



Co-funded by the  
European Union

## Freezing Orders and Confiscation orders: Effort for common standards

---

# D2.2 Report on confiscation and freezing orders practical issues

<b>Title</b>	D2.2 Report on confiscation and freezing orders practical issues
<b>Document description</b>	The Report will depict best and bad practices in at least 14 MS on practical application of the Regulation (EU) 2018/1805. Together with the Comparative Report on the implementation of Regulation (EU) 2018/1805 (D2.1), it will form the basis of the draft of the FORCE Common Standards and Recommendations (D4.1). The report has been based on the results of the interviews submitted to the practitioners. Hence, the content of the report is exclusively based on the information gathered during the interviews.
<b>Nature</b>	Public
<b>Task</b>	T.2.2 Need assessment and monitoring of best practices
<b>Status</b>	Final Version
<b>WP</b>	WP2
<b>Lead Partner</b>	UniLu
<b>Date</b>	28/03/2023

<b>Revision history</b>	Author	Delivery date	Summary of changes and comments
<b>Version 01</b>	UNILU	08/03/2023	First version shared with Project coordinator and partners and sent to peer-reviers
<b>Version 02</b>	UNILU	28/03/2023	Internal and external reviewers comments embedded to the document.
<b>Final Version</b>	UNILU - UNITO	15/09/2023	Final version after implementing Project Officer's comments

### Disclaimer:

Funded by the European Union. Views and opinions expressed are however those of the author(s) only and do not necessarily reflect those of the European Union. Neither the European Union nor the granting authority can be held responsible for them.



## Contents

<b>1. METHODOLOGICAL PREAMBLE</b> .....	<b>4</b>
<b>2. MAGISTRATES</b> .....	<b>5</b>
2.1. DATA.....	5
2.1.1. Number of persons involved .....	5
2.1.2. Gender analysis .....	5
2.1.3. Professions .....	5
2.1.4. National affiliation .....	6
2.2. MERITS.....	7
<b>3. CONCLUDING REMARKS</b> .....	<b>39</b>
<b>4. LAWYERS</b> .....	<b>42</b>
4.1. DATA.....	42
4.1.1. Number of persons involved .....	42
4.1.2. Gender analysis .....	42
4.1.3. National affiliation .....	43
4.2. MERITS.....	43
<b>5. CONCLUDING REMARKS</b> .....	<b>50</b>

# 1. METHODOLOGICAL PREAMBLE

In the context of the Working Package 2 ‘desk research and assessment’ phase to be carried out within FORCE project<sup>1</sup>, the University of Luxembourg was requested to draft a Report on confiscation and freezing orders practical issues (‘the Report’).<sup>2</sup>

As for the content of the report, it will depict best and bad practices in at least 14 MS on practical application of the Regulation (EU) 2018/1805.<sup>3</sup> Together with the Comparative Report on the implementation of Regulation (EU) 2018/1805,<sup>4</sup> it will form the basis of the draft of the FORCE Common Standards and Recommendations.<sup>5</sup>

The report has been based on the results of the interviews submitted to the practitioners. Hence, the content of the report is exclusively based on the information gathered during the interviews.

All the respondents have been contacted either directly (this has been oftentimes the case of attorneys, whose legal firms have been contacted directly) or through the relevant institutions to whom they are linked (e.g., judges have been contacted through the court in which they work).

Intense efforts were made to reach as many practitioners as possible, both by sending hundreds of emails and making dozens of phone calls. Nonetheless, there were issues in reaching German attorneys and judges: some did not reply and the ones who did reply to the emails declared not to have applied the Regulation (EU) 2018/1805. Therefore, unfortunately, no interviews with German practitioners could be conducted.

From a practical standpoint, two kinds of questionnaires – which have been duly prepared by the University of Turin – have been employed in order to carry out the aforementioned interviews. One of them relates to judges and prosecutors, the other one being submitted to lawyers.

Accordingly, Section 1 of this report will provide an overview of the outcomes which have been collected from magistrates.

Subsequently, and by analogy, Section 2 will be devoted to scrutinise the outcomes of lawyers.

At the end of every section, a series of concluding remarks aim at sketching an overall portrait of the main issues at stake, for what concerns the key challenges on the practical application of the Regulation (EU) 2018/1805.

---

<sup>1</sup> Project: 101046569 – FORCE – JUST-2021-JCOO.

<sup>2</sup> Deliverable 2.2.

<sup>3</sup> 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, OJ L 303, 28.11.2018, p. 1–38.

<sup>4</sup> Deliverable 2.1 (lead beneficiary: UNITO).

<sup>5</sup> Deliverable 4.1 (lead beneficiary: UNITO).

## 2. MAGISTRATES

This section is exclusively devoted to providing a comparative analysis of the answers which have been collected from magistrates, for what concerns the practical application of the Regulation (EU) 2018/1805.

For the purpose of the present report, the word ‘magistrates’ covers both judges and public prosecutors.

### 2.1. DATA

#### 2.1.1. Number of persons involved

The questionnaires to be transmitted to magistrates of at least 14 Member States have been sent to a great amount of judges and public prosecutors across the EU. Notably, a number of 51 (fifty-one) answers have been received.

#### 2.1.2. Gender analysis

From a gender-based perspective, a number of 19 (nineteen) is male, a number of 29 (thirty) is female and a number of 2 (two) did not declare their gender.

Among judges, 8 (eight) respondents are males and 10 (ten) are females. Remarkably, 2 (two) judges did not declare their gender.

Among prosecutors, 11 (eleven) respondents are males and 20 (twenty) are females.

A table is provided below, with the relevant data ([TABLE 1](#)).

#### 2.1.3. Professions

Among the magistrates who have provided an answer, thirty-one (31) respondents are public prosecutors, while 20 (twenty) are judges.

For the sake of completeness, it is worth noting that the answers of senior judicial advisors have been encompassed under the ‘judges’ category.<sup>6</sup> Analogously, the answers collected from the members of specialised units attached to the Attorney General’s Office have been encompassed under the ‘public prosecutors’ category.<sup>7</sup>

A table is provided below, with the relevant data ([TABLE 2](#)).

---

<sup>6</sup> In some countries (e.g., [Slovenia](#)), their function is to support the judge for the purpose of issuing or executing the relevant procedures foreseen in Regulation (EU) 2018/1805.

<sup>7</sup> This is the case of [Cyprus](#), where the MOKAS (Unit for Combating Money Laundering) works under the supervision of the Attorney’s General Office.

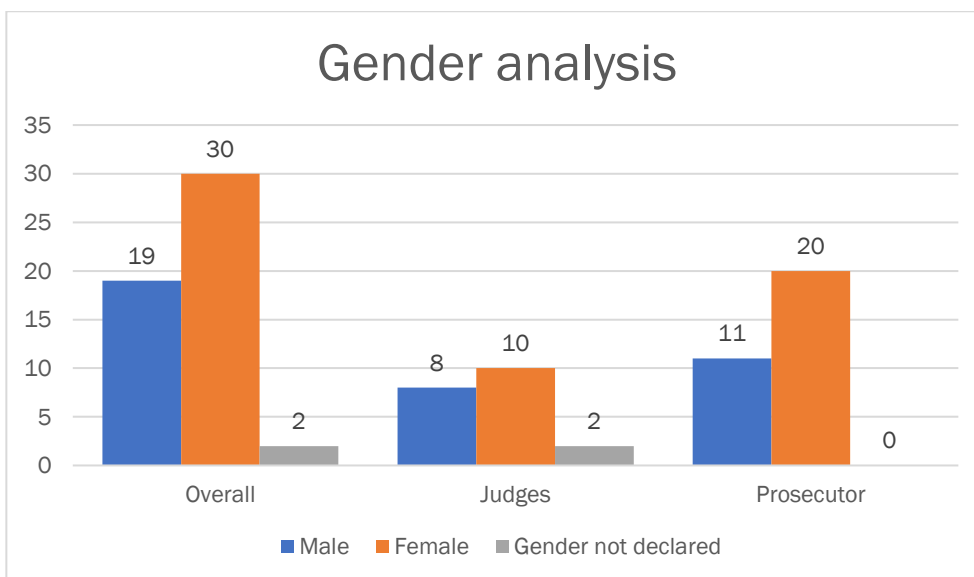


TABLE 1 – GENDER ANALYSIS.

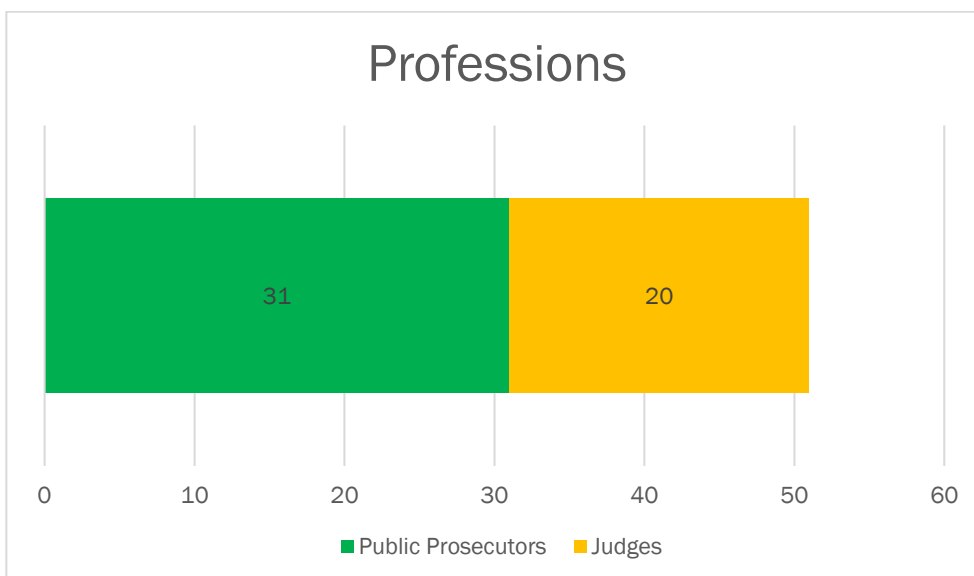


TABLE 2 – PROFESSIONS OF THE MAGISTRATES WHOSE ANSWERS HAVE BEEN COLLECTED.<sup>8</sup>

2.1.4. National affiliation

As for the national affiliation of the magistrates whose feedbacks have been gathered, relevant data are provided in the table below (TABLE 3).

COUNTRY	JUDGES	PUBLIC PROSECUTORS
Austria	2	2
Belgium		1
Bulgaria	1	
Cyprus	1	4
France		1

<sup>8</sup> In other words, public prosecutors were some 60% of the respondents, while judges were in turn some 40%.

Germany		
Italy	3	5
Latvia	2	3
Lithuania	2	4
Luxembourg		1
Malta	1	1
Netherlands		3
Slovenia	6	2
Spain		1
Sweden	3	2
TOTAL	21	30

TABLE 3 – NATIONAL AFFILIATIONS OF THE RESPONDENT MAGISTRATES.

## 2.2. MERITS

Since the questionnaire submitted to public prosecutors and judges was of the same content, the analysis of the investigation will be conducted jointly, without further distinguishing those two categories.

Nevertheless, should it be necessary to emphasise certain peculiar features in the answers, attention will be paid on the subject who would emphasise such aspects. This might be the case, for instance, where public prosecutors have a different standpoint to those advocated by judges.

### 2.2.1. Question 1

The first question foreseen in the questionnaire could be split, in turn, into two sub-questions, and reads as follows:

“Does the national legislation implementing Regulation 2018/1805 assign you a specific role to issue/execute freezing and confiscation orders?”

Do you have only this role or you are in charge of other tasks connected or not with freezing and confiscation orders?”.

First of all, it is worth noting that all magistrates answered this question. However, as could be expected, there are different feedbacks, depending on the role assigned to the responding magistrate.

#### 2.2.1.1. The role of judges

Normally, courts are assigned the pivotal role of issuing/executing authorities. Almost *all* judges emphasised this point.<sup>9</sup>

About the existence of specialised judges who deal with issues related to Regulation (EU) 20108/1805, a judge from **Bulgaria** set forth that:<sup>10</sup>

“There is no specific role assigned. Within the Bulgarian legal order, precautionary measures (freezing orders) can be issued by any prosecutor or criminal section judge, depending on the progress of the criminal proceeding – pre-trial or trial. Confiscation can only be imposed by judges as a type of penal sanction part of the sentence. Freezing orders coming from abroad are always assigned to the judge-at-duty, in order to be processed in an expedient manner. However, this position is rotational and there is no special characteristics assigned to it”.

<sup>9</sup> Interview 2 (**Latvia**), Interview (**Cyprus**) and Interview 6.2.2023 (**Slovenia**).

<sup>10</sup> Interview 1 (**Bulgaria**).



Similarly, a judge from [Lithuania](#) emphasised that ‘there are no specialised judges for the matters of international cooperation’.<sup>11</sup>

The same was highlighted by senior judicial advisors from [Slovenia](#).<sup>12</sup>

More specifically, a judge from [Sweden](#) observed that ‘to the extent that a case comes, it can land on anyone ... it can come to the desk of any judge’.<sup>13</sup>

#### 2.2.1.2. The role of prosecutors

Almost *all* prosecutors stressed the lack of specialised offices which deal with the issues of mutual recognition of freezing/confiscation orders.<sup>14</sup> However, prosecutors from [Sweden](#) reported the existence of specialised public prosecutors who handle:<sup>15</sup>

“some, not all but most incoming requests for international legal assistance in criminal matters ... and also these types of cases ... there is thus a specialisation within the prosecution service and this is a rule that is not enshrined by law but is an outflow of the Prosecutor General’s right to direct and distribute the work”.

Similarly, in [Italy](#), some specialised units within public prosecutors’ offices have been created. Strict conditions to be part of those groups are envisaged (e.g., special experience in the field of criminal cooperation, knowledge of *at least* a foreign language).<sup>16</sup>

In several countries, especially those of common law, prosecutors are normally in charge to ask the competent court an order for the execution of foreign freezing/confiscation measures based on Regulation (EU) 2018/1805; similarly, prosecutors can ask the court to issue a freezing/confiscation order which then shall be transmitted to another Member State by prosecuting authorities themselves.<sup>17</sup> The court, in other words, needs an application on the part of the public prosecutors, for both measures and in both situations (issuing/executing authority).

Slightly differently, in [Lithuania](#), a foreign request for the execution of a freezing order in that country shall be sent to public prosecutors which, in turn, will apply to the court; on the other hand, a request of the execution of a confiscation measure shall be sent directly to the competent court, no application from the public prosecutor being needed in this field.<sup>18</sup>

In the same country, it appears that it is for the public prosecutor to send *directly* the certificate of freezing orders, without the need to ask for a court to do so.<sup>19</sup>

Remarkably, in [Austria](#), in the case of a ‘securing’ order to be executed in that country, public prosecutors do not need to ask for a court authorisation.<sup>20</sup> Conversely, the need for a judicial authorisation is still required should a freezing/confiscation order is to be executed in Austria.

When [Malta](#) is the issuing State, public prosecutors are required to ‘validate’ freezing orders to be recognised abroad. Yet, they are issued by an *ad hoc* body (see below para 32).

Notably, in [Cyprus](#), a specialised unit that is attached to the Attorney’s General Office (MOKAS) – which gives support in applying for the issuing/execution of

---

<sup>11</sup> Interview ([Lithuania](#)).

<sup>12</sup> Interview ([Slovenia](#)).

<sup>13</sup> Interview ([Sweden](#)).

<sup>14</sup> Interview 18.11.2022 ([Slovenia](#)) and Interview 20.3.2023 ([Luxembourg](#)).

<sup>15</sup> Interview 21.2.2023 ([Sweden](#)).

<sup>16</sup> Interview 19.01.2023 ([Italy](#)).

<sup>17</sup> This aspect has been emphasised, *inter alia*, by magistrates from [Cyprus](#) and [Austria](#).

<sup>18</sup> Interview public prosecutor ([Lithuania](#)).

<sup>19</sup> *Ibid.*

<sup>20</sup> Interview 1 ([Austria](#)).

freezing/confiscation orders before the competent court – holds also the task of asset recovery office. This ‘dual role’ has been welcomed by MOKAS’ officers, as it proves to be useful for the purpose of asset tracing (and the subsequent asset recovery).<sup>21</sup>

As for the supervision upon the execution *in concreto* of the order at stake – both at the domestic level or abroad – the competence is typically up to public prosecutors.<sup>22</sup> In this regard, some judges emphasised that, although they are labelled as ‘executing authority’, their role is merely to issue the relevant authorisation, since they are not responsible for the factual implementation of the measure at stake.<sup>23</sup> The same holds true for what concerns judges who act as ‘issuing authorities’ – they authorise the request of public prosecutors to issue a freezing/confiscation orders, but subsequently it will for prosecutors to take care of the relevant proceedings.

A peculiar framework is that of **Slovenia**, where every freezing/confiscation order is issued *and* executed solely by judges – ‘prosecutors are now less involved in cross-border freezing of assets’ and confiscation measures, as two judges observed.<sup>24</sup> Public prosecutors therefore are neither issuing nor executing authorities within the meaning of the Regulation (EU) 2018/1805. The role of public prosecutors, however, is significant for what concerns freezing orders – the latter cannot be issued *ex officio* by the competent judge, but an application from the public prosecutor is needed in this regard. Differently, confiscation orders can be issued autonomously by the competent judge.<sup>25</sup>

A public prosecutor from **France** confirmed, indirectly, that an application before a court for the issuance of a freezing order to be recognised and executed abroad is foreseen also in that country.<sup>26</sup>

Finally, public prosecutors in **Luxembourg** are issuing authorities for what concerns both freezing and confiscation orders. Conversely, they cannot be executing authorities in any case.<sup>27</sup>

#### 2.2.1.3. The role of *ad hoc* authorities

It is noteworthy that **Malta** has opted for assigning the role of issuing/executing authority to an *ad hoc* body, i.e. the Asset Recovery Bureau.<sup>28</sup>

#### 2.2.1.4. Duties *vis-à-vis* the affected persons

Remarkably, courts are oftentimes in charge of the task of informing the affected persons in accordance with Article 32 of Regulation (EU) 2018/1805.<sup>29</sup>

#### 2.2.1.5. Practical issues

For what concerns the number of orders which have been dealt with by the magistrates concerned, there were several respondents who highlighted the lack of practice in this field:

---

<sup>21</sup> **Cyprus** (MOKAS officers, see *supra* note 7).

<sup>22</sup> **Cyprus** and **Austria**.

<sup>23</sup> This was the observation of a judge from **Austria**.

<sup>24</sup> Interview (**Slovenia**).

<sup>25</sup> These features have been depicted by public prosecutors in **Slovenia**. Notably, a public prosecutor argued that it could be better to allow public prosecutors at least to ‘suggest confiscation of assets at the end of the main hearing’, despite the lack of hard/soft law in this regard.

<sup>26</sup> Interview (**France**).

<sup>27</sup> Interview 20.3.2022 (**Luxembourg**).

<sup>28</sup> Interviews 25.11.2022 and 21.12.2022 (**Malta**).

<sup>29</sup> This aspect has been emphasized by a magistrate from **Cyprus** (Interview 3.2.2023).

- A judge from [Austria](#) observed that ‘there is very little practical experience with the Regulation in Austria; I have been assigned three cases so far’.<sup>30</sup>
- A public prosecutor from [Lithuania](#) emphasised that in 2022, with reference to confiscation orders which are ‘not common’, ‘we sent two, received 10’. In 2021, the same prosecutor issued 3 confiscation orders and received 5 of them.<sup>31</sup>
- Two European Delegated Prosecutors (European Public Prosecutor’s Office) from [Italy](#) stressed that ‘we have not applied Regulation 1805 yet’.<sup>32</sup>
- By analogy, a European Delegated Prosecutor from [Spain](#) claimed that he did not apply the Regulation (EU) 2018/1805 yet.<sup>33</sup>
- A public prosecutor from [France](#) stressed that he applied the Regulation (EU) 2018/1805 only once, at the beginning of 2021.<sup>34</sup>
- Similarly, a public prosecutor from [Austria](#) stressed that ‘freezing orders in the scope of the Regulation are very rare’ while freezing orders adopted under the European Investigation Order (EIO) are ‘more common’.<sup>35</sup>
- A judge from [Lithuania](#) highlighted that, in three years, ‘in total there were only 7 or 9 rulings’ that concerned the Regulation.<sup>36</sup>
- Two judges from [Slovenia](#) reported, albeit briefly, that ‘it is not a lot of work’.<sup>37</sup>

Some magistrates also provide practical examples from their experience.

Both a judge and a public prosecutor from [Italy](#) claimed that they successfully managed to issue a freezing order to the Netherlands (amount: EUR 1,000,000), with the valuable support of Eurojust.<sup>38</sup>

“We have placed as an issuing authority a seizure in Holland, issued by the Court, Section of Prevention Measures and executed by Dr Ruggiero of the Public Prosecutor’s Office, but the freezing order was issued by the President of the Court, following the orientation of the Circular of the Ministry of Justice according to which the authority that must issue the certificate is identified in the Prosecutor or Judge depending on the phase and type of measure. With reference to the prevention phase, the orientation of the Ministry of Justice is in the sense of considering that the decree issued by the President of the Court is then recognised with a freezing order also issued by the President of the Court. The judge who issued the seizure decree, issues the freezing order.

We translated the certificate into English and the transmission was handled by the Public Prosecutor’s Office through the channel Eurojust. The rule should be to use the intermediary of the Ministry of Justice, but this procedure was part of an investigative activity concerning criminal proceedings that had already been characterised by cooperation with the Dutch authority. Through Eurojust, a number of European Investigation Orders had been issued, so the subject was also of investigative interest to the Netherlands and cooperation had already been established, which then benefited the prevention procedure. The cooperation was under the umbrella of Eurojust, so we already had contacts and were facilitated in this. We used the Eurojust channel for the transmission of the freezing order and it worked because it was then executed immediately”.

One of the public prosecutors from [Austria](#) made an interesting illustration of a case in which he was involved, which is worth quoting here at some length:<sup>39</sup>

---

<sup>30</sup> Interview 1 ([Austria](#)).

<sup>31</sup> Interview ([Lithuania](#)).

<sup>32</sup> Interview 21.11.2022 ([Italy](#))

<sup>33</sup> Interview ([Spain](#)).

<sup>34</sup> Interview ([France](#)).

<sup>35</sup> Interview 3 ([Austria](#)).

<sup>36</sup> Interview ([Lithuania](#)).

<sup>37</sup> Interview 12.12.2022 ([Slovenia](#)).

<sup>38</sup> Interview 24.1.2023 ([Italy](#)).

<sup>39</sup> Interview 2 ([Austria](#)).

“The typical case is that we find a foreign, stolen car in Austria, for which an alert has been issued in the Schengen Information System. Then I initiate a procedure according to § 43 para 2 EU-JZG and look for the authority that put out an alert, i.e. police and public prosecutor’s office - mostly Italian authorities - and we inform them that we have found the car and say that they can send a freezing order within four weeks, then we bring it to the border and would hand it over. So far, I have only received one response from a Slovakian authority, and they have succeeded in extraditing the car and returning it to the victim. We drove to the border with a tow truck and the Slovak authorities took it over. In most cases, however, the authorities do not reply and do not send a freezing certificate. If I do not hear back after four weeks, then the case is dealt with purely domestically. If you get a response, the procedure works very well. I have never had the reverse case, i.e., a foreign authority actively approaching us”.

Despite the positive outcome of the material case, the magistrate put emphasis on the lack of cooperation among national authorities.

In this regard, a judge from [Lithuania](#) mentioned a case concerning a ‘confiscation request’ received from [Germany](#) (Hamburg prosecutor’s office). Such request came together with a EIO. The example is of a certain interest, since the issuing authority (Germany) made a mistake in sending the request which, indeed, concerned a freezing order (and not a confiscation order, as was wrongly reported in the certificate):<sup>40</sup>

‘It [sic] this case, there was a car which was requested to be arrested, but the prosecutor overworked – he or she asked not to arrest, but to confiscate it. In the pre-trial investigation we can’t confiscate, because a person is still not convicted, it is possible only to freeze property temporarily.

A car requested to be arrested as a crime instrumentality. It was used for transportation of stolen goods. The Hamburg county court order was for confiscation, but maybe there was a translation mistake, because after studying the request and the ruling, it was clear that temporary measures were requested, not confiscation. In this case prosecutor could solve the issue themselves, they had power to freeze that car’.

Other concerns were shared among magistrates for what concerns inconsistencies in filing the certificate. For instance, a public prosecutor from [Lithuania](#) stressed that some Member States issue only one ‘warrant’ [sic] which refers to a suspect and all his/her property to be frozen/confiscated, while other authorities ‘write a separate warrant for each unit of property ... we usually write one, the Spanish write several’.<sup>41</sup>

Against this background, it is noteworthy that public prosecutors from [Slovenia](#) welcomed the fact that they are no more in charge of practical issues concerning ‘serving of cross-border certificates and freezing orders, ‘translations and so on’ – this has been deemed ‘a relief for state prosecutors’.<sup>42</sup>

Finally, for what concerns sharing of good practices in practical issues, a judge from observed what follows:<sup>43</sup>

“One of the issues is to adapt training to the needs arising from new acts of European and international law. One issue is how to make the relevant structures more efficient in terms of judicial cooperation, and the other is to facilitate the exchange of experience in this area and to try to promote this exchange with judicial authorities in other countries. In recent weeks, we have made some requests to the European Judicial Training Network to promote this type of exchange, both with France and with some Eastern European countries”.

### 2.2.2. Question 2

The second question foreseen in the questionnaire reads as follows:

“Could you tell me how many people in your staff/organization are involved in requesting/executing freezing and confiscation orders? (provide numbers). How many are women?”.

---

<sup>40</sup> Interview ([Lithuania](#)).

<sup>41</sup> Interview ([Lithuania](#)).

<sup>42</sup> Interview 18.11.2022 ([Slovenia](#)).

<sup>43</sup> Interview 19.12.2022 ([Italy](#)).

Due to the differences among Member States, a graphic summary of relevant data can be provided for each country, on the basis of the available information. No data have been collected from **Germany**, **the Netherlands**,<sup>44</sup> **Spain** and **Sweden**.

2.2.2.1. Austria

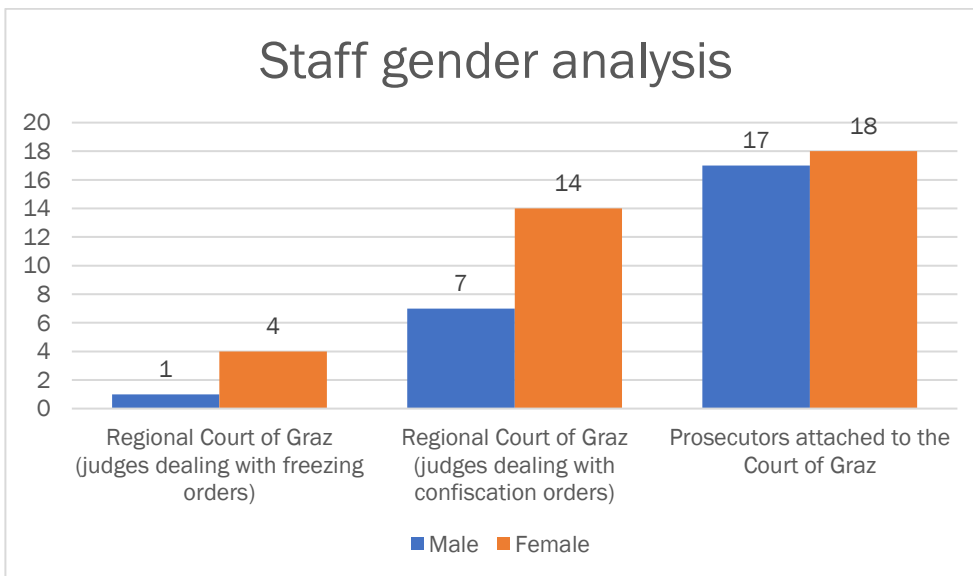


TABLE 4 – STAFF GENDER ANALYSIS (AUSTRIA)<sup>45</sup>

2.2.2.2. Belgium

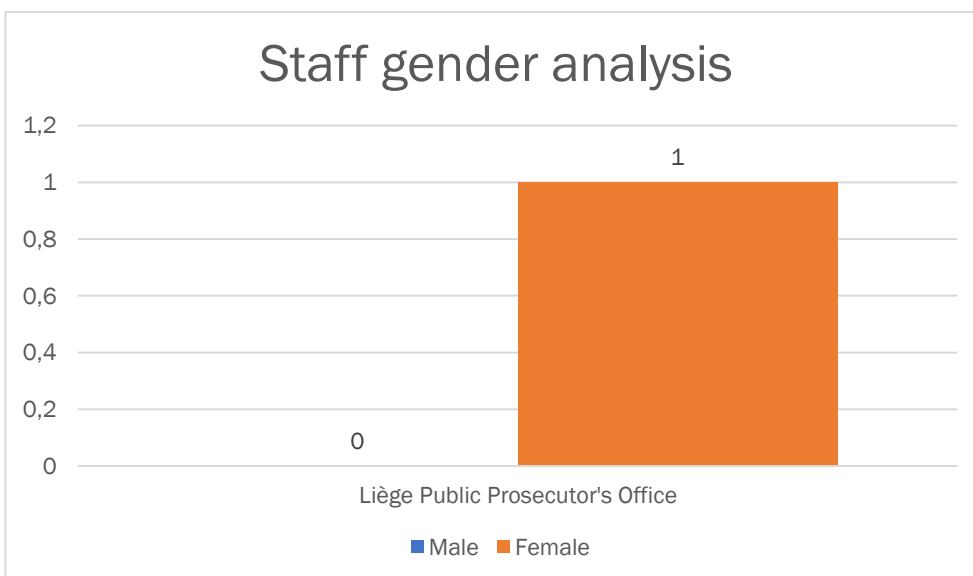


TABLE 5 – STAFF GENDER ANALYSIS (BELGIUM).

<sup>44</sup> One respondent reported that 15 persons are working on requesting/executing freezing and confiscation orders at the Central Judicial Collection Agency (CJIB: *Centraal Justitieel Incassobureau*). Yet, she did not provide any further information (e.g., how many women are involved).

<sup>45</sup> Among the 17 male prosecutors attached to the Court of Graz, only two of them are also responsible for the execution of foreign freezing orders.

2.2.2.3. Bulgaria

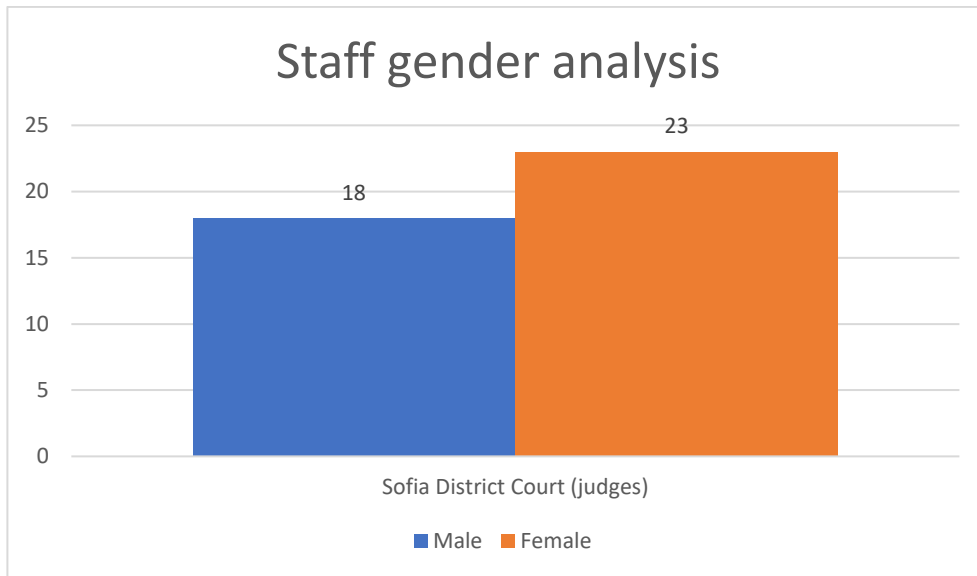


TABLE 6 – STAFF GENDER ANALYSIS (BULGARIA).<sup>46</sup>

2.2.2.4. Cyprus

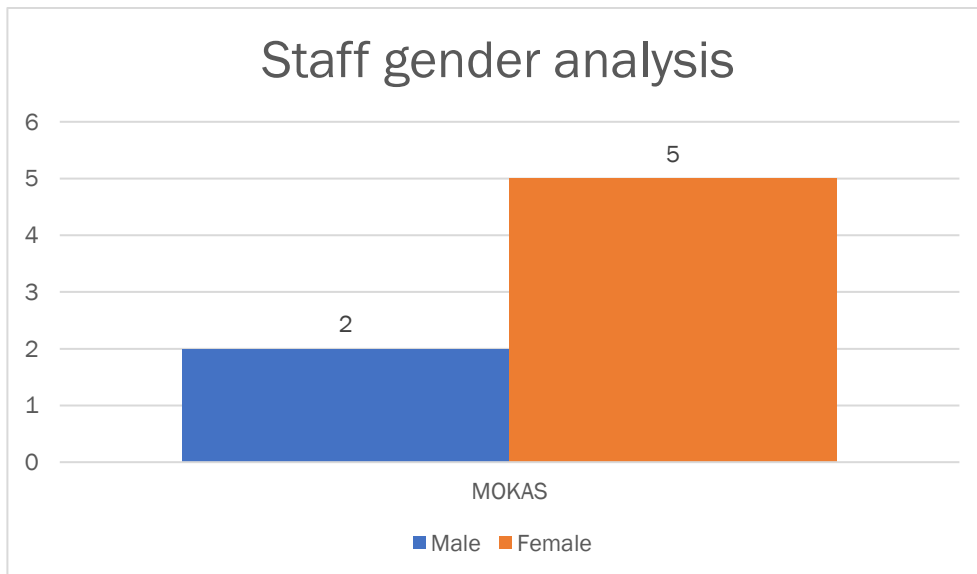


TABLE 7 – STAFF GENDER ANALYSIS (CYPRUS).<sup>47</sup>

<sup>46</sup> No data have been provided for what concerns public prosecutors.

<sup>47</sup> No data have been provided for what concerns judges.

2.2.2.5. France

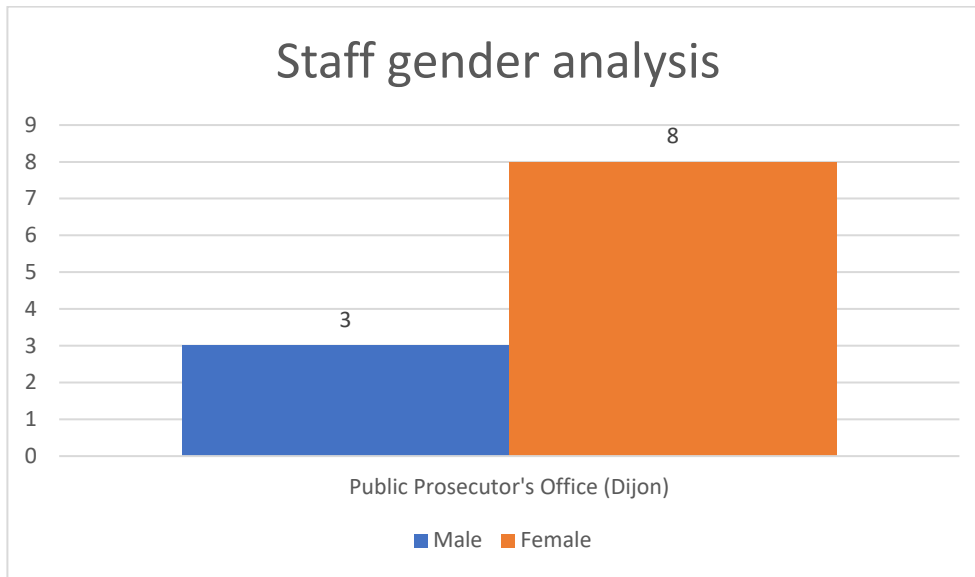


TABLE 8 – STAFF GENDER ANALYSIS (FRANCE).<sup>48</sup>

2.2.2.6. Italy

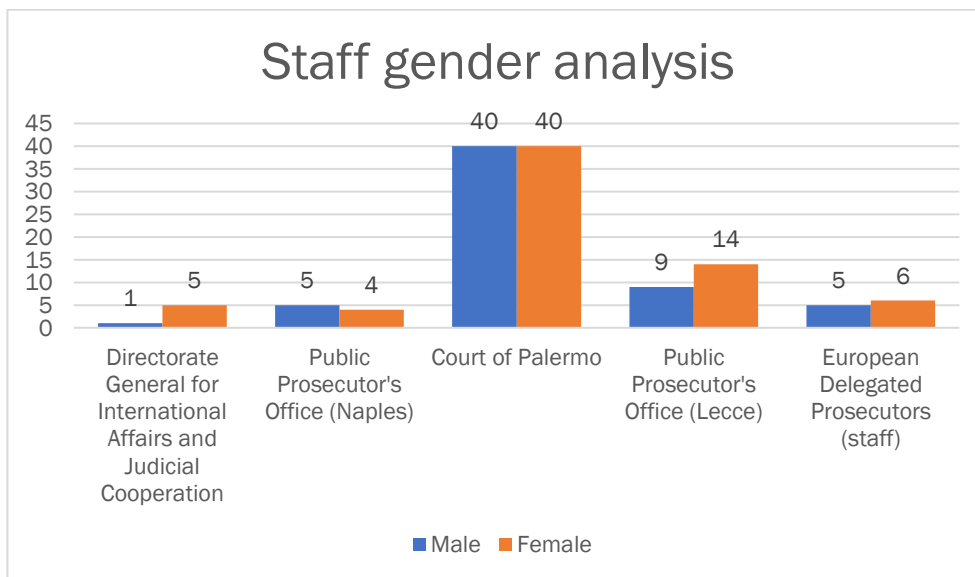


TABLE 9 – Staff gender analysis (Italy).<sup>49</sup>

<sup>48</sup> No data have been provided for what concerns judges.

<sup>49</sup> Data provided for the Public Prosecutor's Office (Naples) refer to specific unit which deals with requesting/executing freezing and confiscation orders. Differently, data provided for the Public Prosecutor's Office (Lecce) and for the Court of Palermo refer to all magistrates within those offices.

2.2.2.7. Latvia

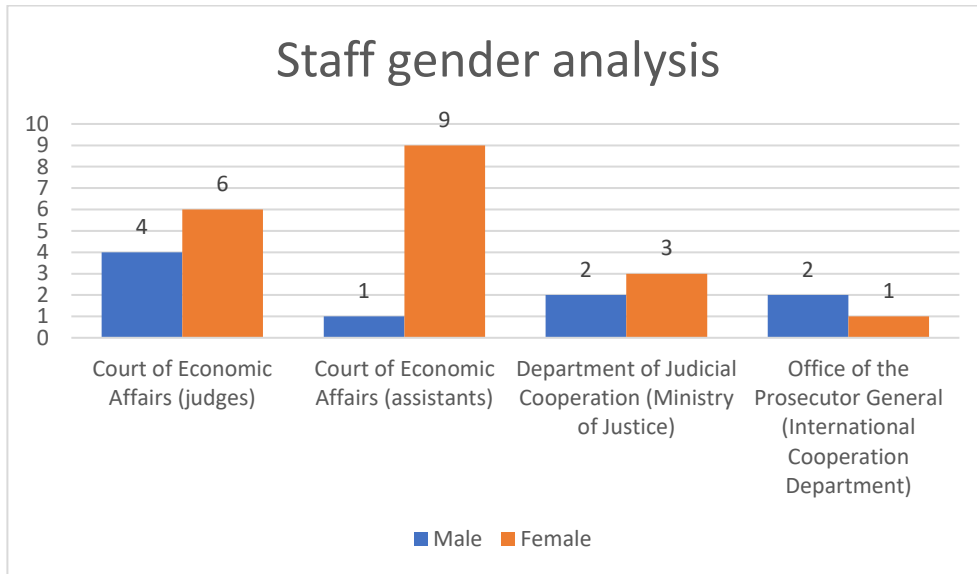


TABLE 10 – STAFF GENDER ANALYSIS (LATVIA).

2.2.2.8. Lithuania

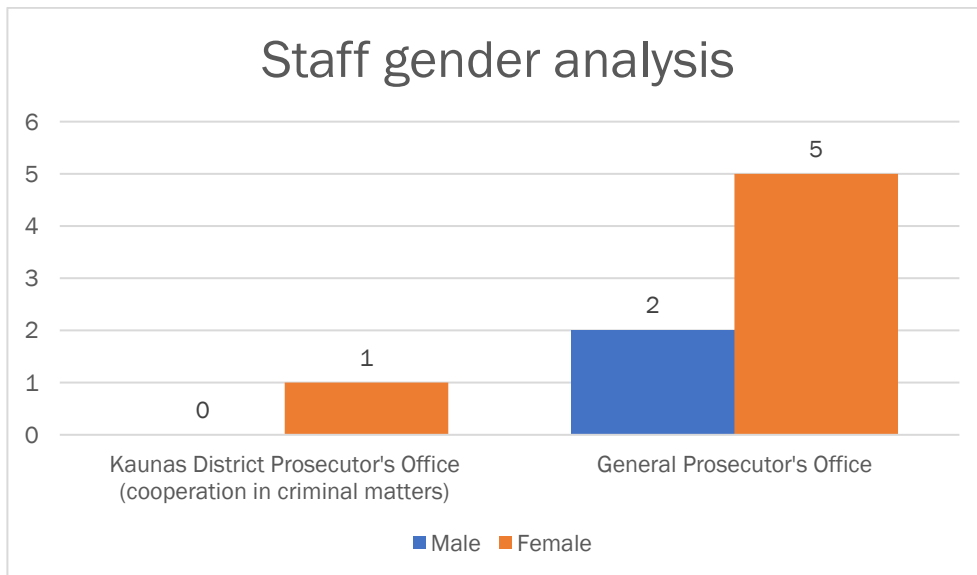


TABLE 11 – STAFF GENDER ANALYSIS (LITHUANIA).<sup>50</sup>

<sup>50</sup> No data have been provided for what concerns judges.



2.2.2.9. Luxembourg

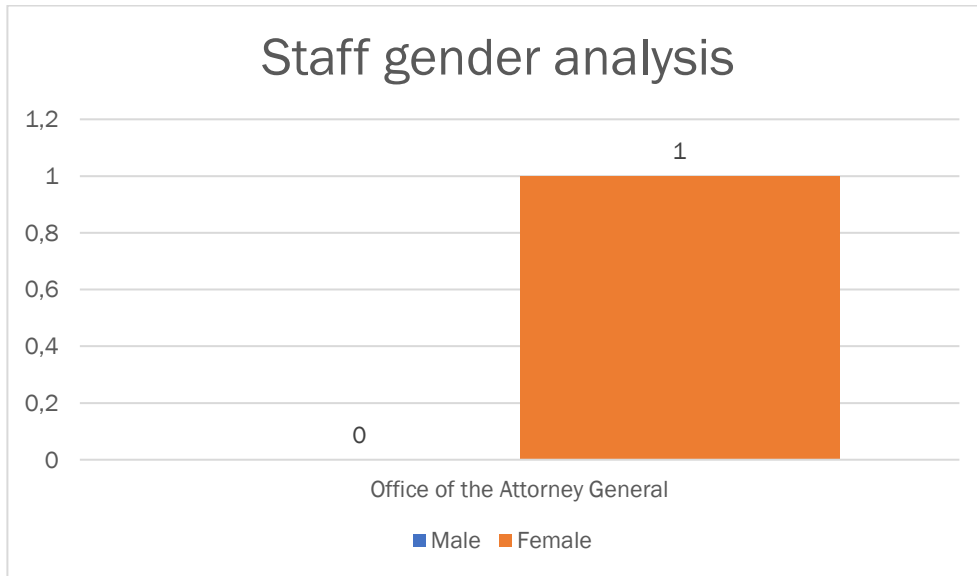


TABLE 12 – STAFF GENDER ANALYSIS (LUXEMBOURG).<sup>51</sup>

2.2.2.10. Malta

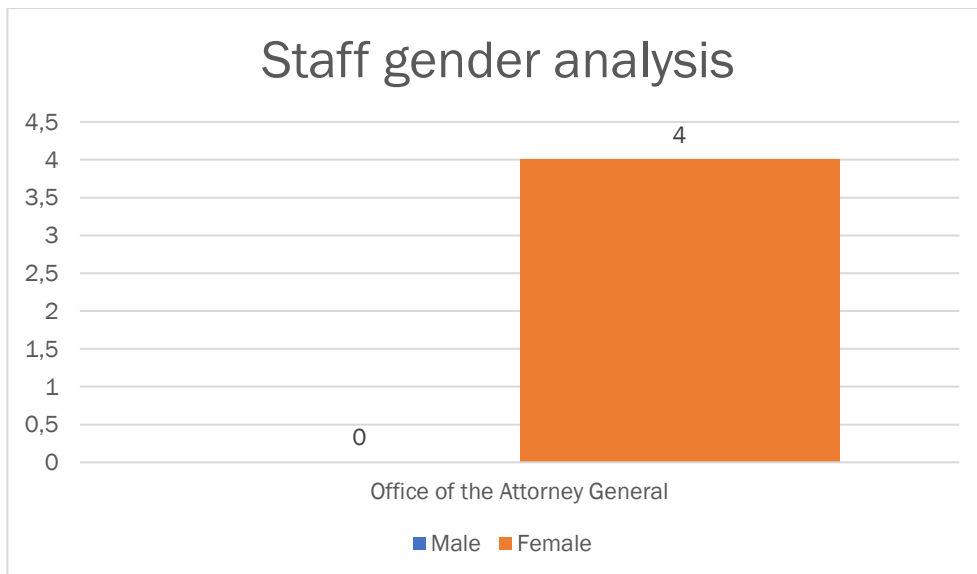


TABLE 13 – STAFF GENDER ANALYSIS (MALTA).<sup>52</sup>

<sup>51</sup> No data have been provided for what concerns judges.

<sup>52</sup> No data have been provided for what concerns judges.

2.2.2.11. Slovenia

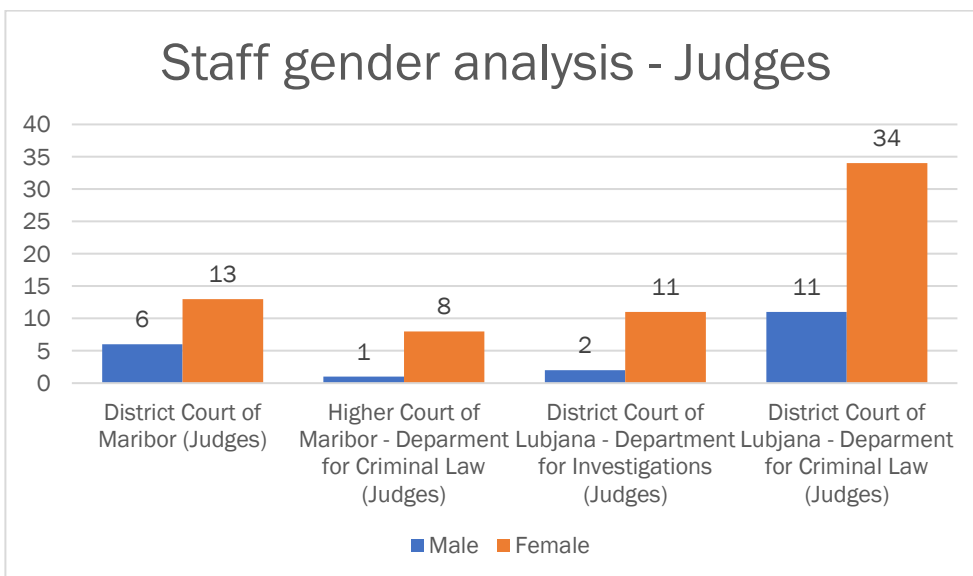


TABLE 14A – STAFF GENDER ANALYSIS - JUDGES (SLOVENIA).

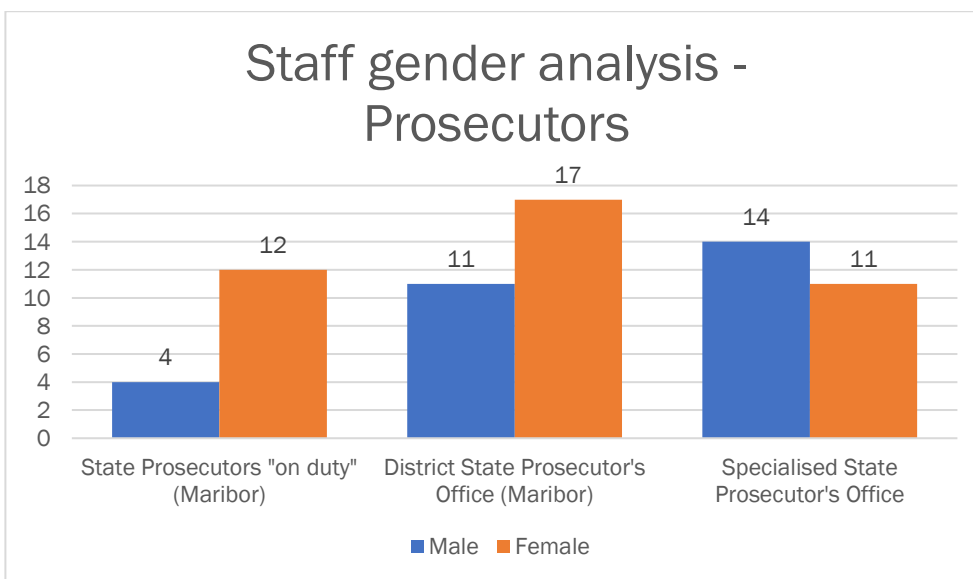


TABLE 14B – STAFF GENDER ANALYSIS - PROSECUTORS (SLOVENIA).

2.2.3. Question 3

The third question foreseen in the questionnaire reads as follows:

“Has your country introduced specific soft/hard law legislation to implement Regulation 2018/1805? If yes, what are soft/hard law that have implemented Regulation 2018/1805 in your country?”.

2.2.3.1. Hard law

In almost all cases, the answers provided by magistrates focused on hard law provisions.

In this regard, a number of magistrates tend generally to refer to domestic legislation concerning cooperation in criminal matters which have been amended for the purposes of the Regulation.<sup>53</sup>

Conversely, other magistrates proved to be more aware and updated on the national framework concerning the implementation of the Regulation (EU) 2018/1805.<sup>54</sup> It is noteworthy that a respondent from **Cyprus** also explained the aim of implementing legislation in the following terms:<sup>55</sup>

“Yes, we have amended our AML/CFT Law and included PART IV B COOPERATION WITH MEMBER STATES OF THE EUROPEAN UNION (EU) PURSUANT TO REGULATION (EU) 2018/1805 Law 13/202, in order to include minimum provisions about the areas that we consider that the Regulation does not provide enough guidance and would ease the application of the Regulation. For example, we included provisions on competent authorities, notifications to affected parties as well. The idea is to assess if there are any gaps from the practical experience and review the text of that law every year for any other possible additions or amendments that will help the effective application of the Regulation”.

In other countries, it was specified that no specific hard law was to be found for the purposes of implementing the Regulation (EU) 2018/2015.<sup>56</sup> Hence, the latter is oftentimes employed as such.<sup>57</sup> According to some respondents, this is due to the fact that the Regulation is directly applicable.<sup>58</sup>

#### 2.2.3.2. Soft law

Rarely, magistrates mentioned soft law provisions concerning the implementation of the Regulation (EU) 2018/1805 in their countries. In particular, some respondents stressed the lack of soft law legislation.<sup>59</sup> Other respondents referred to the role of a document circulated by Eurojust, whose support was valuable for the purpose of implementing the aforementioned Regulation.<sup>60</sup>

Similarly, a judge from **Lithuania** observed that they found useful information on the European Judicial Network (EJN) website.<sup>61</sup>

Furthermore, a number of respondents were aware of relevant soft law legislation (esp. Circulars drafted by the competent Ministries).<sup>62</sup>

#### 2.2.3.3. Summary

The table below provides a summary on the issue at stake, based on the information collected:

---

<sup>53</sup> This was the case of magistrates from **Austria**, **Lithuania** (Interview 24.02.2023), (20.3.2023) and **Slovenia** (Interview 12.12.2022).

<sup>54</sup> This was the case of magistrates from **Bulgaria**, **Cyprus** (Interview 03.02.2023; Interview 30.11.2022; 17.01.2023), **Malta** (Interview 25.11.2022; Interview 21.12.2022) and **Sweden** (Interview 21.02.2023; Interview 22.02.2023).

<sup>55</sup> **Cyprus** (Interview 26.10.2022).

<sup>56</sup> **Italy** (Interview 05.12.2022), **Slovenia** (Interview 06.02.2023, emphasising that ‘the changes introduced ... are very brief’ to the point that they ‘mostly use the Regulation itself’) and **Spain** (Interview 20.12.2022).

<sup>57</sup> **Slovenia** (Interview 06.02.2023).

<sup>58</sup> **Latvia** (all three interviews) and **Slovenia** (Interview 12.12.2022).

<sup>59</sup> **Cyprus** (Interview 03.02.2023), **Lithuania** (Interview 17.02.2023), **Slovenia** (Interview 12.12.2022) and **Spain** (20.12.2022).

<sup>60</sup> **Cyprus** (Interview 24.11.2022).

<sup>61</sup> **Lithuania** (Interview 17.02.2023).

<sup>62</sup> **Italy** (Interview 21.11.2023; Interview 19.01.2023; Interview 19.12.2022; Interview 24.01.2023; Interview 28.12.2022) and **Sweden** (Interview 21.02.2023; Interview 22.02.2023).

COUNTRY	HARD LAW (IMPLEMENTATION OF THE REGULATION)	SOFT LAW
Austria	✓	X
Belgium	✓	X
Bulgaria	✓	X
Cyprus	✓	X*
France	X	X
Italy	X	✓
Latvia	X	X
Lithuania	✓**	X
Luxembourg	✓	X
Malta	✓	X
Netherlands	✓	X
Slovenia	✓	X
Spain	X	X
Sweden	✓	✓
<b>TOTAL</b>	<b>11 ✓</b>	<b>2 ✓</b>

(a) This information is taken from the national report.

(b) The respondent did not provide any information on this point.

\* A respondent stressed that there are no soft law regulations. Yet, other respondents claimed that soft law instruments exist in [Cyprus](#).

\*\* A judge from [Lithuania](#) mentioned the Regulation and its 'implementation law' (Interview 17.02.2023).

**TABLE 15A – OUTLINE OF THE HARD/SOFT LAW IN FORCE AMONG MEMBER STATES.**

#### 2.2.4. Question 4

The fourth question foreseen in the questionnaire reads as follows:

"Has the soft law/hard law document adopted by your national system facilitated the application of Regulation 2018/1805? If yes, in what terms?".

The answers can be depicted as follows:

COUNTRY	ANSWER	REMARKS
Austria	✓	—
Belgium	X	Hard/soft law merely transposed the relevant provision of the Regulation into domestic system
Bulgaria	—*	—*
Cyprus	✓	—
France		No answer, since no hard/soft law is in force
Italy	✓	—
Latvia		No answer, since no hard/soft law is in force
Lithuania	—**	—**
Luxembourg	✓	—
Malta	✓	—
Netherlands	✓	—
Slovenia	X	—
Spain		No answer, since no hard/soft law is in force
Sweden	✓	—

\* A Bulgarian judge answered to this question, but she did not provide a clear position, claiming that, in this field, there is no legal practice yet.

\*\* Magistrates from [Lithuania](#) did not provide an opinion on this point.

**TABLE 15B – OPINIONS UPON THE HARD/SOFT LAW IN FORCE AMONG MEMBER STATES.**

Thus, in a majority of Member States, the adoption of *ad hoc* hard or soft law provisions with the aim of fostering the implementation of the Regulation (EU) 1805/2018 had a positive impact. It allows national authorities to interpret Regulation’s provisions in a uniform manner. What is more, it helps domestic bodies in defining their practical tasks, hindering the possibility of overlapping in this field.

In [Slovenia](#), magistrates emphasised that the implementing law was too concise, hence they tend to apply the Regulation as such.

### 2.2.5. Question 5

The fifth question foreseen in the questionnaire reads as follows:

“Do you think that the model of certificate as defined by the Regulation and attached to it lack some information? Or something could have been done differently? (i.e.: useful details that are missing in the standard certificate)”.

The answers can be summarised as follows:

COUNTRY	ANSWER	REMARKS
Austria	X	<ul style="list-style-type: none"> <li>The certificate is extensive and complete;</li> <li>The form is sufficient;</li> <li>The form is easy to fill out.</li> </ul>
Belgium	X	The model is adequate.
Bulgaria	X	The certificate is very clear and covers all information that would typically be needed.
Cyprus	✓X	Mixed answers: some respondents were of the opinion that the certificate may lack clarity. Other respondents were satisfied that it is complete.
France	X	No difficulties have been reported.
Italy	✓X	Mixed answers: some respondents were of the opinion that the certificate may lack clarity. Other respondents were satisfied that it is complete.
Latvia	X	—
Lithuania	—*	—
Luxembourg	X	—
Malta	✓X	—
Netherlands	✓	<ul style="list-style-type: none"> <li>There is no indication of the <i>purpose</i> of the freezing order at stake;</li> <li>The expiration date of the measure at stake is not required.</li> </ul>
Slovenia	X	—
Spain	X	—
Sweden	X	—
* Both magistrates from <a href="#">Lithuania</a> did not provide an opinion on this point.		

**TABLE 16 – OUTLINE OF THE OPINIONS UPON THE MODEL OF CERTIFICATE.**

Although a majority of magistrates have no remarks about the model of certificate, there is a significant minority of respondents who highlighted several shortcomings in this regard, which can be summarised as follows:

- too much information seems to be required;
- the certificate is deemed ‘too rigid’ in its structure, leaving little room to domestic authorities to fill it in a more flexible manner;
- the certificate should be more detailed for what concerns procedural details of freezing orders (e.g., issuing authority, date of the certificate; date of expire of the measure at stake; the purpose of the freezing order to be recognised and executed etc.);
- there is a lack of details *vis-à-vis* the requests for the restitution of property in favour of the victim;
- in the case of a freezing/confiscation order to be executed in a Member State, additional information on the latter’s domestic framework should be provided to the issuing authority.

### 2.2.6. Question 6

The sixth question foreseen in the questionnaire reads as follows:

“According to your experience as a practitioner, do you notice any issues in the way the certificate is used? For example, frequent lack of information, issues with the languages or other issues”.

In several Member States, magistrates answered that no issues have been noticed in the way the certificate is used. In particular, reference is to be made to:

- [Austria](#);<sup>63</sup>
- [Bulgaria](#);<sup>64</sup>
- [France](#);<sup>65</sup>
- [Italy](#);<sup>66</sup>
- [Latvia](#);<sup>67</sup>
- [Malta](#);<sup>68</sup>
- [Spain](#);<sup>69</sup>
- [Sweden](#).<sup>70</sup>

Yet, a number of shortcomings have been stressed by other respondents. They may be summarised as follows:

ANSWER	COUNTRIES	REMARKS
List of offenses regarding double criminality	<a href="#">AU</a> <sup>(a)</sup>	A problem arises with the list of offenses regarding double criminality. The catalogue of offenses is too extensive and you often do not know which category to tick.
Maximum limit of criminal offences	<a href="#">AU</a> <sup>(a)</sup>	The three-year limit for the custodial sentence seems somehow arbitrary, e.g. why is it not one year?
	<a href="#">AU</a> <sup>(b)</sup>	It is often difficult to check the maximum sentence of the other State for offenses.
	<a href="#">CY</a> <sup>(c)</sup>	Sometimes there are problems with other States not completing correctly the certificate.

<sup>63</sup> Interview 05.12.2022 and Interview 13.12.2022.

<sup>64</sup> Interview 03.02.2023.

<sup>65</sup> Interview 28.02.2023.

<sup>66</sup> Interview 19.01.2023 and Interview 24.01.2023.

<sup>67</sup> Interview (Prosecutor).

<sup>68</sup> Interview 21.12.2022.

<sup>69</sup> Interview 20.12.2022.

<sup>70</sup> Interview 21.02.2023 and Interview 22.02.2023.

Improper filling of the certificate	IT <sup>(d)</sup>	There is a tendency to leave some parts of the certificate uncompleted if the information requested is not understood. There is a tendency to report only what is essential, due to 'reasons of confidentiality'.
	LT <sup>(i)</sup>	There is no unified practice. 'Several certificates are required when there are several property units. We write in one, Latvians write several certificates. When there are several suspects, we write different orders, although we get one from Spain for several suspects'.
Improper/lack of use of the official certificate	CY <sup>(c)(e)</sup>	Some States do not use the official translated certificate from EJM website and make their own translation and this causes problems.
	NL <sup>(p)</sup>	Some countries still uses the certificate of the Framework Decision 2006/783/JHA.
	BE <sup>(o)</sup>	Sometimes certificates proved to be incomplete.
Lack of information	CY <sup>(e)</sup>	The most common issue that comes up is the lack of information in the certificate and more specifically in the area of affected third parties. They always include the name of the suspects, and they don't include the owner of the property and the affected persons.
	LT <sup>(i)</sup>	It always happens that there is a lack of information, something does not correspond to the actual circumstances.
	MT <sup>(k)</sup>	They have experienced frequent lack of information in the certificate.
	CY <sup>(e)(f)</sup>	Translator from other Member States do not use the proper words for 'freezing/confiscation' measures (e.g., the word 'confiscation' could be translated in different manners and this increases confusion among different authorities).
Language/translation issues	IT <sup>(d)</sup>	The quality of translations is not always brilliant, presumably so in Italian active cases.
	IT <sup>(h)</sup>	There may be translation problems, since each notion 'is born within the framework of a specific legal concept'.
	LV <sup>(i)</sup>	Sometimes 'the translation of the certificate into Latvian is not of high quality'. This could delay the execution of the request.
	MT <sup>(k)</sup>	Where literal translations are done by the foreign country, the meaning behind the text is lost.
	NL <sup>(p)</sup>	
	SI <sup>(l)(m)</sup>	Three issues have been reported: (i) foreign authorities that ask for the translation <i>also</i> of the original freezing order; (ii) things which get lost in translation, legal terminology is not always easy to translate; (iii) as for some 'exotic' EU languages, it is hard to find translators.
Overlapping with the EIO	SE <sup>(n)</sup>	'Language factor' mentioned.
	IT <sup>(g)</sup>	It could happen that another Member State issues 'a mix of EIO and freezing order (e.g.: since there has been a profit of 10k euros, we ask to seize 10k euros). In these cases, we obviously reject the request because it makes no sense: not only do they not send an order upstream, but the essential coordinates to be able to define the type of seizures are not even indicated'.

(a) Interview 23.11.2022.  
 (d) Interview 05.12.2022.  
 (e) Interview 28.12.2022.  
 (i) Interview 17.02.2023.  
 (m) Interview 12.12.2022.  
 (p) Interview 23.03.2023.

(b) Interview 05.12.2022.  
 (e) Interview 26.10.2022.  
 (h) Interview 19.12.2022.  
 (k) Interview 25.11.2022.  
 (n) Interview 24.01.2023.

(c) Interview 17.01.2023.  
 (f) Interview 24.11.2022.  
 (i) Interview (Judge)(1).  
 (l) Interview 6.2.2023.  
 (o) Interview 23.03.2023.

TABLE 17 – OUTLINE OF THE PRACTICAL ISSUES ON THE EMPLOYMENT OF THE CERTIFICATE.

Interestingly, a public prosecutor from **Luxembourg** highlighted that the most challenging issue might be the notification of the certificate to the person involved (e.g., the suspect or the convicted person) and also to the third parties concerned – each of them holds the right to benefit from a legal remedy in order to challenge the certificate. For instance, should one of them reside abroad, the problem of notification arises, also with regard to linguistic issues – such certificate, as well as the decision to be recognized, shall be translated in a language which is known by the individual concerned, in order to give him/her an effective remedy. This could be difficult, given that the Regulation does not provide anything on this point.<sup>71</sup>

### 2.2.7. Question 7

The seventh question foreseen in the questionnaire reads as follows:

“As executing authority, do you provide a justification why you would not execute a measure due to an incomplete certificate?”

The answers can be summarised as follows:

COUNTRY	ANSWER	REMARKS
Austria	✓	—
Belgium	✓	—
Bulgaria	✓	—
Cyprus	✓	—
France	✓	—
Italy	✓	—
Latvia	✓	—
Lithuania	✓	—
Luxembourg	✓	—
Malta	✓	—
Netherlands	✓	—
Slovenia	✓	—
Spain	Public prosecutors are not the executing authorities	
Sweden	✓	—
* Both magistrates from <b>Lithuania</b> did not provide an opinion on this point.		

TABLE 18 – OUTLINE OF THE JUSTIFICATIONS FOR NON-EXECUTING A MEASURE DUE TO AN INCOMPLETE CERTIFICATE.

Thus, in almost all Member States, the decisions not to execute a freezing/confiscation order are well-grounded by the competent authorities.

Notably, some respondents highlighted the need to avoid, as much as possible, a non-recognition decision, in the spirit of mutual trust and judicial cooperation in criminal matters:

- a judge from **Bulgaria** stated that they ‘always try to be as cooperative as possible’;<sup>72</sup>

<sup>71</sup> See Interview 20.03.2023.

<sup>72</sup> See Interview 03.02.2023.



- other respondents from **Cyprus** shared the same standpoint, as they try to come back to the issuing authorities, and explaining them how to complete properly the certificate;<sup>73</sup>
- two respondents from **Italy** stated that, in those situations, ‘we would establish an interlocution’.<sup>74</sup> In this regard, the ‘dialogue’ with issuing authorities is deemed significant.<sup>75</sup> A prosecutor from the same country emphasised this aspect: ‘before rejecting we talk’;<sup>76</sup>
- a judge from **Latvia** stated that ‘in cases of incomplete certificates usually competent authorities initiate consultations and are asking for providing additional information’;<sup>77</sup>
- a judge from **Lithuania** observed that his/her ‘approach is not formal, if some data are missing, we do not reject a request but ask to provide missing data. Otherwise, it would be an unnecessary waste of human resources ... after all, we work for the same purpose’;<sup>78</sup>
- respondents from **Slovenia** shared the same perspective,<sup>79</sup> stressing the significant role of EUROJUST or EJN in facilitating the contacts among different authorities.<sup>80</sup> Similarly, a prosecutor from **Sweden** mentioned EUROJUST as a useful channel for these purposes.<sup>81</sup>

### 2.2.8. Question 8

The eighth question foreseen in the questionnaire reads as follows:

“As executing authority, have you ever refused to execute a freezing and confiscation order send by the issuing State due to problems (i.e. unclear or incorrect information) with the certificate form?”.

The answers can be summarised as follows:

COUNTRY	ANSWER	REMARKS
Austria	X	—
Belgium	X	—
Bulgaria	—*	—*
Cyprus	X	—
France	—**	—**
Italy	✓	<ul style="list-style-type: none"> <li>▪ A foreign authority sent the certificate to the wrong Italian authority.</li> <li>▪ Generally, there have been case of certificates sent to wrong offices.</li> </ul>
Latvia	X	—
Lithuania	X	—
Luxembourg	X	—
Malta	✓	A couple of requests were refused due to incorrect information

<sup>73</sup> Interview 24.11.2022 and 26.10.2022.

<sup>74</sup> Interview 24.01.2023.

<sup>75</sup> Interview 21.11.2023.

<sup>76</sup> Interview 28.12.2022.

<sup>77</sup> Interview (Judge)(1)

<sup>78</sup> Interview 24.02.2023.

<sup>79</sup> Interview 06.02.2023.

<sup>80</sup> Interview 12.12.2022.

<sup>81</sup> Interview 22.02.2023.

		contained in the certificate (e.g., the companies indicated therein were not even licences in Malta).
Netherlands	X	—
Slovenia	✓	A request was refused due to incorrect information contained in the certificate form (i.e., a bank account not existing in Slovenia anymore).
Spain		Public prosecutors are not the executing authorities
Sweden	X	—
* A judge from <b>Bulgaria</b> did not provide a clear answer on this point.		
** A prosecutor from <b>France</b> observed that he/she is not the executing authority within the domestic legal framework.		

**TABLE 19 – OUTLINE ON THE REFUSALS TO EXECUTE A MEASURE DUE TO PROBLEMS WITH THE CERTIFICATE FORM.**

The answers provided suggest that very few Member States have refused to execute a freezing/confiscation order due to problems with the certificate form.

### 2.2.9. Question 9

The ninth question foreseen in the questionnaire reads as follows:

“As executing authority, what would you do if a measure that does not exist in your system is requested by an issuing State? Can you give me an example if you have one?”.

The answers can be summarised as follows:

ANSWER	COUNTRIES	REMARKS
I would <u>not</u> execute/authorise the execution of the measure	AU <sup>(a)</sup>	—
	LV <sup>(h)</sup>	—
	AU <sup>(b)</sup>	—
	BE <sup>(o)</sup>	—
I would look for an equivalent domestic measure	IT <sup>(e)</sup>	—
	IT <sup>(g)</sup>	—
	LU <sup>(n)</sup>	—
	LV <sup>(i)</sup>	—
I would look for an equivalent and less intrusive domestic measure	AU <sup>(c)</sup>	—
I would inform the issuing authority, possibly suggesting an alternative measure (if available)	CY <sup>(d)</sup>	—
	SI <sup>(k)(l)</sup>	—
	SE <sup>(n)</sup>	—
I do not execute the measure at stake, should the latter be of a civil or administrative nature	IT <sup>(f)</sup>	—
I would consult EUROJUST	LT <sup>(j)</sup>	—
(a) Interview 23.11.2022.	(b) Interview 13.12.2022.	(c) Interview 05.12.2022.
(d) Interview 03.02.2022.	(e) Interview 05.12.2022.	(f) Interview 19.01.2023.
(g) Interview 19.12.2022.	(h) Interview Prosecutor.	(i) Interview (Judge)(1).
(j) Interview 17.02.2023.	(k) Interview 06.02.2023.	(l) Interview 12.12.2022.
(m) Interview 20.12.2022.	(n) Interview 20.03.2023.	(o) Interview 23.3.2023.

**TABLE 20 – OUTLINE ON THE REACTIONS OF EXECUTING AUTHORITIES WHERE THEY HAVE TO RECOGNISE A MEASURE WHICH DOES NOT EXIST IN THEIR DOMESTIC FRAMEWORK.**

Notably, a judge from **Bulgaria** reported that such situation never happened in his/her practice.<sup>82</sup> Similar answers have been provided by respondents from **Cyprus**.<sup>83</sup>

A Prosecutor from **France** argued that he/she does not see any measure that cannot be executed in the country, being the confiscation of all individual's property foreseen in domestic law.<sup>84</sup>

By analogy, a public prosecutor from **Italy** declared that 'we have so many instruments that it cannot happen'.<sup>85</sup> A same statement was made by a prosecutor from **Sweden**.<sup>86</sup>

According to two EPPO Delegated Prosecutors from **Italy**, the question was 'a bit hypothetical', since 'if the measure is requested in the application of the mutual recognition instrument, it exists'.

### 2.2.10. Question 10

The tenth question foreseen in the questionnaire reads as follows:

"As issuing/executing authority, have you experienced the use of a fundamental rights non-recognition ground? If yes, what were the reasons? How was the matter resolved?".

The answers may be summarised as follows:

COUNTRY	NON-RECOGNITION DUE TO HUMAN RIGHTS CONCERNS
Austria	X
Belgium	X
Bulgaria	X
Cyprus	X
France	X
Italy	X
Latvia	X
Lithuania	X
Luxembourg	X
Malta	X
Netherlands	X
Slovenia	X
Spain	X
Sweden	X

**TABLE 21 – OUTLINE ON THE APPLICATION OF THE FUNDAMENTAL RIGHTS NON-RECOGNITION GROUND.**

### 2.2.11. Question 11

The eleventh question foreseen in the questionnaire reads as follows:

"As issuing/executing authority, have you encountered any issues as regards double criminality?".

The answers may be summarised as follows:

<sup>82</sup> Interview 03.02.2022.

<sup>83</sup> Interview, 26.10.2022, Interview 17.01.2023, Interview 24.11.2022 and Interview 30.11.2022.

<sup>84</sup> Interview 28.02.2023.

<sup>85</sup> Interview 28.12.2022.

<sup>86</sup> Interview 24.01.2023.

COUNTRY	ISSUES RELATED TO DOUBLE CRIMINALITY
Austria	X
Belgium	X
Bulgaria	X
Cyprus	X
France	X
Italy	X
Latvia	X
Lithuania	X
Luxembourg	X
Malta	X
Netherlands	X
Slovenia	X
Spain	X
Sweden	X

TABLE 22 – OUTLINE ON THE ISSUES RELATED TO DOUBLE CRIMINALITY.

### 2.2.12. Question 12

The twelfth question foreseen in the questionnaire reads as follows:

“As issuing/executing authority, have you encountered cases in which the suspected/accused person made use of legal remedies regarding the orders? Please elaborate. What were the results?”.

Very few interviewees (seven) had experience with remedies. Notably, these practitioners had experience of remedies as executing authorities. Nevertheless, even if asked to elaborate their experience, almost none of them specified the actual legal remedy invoked and its motivation; someone stated that the remedy was refused.

A Bulgarian Judge ‘recalls several cases where defendants argued that they were not properly informed about a freezing order against them, or that they were not represented or did not have the opportunity to present a defence, but the appellate courts had always denied such claims’.

The most specific answers were provided by a Dutch Prosecutor and a Slovenian Judge,

The Dutch Prosecutor stated that ‘most of the time the conflict has some arguments regarding fundamental rights or regarding the material grounds of the decision in the requesting Member state. These appeals all lead to the decision ‘unfounded’.

The Slovenian Judge affirmed that ‘we had one case where a legal remedy was used. This was an incoming confiscation order from Italy where the convicted person argued that the Italian judgement which included confiscation of property was not yet final (*res iudicata*) since he filed an appeal against it in Italy. Upon receiving this information, we contacted the Italian issuing authority who assured us that the appeal only concerned the legal qualification of the criminal offence and not the confiscation of assets. Hence, according to Italian law, the judgement was final in the part which related to confiscation of assets. We, therefore, issued a confiscation order, which the convicted person then appealed against. The Higher court in Ljubljana agreed with us and argued that since the Italian issuing authority assured (twice) that the confiscation order is final, we had no option but to execute it. It therefore dismissed the appeal’.

The answers may be summarised as follows:

COUNTRY	EMPLOYMENT OF LEGAL REMEDIES	REMARKS
Austria	X	—
Belgium	X	n.d.
Bulgaria	✓	A judge observed that appeals take place often, usually in the executing state.
Cyprus	✓	—
France	X	—
Italy	X	—
Latvia	X	—
Lithuania	X	—
Luxembourg	X	—
Malta	X	—
Netherlands	✓	—
Slovenia	✓	—
Spain	X	—
Sweden	✓	—

TABLE 23 – OUTLINE ON THE EMPLOYMENT OF LEGAL REMEDIES BY SUSPECTS OR ACCUSED PERSONS.

Some respondents ([Bulgaria](#), [Cyprus](#), [the Netherlands](#), [Slovenia](#) and [Sweden](#)) stressed the fact that they encountered cases in which the suspect/accused person made use of legal remedies against the order at stake.

### 2.2.13. Question 13

The thirteenth question foreseen in the questionnaire reads as follows:

“As issuing authority, have you ever requested specific formalities (for example the date of execution or provide information on the measure to interested parties) to be fulfilled by the executing authority? If yes, what did they relate to?”.

The answers may be summarised as follows:

COUNTRY	ANSWER	REMARKS
Austria	X	—
Belgium	X	n.d.
Bulgaria	X	—
Cyprus	✓	Solely a respondent stressed that they requested a specific date for an execution. Also, they have proceeding by a certain date ‘because an action involves different Member States and it needs to proceed in the same date, in order to avoid the dissipation of asset or evidence’.
France	X	—
Italy	✓	<ul style="list-style-type: none"> <li>One respondent observed what follows: ‘we needed a contextual execution because we were dealing with several assets, some in Italy and one in the Netherlands, and at the time the proposal was restricted in Brasil.’</li> </ul>

		The possibility of having a direct contact through Eurojust helped a lot'. <ul style="list-style-type: none"> <li>Another respondent claimed what follows: 'a colleague reported to me difficulties with the formalities of executing a seizure, which were later clarified based on interlocutions'.</li> </ul>
Latvia	X	—
Lithuania	✓	One respondent said that they ask for the restitution of money to the victim.
Luxembourg	X	—
Malta	X	—
Netherlands	✓	The following details have been requested: <ul style="list-style-type: none"> <li>A predeterminate date for the execution of the measure at stake or the expiration date for the measure at stake)</li> <li>Request to record the freezing/confiscation order in the land registry, should the item be a real estate.</li> </ul>
Slovenia	✓	In case of simultaneous freezing orders, one respondent said that they ask for the simultaneous execution of the latter.
Spain	X	—
Sweden	✓	—

TABLE 24 – OUTLINE ON THE SPECIFIC FORMALITIES TO BE FULFILLED BY THE EXECUTING AUTHORITY.

#### 2.2.14. Question 14

The fourteenth question foreseen in the questionnaire reads as follows:

“What is your experience with the time frame? Is the time frame appropriate for the recognition and execution? Do you have any experience with an urgency request under the Regulation 2018/1805? If yes, please elaborate”.

The outcomes, which refer to **each respondent** who provides a pertinent answer, may be summarised as follows:

COUNTRY	REASONABLE TIMEFRAMES?	EXPERIENCE WITH URGENCY REQUEST?	REMARKS
Austria	✓	X	—
Belgium	✓	X	—
Bulgaria	✓	X	An immediate closed session is summoned by the judge-at-duty (in case of freezing orders) or, alternatively, the defendant is summoned.
Cyprus	X	✓	Timeframes are always a problem for executing authorities. Usually, timeframes are very difficult to be respected.
France	—	—	—

Italy	✓	✓	—
Latvia	—	✗	In case the documents are not received in Latvian, execution delay is possible until translation is received, but this was not considerable delay so far.
Lithuania	—	—	One respondent said that, sometimes, they communicate with foreign authorities for a year.
Luxembourg	✓	✗	—
Malta	✓✗	✓	A respondent highlighted that the timeframe under Article 9(3) of the Regulation may be burdensome, especially in offices which are limited in personnel and other human resources.
Netherlands	✓	✓	—
Slovenia	✓	✓	—
Spain	✓	✗	—
Sweden	✗	—	—

TABLE 25 – OUTLINE ON THE TIME FRAME FOR THE RECOGNITION AND EXECUTION AND URGENCY REQUESTS.

Among the specific formalities that the national issuing authorities have possibly requested to the executing authorities, the most frequent ones concerned the timing of the executing of the measure at stake (e.g., execution of a freezing order by a certain date), or the request for a simultaneous execution of different freezing orders.

Mixed answers have been collected with regard to the time-frame for the recognition/execution of urgency requests. While some respondents stressed the difficulties encountered in complying with the timeframes, other magistrates deem them reasonable. Moreover, the answers collected revealed the wide-ranging lack of experience with urgency requests, as solely four respondents argued that they have dealt with those requests.

### 2.2.15. Question 15

The fourteenth question foreseen in the questionnaire reads as follows:

“In your opinion, would it be reasonable that the certificate attached to a freezing order would fix a specific time-limit for the application of the measures taken as a consequence of the order?”.

The outcomes, which refer to **each respondent**, may be summarised as follows:

COUNTRY	ANSWERS
Austria	✓✓✗
Belgium	✗

Bulgaria	X	The certificate is a mechanism for cooperation that cannot introduce procedural aspects that are not provided for in the legal order of the executing authority.
Cyprus	✓✓XX	<ul style="list-style-type: none"> <li>• One respondent provided no answer.</li> <li>• Respondents who answered in the negative supported the idea that it would be for the Member State concerned to set up a specific time-limit.</li> </ul>
France	no answer on this point	—
Italy	✓✓XXXXX	<ul style="list-style-type: none"> <li>▪ One respondent, albeit answering in the positive, observed that the introduction of a time limit would clash with national legislation.</li> <li>▪ A respondent, who answered in the negative, stressed that ‘better mutual trust and common commitment without imposing a deadline’.</li> </ul>
Latvia	XXXX	<ul style="list-style-type: none"> <li>▪ Another respondent argued that the time limit should be controlled by the issuing authority.</li> <li>▪ A respondent deemed the definition of a deadline ‘a form of interference in the activities of the enforcement authorities of other Member States’.</li> </ul>
Lithuania	X	—
Luxembourg	X	It could be difficult for domestic authorities to comply with such time-limit in complex cases, even if their proceedings are fast
Malta	✓	—
Netherlands	✓	—
Slovenia	✓✓✓XXXX	<ul style="list-style-type: none"> <li>▪ Two respondents who answered in the positive stressed that fixing a time limit should be done solely in extraordinary or urgent cases.</li> </ul>
Spain	✓	—
Sweden	✓✓✓	<ul style="list-style-type: none"> <li>▪ A respondent who answered in the positive stressed that fixing a time limit should be done solely should the measure at stake expire within a certain time frame.</li> </ul>
<b>TOTAL</b>	<b>15 ✓ 20 X</b>	

**TABLE 26 – OUTLINE ON THE POSSIBILITY TO SPECIFY A TIME-LIMIT WITHIN THE CERTIFICATE ATTACHED TO A FREEZING ORDER.**

Nineteen respondents did not stress the necessity to fix a specific time-limit for the application of the measures taken as a consequence of the order in the certificate. Conversely, thirteen respondents answered in the positive.

### 2.2.16. Question 16

The sixteenth question foreseen in the questionnaire reads as follows:



“What sort of practical problems or obstacles arise in your country in relation to requests for transferring property for confiscation? What is your national practice when processing those requests and, in particular, how is property transferred to the issuing State?”.

The answers may be summarised as follows:

COUNTRY	ANSWERS
Austria	<ul style="list-style-type: none"> <li>▪ The Public prosecutor’s office is responsible for this;</li> <li>▪ Not hearing back from the foreign authorities;</li> <li>▪ Difficulties in locating the competent authority in another Member State.</li> </ul>
Belgium	<ul style="list-style-type: none"> <li>▪ Sometimes certificates prove to be incomplete.</li> </ul>
Bulgaria	No answer on this point
Cyprus	<ul style="list-style-type: none"> <li>▪ If the confiscation refers to a bank account, they proceed by sending letters requesting the bank institution to execute the confiscation order, then the bank gives us the money are being transferred to the other country according to our agreement.</li> <li>▪ When the property is a car or a real estate, we proceed with an application to the Court to appoint a receiver in order to sell the property. After the sale, we get the money from the sale and then send to other country according to our agreement. These steps take place after the notification to the affected persons.</li> </ul>
France	No answer on this point
Italy	<ul style="list-style-type: none"> <li>▪ Where sum of money are involved, the rule of “50-50” division applies.</li> <li>▪ Italian legislation on confiscation is very restrictive for what concerns ‘new-generation’ confiscations and the allocation for social purposes of confiscated assets.</li> </ul>
Latvia	One respondent observed that in most cases parties agree during the consultation process.
Lithuania	One respondent observed that courts execute confiscation measures through bailiffs. In a case, he/she returned the money without involving bailiffs, when he/she asked to transfer the money from the deposit of the Police to the Estonian Court deposit account. But courts execute through bailiffs. The Regulation also says that national law should be followed and Lithuanian law provides execution through bailiffs.
Luxembourg	<ul style="list-style-type: none"> <li>▪ Communication and language issues (see answer No. 6).</li> </ul>
Malta	One respondent referred to a case in which Maltese authorities needed to confiscate a real estate and a field which belonged to both the suspect and his wife. Hence, the first issue was to divide the property between the two subjects. The case is still ongoing.
Netherlands	<ul style="list-style-type: none"> <li>▪ All the respondents highlighted the lack of practice in this field.</li> </ul>
Slovenia	<ul style="list-style-type: none"> <li>▪ Three respondents referred to cases in which funds were directly confiscated (e.g., bank accounts). They also referred to cases in which the executing authority agreed to freeze the assets but not to transfer the funds to our account.</li> <li>▪ Where the issuing authority provides a bank account, Slovenian authorities transfer such confiscated funds.</li> </ul>
Spain	<ul style="list-style-type: none"> <li>▪ Not hearing back from the foreign authorities;</li> <li>▪ Difficulties in locating the competent authority in another Member State.</li> </ul>

**Sweden**

- Costs issues of confiscation procedures – ‘unless it is a very large real estate, it can cost more than it takes to share it’.

**TABLE 27 – OUTLINE ON PRACTICAL ISSUES CONCERNING REQUESTS FOR TRANSFERRING PROPERTY FOR CONFISCATION.****2.2.17. Question 17**

The seventeenth question foreseen in the questionnaire reads as follows:

“What secure channels of communication do you use for transmitting/answering to a certificate? Do you use the electronic version of the certificate? Do you consult the EJM webpage before issuing an order?”.

The answers may be summarised as follows:

COUNTRY	SECURE CHANNELS?	ELECTRONIC VERSION?	EJM WEBSITE?
<b>Austria</b>	<ul style="list-style-type: none"> <li>▪ Email;</li> <li>▪ Regular (international) mail.</li> </ul>	✓	✓
<b>Belgium</b>	<ul style="list-style-type: none"> <li>▪ Email;</li> <li>▪ Regular (international) mail.</li> </ul>	✓	✓
<b>Bulgaria</b>	<ul style="list-style-type: none"> <li>▪ Through the Ministry of Justice;</li> <li>▪ Email;</li> <li>▪ Regular international mail.</li> </ul>	no answer on this point	✓
<b>Cyprus</b>	<ul style="list-style-type: none"> <li>▪ Email (also cc EUROJUST);</li> <li>▪ Regular international mail;</li> <li>▪ SIENA (Secure Information Exchange Network Application).</li> </ul>	✓	✓
<b>France</b>	<ul style="list-style-type: none"> <li>▪ Email;</li> <li>▪ Regular international mail.</li> </ul>	no answer on this point	no answer on this point
<b>Italy</b>	<ul style="list-style-type: none"> <li>▪ Transmitted in PDF format through the Italian desk of EUROJUST;</li> <li>▪ Ministry of Justice;</li> <li>▪ Email;</li> <li>▪ Regular international mail.</li> </ul>	✓	✓
<b>Latvia</b>	<ul style="list-style-type: none"> <li>▪ Email;</li> <li>▪ Regular international mail;</li> <li>▪ Ministry of Justice.</li> </ul>	✗	✓
<b>Lithuania</b>	<ul style="list-style-type: none"> <li>▪ Email;</li> <li>▪ EUROJUST.</li> </ul>	no answer on this point	no answer on this point
<b>Luxembourg</b>	<ul style="list-style-type: none"> <li>▪ Email;</li> <li>▪ Regular international mail.</li> </ul>	✓	✓
<b>Malta</b>	<ul style="list-style-type: none"> <li>▪ Email;</li> <li>▪ Regular international mail.</li> </ul>	✓	✓*
<b>Netherlands</b>	<ul style="list-style-type: none"> <li>▪ Email;</li> <li>▪ Fax.</li> </ul>	✓	✓

<b>Slovenia</b>	<ul style="list-style-type: none"> <li>▪ Email;</li> <li>▪ Regular international mail;</li> <li>▪ EUROJUST.</li> </ul>	✓	✗
<b>Spain</b>	<ul style="list-style-type: none"> <li>▪ Email;</li> <li>▪ Regular international mail;</li> <li>▪ EUROJUST.</li> </ul>	✓	✓
<b>Sweden</b>	<ul style="list-style-type: none"> <li>▪ Email;</li> <li>▪ Regular international mail;</li> <li>▪ EUROJUST.</li> </ul>	✓	✓

\* One respondent emphasises that he/she does not employ EJM website, while another respondent confirmed that he/she employs EJM website.

**TABLE 28 – OUTLINE ON SECURE CHANNELS OF COMMUNICATION, DIGITAL ISSUES AND THE ROLE OF THE EUROPEAN JUDICIAL NETWORK**

In a nutshell, in almost all Member States, the means which are most frequently adopted for the purposes of the Regulation are: (i) emails and (ii) regular international mail. Some countries also mentioned the significant role of EUROJUST in this field, as well as the one of the Ministry of Justice.

For what concerns the employment of the electronic version of the certificate, almost all domestic authorities confirmed that they make use of the latter.

The same holds true *vis-à-vis* the EJM website, which is deemed of paramount importance by almost all Member States.

### 2.2.18. Question 18

The eighteenth question foreseen in the questionnaire reads as follows:

“In your opinion, what are the main obstacles arising within the EU when dealing with the recognition and enforcement of freezing and confiscation orders?”.

The answers may be summarised as follows:

ANSWER	COUNTRIES	REMARKS
Lack of relevant information	AU <sup>(a)</sup>	—
	ES <sup>(w)</sup>	—
	LU <sup>(z)</sup>	Oftentimes there is no indication of the items to be confiscated (but merely their value).
Authorities do not report back, communication/coordination issues among MS	AU <sup>(b)</sup>	—
	BE <sup>(aa)</sup>	—
	CY <sup>(g)</sup>	—
	IT <sup>(k)</sup>	Reference was made to ‘language barriers’.
Double criminality	AU <sup>(c)</sup>	—
Language issues	IT <sup>(l)</sup>	Difficulties in findings good interpreters.
	LU <sup>(z)</sup>	Lack of translators
	LV <sup>(o)</sup>	Poor translation of the documents.
	MT <sup>(r)</sup>	Sometimes accurate translations are missing.
Lack of meetings among magistrates / training activities	SE <sup>(x)</sup>	—
	BG <sup>(d)</sup>	—
	ES <sup>(w)</sup>	—
	IT <sup>(k)</sup>	—
	SI <sup>(u)(v)</sup>	—

No duration foreseen with regard to freezing orders	CY <sup>(e)</sup>	—
Time issues	CY <sup>(f)(h)</sup>	A respondent referred to the time spent in order to notify the relevant decision to the affected persons.
	IT <sup>(k)</sup>	Need to coordinate national authorities with regard to holidays and critical periods for receiving requests.
	LV <sup>(n)</sup>	Late submission of a freezing order.
	LT <sup>(q)</sup>	Where States work slowly, it takes time. The problem arises from the nature of the specific circumstances and the nature of the material case.
	MT <sup>(r)</sup>	There are sometimes long delays between the time you send the certificate and the time you get a reply from the foreign country and some assets might disappear.
Co-ownership of the property to be confiscated	CY <sup>(h)</sup>	—
Presence of a central authority	IT <sup>(j)</sup>	Reference was made to the fact that oftentimes foreign authorities are not aware of the presence of central authorities, and thus they send the certificate to local authorities (e.g., public prosecutors offices), which then, in turn, shall transmit the certificate to the central authority.
Lack of practice	FR <sup>(i)</sup>	—
	ES <sup>(w)</sup>	—
	SI <sup>(t)</sup>	—
Misalignment among different Member States	IT <sup>(j)</sup>	For some countries, the certificate in itself is sufficient as to the enforceability of the measure a stake. Conversely, other countries request <i>also</i> the prior court order which forms the basis of the certificate.
	IT <sup>(m)</sup>	Specific criminal framework for certain specific measures (anti-mafia, disproportionate and <i>par equivalent</i> confiscations) which is based on sensitive crimes and are characterised by a high degree of technicality.
	LV <sup>(p)</sup>	Questions related to the domestic legal framework (e.g., separation of criminal proceedings, one concerning ‘basic criminal procedure’, the other concerning ‘criminally obtained property’).
	MT <sup>(s)</sup>	Different countries have different legal systems, and this may hinder the recognition and enforcement of freezing and confiscation orders.
	SI <sup>(u)</sup>	Differences among substantial and procedural grounds for freezing orders in different Member States.
(a) Interview 23.11.2022.	(b) Interview 13.12.2022.	(c) Interview 05.12.2022.
(d) Interview 03.02.2023.	(e) Interview 26.10.2022.	(f) Interview 30.11.2022.
(g) Interview 24.11.2022.	(h) Interview 17.01.2023	(i) Interview 28.02.2023.
(j) Interview 28.12.2022.	(k) Interview 19.12.2022.	(l) Interview 21.11.2022.
(m) Interview 05.12.2022.	(n) Interview Prosecutor.	(o) Interview Judge(1).
(p) Interview Judge(2).	(q) Interview 17.02.2023.	(r) Interview 25.11.2022.
(s) Interview 21.12.2022.	(t) Interview 18.11.2022.	(t) Interview 18.11.2022.
(u) Interview 06.02.2023.	(v) Interview 15.12.2022.	(w) Interview 20.12.2022.
(x) Interview 24.1.2023.	(z) Interview 20.03.2023.	(aa) Interview 23.3.2023.

(bb) Interview 23.03.2023.

**TABLE 29 – OUTLINE ON THE MAIN OBSTACLES ARISING WITHIN THE EU WHEN DEALING WITH THE RECOGNITION/ENFORCEMENT OF FREEZING AND CONFISCATION ORDERS.**

Among the main obstacles arising within the EU when dealing with the recognition/enforcement of freezing and confiscation orders, the respondents highlight what follows:

- Lack of relevant information;
- Authorities do not report back;
- Communication/coordination issues among Member States;
- Double criminality;
- Language issues;
- Lack of meeting among magistrates;
- Lack of training activities;
- Time issues;
- Lack of practice;
- Misalignment among different Member States.

Interestingly, a prosecutor from **Luxembourg** reported what follows:

“I think that the main obstacles arising within the EU when dealing the recognition/enforcement of freezing/confiscation orders are: (i) communication issues among domestic authorities among different Member States; (ii) language issues (e.g., the lack of translators who may be able to translate the relevant documents in all languages of the EU, even in those languages which are not frequent).

In this last regard, I would refer to a case in which we have been involved – we received a certificate from Lithuania, concerning a person of Russian origins who currently lived in the United Kingdom. In our opinion, it was extremely difficult to ascertain the language through which we were supposed to notify him the certificate and all the relevant information related thereof.

Also, should a confiscation measure be recognized in Luxembourg without a prior seizure, **Luxembourgish magistrates hold no power of identifying the relevant goods or bank accounts** – they can only execute the measure requested by the Member State concerned. This can be a problem because we cannot carry out any proceedings in order to detect and ascertain the relevant items”.

This last aspect—that is the fact that national authorities **might not hold the necessary powers in order to effectively enforce the (already recognised) certificate**—has been also emphasised by the magistrates from **the Netherlands**.<sup>87</sup> Hence, there might **be a number of certificates which have been recognised** in a Member States; yet, **they cannot be concretely executed** due to the lack of material powers on the part of the competent authority.

**2.2.19. Question 19**

The nineteenth question foreseen in the questionnaire reads as follows:

“In your opinion, what measures would improve the execution of freezing and confiscation orders within the European Union?”.

The answers may be summarised as follows:

ANSWER	COUNTRIES	REMARKS
Improvement of the Schengen Information System (SIS)	AU <sup>(a)</sup>	In the case of alerts in the SIS, the competent authority should be indicated (along with its fax number), not only the authority issuing the alert.

<sup>87</sup> Interview 23.03.2023.

Double criminality	AU <sup>(b)</sup>	Expanding the list of the offences could lower the need to examine double criminality.
	BG <sup>(t)</sup>	—
Raising awareness among practitioners	BG <sup>(c)</sup>	There is a need to raise awareness among practitioners and facilitate discussions on the most appropriate ways the Regulation could be used to improve the existing practice.
	CY <sup>(d)</sup>	—
Improving measures about time limits	IT <sup>(h)</sup>	One respondent stressed that time limits should be foreseen solely for freezing orders, not for confiscations.
	BE <sup>(t)</sup>	—
	CY <sup>(e)</sup>	—
	IT <sup>(i)</sup>	—
Training for magistrates	SI <sup>(p)(q)</sup>	Communications via EUROJUST or the EJM should be emphasised in national trainings for judges and prosecutors.
	ES <sup>(r)</sup>	—
Training for the Police	IT <sup>(i)</sup>	—
	BE <sup>(t)</sup>	—
	CY <sup>(e)</sup>	—
More specific guidelines and best practices	IT <sup>(h)</sup>	Reference was made to a broadcasting platform and a sort of compendium in which every national procedure and legislation are explained.
	CY <sup>(f)</sup>	—
More active role of EUROJUST	SI <sup>(p)</sup>	EUROJUST should have a person on duty to help with urgent cases (even on weekends and during holidays).
A European manual related to domestic legislations	IT <sup>(i)</sup>	—
Need for clarifications on certain definitions provided by the Regulation	IT <sup>(k)</sup>	Reference was made to non-conviction based confiscation and proceedings in criminal matters. It might be important, according to the respondent, to create detailed legislation that gives substance to certain underlying concepts. It could in turn be brought to legislative development with certain principles.
Further steps in harmonising substantive rights	IT <sup>(j)</sup>	—
A return form following execution	FR <sup>(g)</sup>	—
Harmonising the management of confiscated assets and coordination in this field among Member States	IT <sup>(h)</sup>	—
Language improvements	LV <sup>(l)</sup>	Declaring the State language as the language in which the request shall be drafted.
	SE <sup>(s)</sup>	It could be preferable to employ solely English as a main language.
	LV <sup>(m)</sup>	Reference was made to the need to improve the use of digitalisation.
Fostering communication among Member States	MT <sup>(n)</sup>	Enhancing informal communications among Member States <i>before</i> official transmission of certificates.
	MT <sup>(o)</sup>	—
	ES <sup>(r)</sup>	—

Simplifying the certificate	SE <sup>(s)</sup>	—
(a) Interview 05.12.2022.	(b) Interview 13.12.2022.	(c) Interview 03.02.2023.
(d) Interview 30.11.2022.	(e) Interview 24.11.2022.	(f) Interview 24.11.2022.
(g) Interview 28.02.2022.	(h) Interview 21.11.2022.	(i) Interview 28.12.2022.
(j) Interview 05.12.2022.	(k) Interview 19.12.2022.	(l) Interview Prosecutor.
(m) Interview Judge(1).	(n) Interview 25.11.2022.	(o) Interview 21.12.2022.
(p) Interview 12.12.2022.	(q) Interview 15.12.2022.	(r) Interview 20.12.2022.
(s) Interview 24.02.2023.	(t) Interview 23.3.2023.	

**TABLE 30 – OUTLINE ON THE MAIN MEASURES WHICH CAN IMPROVE THE EXECUTION OF FREEZING/CONFISCATION ORDERS.**

Among the measures which have been suggested by the respondents to improve the execution of freezing/confiscation orders within the EU, it is worth mentioning *inter alia*: (i) more active role of EUROJUST; (ii) raising awareness among practitioners; (iii) training for magistrates and the Police; (iv) drafting more specific guidelines and best practices; (v) fostering communication among Member States; (vi) harmonising the management of the assets concerned.

Interestingly, a public prosecutor from **Luxembourg** emphasised what follows:<sup>88</sup>

“I would say: (i) there should be more coordination with the EIO, in light of the ‘new’ certificate foreseen in the Regulation; (ii) there should be a pre-identification of the items to be seized/confiscated within certificate; (iii) it would be better to specify which documents should be sent to the individual concerned, in order to provide him/her with an effective remedy against the measure at stake.

Moreover, it should be noted that since the Regulation does not specify the content of the information to be given to the affected person, we are implementing a good practice vis-à-vis the latter – we sent to him/her not only a summary of the measure at stake, but also the certificate and the foreign decision. We believe that the effectiveness of the remedy is inextricably linked to the quality of the information provided.

Furthermore, another issue concerns the fact that should confiscation measure be recognized without a prior freezing order being implemented, the affected person shall be informed of the effective remedies available to challenge the confiscation order. Hence, the individual concerned is informed before the execution of the confiscation and this may place him/her in a peculiar situation – he/she might conceal their items, or transfer them abroad, in order to hinder confiscation procedures.

In my opinion, the right procedure to be followed should be coordinated with the EIO – before executing a confiscation, there might be room for urgently identifying and then seizing the good concerned. Accordingly, the items will be concretely available and they can be subsequently confiscated.”.

Moreover, in addition to what has been already mentioned, magistrates from **the Netherlands** stressed *inter alia* the need for:<sup>89</sup>

- The appointment for a national central authority for each country;
- A 24/7 emergency channel;
- The possibility to issue freezing/confiscation orders also with a view of victims’ compensation.

<sup>88</sup> Interview 23.03.2023.

<sup>89</sup> Interview 23.03.2023.



### 3. CONCLUDING REMARKS

In the light of the above, it can be inferred what follows:

- Judges hold a pivotal role as issuing/executing authorities within the meaning of the Regulation (EU) 2018/1805. National governments have thus chosen to assign such role to courts. However, common standards on the power of judges in this regard are lacking. Indeed, in some Member States an application of the public prosecutor is required at the beginning of the relevant issuing/executing proceedings, both with regard to freezing and confiscation measures. Conversely, in other Member States, judges can issue/execute confiscation orders *ex officio*, while the same does not hold true for what concerns freezing orders, for which an application of the public prosecutors is still required.
- Public prosecutors are commonly assigned the role of overseeing the execution of the relevant measures. The available data showed that, in some Member States, their role is wider should a freezing order need to be issued – they are normally required to apply to a court for the issuing of such measure.
- There seems to be a lack of specialisation on the part of the judges – no Member State has foreseen the role of expert judges to deal with issuing/executing freezing and confiscation orders. Conversely, some specialised units have been established within public prosecutors' offices by few Member States.
- The lack of cooperation among national authorities has been highlighted by some magistrates. This aspect should not be underestimated, since it depicts a serious obstacle for the smooth functioning of mutual recognition mechanisms in criminal matters. What is more, such lack of cooperation may reveal, in turn, the lack of mutual trust among Member States in this field.
- The lack of practice and experience in issuing/executing the relevant measures under the Regulation is an issue which has been highlighted by all respondents.
- While a majority of Member States (11) has drafted hard law provisions in order to implement the Regulation (except for [Italy](#), [Latvia](#) and [Spain](#)), solely two countries ([Italy](#) and [Sweden](#)) have soft law provisions in force for that purpose. According to some respondents, this is due to the fact that the Regulation is directly applicable.
- It is noteworthy that both [Spain](#) and [Latvia](#) do have neither hard law nor soft law provisions in force, for the purpose of implementing the Regulation.
- In general, magistrates are satisfied that hard/soft provisions facilitate the application of the Regulation within domestic frameworks. In this regard, they reported *inter alia* the following advantages of having those provisions in force: (i) better understanding of the Regulation; (ii) solving practical issues (e.g., notification to the affected persons; distribution of competence at the domestic level; jurisdiction issues); (iii) allowing a uniform application of law at the national level. Conversely, implementing law has been described as being too concise by some respondents from [Slovenia](#) – hence, they tend to apply the Regulation as such.
- A large majority of the respondents stressed that the model of certificate does not lack any relevant information and thus it is complete. Yet, some remarks have been made by a minority of magistrates as for its extreme conciseness, its alleged lack of clarity and the fact that it may be burdensome for the authorities.
- As for the possible practical issues concerning the employment of the certificate, the respondents provided the following list:
  - Double criminality;



- Maximum limit of criminal offences;
  - Improper filling of the certificate;
  - Employment of a certificate other than the official one;
  - Lack of information;
  - Language/translation issues;
  - Overlapping with the EIO.
- In almost all Member States, the decisions not to execute freezing and confiscation orders are well-grounded by the competent authorities.
  - The answers provided suggest that very few Member States have refused to execute a freezing/confiscation order due to problems with the certificate form.
  - Different approaches have been revealed by the respondents, should they have to recognise a measure which does not exist in their domestic frameworks:
    - Non-execution of that measure;
    - Execution of an equivalent domestic measure;
    - Execution of an equivalent *and less intrusive* domestic measure;
    - Attempts to contact the issuing authority, suggesting an alternative measure (if available);
    - Consulting EUROJUST.
  - No Member State applied the fundamental rights non-recognition ground.
  - No Member State reported having refused an order on the ground of double criminality.
  - Some respondents ([Bulgaria](#), [Cyprus](#), [Slovenia](#) and [Sweden](#)) stressed the fact that they encountered cases in which the suspect/accused person made use of legal remedies against the order at stake.
  - Among the specific formalities that the national issuing authorities have possibly requested to the executing authorities, the most frequent ones concerned the timing of the executing of the measure at stake (e.g., execution of a freezing order by a certain date), or the request for a simultaneous execution of *different* freezing orders.
  - Mixed answers have been collected with regard to the time frame for the recognition/execution of urgency requests. While some respondents stressed the difficulties encountered in complying with the timeframes, other magistrates deem them reasonable. Moreover, the answers collected revealed the wide-ranging lack of experience with urgency requests, as solely four respondents argued that they have dealt with those requests.
  - Eighteen respondents did not stress the necessity to fix a specific time-limit for the application of the measures taken as a consequence of the order in the certificate. Conversely, thirteen respondents answered in the positive.
  - Among the practical issues concerning requests for transferring property for confiscation, the main answers may be summarised as follows:
    - Not hearing back for the foreign authorities;
    - Difficulties in locating the competent authority in another Member State;
    - Costs issues.
  - As for the channels of communication employed, digital issues and the role of the EJN, a large majority of respondents confirmed that they make use of secure channels of communication (e.g., mail, regular international mail, the Ministry of Justice, EUROJUST). Similarly, a large majority of Member States use the electronic version of the certificate and consult the EJN webpage before issuing an order.

- Among the main obstacles arising within the EU when dealing with the recognition/enforcement of freezing and confiscation orders, the respondents highlight what follows:
  - Lack of relevant information;
  - Authorities do not report back;
  - Communication/coordination issues among Member States;
  - Double criminality;
  - Language issues;
  - Lack of meeting among magistrates;
  - Lack of training activities;
  - Time issues;
  - Lack of practice;
  - Misalignment among different Member States;
  - The lack of power of the executing authority in order to identify and ascertain the relevant goods/items – there might be certificates which have been formally recognised but cannot be executed.
- Among the measures which have been suggested by the respondents to improve the execution of freezing/confiscation orders within the EU, it is worth mentioning *inter alia*: (i) the improvement of the SIS; (ii) raising awareness among practitioners; (iii) training for magistrates and the Police; (iv) drafting more specific guidelines and best practices; (v) fostering communication among Member States.

## LAWYERS

This section is exclusively devoted to providing a comparative analysis of the answers which have been collected from lawyers, for what concerns the practical application of the Regulation (EU) 2018/1805.

### 2.3. DATA

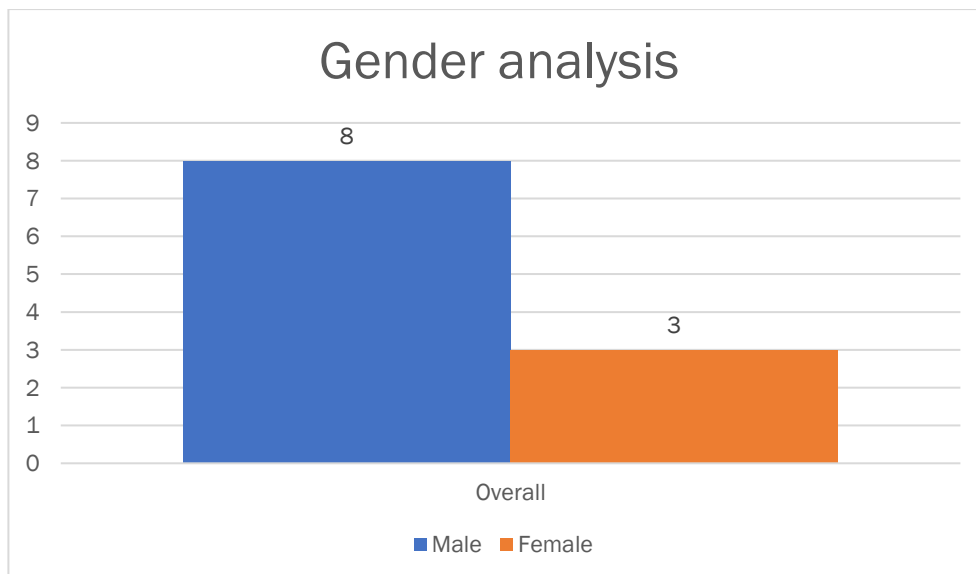
#### 2.3.1. Number of persons involved

The questionnaires to be transmitted to lawyers of at least 14 Member States have been sent to a great number of legal practitioners across the EU. Notably, a number of 11 (eleven) answers have been received.

#### 2.3.2. Gender analysis

From a gender-based perspective, a number of 8 (eight) is male while a number of 3 (three) is female.

A table is provided below, with the relevant data ([TABLE 31](#)).



**TABLE 31 – GENDER ANALYSIS.**

### 2.3.3. National affiliation

As for the national affiliation of the magistrates whose feedbacks have been gathered, relevant data are provided in the table below (TABLE 32).

COUNTRY	LAWYERS
Belgium	1
Bulgaria	1
Cyprus	2
Italy	3
Malta	2
The Netherlands	1
Sweden	1
<b>TOTAL</b>	<b>11</b>

TABLE 32 – NATIONAL AFFILIATIONS OF THE RESPONDENT LAWYERS.

## 2.4. MERITS

### 2.4.1. Question 1

The first question foreseen in the questionnaire reads as follows:

“What is your experience concerning judicial cooperation instruments? More specifically, what is your experience with the freezing and confiscation orders?”.

The answers may be summarised as follows:

COUNTRY	EXPERIENCE	REMARKS
Belgium	X	—
Bulgaria	X	—
Cyprus	✓	—
Italy	✓	All three respondents dealt with cases involving mutual recognition of freezing or confiscation orders.
Malta	✓	—
The Netherlands	X	—
Sweden	X	—

TABLE 32 – EXPERIENCE WITH FREEZING/CONFISCATION ORDERS IN THE FIELD OF JUDICIAL COOPERATION.

### 2.4.2. Question 2

The second question foreseen in the questionnaire reads as follows:

“Has your country introduced specific soft/hard law to implement Regulation 2018/1805? If yes, has the soft law/hard law document adopted by your national system facilitated the application of Regulation 2018/1805? If yes, in what terms? (for the interviewers: you can also mention pieces of legislation that you know and ask if you have cited all of them. It could be a good way to show that you know the topic)”.

The answers may be summarised as follows:

COUNTRY	SOFT/HARD LAW	ENHANCING THE APPLICATION?	REMARKS
Belgium	✓	✓	—
Bulgaria	The respondent was aware of some amendments to the Criminal Code which, allegedly, were 'introduced in line with Bulgaria's responsibilities under EU law'. However, no further clarifications were provided.		
Cyprus	✓	✓	It helped to clarify some practical issues (e.g., determination of competent national authorities) • Circulars gave some hints, although they were not taken up by the judges.
Italy	✓	✓	• Circulars make several aspects of the Regulation clearer (e.g., procedural aspects).
Malta	✓	✓	—
The Netherlands	✓	✓	—
Sweden	✓		No answer on this point

TABLE 33 – SOFT/HARD LAW IMPLEMENTING THE REGULATION.

### 2.4.3. Question 3

The third question foreseen in the questionnaire reads as follows:

"As an attorney, what legal remedies would you use in your legal system to challenge a certificate in the recognition and execution procedure? If such legal remedies exist, please briefly describe their role and functioning in the recognition and execution procedure as implemented in your legal system. Would the legal remedy suspend the execution of the investigative measure?"

The answers may be summarised as follows:

COUNTRY	LEGAL REMEDIES	SUSPENSIVE EFFECT?	REMARKS
Belgium	✓	✗	Both for freezing orders and confiscation measures, there is the possibility to challenge a certificate before a court. The remedy does not have suspensive effect
Bulgaria			n.d.
Cyprus	✓	✗	<ul style="list-style-type: none"> <li>• Institution of Court proceedings in order to challenge the recognition of an order in Cyprus. Against this decision, an appeal may be lodged.</li> <li>• If the executing authority (i.e. Cyprus) has acted in breach of fundamental rights, an application may be made before the Supreme Court.</li> <li>• Remedies for non-execution of the freezing or confiscation order.</li> </ul>

			<ul style="list-style-type: none"> <li>Remedies for the annulment of setting aside the order for the registration of the freezing and confiscation order.</li> </ul>
Italy	✓	✗	The Review ( <i>Riesame</i> ), which is a sort of appeal against the measure at stake.
Malta	✓	n.d.	<ul style="list-style-type: none"> <li>Challenge on the merit.</li> <li>Constitutional reference.</li> </ul>
The Netherlands	✓	✗	Both for freezing orders and confiscation measures, there is the possibility to challenge a certificate before a court. The remedy does not have suspensive effect (see Article 5.5.18 of the Code of Criminal Procedure and Article 39 of the Law on Mutual Recognition of Confiscation Orders of 2007).
Sweden	✓	✗	The respondent listed down a number of legal remedies, essentially related to an appeal to be lodged before the competent court.

TABLE 34 – LEGAL REMEDIES.

#### 2.4.4. Question 4

The fourth question foreseen in the questionnaire reads as follows:

“As an attorney, have you ever challenged (on behalf of the accused) a freezing or confiscation order in the executing state? If yes, were you successful? How did you deal with the foreign legal system and language? Were you a part of a transnational defence team? Please elaborate, provide examples and describe possible issues regarding the process of challenging a certificate in the executing state in your legal system”.

The answers may be summarised as follows:

COUNTRY	ANSWER	REMARKS
Belgium	✗	—
Bulgaria		The answer provided was ‘non applicable’.
Cyprus	✗	One respondent reported that he was involved in cases related to freezing/confiscation orders whose recognition/enforcement was sought in Cyprus.
Italy	✓	One respondent challenged a freezing/confiscation order ‘unsuccessfully’. Yet, he did not deal with the foreign legal system since there was a sworn translation into Italian notified by the foreign authorities.
Malta	✗	—
The Netherlands	✗	—
Sweden	✗	—

TABLE 35 – ANSWERS TO THE QUESTION AS TO WHETHER THE RESPONDENT HAS EVER CHALLENGED A FREEZING/CONFISCATION ORDER IN THE EXECUTING STATE.

#### 2.4.5. Question 5

The fifth question foreseen in the questionnaire reads as follows:

“As an attorney, have you ever challenged a freezing or confiscation order for issues related to the double criminality?”.

The answers may be summarised as follows:

COUNTRY	ANSWER	REMARKS
Belgium	✗	—
Bulgaria	✗	—

Cyprus	X	—
Italy	X	—
Malta	✓	The respondent was involved in a case of oil smuggling, in which his client was affected by two freezing/confiscation orders (it is not specified in the answer). He challenged the aforementioned order, but unsuccessfully.
The Netherlands	X	—
Sweden	X	—

**TABLE 36 – ANSWERS TO THE QUESTION AS TO WHETHER THE RESPONDENT HAS EVER CHALLENGED A FREEZING/CONFISCATION ORDER ON THE BASIS OF DOUBLE CRIMINALITY ISSUES.**

#### 2.4.6. Question 6

The sixth question foreseen in the questionnaire reads as follows:

“As an attorney, would you challenge (on behalf of the accused or a third party) a certificate in the executing state on the grounds of infringement of fundamental rights? What legal remedies would you use in your legal system to challenge such a certificate?”.

The answers may be summarised as follows:

COUNTRY	ANSWER	REMARKS
Belgium	✓	As for the legal remedies, reference was made to the answer provided for the third question.
Bulgaria		The answer provided was ‘non applicable’.
Cyprus	✓	As for the legal remedies, reference was made to the answer provided for the third question.
Italy	✓	One respondent mentioned the possibility to appeal before the Court of Cassation as per Article 111 of the Constitution.
Malta	✓	As for the legal remedies, reference was made to the answer provided for the third question.
The Netherlands	✓	As for the legal remedies, reference was made to the answer provided for the third question.
Sweden	✓	As for the legal remedies, reference was made to the answer provided for the third question.

**TABLE 37 – ANSWERS TO THE QUESTION AS TO WHETHER THE RESPONDENT WOULD CHALLENGE A FREEZING/CONFISCATION ORDER ON THE BASIS OF AN INFRINGEMENT OF FUNDAMENTAL RIGHTS.**

#### 2.4.7. Question 7

The seventh question foreseen in the questionnaire reads as follows:

“As an attorney, would you challenge (on behalf of the accused or a third party) a certificate in the executing state on the grounds of incomplete certificate? What legal remedies would you use in your legal system to challenge such a certificate?”.

The answers may be summarised as follows:

COUNTRY	ANSWER	REMARKS
---------	--------	---------

Belgium	✓	As for the legal remedies, reference was made to the answer provided for the third question.
Bulgaria		The answer provided was 'non applicable'.
Cyprus	✓	As for the legal remedies, reference was made to the answer provided for the third question.
Italy	✓	As for the legal remedies, reference was made to the answer provided for the third question.
Malta	✓	—
The Netherlands	✓	As for the legal remedies, reference was made to the answer provided for the third question.
Sweden	✓	As for the legal remedies, reference was made to the answer provided for the third question.

**TABLE 38 – ANSWERS TO THE QUESTION AS TO WHETHER THE RESPONDENT WOULD CHALLENGE A FREEZING/CONFISCATION ORDER ON THE BASIS OF AN INCOMPLETE CERTIFICATE.**

### 2.4.8. Question 8

The eighth question foreseen in the questionnaire reads as follows:

“In your opinion, what are the main obstacles arising within the EU when dealing with the recognition and enforcement of freezing and confiscation orders? (for example lack of communication during cooperation operations between member states)”.

The answers may be summarised as follows:

ANSWER	COUNTRY	REMARKS
Communication issues	BE <sup>(h)</sup>	—
	BG <sup>(a)</sup>	This was indirectly underlined by the respondent, who stressed the importance of the EJM in fostering effective communications among Member States, even for other mutual recognition tools (e.g., the EAW).
	CY <sup>(c)</sup>	—
	NL <sup>(f)</sup>	In particular, language issues may hinder the recognition and enforcement of freezing and confiscation orders.
	SE <sup>(g)</sup>	In particular, language issues may hinder the recognition and enforcement of freezing and confiscation orders.
Different approach and practice among MS	CY <sup>(b)</sup>	The process should be simplified and information should be exchanged more efficiently among Member States.
	IT <sup>(d)</sup>	The lack of a uniform legal culture is the latent flaw that should have given pause for thought before the adoption of the Regulation – ‘when they adopt it, they should have started from the assumption of uniformity of the countries involved. I think this was not done’.
Inadequate completed documentation	CY <sup>(c)</sup>	This may lead to increase delays, since the documentation shall be properly filled.
Lack of access to the relevant documentation	IT <sup>(e)</sup>	The respondent argued that ‘the obstacle was to acquire useful documentation to verify the possibility of adopting an effective remedy’. He proposes that every document must be made available.



<b>Lack of harmonisation among MS</b>	<b>BE</b> <sup>(h)</sup>	—
	<b>IT</b> <sup>(f)</sup>	—
<b>Time aspects</b>	<b>SE</b> <sup>(g)</sup>	According to the respondent 'if the deadline is short, it can be problematic because the procedure will take time'.
(a) Interview 30.01.2023.	(b) Interview 24.01.2023.	(c) Interview 30.01.2023.
(d) Interview 15.12.2022.	(e) Interview 28.12.2022.	(f) Interview 27.01.2023.
(g) Interview 13.03.2023.	(h) Interview 10.03.2023.	

**TABLE 39 – MAIN OBSTACLES HINDERING THE RECOGNITION/ENFORCEMENT OF FREEZING AND CONFISCATION ORDERS.**

### 2.4.9. Question 9

The ninth question foreseen in the questionnaire reads as follows:

“In your experience, have you ever encountered problems of various natures with the certificate as regards information provided by the issuing/executing State? If yes, what were the problems encountered by the defence? (i.e. unclear, incorrect, incomplete information)”.

The answers may be summarised as follows:

COUNTRY	ANSWER	REMARKS
<b>Belgium</b>	<b>X</b>	—
<b>Bulgaria</b>		The answer provided was 'non applicable'.
<b>Cyprus</b>	<b>✓</b>	One respondent highlighted that the examples provided (i.e. unclear, incorrect, incomplete information) may be in favour of the defence, since they constitute grounds for non-recognition.
<b>Italy</b>	<b>✓</b>	<ul style="list-style-type: none"> <li>• Unclear information;</li> <li>• Incomplete certificate.</li> </ul>
<b>Malta</b>	<b>✓</b>	<ul style="list-style-type: none"> <li>• Incomplete or incorrect information.</li> </ul>
<b>The Netherlands</b>	<b>X</b>	—
<b>Sweden</b>	<b>X</b>	—

**TABLE 40 – PROBLEMS OCCURRED WITH THE CERTIFICATE.**

### 2.4.10. Question 10

The tenth question foreseen in the questionnaire reads as follows:

“In your opinion, would it reasonable that the certificate attached to a freezing order would fix a specific time-limit for the lifting of the measures taken as a consequence of the order?”.

The answers may be summarised as follows:

COUNTRY	ANSWER	REMARKS
<b>Belgium</b>	<b>✓</b>	A time limit may help those States which have legal frameworks whose procedures are slower than others.
<b>Bulgaria</b>		The answer provided was 'non applicable'.
<b>Cyprus</b>	<b>X</b>	<ul style="list-style-type: none"> <li>• One respondent highlighted that the order should be in force until the competent authority issue an order of annulment or setting aside the order.</li> <li>• A specific time-frame may materially undermine the scope of the Regulation, hence the most advisable solution would be that the existence/continuance of the order remains under the discretion of the Court of the issuing authority, which – within</li> </ul>

		a reasonable intervals of time – shall either quash or renew the order.
<b>Italy</b>	✓	<ul style="list-style-type: none"> <li>• All three respondents answered in the positive.</li> <li>• One respondent added that the length of trials is a problem.</li> <li>• Another lawyer highlighted that the regulation of the timing would be desirable.</li> </ul>
<b>Malta</b>	✓	<ul style="list-style-type: none"> <li>• Time limits are always important.</li> <li>• One issue might be related to the fact that there are different legal systems, and different domestic time frames.</li> <li>• A time limit may help those States which have legal frameworks whose procedures are slower than others – they would thus be stimulated by the fixing of a time limit.</li> </ul>
<b>The Netherlands</b>	✓	A time limit may help those States which have legal frameworks whose procedures are slower than others.
<b>Sweden</b>	✓	According to the respondent, a time limit ‘would make the procedure go faster’.

**TABLE 41 – SPECIFIC TIME LIMIT FOR THE LIFTING OF THE MEASURES TAKEN AS A CONSEQUENCE OF THE ORDER.**

## CONCLUDING REMARKS

In the light of the above, it can be inferred what follows:

- Seven (7) respondents argued that they have been involved in cases related to mutual recognition of freezing/confiscation orders.
- With one exception, almost all practitioners were aware of hard/soft law provisions concerning the implementation of the Regulation in their domestic legal frameworks, respectively. In this regard, they agree that the latter enhanced the application of the Regulation at the national level.
- Among the issues that have been elucidated by the aforementioned hard/soft law provisions, it is worth recalling: (i) determination of national competent authorities; (ii) procedural aspects of the relevant proceedings.
- With one exception, almost all practitioners emphasised the existence of legal remedies to challenge a certificate in the recognition/execution procedures. Notably, none of them holds a suspensive effect over the measure at stake. Typically, appeal proceedings are foreseen. Two respondents refer also, respectively, to a procedure before the Supreme Court (according to domestic Constitutional provisions) and to the possibility to ask for a constitutional reference. In any case, those remedies are to be lodged before a court.
- A sole respondent states that he/she challenged a freezing/confiscation order in an executing State; yet, the attempt was unsuccessful. The other practitioners denied having been involved in such a circumstance.
- Similarly, a sole respondent reported that he/she challenged a freezing/confiscation order on the basis of double criminality issues. Conversely, the other practitioners denied having been involved in such a circumstance.
- Asked on whether they would challenge an order on the basis on an infringement of fundamental rights, all respondents – with one exception – answered in the affirmative.
- The same holds true for what concerns the answers provided to the question as to whether the respondent would challenge an order on the basis of an incomplete certificate.
- Among the main obstacles that can hinder the recognition/enforcement of freezing/confiscation orders, reference has been made to:
  - Communication issues;
  - Different approach and practice among Member States;
  - Inadequate completed documentation;
  - Lack of access to the relevant documentation;
  - Lack of harmonisation among Member States.
- As for the problems that occurred with the certificate, reference was made to:
  - Unclear information;
  - Incompleteness of the information contained therein.
- As for the possibility to fix a time-limit in the certificate for the lifting of the measures taken as a consequence of an order, mixed answers have been collected. On the hand, some respondents did not deem it necessary, since a specific time-frame may materially undermine the scope of the Regulation. According to them, the most advisable solution would be that the existence/continuance of the order remains

under the discretion of the Court of the issuing authority, which – within a reasonable interval of time – shall either quash or renew the order. On the other hand, according to other respondents, a time limit may help those States whose procedures are slower than others.

## LIST OF TABLES

P.

### Magistrates

TABLE 1 – Gender analysis	7
TABLE 2 – Professions of the magistrates whose answers have been collected.	7
TABLE 3 – National affiliations of the respondent magistrates.	8
TABLE 4 – Staff gender analysis (Austria)	13
TABLE 5 – Staff gender analysis (Belgium)	13
TABLE 6 – Staff gender analysis (Bulgaria)	14
TABLE 7 – Staff gender analysis (Cyprus)	14
TABLE 8 – Staff gender analysis (France)	15
TABLE 9 – Staff gender analysis (Italy)	15
TABLE 10 – Staff gender analysis (Latvia)	16
TABLE 11 – Staff gender analysis (Lithuania)	16
TABLE 12 – Staff gender analysis (Luxembourg)	17
TABLE 13 – Staff gender analysis (Malta)	17
TABLE 14A – Staff gender analysis - Judges (Slovenia)	18
TABLE 14B – Staff gender analysis - Prosecutors (Slovenia)	18
TABLE 15A – Outline of the hard/soft law in force among Member States	20
TABLE 15B – Opinions upon the hard/soft law in force among Member States	20
TABLE 16 – Outline of the opinions upon the model of certificate	21
TABLE 17 – Outline of the practical issues on the employment of the certificate.	23
TABLE 18 – Outline of the justifications for non-executing a measure due to an incomplete certificate.	24
TABLE 19 – Outline on the refusals to execute a measure due to problems with the certificate form.	26
TABLE 20 – Outline on the reactions of executing authorities where they have to recognise a measure which does not exist in their domestic framework.	26
TABLE 21 – Outline on the application of the fundamental rights non-recognition ground.	27
TABLE 22 – Outline on the issues related to double criminality.	28
TABLE 23 - Outline on the employment of legal remedies by suspects or accused persons	28
TABLE 24 – Outline on the specific formalities to be fulfilled by the executing authority	29
TABLE 25 – Outline on the time frame for the recognition and execution and urgency requests	30
TABLE 26 – Outline on the possibility to specify a time-limit within the certificate attached to a freezing order	31
TABLE 27 – Outline on practical issues concerning requests for transferring property for confiscation	32
TABLE 28 – Outline on secure channels of communication, digital issues and the role of the European Judicial Network	34
TABLE 29 – Outline on the main obstacles arising within the EU when dealing with the recognition/enforcement of freezing and confiscation orders.	35
TABLE 30 - Outline on the main measures which can improve the execution of freezing/confiscation orders	37

**Lawyers**

TABLE 31 – Gender analysis	45
TABLE 32 - Experience with freezing/confiscation orders in the field of judicial cooperation	46
TABLE 33 – Soft/hard law implementing the Regulation	47
TABLE 34 – Legal remedies	48
TABLE 35 – Answers to the question as to whether the respondent has ever challenged a freezing/confiscation order in the executing state.	48
TABLE 36 – Answers to the question as to whether the respondent has ever challenged a freezing/confiscation order on the basis of double criminality issues.	48
TABLE 37 – Answers to the question as to whether the respondent would challenge a freezing/confiscation order on the basis of an infringement of fundamental rights.	49
TABLE 38 – Answers to the question as to whether the respondent would challenge a freezing/confiscation order on the basis of an incomplete certificate.	49
TABLE 39 – Main obstacles hindering the recognition/enforcement of freezing and confiscation orders.	50
TABLE 40 – Problems occurred with the certificate.	51
TABLE 41 – Specific time limit for the lifting of the measures taken as a consequence of the order.	51