regulation and in case of confusion, contact the Ministry of Justice. The same idea is included in the text of Annotation to the amendments¹⁰¹ of the Criminal Procedure Law. Text of Regulation and form of confiscation certificate is available in Latvian on the site of Ministry of Justice¹⁰². More specific instructions are not publicly available.</p>
<p>Lithuania</p> 	<p>In Lithuanian criminal justice system, there are two major types of soft law. The Prosecutor General issues recommendations on selected issues that guide the prosecutors and the PTI authorities. In the judicial realm, the Supreme Court Department on Legal Analysis issues overviews of judicial practice in certain areas with critic and endorsements of different practices. They also summarize their overview into number of conclusions that may be assumed as authoritative interpretation of the law. The overview is approved in the meeting of Supreme Court judges. In fact, both Prosecutor General recommendations and Supreme Court overviews and their conclusions, thou being not legally binding, are highly regarded in practice.</p> <p>However, in regard of implementation of Regulation EU 2018/1805 neither Prosecutor General's recommendations nor Supreme Court overview have been issued so far.</p>



⁹⁹ For example, it is provided for in the Article 880 (Chapter 83) Paragraph (2)⁹⁹ - *The decision to seize a property together with the freezing certificate shall be sent to the Office of the Prosecutor General which will send the abovementioned documents to a European Union Member State in accordance with the procedures specified in Regulation No 2018/1805. If the decision to seize a property must be sent to a European Union Member State that is not bound by Regulation No 2018/1805, the sending shall take place in accordance with the procedures specified in this Chapter.*

¹⁰⁰ Available in Latvian: <https://www.tm.gov.lv/lv/media/4033/download>.

¹⁰¹ Annotation to the amendments in the Criminal Procedure Law January 7, 2021, entered into effect January 20, 2021. Available in Latvian: <https://titania.saeima.lv/LIVS13/SaeimaLIVS13.nsf/0/2027499A991EE65CC22585C8003564FA?OpenDocument#B>

¹⁰² <https://www.tm.gov.lv/lv/tiesiskas-palidzibas-lugumu-veidlapas>.

	<p>The Prosecutors General Office noted in the annual report 2021 that the Office plans to participate in the European Commission project “Regulation EU 2018/1805 on mutual recognition of freezing orders and confiscation orders”. We may only assume participation in this project could facilitate preparation of the recommendations on application of the regulation EU 2018/1805.</p> <p>The only national legislation issued to facilitate the implementation of Regulation EU 2018/1805 were a couple of laws, promulgated on the same day: 1) the “Law on amendment and supplementing of the law on the mutual recognition and enforcement of decisions of European Union member states in criminal cases” that defined the confiscation orders and freezing orders issuing and receiving institutions and their communications with the counterparts in the EU member states and 2) the “Law on amendment of the Code of Criminal Procedure that supplemented the CCP with references to the law on the mutual recognition and enforcement of decisions of European Union member states in criminal cases”.</p> <p>The authors of the draft of the laws noted in the explanatory memorandum that amendments aimed at the consolidation of the regulation on mutual recognition and execution of the EU member states decisions in the penal matters and on transfer of the decisions of the Lithuanian criminal justice authorities to the EU member states in one specialized law.</p> <p>The explanatory memorandum to the drafts of the laws mentioned above notes that the regulation EU 2018/1805 sets out in detail the transmission, recognition and execution of freezing and confiscation orders, and specifies the criminal acts, in the investigation of which freezing and confiscation orders can be issued but it does not indicate which institutions would perform the necessary steps in recognizing and/or issuing rulings. So, the main task of the amendments was indication of the issuing, receiving and recognizing authorities in Lithuania. The explanatory memorandum continues with noting that since the Regulation is a legal act of direct application, the competent authorities, performing the necessary actions, will be directly guided by its provisions. The law on amendment of law on mutual recognition will provide for two separate new sections, which regulate, firstly, the recognition and enforcement of a European Union member state's property seizure act (property seizure act - a term used in the Lithuanian legal system that has the same meaning as freezing order in the Regulation) in the Republic of Lithuania, as well as the issuance of a property freezing order (Chapter XVI), secondly, the recognition and enforcement of the decision of a Court of a European Union member state to confiscate assets in the Republic of Lithuania, as well as the transfer of decisions to confiscate assets made in the Republic of Lithuania to other Member States of the European Union for execution (Chapter XVII).</p> <p>So, the procedures of issuing the freezing of confiscation orders and receiving, recognizing and executing freezing and confiscation orders are regulated by the Regulation 2018/1805, the law on the mutual recognition and enforcement of decisions of European Union member states in criminal cases (the Law on Mutual Recognition, Art. 81-84). Other matters that are not covered by aforementioned acts (i.e. details on procedure of execution, administration etc. of the freezed assets or assets subject to confiscation) are regulated by general national provisions provided in the Code on Criminal Procedure, Civil Procedure Code and relevant (more technical) instructions .</p> <p>After the adoption of a decision on the transfer of the confiscation orders issued in the Republic of Lithuania to another member</p>
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	state of the European Union, within three days from the entry into force of the decision or the return of the case from a higher instance, the Court or the judge of the pre-trial investigation shall draw up a certificate. This certificate must be translated into the official language of another European Union Member State or into another language, if this Member State has indicated that it will recognize a translation into one or more official languages of other European Union Member States.
<p>Luxembourg</p> 	<p>It is noteworthy that no provision of Luxembourgish law aimed at ensuring the smooth implementation of Regulation (EU) 2018/1805.</p> <p>Yet, a law proposal is being discussed at the <i>Chambre des Deputes</i>, since 2021. Labelled as <i>Projet de loi portant 1) mise en œuvre du règlement (UE) 2018/1805 du Parlement européen et du Conseil du 14 novembre 2018 concernant la reconnaissance mutuelle des décisions de gel et des décisions de confiscation</i> (...), it has been lodged on February 1st, 2021¹⁰³. Since then, several amendments have been presented¹⁰⁴. As for now, parliamentary debate is ongoing¹⁰⁵.</p>
<p>Malta</p> 	<p>The part VII of the Proceeds of Crime Act 2021 - named "<i>International Cooperation</i>" - provides a set of rules to make foreign confiscation or freezing orders enforceable in Malta and to make Maltese institutions collaborate with foreign equivalent institutions, "<i>in accordance with such rules of European Union law</i>".</p> <p>In addition, in order to implement the Regulation EU 2018/1805, the Minister of Justice of Malta approved a regulation (Mutual Recognition of Freezing Orders and Confiscation Orders Regulations, 2021 - <i>Legal Notice 180 of 2021</i>), in order to provide for the necessary provisions required to implement this specific EU Regulation. Firstly, it indicates the role of each Maltese institution involved. When Malta is the "issuing State", the Courts of criminal jurisdiction and the Asset Recovery Bureau are designated as competent issuing authorities, while the Attorney General is the validating authority. When Malta is the "executing State", the Asset Recovery Bureau is designated as the competent executing authority.</p>
<p>Netherlands</p>	<p>The Dutch Criminal procedure code contains an <i>ad hoc Boek</i> which deals with international and European criminal cooperation – it is Book V (<i>Internationale en Europese strafrechtelijke samenwerking</i>) of the CCP¹⁰⁶. Its Title V concerns 'European freezing orders' (<i>Europees bevroingsbevel</i>), and its provisions</p>

¹⁰³ The project is available at the following URL: <https://data.legilux.public.lu/filestore/eli/etat/projet/pl/20170407/doc/1/fr/1/pdf/manifestation/eli-etat-projet-pl-20170407-doc-1-fr-1-pdf-manifestation.pdf>.

¹⁰⁴ They are available at the following URL: <https://data.legilux.public.lu/filestore/eli/etat/projet/pl/20170407/evenement/amp/1/doc/1/fr/1/pdf/manifestation/eli-etat-projet-pl-20170407-evenement-amp-1-doc-1-fr-1-pdf-manifestation.pdf>.

¹⁰⁵ The eventual updates of the parliamentary procedure will be available at the following URL: <http://data.legilux.public.lu/eli/etat/projet/pl/20170407>. Moreover, a section of the website of the *Chambre de Députés* is devoted to the matter: <https://www.chd.lu/wps/portal/public/Accueil/TravailALaChambre/Recherche/RoleDesAffaires?action=doDocpaDetails&id=7758>.


¹⁰⁶ The Dutch text of the CCP is available at the following URL: <https://wetten.overheid.nl/BWBR0001903/2022-07-01>.

	<p>were drafted prior to the adoption of the Regulation (EU) 2018/1805. It goes from Article 5.5.1. to Article 5.5.19. Title V been recently amended by a legislative act, concerning the implementation of the aforementioned Regulation. Moreover, it is noteworthy that, since 2007, there exists an <i>ad hoc</i> provision concerning mutual recognition of confiscation measures in the Netherlands. It is the “Mutual Recognition and Enforcement of Monetary Sanctions and Confiscation Orders Act” (<i>Wet wederzijdse erkenning en tenuitvoerlegging geldelijke sancties en beslissingen tot confiscatie</i>)¹⁰⁷, hereinafter ‘Law on Mutual Recognition of Confiscation Orders’. While, on the one hand, it cannot be said to be <i>de iure</i> a legal act which aims at implementing Regulation (EU) 2018/1805, on the other hand, it has been amended through the years, finally in 2020, by a legislative act concerning the implementation of the aforementioned Regulation.</p> <p>Thus, the Dutch legal framework on the matter is deemed to be slightly complex: relevant provisions concerning mutual recognition of freezing orders are laid down in the CCP, while the relevant ones concerning confiscation orders are set forth in the Law on Mutual Recognition of Confiscation Orders of 2007. Through the years, this framework has not changed in its essential structure.</p> <p>In 2020, the Dutch Parliament has approved a legislative act (“law on the implementation of the Regulation 2018/1805”) concerning <i>inter alia</i> the implementation of that provision within the domestic system. Formally, it is the only provision within Dutch criminal justice system which expressly aims at implementing the provision of the aforementioned Regulation. It has come into force on December 19th, 2020¹⁰⁸. The main features of this Law relate to a group of amendments, concerning the CCP and the Law on Mutual Recognition of Confiscation Orders drafted in 2007.</p> <p>A notification from the Netherlands has been sent, on December 2020, to the Directorate-General for Justice and Consumers of the European Commission¹⁰⁹, in order to make them aware that the authority referred to in Article 2(8) and (9) of the Regulation is authorised under Dutch law to represent the Netherlands as issuing State or executing State respectively.</p>
<p>Poland</p>	<p>In Poland, no legislative changes have been made to ensure smooth implementation of Regulation EU 2018/1805¹¹⁰, and the</p>

¹⁰⁷ See <https://wetten.overheid.nl/BWBR0022604/2020-12-19>.


¹⁰⁸ See Decision of 13 October 2020 determining the time of entry into force of the Act of 1 July 2020 amending the Code of Criminal Procedure and the Law on Mutual Recognition and Enforcement of Monetary Sanctions and Confiscation Orders in connection with the implementation of Regulation (EU) No 2018/1805 of the European Parliament and of the Council of 14 November 2018 on the mutual recognition of freezing orders and confiscation orders (OJEU 2018, L 303/1) (Stb. 2020, 291), available at the following URL: <https://zoek.officielebekendmakingen.nl/stb-2020-411.pdf>.

¹¹⁰ It should be noted, however, that the issue of implementing Regulation EU 2018/1805 appeared in the legislative works of the Ministry of Justice. It is about draft law introducing the possibility of confiscation of property derived from crime, even if it was not in the possession of the defendant, as long as it was in his/her possession even for a moment in the last five years (confiscation *in rem*). An object of confiscation would be the property possessed by the accused person of the most serious crimes, which, however, are formally owned by third parties. The condition for confiscation would be to make the committing of a specific offence (esp. as part of organized crime) plausible. In addition, the condition for the confiscation would be to establish that the value of the property is not covered by the legal sources of income of its formal owner. The object and purpose of the actions of authorities in this regard would not be the accused person, but the property/profit obtained illegally. Among the arguments raised by officials to justify the need to introduce such solutions, there was also the necessity to implement Regulation EU 2018/1805. It was pointed out, that the lack of Polish statutory regulation will make

	<p>national provisions implementing Framework Decisions 2003/577 and 2006/783, which are still in force, have not been modified. Applying to another EU Member State for the enforcement of freezing order is regulated in Chapter 62a of the CCP, while the enforcement of a freezing orders issued in another Member State is regulated in Chapter 62b of the CCP. The application to another Member State for the enforcement of a forfeiture judgment has been regulated in Chapter 66c of the CCP, and the enforcement of a confiscation order issued in another Member State – in Chapter 66d of the CCP. These national regulations are still in force and apply to cooperation with Denmark and Ireland, which were not covered by Regulation EU 2018/1805. From the content of art. 39 sec. 3 of Regulation EU 2018/1805, however, a rule can be derived that to the extent necessary for the application of the provisions of this Regulation by Polish judicial authorities, the national provisions should be applied accordingly¹¹¹. The applicable national regulations determine the competence of the prosecutor and the Court to apply for or to recognize freezing and confiscation orders, as well as the procedure by which this is done (passive and active). However, there are no specific instructions on the correct compiling of freezing and confiscation orders and certificates. The basic formal rules that a national freezing or confiscation order must comply with arise from the general provisions on procedural decisions issued by the prosecutor and the Court and specific requirements regarding the content of freezing and confiscation orders. Polish law also does not provide for specific instructions on secure, standardized transmission of orders and certificates, as well as the fast and complete assessment of the order. As regard to handling of urgent cases, from the provisions of Chapter 62b of the CCP it can be concluded that the decision to recognize and execute the freezing order should be made within 24 hours of receipt of the order. There are no more specific regulations regarding to urgent cases. Polish regulations implementing instruments based on the principle of mutual recognition most often have taken over the catalog of grounds for non-recognition and non-execution provided for in a given framework decision or directive. In the case of optional grounds for refusal, the Polish legislator does not introduce additional criteria that the authority deciding on the recognition and execution of the decision should take into account. Polish regulations only foresee – similarly to Art. 19 sec. 2 Regulation EU 2018/1805 – the obligation to consult the issuing authority when the information provided in the certificate is not sufficient to make a decision.</p> <p>Polish regulations do not provide for any specific procedure for the execution of foreign freezing orders and confiscation orders. The principle here is that such orders are executed according to the same rules as the analogous domestic orders (Art. 589I § 3 CCP, Art. 611f § 5 CCP).</p> <p>Polish law does not provide for any specific rules regarding the execution of freezing orders and confiscation orders relating to legal persons. Article 22 of the Act on Liability of Collective Entities for Prohibited Acts foresees that the provisions of the Code of Criminal Procedure shall apply <i>mutatis mutandis</i> to the proceedings in the matter of the liability of collective entities for acts prohibited under penalty, unless the provisions of this Act</p>
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it impossible to fully apply the provisions of the Regulation EU 2018/1805 to the applications of those Member States that have confiscation in rem (see answer of Vice-minister of Justice to the question of Parliament deputies - <https://www.sejm.gov.pl/Sejm9.nsf/InterpelacjaTresc.xsp?key=BX6HNN>).

¹¹¹ Compare B. Augustyniak (in:) D. Świecki (ed.), *Kodeks postępowania karnego. Komentarz*, Warszawa 2022, vol. 2, pp. 992, 1004, 1338, 1347.

	<p>state otherwise. It follows that the above-mentioned provisions of the CCP concerning the recognition of freezing orders and confiscation orders may, to an appropriate extent - complementing the provisions of the Regulation EU 2018/1805 - apply to cases involving collective entities.</p> <p>When it comes to suspects, victims and third parties' rights, it is necessary to refer to the provisions implementing Framework Decisions 2003/577 and 2006/783. It follows from the general provisions that if the Court decides to recognize the freezing order, the persons affected by this decision may attend the Court session, although they are not notified of the date of this session (Art. 96 § 2 CCP). The decision on recognition will also be delivered to them. Persons affected by the freezing of property may also appoint legal counsel, but persons other than the accused person must prove that it is required to protect their interests in these proceedings. It is also possible for these persons to obtain legal aid if they prove that they do not have adequate financial resources (Art. 78 § 1a CCP mutatis mutandis). Art. 589n § 2 of the CCP provides that persons whose rights have been violated have the right to lodge an appeal against the decision to recognize a freezing order, as well as against activities related to its execution and freezing of the property. In the latter case, the complainant may, however, only request to prove that the act has been properly carried out.</p> <p>Article 611fx § 1 of the CCP provides that the case of the recognition of the confiscation order is examined by the Court at the session in which may participate: the prosecutor, the accused - if is on the territory of the Republic of Poland, his defense lawyer, a person whose rights may be violated by the execution of the confiscation order. If the accused person, who is not staying on the territory of the Republic of Poland, does not have a defense lawyer, the president of the Court may appoint him a defence lawyer. The Court's decision on the recognition and enforcement of the confiscation order may be appealed by the prosecutor, accused person, defence lawyer and above-mentioned person (Art. 611 § 2 CCP).</p>
<p>Portugal</p> 	<p>The Portuguese Republic has not operated any legislative amendments towards the implementation of (the contents of) Regulation EU 2018/1805, notwithstanding its entry into force in 19.12.2020. Although sent information requests to the Portuguese Republic¹¹², the Executive Power [General Direction of Justice Politics¹¹³ (DGPJ) - Ministry of Justice] did not provide any information.</p> <p>The Legislative Power (Constitutional Affairs, Rights, Liberties and Guaranties Commission - Portuguese Parliament) has provided information. The request sent to the Constitutional Affairs, Rights, Liberties and Guaranties strived to enlighten if it was “<i>created any new legal diploma to set</i>” in the Portuguese legal framework “<i>the determinations of the Regulation</i>” or if it as suffered any modification “<i>any of the legal texts in force, specifically Law 5/2002, the Criminal Code and/or the Criminal Procedure Code</i>” and, in case of a negative response, if there is “<i>a legal proposal with the mentioned intents</i>”.</p>

¹¹² The contact made aimed to understand what are the “types of freezing and confiscation orders exist in the Portuguese criminal procedure framework; statistic data regarding those orders applied in the Portuguese judicial system; internal legal diplomas modified/created correlated with the Regulation”.


¹¹³ Entrusted with the planning, conception, and evaluation of the policies of the Ministry of Justice, the setting, and the prosecution of the policies regarding the European Union (namely undertaking the study of legal rules from EU Law related to the Portuguese Republic) and the production of official statistics in the Portuguese field of Justice.

	<p>Returning, the Commission wrote down that “We inform that, once made a brief consultation of the database, we did not find legislative initiatives regarding the Regulation. Considering Law 5/2002, January 11th, was assessed the Law Proposal n. 3/XV/1st (Government) - Changes to the Criminal Procedure Code and Law 5/2002, January 11th, originating Law 13/2022, January 11th”. Law 13/2022 amplified the list of crimes formally allowing the ‘perda alargada’, but nothing more.</p> <p>Without any margin for different interpretations, the Portuguese Republic has not made any legal changes to adapt the national framework to the Regulation.</p> <p>It must be said that exist some differences between the Portuguese legal framework, <i>inter alia</i> Law 5/2022, and some of the provisions from the Regulation: there are discrepancies amid the concepts of ‘perda alargada’ in Law 5/2002 and the concept of ‘confiscation order’ set in article 2 n. 2 of the Regulation; moreover, the concept of “freezing order” in article 2 n. 1 of the Regulation has a various scope from the Portuguese ‘apreensão’ (foreseen as a way of obtaining evidence in articles 178 et seq. CrimPC), also encompassing the freezing order, either the preventive freezing, regulated as a patrimonial safeguard measure, article 228 CrimPC, or the one aiming to assure the effectivity of the ‘perda alargada’, in article 10 Law 5/2002¹¹⁴.</p>
<p>Romania</p> 	<p>Concerning the specific instructions on the correct compiling of freezing and confiscation orders and certificates, on their secure, standardized transmission, the fast and complete assessment of the order, the handling of urgent cases, on the dialogue between issuing and executing authorities on possible grounds for non-recognition or non-execution, the best national legal instruments to execute the order or the handling of cases involving legal persons, the compliance with accused, victims and third parties rights, from the perspective of the implementation of Regulation EU 2018/1805, the Romanian law does not provide specific instructions. However, in this respect, “Law no. 51/26 March 2021” amended Law no. 302/2004 on international judicial cooperation in criminal matters. Thus, a section was introduced regarding the measures necessary for the national implementation of the provisions of art. 2 para. (8) and (9), art. 6 para. (3), art. 14 para. (3), art. 17 para. (3) and of art. 24 para. (2) of Regulation (EU) 2018/1805 of the European Parliament and of the Council of 14 November 2018 on the mutual recognition of freezing and confiscation orders¹¹⁵.</p>



¹¹⁴ This trio of legal institutes “set the unavailability regarding the object” - CORREIA, João Conde. (2019). Reconhecimento mútuo de decisões de apreensão e de confisco: o Regulamento (UE) 2018/1805 do Parlamento Europeu e do Conselho de 14 de novembro de 2018. *Revista Julgar*, N. 39, set./dez. 2019, p.183-201, p.198.

¹¹⁵ Through this legislative amendment, four articles were added regarding the issuing and executing authorities, the language used in the procedures, the annexed documents when Romania is the executing state, and the central authorities were established. According to the legal provisions, the freezing order is issued by the prosecutor, during the criminal investigation phase, and by the court, during the trial. On the other hand, the confiscation order is issued by the court. When Romania is the executing state, the freezing orders are executed by the prosecutor’s office attached to the court, during the criminal investigation phase, and by the court, during the trial. If the order is issued in a case in which criminal prosecution is carried out for crimes which, according to Romanian law, are under the competence of the Directorate for the Investigation of Organized Crime and Terrorism or the National Anti-Corruption Directorate, the order of freezing shall be enforced by them. On the other hand, confiscation orders are always enforced by the court. The territorial jurisdiction of the executing authority is determined depending on the location of the property for which the freezing order or confiscation order was issued or depending on the domicile or headquarters of the natural or legal person who is believed that it generates income in Romania.

Regarding the language used, the freezing orders and confiscation orders sent to the Romanian authorities must be accompanied by a translation in Romanian, English or French. In urgent cases, the orders will be accompanied by the Romanian translation. Also, when Romania is the executing state, the confiscation certificate will be accompanied by the original confiscation order or a certified copy

	<p>On the other hand, the government adopted the decision no. 917 of August 25, 2021 for the approval of the National Strategy regarding the recovery of debts arising from crimes for the period 2021-2025 "Crime is not profitable!" and of the Action Plan for the implementation of the National Strategy regarding the recovery of debts arising from crimes for the period 2021-2025 "Crime is not profitable!". In the Action Plan of August 25, 2021 it was provided as objective the professionalization and improvement of the activity of the institutions involved in the process of recovery and administration of claims arising from crimes. Responsible for the implementation of the plan is the National Agency for the Management of Seized Assets (ANABI – The Romanian AROs). Unfortunately, until now no tool has been offered to help professionals apply the regulation. ANABI has set the deadline for the achievement of the objective (according to the public data on the institution's website) in 2024.</p> <p>The <i>“Tools and Best Practices for International Asset Recovery Cooperation Handbook”</i>, published by Advice on Individual Rights in Europe (AIRE) and Regional Anti-corruption Initiative (RAI) and the authors are from AML Consulting (Global) Ltd Experts (Jill Thomas, Lawrence Day, Fiona Jackson) is available in Albanian, Bosnian, Croatian, Serbian, Romanian and Macedonian and it contains several recommendations on how to complete the certificate or order and some specific instructions on their secure, standardized transmission.</p>
<p>Slovakia</p> 	<p>Regulation 2018/1805 was implemented into Slovak law in 2020 by “Act No. 312/2020 Coll. on the Enforcement of Seizure Decisions and Administration of Seized Property”, which amends other legislation. Through the above-mentioned Act, the Regulation has been implemented in two basic legal acts, namely: “Act No. 650/2005 Coll. on the execution of an order for the seizure of property or evidence in the European Union”; and “Act No. 316/2016 Coll. on the Recognition and Enforcement of a Property Judgment Issued in Criminal Proceedings in the European Union”. Both of these regulations were already adopted prior to Regulation 2018/1805 and only minor changes were made to the legislation with the adoption of Act No. 312/2020 Coll. Annex 1 of Act No. 650/2005 Coll. provides for a sample certificate to be sent by the judicial authority of the Slovak Republic to the judicial authority of the executing State together with the order for seizure of property, if the property needs to be seized and it is located in another Member State. Annex 1 of Act No. 316/2016 Coll. regulates the sample of the certificate to be sent by the Slovak Court through the Ministry of Justice for the purpose of recognition and enforcement of a property decision in another Member State. The Ministry accepts certificates and property decisions.</p> <p>The Ministry of Justice of the Slovak Republic then has issued “Notice 1/2021 on the declaration of the Slovak Republic to Regulation 2018/1805”. This brief two-page document regulates, for example, who is understood to be the judicial authority under the regime for restraint orders, what is the regime for property decisions, etc.</p>

thereof together with the confiscation certificate. Concerning central authorities, when Romania is the executing state, the Ministry of Justice is the central authority for confiscation orders and freezing orders issued during the trial phase. For the freezing orders issued during the criminal investigation phase, the central authority is the Prosecutor's Office attached to the High Court of Cassation and Justice, through the specialized structures. The main role of the central authorities is to assist the issuing Romanian judicial authorities and to transmit and receive the non-availability and confiscation orders in the cases where direct contact is not possible.

<p>Slovenia</p> 	<p>In order to fill in the gaps which were not directly addressed by Regulation EU 2018/1805, the Republic of Slovenia strived to implement the Regulation by amending the “Cooperation in Criminal Matters with the Member States of the European Union Act” (hereinafter ZSKZDČEU-1),¹¹⁶ which came into force on the 26th of June 2021. The amendments were technical in nature to ensure a smooth implementation of Regulation EU 2018/1805 and were all introduced in Chapter 24 in order to avoid confusion with other instruments and legislation of the European Union.¹¹⁷ Regarding provisions on Regulation EU 2018/1805, ZSKZDČEU-1 deals with grounds for refusal to recognise freezing orders and confiscation orders, jurisdiction of authorities for recognition and execution of said orders, the form of the freezing certificate and confiscation certificate, deliberation procedure and the decision on recognition and execution of freezing or confiscation orders. There is currently no soft law on Regulation EU 2018/1805. The only additional documents useful for the interpretation of hard law are brief explanatory documents from the legislative procedure such as the Report of the Justice Committee on the Act Amending the Cooperation in Criminal Matters with the Member States of the European Union Act (ZSKZDČEU-1C), summary procedure, EPA 1705-VIII, as well as the “Notification by the Republic of Slovenia to the European Commission relating to 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 from 19.12.2020”.</p>
<p>Spain</p> 	<p>Within Spanish criminal justice system, prior to the entry into force of the Regulation, there was already an <i>ad hoc</i> provision dealing with mutual recognition of criminal decisions within the EU legal framework – it is the <i>Ley 23/2014, de 20 de noviembre, de reconocimiento mutuo de resoluciones penales en la Unión Europea</i> (“Law on mutual recognition”)¹¹⁸. The latter piece of legislation has been amended in 2018¹¹⁹ and, lastly, in 2021¹²⁰, none of these revisions dealing with the implementation of the Regulation. In-depth research on the website of the Official Journal of the Kingdom of Spain (<i>Boletín Oficial del Estado – BOE</i>)¹²¹ shows that, as for now, no piece of legislation implementing Regulation (EU) 2018/1805 has been come into force. Nevertheless, and curiously, in 2019, the Spanish <i>Ministerio de Justicia</i> urged Spanish citizens to participate in a public discussion—with the aim to ‘enable public participation in the</p>

¹¹⁶ Zakon o sodelovanju v kazenskih zadevah z državami članicami Evropske unije, Uradni list RS, št. 48/13, 37/15, 22/18 in 94/21.

¹¹⁷ Report of the Committee on Justice from 6.5.2021, no. 713-01/21-8/, pages 1 and 2.

¹¹⁸ See <https://www.boe.es/buscar/pdf/2014/BOE-A-2014-12029-consolidado.pdf>. For the sake of completeness, on the same year, another piece of legislation has been drafted (*Ley Orgánica 6/2014, de 29 de octubre, complementaria de la Ley de reconocimiento mutuo de resoluciones penales en la Unión Europea, por la que se modifica la Ley Orgánica 6/1985, de 1 de julio, del Poder Judicial*), with the aim of ‘complement’ the law on mutual recognition.

¹¹⁹ More precisely, it was the *Ley 3/2018, de 11 de junio, por la que se modifica la Ley 23/2014, de 20 de noviembre, de reconocimiento mutuo de resoluciones penales en la Unión Europea, para regular la Orden Europea de Investigación*, available here: <https://www.boe.es/boe/dias/2018/06/12/pdfs/BOE-A-2018-7831.pdf>.

¹²⁰ Reference is to be made to *Ley Orgánica 9/2021, de 1 de julio, de aplicación del Reglamento (UE) 2017/1939 del Consejo, de 12 de octubre de 2017, por el que se establece una cooperación reforzada para la creación de la Fiscalía Europea*, available here: <https://www.boe.es/boe/dias/2021/07/02/pdfs/BOE-A-2021-10957.pdf>.

¹²¹ See <https://bit.ly/3UeEgke>. Indeed, only one provision having “1805/2018” or vice versa its name and/or content can be found in the official website of the BOE, that is the Regulation itself.

	<p>policy-making process through the web portals of ministerial departments’—upon the eventual approval of domestic provisions implementing the Regulation (EU) 2018/1805¹²². Notably, the aftermath of this initiative is unknown.</p> <p>A notification from the Kingdom of Spain has been sent, in December 2020, to the Directorate-General for Justice and Consumers of the European Commission¹²³.</p>
<p>Sweden</p> 	<p>The implementation of the Regulation EU 2018/1805 has been sparse and limited to one implementing law (or act) and one implementing decree (“<i>förordning</i>”)¹²⁴, in combination with their preparatory works. Laws, or acts, are made by parliament, and are of a higher degree (<i>lex superior</i>) than <i>internal</i>, government made decrees. Two translated acts are relevant – the Swedish Judicial Code (updated up until 1999) and the Enforcement Code (updated up until 2001).</p> <p>The main applicable acts are the “Law with Supplementary Provisions to the EU regulation on the mutual recognition of freezing orders and confiscation orders (2020:968)” (“<i>lag med kompletterande bestämmelser till EU:s förordning om ömsesidigt erkännande av beslut om frysning och beslut om förverkande</i>”) (hereinafter the Law with Supplementary Provisions) and the Decree with Supplementary Provisions to the EU regulation on the mutual recognition of freezing orders and confiscation orders (2020:974) (“<i>förordning med kompletterande bestämmelser till EU:s förordning om ömsesidigt erkännande av beslut om frysning och beslut om förverkande</i>”) (hereinafter Decree with Supplementary Provisions).</p> <p>Furthermore, for the understanding of both the Law with Supplementary Provisions and the Decree with Supplementary Provisions, the preparatory works are of interest. The main preparatory works are the Government bill 2019/20:198 Supplementary provisions to the EU regulation on the mutual recognition of freezing orders and confiscation orders (“<i>regeringens proposition 2019/20:198 Kompletterande bestämmelser till EU:s förordning om ömsesidigt erkännande av beslut om frysning och beslut om förverkande</i>”) and the Ministry report 2019:28 Supplementary provisions to the EU regulation on the mutual recognition of freezing orders and confiscation orders (“<i>2019:28 Kompletterande bestämmelser till EU:s förordning om ömsesidigt erkännande av beslut om frysning och beslut om förverkande</i>”). In the Swedish legal system, preparatory works (“<i>förarbeten</i>”) are used widely to understand the interpretation of the relevant laws and regulations. The Courts are usually loyal to the intent of the legislator, and the preparatory works are seen as a clear way of indicating this intent¹²⁵.</p>

¹²² The official communication is available here: <https://bit.ly/3qPkzC4>. A summary of the initiative is available here: <https://noticias.juridicas.com/actualidad/noticias/14665-justicia-somete-a-consulta-pamp;uacute;blica-la-transposiciamp;oacute;n-de-siete-directivas-y-reglamentos-europeos/>.

¹²³ That communication concerned the duty to inform the Commission of the authority or authorities as defined in Article 2(8) and (9) of the Regulation (EU) 2018/1805 that are competent under domestic law in cases where that Member State is, respectively, the issuing State or the executing State.

¹²⁴ The direct translation of the Swedish “*förordning*” would be “regulation”, but to avoid confusion with EU Regulations, it is used the term “decree”.

¹²⁵ However, this loyalty to the intent of the legislator cannot be stretched farther than the wording of the law itself when it comes to criminal matters, due to the principle of legality as stated in the Instrument of Government 2:10.