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Freezing Orders and Confiscation orders: Effort for common standards

T4.1 Drafting FORCE Common Standards and Recommendations

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Disclaimer:

CONTENTS

LIST OF ABBREVIATIONS

AFSJ: Area of Freedom, Security and Justice
Art.: Article
Charter: Charter of Fundamental Rights of the European Union
C.J.EU: Court of Justice of the European Union
CR on Desk Research: Comparative Report on the Implementation of Regulation EU (2018/1805) [D.2.1.-WP2]
CR: Comparative Report
CSR: Common Standards and Recommendations
EAW: European Arrest Warrant
EC: European Commission
ECHR: European Convention on Human Rights
ECtHR: European Court of Human Rights
EDP: European Delegated Prosecutor(s)
EIO: European Investigation Order
EPPO: European Public Prosecutor's Office
EPPO Regulation: Regulation (EU) 2017/1939
EJN: European Judicial Network
EU: European Union
FC: Force Community
FCC: Freezing and/or Confiscation Certificate(s)
FCO: Freezing and/or Confiscation Order(s)
FD: Framework Decision
FORCE CSR: FORCE Common Standards and Recommendations
KSR: Knowledge Sharing Repository
MOOC: Massive Open Online Course
MS: Member State(s)
MS: Member State(s)
NCBC: Non-Conviction Based Confiscation
PO: Project Officer
PP: Public Prosecutor
Regulation: Regulation (EU) 2018/1805
Report on Interviews: Report on confiscation and freezing orders practical issues [D.2.2.-WP2]
SD: Stakeholder Database
SO: Specific Objective
TEU: Treaty on the European Union
TFEU: Treaty on the Functioning of the European Union
VLE: Virtual Learning Environment
WP: Work Package

1. INTRODUCTION

1. The implementation of the Regulation (EU) 2018/1805 ("Regulation") – as amended by Regulation 2023/2844/EU – represents a pillar in the creation of a single Area of Freedom Security and Justice ("AFSJ") by simplifying the recognition of cross-border freezing and confiscation orders ("FCO"). The underlying principle of the Regulation is the principle of mutual recognition – a strong foundation which nonetheless proves to be plagued by some shortcomings when it comes to a uniform application of the EAW and of the EIO. Therefore, it is not surprising that similar difficulties are also arising in the field of FCO recognition. These problems can be traced, in large part, to the lack of mutual trust between MSs. One of the main purposes of the Regulation was to increase the low rate of cross-border freezing and confiscation in the EU (respectively 2% and 1% of the proceeds of crimes). However, this aim cannot be reached by merely adopting the Regulation. Equally significant is the establishment of a uniform and seamless implementation of the Regulation among EU practitioners.
2. The principle of mutual recognition in its purest form entails that the order should be recognised without any further formality. However, the Regulation still retains some features which are more typical of the former conventional mutual legal assistance instruments (although to a lesser extent than the EAW and EIO frameworks). The primary exceptions to the principle of mutual recognition consist of the specific reasons for non-recognition and non-execution, forming a closed and narrowly interpretable list. By incorporating similar grounds for rejection, the concept of "automatic recognition" is evidently mitigated. Nonetheless, the previous partial harmonisation of national legislation concerning confiscation (Directive 2014/42/EU) may aid in mitigating the widespread application of these refusal grounds, at least to some extent. What is more, the harmonisation framework in the field of confiscation and freezing of assets should be further strengthened if the proposal for the revision of Directive (EU) 2014/42 is approved.
3. Taking into account that the Regulation is an instrument of mutual recognition, it is further clear that various perspectives and interests have to be considered and balanced. They include, *inter alia,* the efficiency in managing all stages of the lifecycle of an order, as well as the protection of fundamental rights of the defendants and third parties affected by the orders.
4. The main goal of the FORCE Project is to present a set of Common Standards and Recommendations ("CSR") on the use of the Regulation (EU) 2018/1805 ("Regulation") on mutual recognition of freezing and confiscation orders. These CSR are intended to give practitioners – judges, public prosecutors, and defence lawyers – the most efficient and smooth way to apply the Regulation. The aim of the CSR is, therefore, to guide practitioners at all stages of the Regulation, by providing the highest possible standards to be followed.
5. The drafting of the CSR tried to fairly balance the protection of fundamental rights and the efficiency of judicial cooperation. It should be noted, though, that these CSR inherently promote cooperation, indicating that, when in doubt, an order should be acknowledged, except in instances where a fundamental right is endangered.
6. These CSR are based on four foundational principles:

- Necessity and proportionality: these are principles which characterise (legally or by case-law) every mutual recognition instrument and want to avoid arbitrary use of FCO;
- Minimum use of grounds for refusal: If these reasons obstruct the seamless application of the Regulation and conflict with the mutual recognition principle outlined in Art. 82 TFEU, they should only be invoked as a last resort;
- Dialogue: it is the best way to prevents mutual distrust and lack of cooperation, as it allows to solve problems that could lead to a refusal;
- Recognition of every type of FCO: every FCO issued in proceedings on criminal matters should be recognised, even if it does not exist in the executing State, in order to grant cooperation to its maximum extent.

7. Prior to the CSR, there is an examination of the identified issues aimed at enhancing their clarity and understanding. The CSR are based on
    - interviews with practitioners that the project team have been able to collect in fifteen selected EU Countries. The choice fell on Italy, Cyprus, Malta, Spain, France, Bulgaria, Latvia, Slovenia, Germany, Luxembourg, Belgium, The Netherlands, Sweden, Austria, Lithuania, Italy, Bulgaria, Luxembourg and Slovenia were chosen because are the Countries of the partners who conducted the interviews; Germany, France, Spain and Austria were chosen for their relevance in the legal field and for the number of inhabitants; the others were chosen due to the flow of capitals, for their geographic position, and for the peculiarities of their national system, as highlighted in the desk research;
    - desk research, when there was no practical experience on a topic, conducted in all EU Countries;
    - other questions on mutual recognition arose in practice.
8. The followings 184 CSR have been validated by many practitioners (Judges, Prosecutors and Lawyers), as well as academics, via a forum and four online events. Consequently, the CSR have been a ground for discussion and improvement.
9. Lastly, it's important to highlight that the limited duration of the Regulation's implementation does not allow for the cross-border cooperation rules to be based on prior guidelines, whether they provided positive or negative feedback. Therefore, these CSR are the first set of guidelines adopted in the EU and can be intended as a living document. The living document can be improved on in the years to come, when practical application will show the first consistent data, validating this CSR or not.

2. SCOPE OF APPLICATION

2.1. Proceedings in Criminal Matters

11. According to Art. 1, the Regulation “lays down the rules according to which a Member State recognises and executes in its territory freezing orders and confiscation orders issued by another Member State within the framework of proceedings in criminal matters”. Therefore, any cross-border request for FCO concerning proceedings in

criminal matters must be adopted by way of the Regulation. It is worth noting that the Regulation does not apply to FCO "issued within the framework of proceedings in civil or administrative matters" (Art. 1, par. 4, Regulation).

12. The notion of proceedings in criminal matters is not as clear as it may appear. Importantly, Recital 13 of the Regulation stipulates that such notion "is an autonomous concept of Union law interpreted by the Court of Justice of the European Union, notwithstanding the case law of the European Court of Human Rights". The content of such notion is to be traced back to the seminal *Engel and Others* judgment, rendered by the ECtHR in 1976. The Court stated that in determining certain measures of a criminal nature, three criteria should be considered: (i) classification in domestic law, i.e., how the offence is classified in the domestic legal system. If it is classified as a criminal offence, it is likely to fall within the scope of "criminal matters"; (ii) nature of the offence, i.e., it is pivotal to look at the nature and severity of the penalty that the person is facing. If the penalty is punitive in nature, similar to criminal sanctions, it may be regarded as a "criminal matter"; (iii) degree of severity, i.e., it is fundamental to examine the severity of the penalty faced by the person involved. If the penalty is significant, it may indicate that the case involves a criminal charge. These three criteria *(Engel* criteria) are taken as a valuable benchmark by the C.J.EU. Indeed, in rendering several important judgments, the C.J.EU. clarified that the three criteria – which are alternative and not cumulative – are relevant for determining whether legal measures are criminal in nature: (1) the legal classification of the offence under national law, (2) the intrinsic nature of the offence and (3) the degree of severity of the penalty[1]. It is thus clear that, while interpreting the notion of "criminal matters" through the adoption of the *Engel* criteria, the C.J.EU. may hold a margin of manoeuvre to assess whether a certain legal tool falls within the notion of "criminal matters". Nevertheless, the concept retains its fluidity, and offering a universal guideline on what criminal proceedings entail is not feasible. Therefore, liaising with authorities, in case of doubt, is strongly recommended.

13. According to recital 13, the notion of proceedings in criminal matters "covers all types of freezing orders and confiscation orders issued following proceedings in relation to a criminal offence, not only orders covered by Directive 2014/42/EU. It also covers other types of order issued without a final conviction [...] Proceedings in criminal matters could also encompass criminal investigations by the police and other law enforcement authorities". This means that every FCO linked to a crime should be recognised. However, it must be pointed out that a minimum level of safeguards should be granted to the defendants: the guarantees of a fair trial – envisaged by the Charter and the ECHR – should always be respected. Accordingly, the issuing authority should fill in Annex I or II expressly, briefly describing both the nature of proceedings in criminal matters, also declaring the respect of safeguards requested by the Charter and the ECHR. Finally, the notion of "all types" of FCO should also cover freezing orders issued to extend the duration of the original ones, at least when such an extension is subject to a (re)evaluation, by the issuing authority, of substantive reasons upon which the assets are subject to freezing measures.

14. Non-conviction based confiscation ("NCBC") is a hot topic in the EU and is different from preventive measures, even if they could seem similar. The Regulation wants NCBC to be recognised as much as possible, even if many MSs do not foresee it in

[1] See, *inter alia*, C.J.EU, Grand Chamber, 20 March 2018, *Menci*, C-524/15; C.J.EU, Grand Chamber, 20 March 2018, *Garlsson Real Estate SA*, 537/16; C.J.EU, Grand Chamber, 26 February 2013, *Åkerberg Fransson*, C-617/10.

their national legislation. The implementation and the enforcement of NCBC measures may infringe several fundamental rights enshrined in the ECHR, e.g., the right to property (Art. 1, Prot. 1 ECHR) and the right to a fair trial (Art. 6 ECHR):

- Nevertheless, the right to property is not an absolute right but rather a qualified one. An NCBC system can be deemed fully compatible with the provisions of Art. 1 Prot. 1 ECHR, provided that three fundamental criteria are satisfied. Firstly, the interference with the right to property must be established and regulated by law. Secondly, such interference must serve a legitimate purpose. Lastly, the measures employed must be proportionate to the aim pursued, ensuring a reasonable balance between the public interest and the individual's property rights.
- To be considered compliant with Art. 6 ECHR, an asset recovery system must, first of all, allow individuals to challenge the recovery of their assets in a court of law. Additionally, any NCBC regime must exhibit reasonableness and proportionality in its implementation. Therefore, certain NCBC recovery systems have been determined to be in accordance with Article 6 ECHR; however, several limits have been set up. For instance, the ECtHR has found that when a national court is tasked with issuing a confiscation order, it must be convinced that the funds in question are connected to the criminal activity. In this regard, one problem might be that national courts are often required to apply the civil burden of proof, which entails assessing the evidence based on a "balance of probabilities" or demanding a high likelihood of illicit origin combined with the owner's inability to prove otherwise. This standard makes it comparatively easier for the court to order confiscation compared to the criminal standard of "beyond reasonable doubt".

15. In addition, the C.J.EU stated that NCBC may infringe the fundamental right to property envisaged in Article 17 of the Charter. However, NCBC may be lawfully imposed in compliance with this right if there is a conviction; a direct or indirect economic benefit; and the proof of unlawfully owned property[2].
16. Therefore, a NCBC should always be recognised if the guarantees of the C.J.EU and of the ECtHR are respected. Accordingly, a NCBC order should declare that the safeguards provided for by the C.J.EU and the ECtHR have been respected; in turn, the executing authority should trust the declaration of the issuing authority.
17. Recital 13 encompasses the FCO that do not exist in the legal system of the executing State, granting their recognition and execution: "while such orders might not exist in the legal system of a Member State, the Member State concerned should be able to recognise and execute such an order issued by another Member State". As a rule, the executing State should always recognise an FCO that does not exist in its legal system, except for those cases in which a ground for refusal could be invoked. In other words, every order, in the framework of proceedings in criminal matters, should be recognised.
18. Art. 23, par. 2, obliges the executing State to recognise and execute an FCO concerning legal persons, even if criminal liability of the latter is not envisaged in the executing State's legislation. The Regulation clearly aims to bolster the principles of mutual recognition and mutual trust to the highest degree possible. Therefore, the executing State should always enforce an order concerning legal persons.

[2] See, *ex multis*, C.J.EU, 21 October 2021, *DR and TS*, C-845/19 and C-863/19; C.J.EU, 14 January 2021, *O.M.*, C-393/19; C.J.EU, 16 July 2020, *O.C. and other v. Banca d'Italia*, C-686/18; C.J.EU, Grand Chamber, 20 September 2016, *Ledra Advertising Ltd and others v. European Commission*, C-8/15.

19. Finally, the proposal for a Directive on asset recovery and confiscation (COM/2022/245), if definitively adopted, could help solving interpretative issues of the notion of proceedings in criminal matters. Indeed, it explicitly "establishes minimum rules on the tracing and identification, freezing, confiscation, and management of property within the framework of proceedings in criminal matters" (art. 1). Therefore, the following types of confiscation fall under the scope of the notion of proceedings in criminal matters:
    a. Confiscation from a third party (art. 13);
    b. Extended confiscation (art. 14);
    c. Non-conviction based confiscation (art. 15);
    d. Confiscation of unexplained wealth linked to criminal activities (art. 16)

1) The concept of **criminal proceedings** is flexible and ambiguous, making it impractical to offer a comprehensive guideline on their nature, other than adhering to the ***Engel* criteria**. Therefore, liaising with **authorities**, in case of doubt, is strongly recommended, in order to solve any doubts;
2) Types of confiscation envisaged in the proposal for a Directive on asset recovery and confiscation (COM/2022/245), if definitively adopted, should be considered as falling in the scope of proceedings in criminal matters;
3) Annex I, Section E (for freezing orders), and Annex II, Section F (for confiscation orders) should be filled in with "other relevant information" with a brief description of the nature of the proceedings on criminal matters and an affirmation of compliance with fundamental rights, including the safeguards mandated by the Charter and the ECHR;
4) The issuing authority should declare in Annex II, Section F, "other relevant information", that a NCBC order respects the safeguards provided for by the C.J.EU and that the ECtHR have been respected; the executing authority, in turn, should trust the declaration of the issuing authority;
5) The executing State should always recognise an FCO that does not exist in its legal system, except for those cases in which a ground for refusal could be invoked;
6) The executing authority should always enforce an order concerning legal persons, even if it does not provide for the criminal liability of the latter.

2.2. Transitional Provisions and Statistics

20. Art. 40 states that "this Regulation shall apply to freezing certificates and confiscation certificates ("FCC") transmitted on or after 19 December 2020". Every FCC transmitted before 19 December 2020 should be governed either by FD (JHA) 2003/577 or FD (JHA) 2006/783. By referring to FCC transmitted, instead of FCC issued, on or after 19 December 2020, the Regulation clearly wants to enforce freezing or confiscation measures adopted before that date. Indeed, the certificate (FCC) is different from the order (FCO) and it is possible that the latter had been issued before 19 December 2020. What is important, for the aim of the Regulation, is that the FCC, issued according to the Regulation, is transmitted on or after 19 December 2020, regardless of whether the underlying measure (FCO) dates back to a time before that date. Briefly:
    a. The FCO is issued on or after 19 December 2020 and the FCC is transmitted after that day → the FCO must be recognised and executed;
    b. The FCO is issued before 19 December 2020 and the FCC is transmitted after that day → the FCO must be recognised and executed.
21. Art. 35 states that MSs should collect "comprehensive statistics from the relevant authorities" on an annual basis and send them to the European Commission. These statistics include:
    a. the number of freezing orders and confiscation orders received by a Member State from other Member States that were recognised;
    b. the number of freezing orders and confiscation orders received by a Member State from other Member States that were executed;
    c. the number of freezing orders and confiscation orders received by a Member State from other Member States that were refused;
    d. the number of cases in which a victim was compensated or granted restitution of the property obtained by the execution of a confiscation order under this Regulation;
    e. the average period required for the execution of freezing orders and confiscation orders under this Regulation;
    f. the information referred to in Art. 11, par. 2, Directive 2014/42/EU:
        i. the number of requests for freezing orders to be executed in another Member State;
        ii. the number of requests for confiscation orders to be executed in another Member State;
        iii. the value or estimated value of the property recovered following execution in another Member State.
22. The first data transmitted to the European Commission showed that some MSs prefer to combine statistics of freezing and confiscation orders, while others separate them. Moreover, only a handful of MSs indicated the amount recovered. It is therefore necessary to have a unique method of notification. To achieve the most precise statistical breakdown, Member States should incorporate the categories distinguished in the preceding point when submitting their notifications.

7) FCC transmitted on or after 19 December 2020 must be acknowledged and enforced, irrespective of whether the underlying FCO was issued before that date.
8) In order to have the best disaggregation possible, MS should notify the European Commission of the statistics including the following voices: 1) the number of freezing orders and confiscation orders received by a Member State from other Member States that were recognised; 2) the number of freezing orders and confiscation orders received by a Member State from other Member States that were executed; 3) the number of freezing orders and confiscation orders received by a Member State from other Member States that were refused; 4) the number of cases in which a victim was compensated or granted restitution of the property obtained by the execution of a confiscation order under this Regulation; 4) the average period required for the execution of freezing orders and confiscation orders under this Regulation; 5) the number of requests for freezing orders to be executed in another Member State; 6) the number of requests for confiscation orders to be executed in another Member State; 7) the value or estimated value of the property recovered following execution in another Member State.

3. RELATIONSHIPS WITH OTHER MUTUAL RECOGNITION INSTRUMENTS

23. The Regulation may be strictly linked to Directive (EU) 2014/41 on the European Investigation Order in Criminal Matters ("EIO"). Briefly, the EIO is a judicial decision aimed at obtaining evidence in another MS. The functioning is the same of FCO: the issuing authority orders the executing authority to gather a piece of evidence in the territory of the latter.
24. Practice showed that EIO and FCO could work together (see Recital 34 EIO Directive) as a freezing order according to the Regulation has no probatory ends. This does not mean that a freezing order with probatory ends cannot be without issues. Indeed, Art. 32 of Directive (EU) 2014/41 consents the issuing of an EIO "with a view to provisionally preventing the destruction, transformation, removal, transfer or disposal of an item that may be used as evidence". It is possible that an item might need to be utilized as evidence and subsequently subjected to confiscation. In these situations, both a EIO and a freezing order could be issued. Since the two mutual recognition instruments serve distinct purposes, it is necessary to issue both an EIO and a freezing order. They can be transmitted simultaneously, and the executing authority should

recognise and execute both. However, in case of doubt, it is preferrable to issue a EIO first, as Art. 32 Directive (EU) 2014/41 requires the recognition within 24 hours.

25. It is preferrable for both the issuing and executing authority to know where the assets to be frozen or confiscated are located in order to ensure a smooth and speedy cooperation. Regarding this matter, it is recommended that Section D of Annex I and/or II includes optional information, such as bank account particulars and the location of the property items, for better clarity. The EIO could help in giving these details.
26. If it does not hamper the investigation and if it does not disclose the strategy of the issuing authority, a EIO could be issued with a view to collect all the details needed to complete Section D of Annex I and/or II. Acting this way, the recognition and execution of the following FCO would be much smoother and faster.

9) The EIO and the Regulation should be used as speaking instruments. If it does not impede the investigation, if it does not reveal the strategy of the issuing authority, and if urgent circumstances exist, an EIO should be issued before an FCO. This is done with the aim of gathering all the necessary information to complete Section D of Annex I and/or II.
10) A freezing order with preventive ends (the prevention of destruction, transformation, removal, transfer or disposal of property with a view to the confiscation thereof) should be issued according to the Regulation;
11) A freezing order with probatory ends (the prevention of destruction, transformation, removal, transfer or disposal of an item that may be used as evidence) should be issue according to Directive (EU) 2014/41 on the EIO;
12) A freezing order with preventive ends should be issued only if there is a risk of destruction, transformation, removal, transfer or disposal of property that could be confiscated;
13) An EIO and a freezing order should be sent together if there are probatory and preventive needs;
14) An order thought to extend the duration of previously established freezing of assets should by treated as a freezing order within the meaning of the Regulation and transmitted to the executing authority by issuing and transmission of a new freezing certificate.

4. FREEZING AND CONFISCATION ORDERS

27. Art. 2, n. 1, defines a **freezing order** as a "decision issued or validated by an issuing authority in order to prevent the destruction, transformation, removal, transfer or disposal of property with a view to the confiscation thereof". As evident, a freezing order is a **temporary measure** that can be issued with **preventive ends**: the aim is to guarantee a possible future confiscation. Due to the extensive scope of this concept, freezing orders issued to extend their original duration should be encompassed within the Regulation's scope of application. This interpretation should prevail at least in cases where an extension of a freezing duration is provided upon (re)evaluation of substantive reasons for freezing of assets by the issuing authority.
28. Art. 2, n. 2, defines a **confiscation order** as a "a **final penalty** or **measure**, imposed by a court following proceedings in relation to a criminal offence, resulting in the final deprivation of property of a natural or legal person".
29. It is important to highlight that a confiscation order can be issued independently of a freezing order, as the latter is primarily intended to prevent the risk of the item's deterioration or loss. Therefore, in the absence of this risk, a freezing order should not be issued.

15) Always keep in mind the goals of freezing and confiscation orders.
16) A freezing order may not precede a confiscation order.

5. COMPETENT AUTHORITIES

30. The competent issuing and executing authorities must be designated by each single MS, which have a wide margin of appreciation. MS can designate one or more central authorities with administrative tasks in order to assist the competent authorities in the framework of FCO.
31. The list of competent and central authorities is available on the Judicial Library of the European Judicial Network ("EJN") at the following link: EJN | Judicial Library (europa.eu).
32. The Eurojust and the EJN could help in the correct identification of competent and central authorities.

17) To check the competence of an authority, always verify the Judicial Library of the European Judicial Network available at the following link: EJN | Judicial Library (europa.eu);
18) In case of doubt, always ask the contact point of the Eurojust of the EJN.

5.1. Issuing Authorities

33. Art. 2, n. 8, lett. a), defines the issuing authority in relation to **freezing orders** as
    a. A **judge**, **court** or **public prosecutor** competent in the case concerned;
    b. **Another competent authority** designated as such by the issuing State, and which is competent in criminal matters to order the freezing of property or to execute a freezing order in accordance with national law. In this case, a **validation** of a judge, court or public prosecutor is necessary before the order is transmitted.
34. The experience of the EIO, which has a very similar wording to the one of the Regulation, could help in solving many issues.
35. First of all, one of the main issues concerns the independence of the Public Prosecutor ("PP"). Indeed, the independence of the PP was requested under the European Arrest Warrant ("EAW") regime[3]. However, when it comes to the EIO, there are textual, contextual and teleological differences which led the Court of Justice to assert that the concept of the issuing authority encompasses "the public prosecutor of a Member State or, more generally, the public prosecutor's office of a Member State, **regardless of any relationship of legal subordination** that might exist between that public prosecutor or public prosecutor's office and the executive branch of that Member State. This also applies irrespective of the potential exposure of that public prosecutor or public prosecutor's office to the risk of direct or indirect influence from the executive when issuing a European investigation order"[4]. Therefore, the **PP** is **not required to be independent**.
36. Member States **are not permitted to designate an administrative authority** as a public prosecutor by granting the former the identical powers as the latter. Indeed, German legislation provides that tax authorities have the same rights of a PP in conducting criminal tax investigations. The Court of Justice of the European Union (C.J.EU) emphasized that allowing a Member State to confer upon tax authorities the identical powers as a public prosecutor would obscure the distinct boundaries established by

[3] C.J.EU, 7 May 2019, *OG and PI (Public Prosecutor's Offices in Lübeck and Zwickau)*, C-508/18.
[4] C.J.EU, 8 December 2020, *A. and others (Staatsanwaltschaft Wien)*, C-584/19.

the Regulation and give rise to legal ambiguity. However, tax and administrative authorities can issue an FCO which must be validated by a judge, a court, or a prosecutor. In other words, "a tax authority of a Member State which, while being part of the executive of that Member State, conducts, in accordance with national law, criminal tax investigations autonomously, instead of the public prosecutor's office and assuming the rights and the obligations vested in the latter, cannot be classified as [...] an 'issuing authority; [...] such an authority is, on the other hand, capable of falling within the concept of an 'issuing authority'" if the conditions provided for by in Art. 2, n. 8, lett. a), are met[5].

37. Regarding confiscation orders, the competent issuing authority is "an authority which is designated as such by the issuing State, and which is competent in criminal matters to execute a confiscation order issued by a court in accordance with national law". This means that the authorities that can enforce a national confiscation order are the same of the ones entitled to issue a European confiscation order.

19) A public prosecutor who is not independent from the executive branch is authorized to issue a freezing order, which must consequently be acknowledged, unless there are grounds for refusal.
20) AN MS cannot appoint administrative authorities as having the same powers of a PP. If it happens, an order should be refused.

5.2. The "Problem" of the EPPO as Issuing Authority

38. Many MSs notified the European Public Prosecutor's Office ("EPPO") as an issuing authority as regards to MS not bound by the EPPO Regulation (Regulation (EU) 2017/1939). It must be noted that, however, Poland and Sweden expressed their intention to join EPPO (only Hungary will remain outside its scope of application).
39. Art. 30, par. 1, EPPO Regulation states that an EDP can "freeze instrumentalities or proceeds of crime, including assets, that are expected to be subject to confiscation by the trial court, where there is reason to believe that the owner, possessor or controller of those instrumentalities or proceeds will seek to thwart the judgement ordering confiscation". However, the following par. 5 establishes that these freezing measures may only be ordered if "there are reasonable grounds to believe that the specific measure in question might provide information or evidence useful to the investigation". Article 30, therefore, seems to be hybrid in nature: on the one hand, it

[5] See, *mutatis mutandis*, C.J.EU, 2 March 2023, *M.S. (Staatsanwaltschaft Graz)*, C-16/22.

provides a freezing measure with a view to confiscation, such as the Regulation; on the other, it requires the freezing measure to have probatory ends.

40. Article 31 of the EPPO Regulation stipulates that in cross-border investigations, a European Delegated Prosecutor (the 'handling' EDP) can assign the execution of a measure, as provided for in the aforementioned Article 30, to a European Delegated Prosecutor in another Member State participating in the EPPO (the 'assisting' EDP).
41. As for the relations between FCOs and EPPO, practice shows how EDPs issue FCOs only towards States not bound by the Regulation.

21) EDP should be intended as issuing authorities towards Hungary, Poland and Sweden (as far as Poland and Sweden won't join EPPO);
22) EDP should assign freezing orders, instead of resorting to the Regulation

5.3. The Victim: a Forgotten Subject

42. No Article of the Regulation takes into account the possibility for the victim to ask the authorities to issue an FCO. This represents a significant deficiency within the Regulation, especially considering that the victim is granted a privileged pathway for restitution and compensation through the disposition of confiscated assets (Art. 30).
43. Even in the absence of explicit provisions in the Regulation, the victim should possess the entitlement to request the issuance of a freezing order in accordance with their national law, as they maintain the right to seek compensation and restitution. These rights would indeed be somewhat ineffective if the victim did not have the right to petition the competent national authorities.

23) According to national criminal procedure codes, victims should be entitled to ask their national authorities to issue an FCO, with a view to compensation and restitution;
24) The decision to deny a freezing order requested by the victim should be accompanied by a rationale.

5.4. Executing Authorities

44. The Regulation defines the executing authority as "an authority that is competent to recognise a freezing order or confiscation order and to ensure its execution in accordance with this Regulation and the procedures applicable under national law for the freezing and confiscation of property; where such procedures require that a court register the order and authorise its execution, the executing authority includes the authority that is competent to request such registration and authorisation".

5.5. The Role of Central Authorities

45. The Regulation has 'judicialised' the issuing phase by requiring FCO to be issued by a judge, court, or public prosecutor competent in the case, or by requiring that an FCO issued by another competent authority is to be validated by one of these authorities (Art. 2).
46. Art. 24, par. 2, envisages the possibility for MS to appoint one or more central authorities which can play a useful administrative role in support of judicial authorities, with particular regard to the transmission and reception of an order.
47. A central authority, therefore, cannot be considered and is not an issuing or executing authority. It only helps the latter to better communicate.
48. Nowadays, only 12 MSs have appointed one or more central authorities.

25) It is advisable to appoint a central authority;
26) The central authority should aid national competent authorities and those of other Member States in establishing communication and fostering judicial cooperation. It should also serve as a central coordinating body;
27) The central authority may be requested to provide assistance in situations where there are communication challenges with the executing authority or when issues

arise regarding the origin and authenticity of the order or the freezing/confiscation measure.

6. LANGUAGE ISSUES

49. In cross-border cases, one of the main problems of mutual incomprehension and mutual distrust are language issues. In the Regulation, national interests took precedence over pragmatic considerations, and the imposition of a single common language (English) accepted by all Member States was not enforced. The preference has been to "encourage" Member States to acknowledge FCCs in at least one official language of the EU, aside from their own official languages (as stated in recital 28). Moreover, Art. 6 and 17 state that "the issuing authority shall provide the executing authority with a translation of the [FCC] in an official language of the executing State or in any other language that the executing State will accept".
50. When analysing the notifications sent to the European Commission ("EC") by Member States, it becomes evident that a significant number of them do not embrace a language other than their official languages, which sharply contrasts with the "encouragement" mentioned in recital 28.
51. The issues concerning language and translation can be many:
    a. Poor quality of translation, in particular with regard to the use languages other than English;
    b. Lack of collaboration if the order is not translated;
    c. Lack of availability of translators;
    d. Difficulty in assessing the quality of the translation;
    e. Loss of context in cases of indirect translations (e.g., from Slovenian, to English, to Bulgarian).
52. In order to address these problems, the solution could be the widespread use of English for FCC. English is a common language, used at all international conferences, within the European institutions and for notifications made pursuant to the Regulation (as well as the main language of global science, technology, aviation, computing, diplomacy and tourism), which makes it possible to mitigate the problems arising from the low quality of translations, as well as to avoid difficulties in finding legal translators who are experts in languages that are not commonly used. More precisely, as it is a language spoken by millions of people in Europe, trained interpreters and translators are easier to find than those of less widespread languages; moreover, their work is more easily 'verifiable'.
53. The Regulation also provides the possibility for MS to request the transmission of the FCO on which the FCC is grounded (Art. 4, par. 2, and Art. 14, par. 2). However, the original FCO is not thought to be translated, as there are no articles providing for such a duty. The consequence is that the FCO on which the FCC is grounded, most of the times, cannot be understood. Therefore, it can be useful to translate the most important parts at least in the most complicated cases, expect for urgent cases in which its translation could be transmitted at a later date.
54. It is also worth noting that the individual affected may not understand English or any other language accepted in the executing State or used in the issuing State. In these cases, a solution could be the translation at least of the most important parts of the FCC and the FCO in a language spoken by the affected individual, as quickly as possible, after the execution of the order. Indeed, while Directive (EU) 2010/64 on the

right to interpretation and translation in criminal proceedings specifies these rights in relation to accused and suspected persons (in both national and EAW proceedings), a broader obligation to provide translation services to all affected individuals could be associated with the right to an effective remedy outlined in Article 47 of the Charter.

28) AN FCC should be accepted in English, at least in urgent cases. Ideally, the MS would notify the EC that they accept English, at least in urgent cases;
29) In particularly challenging situations, the key components of the FCO upon which the FCC is based can be translated, and both documents should be submitted together, except in urgent cases where the translation of the measure may be delayed;
30) It would be recommendable to translate the FCC in a language spoken by the individual affected, at least after the execution of the order;
31) It would be recommendable to establish, at EU level, a central list of authorised translators who can guarantee the highest quality of translation and who can be contacted quickly;
32) Translators should have specific legal skills.

7. FIRST PHASE: ISSUING OF THE ORDER

7.1. What information shall be included in the FCC?

55. Unlike what is stated in Directive (EU) 2014/41, which provides mandatory and elective information to be included in the certificate, the Regulation is silent on the topic. Only Art. 8, lett. c), and 19, lett. c), establish that incomplete or incorrect FCC could lead to a refusal of the FCO. As a consequence, the FCC should be as complete as possible, giving the possibility to the executing authority to understand what is requested.
56. In mutual recognition practices, it has been shown that the certificates are often imprecise in the description of the facts of the case; there is insufficient information to legally classify the offence and personal data (e.g. some issuing authorities do not indicate the person's place of birth, which makes it very difficult to identify people; or they merely refer to the fact that a person is someone's daughter, without specifying the surname). Moreover, some authorities tend to adapt the form without using the certificate.

57. With regard to freezing orders:
    a. Section A must always be filled in, as it concerns data of the issuing authority;
    b. Section B, dedicated to urgency, should be filled in only if there is a real need for urgency. Conversely, there is a risk that every order is declared as urgent, which could overwhelm executing authorities and hinder their ability to respond to the stated urgency;
    c. Section C must always be filled in carefully, giving all the details of the person affected;
    d. Section D must always be filled in carefully, giving all the information on property to which the order relates;
    e. Section E must always be filled in carefully. The summary of the facts and the grounds for freezing must be completed precisely, giving the executing authority the possibility to fully comprehend them. It is important to bear in mind that other Member States may not be familiar with the legal system of the issuing State; therefore, the description of the crime, the type of freezing measure and the grounds for freezing should be described as precisely as possible;
    f. Section F is elective and should be filled in only if there is a need for confidentiality or for some specific formalities to be followed;
    g. Section G is elective. However, it becomes mandatory if a freezing order is transmitted to more than one executing State;
    h. Section H is elective. However, it becomes mandatory if an earlier freezing order was issued;
    i. Section I is mandatory, as it concerns primary issues on confiscation orders;
    j. Section J is strongly recommended to be completed, as it speeds up cooperation procedures if the executing State wants to resort to alternative measures;
    k. Section K should be carefully completed only if there is a decision to return frozen property to the victim;
    l. Section L is mandatory, as it concerns the authorities of the issuing State that can supply information on legal remedies;
    m. Section M is mandatory. Particular attention must be paid in giving the phone numbers and email addresses. The email address should be an institutional one;
    n. Section N is elective. However, it must be filled in if a freezing order has been validated;
    o. Section O is elective, as it concerns central authorities;
    p. Section P is elective. However, it becomes mandatory if there are attachments to the freezing certificate.

58. With regard to confiscation orders:
    a. Section A must always be filled in, as it concerns data of the issuing authority;
    b. Section B is mandatory and must contain all formal data on the confiscation order;
    c. Section C must always be filled in carefully, giving all the details of the person affected;
    d. Section D must always be filled in carefully, giving all the information on property to which the order relates;
    e. Section E is mandatory and must contain information regarding a concurrent or previous freezing order;

f. Section F must always be filled in carefully. The summary of the facts and the grounds for confiscation must be completed precisely, giving the executing authority the possibility to fully comprehend them. It is important to bear in mind that other Member States may not be familiar with the legal system of the issuing State; therefore, the description of the crime, the type of confiscation measure and the grounds for confiscation should be described as precisely as possible;
g. Section G is elective. However, it becomes mandatory if an FCC is transmitted to more than one executing State;
h. Section H is mandatory. Particular attention should be used to describe:
    i. The fact that the person who was not summoned in person actually received, by other means, official information of the scheduled date and place of the trial which resulted in the confiscation order, in such a manner that it was established unequivocally that they were aware of the scheduled trial, and were informed that a confiscation order may be handed down if they did not appear at the trial; or
    ii. The fact that the person was aware of the scheduled trial and had given mandate to a lawyer to defend them at the trial, and were actually defended by that lawyer at the trial; or
    iii. The fact that the person was served with the confiscation order on a precise date and was expressly informed about the right to a retrial or an appeal, in which they had the right to participate and which allowed a re-examination of the merits of the case including an examination of fresh evidence, and which could lead to the original confiscation order being reversed, and the person expressly stated that they did not contest the confiscation order; or the person did not request a retrial or appeal within the applicable time limits;
i. Section I is strongly recommended to be completed, as it speeds up cooperation procedures if the executing State wants to resort to alternative measures;
j. Section J should be carefully completed only if there is a decision to return property to the victim or to compensate the victim;
k. Section K is mandatory. Particular attention must be paid in giving the phone numbers and email addresses of the issuing authority. The email address should be the institutional one;
l. Section L is elective, as it concerns central authorities;
m. Section M is mandatory, as the executing authority needs to know the bank account on which to transfer a sum of money;
n. Section N is elective. However, it becomes mandatory if there are attachments to the confiscation certificate.

33) With regard to freezing certificates, only Sections A, C, D, E, L, M are mandatory. As regards the confiscation order, only Sections A, B, C, D, E, F, H, K, M are mandatory. For both FCO, other Sections are strongly recommended. Particular attention must be paid to the summary of the facts and the grounds for freezing, as this consents the executing authority to fully comprehend the freezing order and the freezing certificate. It is important to remember that other MSs do not know the legal system of the issuing State; therefore, the description of the crime, the type of freezing measure and the grounds for freezing should be described as precisely as possible;

7.2. How should the FCC be filled in?

59. There are many ways to fill in an FCC. For example, it could be filled in on a word file, as well as via the compendium provided for by the EJN. The latter allows to choose the language of the form, to save progress and to download the final request both in .pdf and .docx.
60. Handwritten entries must be excluded. Bad handwriting could create comprehension issues. Moreover, it is not possible to copy from a non-editable file.

34) AN FCC should be filled in using the compendium provided for by the EJN, available here: European Judicial Network (EJN) (europa.eu). The compendium gives the possibility to choose the language of the form, to save progress and to download the final request both in .pdf and .docx.;
35) Only file extensions in .pdf format (native digital) should be submitted;

36) Only Digital Signatures according to the eIDAS Regulation (Regulation (EU) N°910/2014) should be used;
37) If multiple individuals are affected or if there are numerous items of property to be seized or confiscated, the EJN compendium form should only be completed with the primary person affected and the primary property. Subsequently, the form should be downloaded in Word format and filled out as required;
38) Never modify the form, except for what stated in the previous point;
39) Never use handwriting.

7.3. Necessity and Proportionality

61. Art. 1 establishes that an FCO can be issued only if the principles of necessity and proportionality are met. Moreover, recital 21 precises that:
    a. the FCO should be issued and transmitted, even if it could have been issued in a purely domestic case;
    b. "the issuing authority should be responsible for assessing the necessity and proportionality of such orders in each case as the recognition and execution of freezing orders and confiscation orders should not be refused on grounds other than those provided for in this Regulation". This means that the executing authority has no power to contest the necessity and proportionality of an FCO.
62. Based on the experience with the EIO, it has become evident that a significant number of EIOs are issued for administrative offences where the imposed penalty is trivial, or for minor offences the experience of the EIO. A similar scenario could occur with FCOs, potentially resulting in certain tensions, as it might impose an excessive workload on the executing authorities. To mitigate the risk of overwhelming the system, the issuing authority should consider employing a form of cost-benefit analysis.
63. Necessity consists in the indispensability of the act for the purposes pursued. Proportionality consist of a three-step-test. It must be ascertained whether:
    a. It is appropriate for the purpose pursued;
    b. It cannot be replaced by another less intrusive measure;
    c. The advantages are higher than the disadvantages.

    By way of example, an FCO for minor offences with very low damages (a scam of €50) should not be considered proportionate.

40) Issuing authorities should be careful in issuing an FCO concerning minor offences or low value properties, as to avoid the overburdening of the executing authority. In doing so, a high level of attention should be paid to a cost-benefit analysis;
41) In issuing an order, fundamental rights should always be taken into account to assess proportionality;
42) The executing authority should, in any case, recognise and execute an FCO, even if the latter is thought to be unnecessary or unproportionate.

7.4. The Victim in the Issuing Procedure

64. The Regulation is silent on the role of the victim in the issuing procedure of FCOs. However, it sets down the possibility of restitution of frozen property to the victim (art. 29). Therefore, if the victim has a right to restitution of frozen property, he/she should have, even more so, at least a 'solicitor' power in the issuing procedure. Additionally, the Regulation stipulates, in recital n. 45, that the victims' rights to compensation and restitution should not be prejudiced in cross-border cases.
65. The definition of victim should be the same as provided for by Directive 2012/29/EU. Therefore, the term victim should mean
    a. a natural person who has suffered harm, including physical, mental or emotional harm or economic loss which was directly caused by a criminal offence;
    b. family members of a person whose death was directly caused by a criminal offence and who have suffered harm as a result of that person's death.

43)The victim should have at least a 'solicitor' power in the issuing procedure;
44)The definition of victim should the same of the one provided for by Directive 2012/29/EU.

8. SECOND PHASE: TRANSMISSION OF THE CERTIFICATE

66. Art. 4 and 14 establish that a certificate should be transmitted to the executing authority "by any means capable of producing a written record under conditions that allow the executing authority to establish the authenticity of the freezing certificate". While it is relatively straightforward to define what a means capable of producing a

written record is, it becomes more challenging to establish what a means capable of verifying authenticity is. In practice, the most frequent used means are postal mails and emails. Some MSs do not use certified emails. There is also the option of using the secure transmission channels of the Eurojust and the EJN, even if they could raise some problems regarding the subjects entitled to use them (for example, the EJN secure channel can be used only by contact points of the same EJN).

67. Recently, Regulation (EU) 2022/850 was adopted, introducing a computerized system for electronic cross-border data exchange in the realm of judicial cooperation in civil and criminal matters, which created the new e-CODEX platform. This platform should become the basis for the transmission of all communications concerning mutual recognition instruments, including FCO. The Regulation was adopted precisely to ensure the "swift, direct, interoperable, sustainable, reliable and secure cross-border electronic exchange of case-related data, while always respecting the right to protection of personal data" (recital 3), since digitisation makes it possible to strengthen "the rule of law and fundamental rights guarantees in the Union" (recital 4). More specifically, "the aim of the e-CODEX system is to improve the efficiency of cross-border communication between competent authorities" (recital 7); this is possible thanks to the support of the European Union agency Eu-LISA, which has taken control of it from January 2023. In other words, "the e-CODEX system provides an interoperable solution for the justice sector to connect the IT systems of the competent national authorities, such as the judiciary, or other organisations" (recital 8), with the consequent possibility to exchange text files, sound, visual or audio-visual recordings, as well as any other structured or unstructured file or metadata, even of substantial size. In essence, the new e-CODEX Regulation should make it possible to overcome the transmission problems that have occurred so far, since it combines the speed, reliability, and security of communications at the same time, with the possibility of exchanging any type of file, even large ones.
68. The digitalisation of national proceedings is a topic related to the issuing of orders and certificates, as well as e-signatures. It frequently happens that in many MSs the certificate is mostly completed digitally, then printed, signed, and stamped by the issuing authority, then scanned up and sent via email (in the future: e-Codex). This is a time-consuming and cumbersome activity that can be avoided by using Digital Signatures according to the eIDAS Regulation (Regulation (EU) N°910/2014).
69. The use of e-CODEX, nowadays possible even if not mandatory, as well as e-signature, will become the only way to transmit FCCs and any related official communications. Recently adopted Regulation 2023/2844/EU on the digitalisation of judicial cooperation and access to justice in cross-border civil, commercial and criminal matters, and amending certain acts in the field of judicial cooperation, indeed, obliges MS to resort to a platform, based on e-CODEX (art. 3), and e-signature (art. 7) for future transmissions. The duty to use the qualified electronic signature, in accordance with the eIDAS Regulation, will be effective from 1 May 2025 (art. 26). The binding nature of the digital portal for the transmission of FCCs and related official communications will be applied «from the first day of the month following the period of two years from the date of entry into force of the corresponding implementing acts» (at the latest, then from 18 January 2028).
70. The only derogations to the use of the platform based on e-CODEX will be the followings:
    a. Impossibility due to disruption of the decentralised IT system (art. 3 Regulation 2023/2844/EU);
    b. Impossibility due to physical or technical nature of the trans mitted material (art. 3 Regulation 2023/2844/EU);

c. Force majeure (art. 3 Regulation 2023/2844/EU);
d. Consultations between authorities for the non-recognition or non-execution of the order, as provided by art. 8, par. 2 and 4, and 19, par. 2 (art. 25 Regulation 2018/1805/EU as amended by art. 25 Regulation 2023/2844/EU);
e. Impossibility to meet time limits, as provided by art. 9, par. 5, and 20, par. 4 (art. 25 Regulation 2018/1805/EU as amended by art. 25 Regulation 2023/2844/EU);
f. Consultations based on the restitution of frozen property to the victim, as provided by art. 29, par. 3 (art. 25 Regulation 2018/1805/EU as amended by art. 25 Regulation 2023/2844/EU).

45) It would be preferrable, until the entry into force of Regulation 2023/2844/EU (at latest 18 January 2028), to use the e-CODEX system for the transmission of FCCs and any related communications;
46) It will be mandatory, as soon as the Regulation 2023/2844/EU entries into force (at latest 18 January 2028), to use the platform based on e-CODEX;
47) It is essential, in the meantime, to widely promote awareness of the e-CODEX Regulation;
48) It is crucial for Member States to allocate financial and human resources to ensure that national authorities have access to the e-CODEX system. This is essential for the ongoing digital transformation of the justice system, which is becoming increasingly imperative due to the relentless progress of technology;
49) FCC should be native digital .pdf files;
50) Only Digital Signatures according to the eIDAS Regulation (Regulation (EU) N°910/2014) should be used to sign certificates, even before the entry into force of Regulation 2023/2844/EU (on this topic 1 May 2025).

8.1. FCC transmitted to different MS at a one time

71. The general rule should be to transmit an FCC to a single MS at any one time (Art. 5 and 15). However, there are some exceptions.
72. With regard to specific items of property, both freezing and confiscation orders share the same rule (Art. 5, par. 2, and 15, par. 2). AN FCC can be transmitted to more than one MS at a one time if:
    a. the issuing authority has reasonable grounds to believe that the items of property covered by the FCO are located in different executing States;

b. if the enforcement of the FCO would require action in more than one executing State.

73. With regard to an amount of money:
    a. Freezing certificates can be simultaneously sent to multiple executing States when the issuing authority deems it necessary, especially when the anticipated value of the property that can be frozen in the issuing State and any single executing State is unlikely to cover the entire amount specified in the freezing order. It is important to highlight that, even if it not expressly provided by the Regulation, the sum of each freezing certificate should not exceed the amount of money to be frozen provided in the freezing order.
    b. Confiscation certificates may be transmitted to more than one executing State at the same time where the issuing authority considers that there is a specific need to do so, in particular where:
        i. the property concerned has not been frozen under the Regulation; or
        ii. the estimated value of the property which may be confiscated in the issuing State and in any one executing State is not likely to be sufficient for the confiscation of the full amount covered by the confiscation order. It is important to highlight that the sum of every freezing certificate should not exceed the amount of money to be confiscated as provided in the confiscation order (Art. 16, par. 2).
74. With regard to a confiscation order concerning an amount of money only, Art. 16, par. 3, prescribes a notification duty to the issuing authority (Art. 16, par. 3). The latter should notify the executing authority if:
    a. There is the risk that confiscation in excess of the maximum amount may occur. When the risk ceases to exist, the issuing authority should immediately inform the executing authority;
    b. The confiscation has been all or partially executed in the issuing authority or in another MS, in which case the issuing authority ought to specify the remaining amount of money which still needs to be confiscated. This scenario could also apply to the confiscation of property items if the FCO pertains to both a monetary amount and its equivalent in assets; the value of the property should be converted into the value of an amount of money;
    c. The authority in the issuing State receives any payment made with regard to the confiscation order .

    While the notification may not be obligatory for freezing orders, it is advisable to, as a best practice, convey the same information to the executing authority. This helps prevent disproportionate execution of freezing orders.
75. In turn, the executing authority can delay the execution of a confiscation order if it assesses that there is a potential risk of the total proceeds from executing that confiscation order significantly surpassing the amount indicated in the confiscation order (Art. 21, par. 1, lett. b)).

51) The general rule should be the transmission of an FCC to a single MS at a time;
52) If adhering to the general rule is not feasible, then the exception outlined in Article 5 and 15 should be strictly followed;
53) Regarding a sum of money or its equivalent in freezing/confiscation, the cumulative amount frozen/confiscated across various Member States must not exceed the specified amount in the FCO (Art. 16, par. 2);
54) Section G of Annex I and II should always be filled in;
55) With regards to confiscation orders concerning an amount of money, the issuing authority should notify the issuing authority of the circumstances envisaged in Art. 16, par. 3, in order to avoid confiscation to exceed the maximum provided for by the confiscation order. As a recommendation, it is advisable to, at the very least, relay the same information concerning freezing orders as well;
56) The executing authority may postpone the execution of a confiscation order if it believes there is a risk that the total amount obtained from the execution of that confiscation order might considerably exceed the amount specified in the confiscation order.

9. THIRD AND FOURTH PHASE: RECOGNITION AND EXECUTION OF THE ORDER

9.1. What are the actions to be taken when receiving an FCC?

76. The standard procedure is to register the request, verify its alignment with the legal prerequisites, and subsequently proceed with recognition and execution. For the follow-up reports on FCO implementation, it is crucial to have an automated system in place to record incoming and outgoing FCCs, capture information about the issuing authority, specify the type of requested measure, indicate reasons for FCO refusals if applicable, and track the ultimate outcome of the cooperation procedure.
77. Incoming FCO should be treated as national orders. Hence, the executing authority should adopt the measures required for execution in the same manner as it would for a domestic case.
78. FCC may be transmitted to an authority which is not competent to recognise and execute the order. If this happens there are two scenarios:

a. If the FCC is transmitted to the wrong State, the executing authority should immediately get in touch with the issuing one and bounce back the order;
b. If the FCC is transmitted to the wrong authority of the right State, the executing authority should immediately transmit the FCC to the competent executing authority in its Member State and inform the issuing authority accordingly (Art. 4, par. 9, and Art. 14, par. 8).

57) Efforts should be made to centralize all information concerning incoming and outgoing FCCs within a single entity for statistical purposes;
58) Incoming FCO should be treated as domestic cases;
59) If FCCs are directed to the wrong State, they should be bounced back by the executing authority, informing the issuing authority accordingly;
60) If FCCs are directed to the wrong authority of the right State, they should be transmitted by the executing authority to the competent executing authority, informing the issuing one accordingly.

9.2. How to proceed if the FCO has been issued by an administrative/tax authority, which according to the domestic legal framework is labelled as a judicial authority.

79. As seen before, there are MSs such as Germany that classify administrative/tax authorities as judicial authorities, circumventing Art. 2 of the Regulation. It was seen that, according to the C.J.EU, labelling administrative authorities as judicial authorities, in the field of judicial cooperation, is contrary to EU law, as orders issued by administrative authorities should be validated by judicial authorities[6].
80. In this situation, the requested authority, before granting the execution, could check if the authority identified in the FCC as judicial authority can be considered a judge or PP for the purpose of Art. 2. If so, it could refuse the order.

[6] C.J.EU, 2 March 2023, *M.S. (Staatsanwaltschaft Graz)*, C-16/22.

61) As a general rule, the executing authority should NOT check whether the issuing authority has judicial nature under its national law;
62) The check should be conducted in exceptional circumstances, when the executing authority has serious grounds to believe that the issuing authority might not be a judicial authority in the meaning of Art. 2;
63) If so, the executing authority can ask the issuing one to have the FCO validated by a judge, court or PP;
64) If the issuing authority does not validate the order, the executing authority may refuse the order or, in case of doubt, refer a preliminary question to the C.J.EU.

9.3. Can the executing authority verify the competence of the issuing authority?

81. It could happen that the issuing authority is a competent authority according to the Regulation, but that it actually has no jurisdiction in the issuing State to issue an order (for example a confiscation order is issued by a PP instead of a judge, who are both competent authorities according to the Regulation). The Regulation, unlike the EIO Directive and the EAW, does not provide a rule that allows the executing authority to return an order which has not been issued by an issuing authority.
82. The C.J.EU, referring to the EAW, states that "Although, consequently, it is for the executing judicial authority to ensure, before executing a European arrest warrant, that it has indeed been issued by a judicial authority within the meaning of Article 6(1) of Framework Decision 2002/584, the executing judicial authority cannot, however, verify, under that provision, that the issuing judicial authority has, in the light of the legal rules of the issuing Member State, jurisdiction to issue a European arrest warrant". Indeed, since the designation of issuing authority "derives exclusively, on account of that choice made by the EU legislature, from the law of each Member State, it is for the judicial authorities of the issuing Member State to assess, within the context defined in Article 6(1) of Framework Decision 2002/584 and, where appropriate, subject to review by higher national courts, their jurisdiction, under the law of that Member State, to issue a European arrest warrant". The same principles apply to the Regulation. Therefore, the executing authority is entitled to check if an FCO is issued by a competent authority, according to Art. 2, but is forbidden from checking compliance with the internal legal jurisdiction rules of the issuing State.

65) The executing authority is entitled to check the competence to issue an FCO according to Art. 2 of the Regulation;
66) The executing authority is not entitled to check the jurisdiction of a competent authority and should entrust the issuing authority;
67) Compliance with the jurisdiction of the issuing authority is a matter to be discussed exclusively in the issuing State.

9.4. Time limits for recognition and execution of freezing orders

83. The general rule should be to recognise and execute a freezing order without delay and with the same speed and priority for a similar domestic case (Art. 9, par. 1).
84. The issuing authority should be informed, by any means capable of producing a written record, of the decision on recognition and execution of a freezing order (Art. 9, par. 4).
85. If the issuing authority needs a freezing order to be carried out in a specific date, the executing authority should take into full account this necessity (Art. 9, par. 2). The specific date should be indicated in Section B of Annex I.
86. If the issuing authority needs coordination between the authorities involved (issuing one and one or more executing ones), there should be an agreement on the date of execution of the freezing order. If no agreement is reached, the executing authorities decide the data for the execution, taking into full account as possible the interests of the issuing authority (Art. 9, par. 2). As a recommended procedure, the issuing authority should specify in the freezing certificate (Section B of Annex I) a proposed date for coordinated execution. This indication could be (informally) discussed after all executing authorities received the freezing certificate. However, if an agreement is not reached, the executing authorities should execute the order, if possible, on the date indicated by the issuing authority.
87. The issuing authority might have compelling reasons for the order to be executed as swiftly as feasible (Art. 9, par. 3), if:
    a. there are legitimate grounds to believe that the property in question will immediately be removed or destroyed;
    b. there are specific investigative or procedural needs in the issuing State, for example when there is the need to jointly execute an EIO and an FCO.

    Other grounds for urgency should in principle not be accepted.

88. If urgency reasons are indicated in Section B of Annex I, the executing authority has the duty to recognise the order within 48 hours and execute it within the following 48 hours. These time limits (48h+48h) could be derogated in exceptional circumstances only and the executing authority should immediately inform the issuing authority by any means, giving the reasons why it was not possible to meet the time limits (Art. 9, par. 4). It is not specified that the information should produce a written record. Therefore, as it does not concern the rights of the person affected, the information could also be conveyed verbally. After this consultation, the issuing and executing authorities should agree on an appropriate schedule for the recognition or the execution of the freezing order.
89. If the time limits are not respected and even if an agreement on the schedule of the recognition and execution is not reached, the executing authority in any case has the duty to recognise and execute the order without delay (Art. 9, par. 5).

68) Freezing orders should be executed without delay and with the same speed and priority as for a similar domestic case;
69) The decision on recognizing and executing a freezing order should be conveyed to the issuing authority through any method that can create a written record;
70) The issuing authority could indicate in Section B of Annex I the need for the execution on a specific date. The executing authority should execute the order on the date indicated;
71) The issuing authority could need coordination for the execution in (different) execution State(s) of the freezing order. The issuing State should indicate in Section B of Annex I one or more possible dates for the coordinated execution, as to facilitate and speed-up an agreement of the involved authorities. If an agreement cannot be reached, it is advisable to execute the order on a date specified by the issuing authority, or at the very least, on a date close to the one(s) indicated in Section B of Annex I;
72) In case of urgency, the recognition should take place within 48 hours after the transmission of the certificate and the execution should be carried out within 48 hours after the recognition. If these time limits are not respected, the executing authority has the duty to immediately inform the issuing authority by any means, even verbally, and schedule the recognition or execution of the order;
73) If it is not possible to respect the time limits and an agreement on the schedule is not reached, the executing authority is obligated to promptly to recognise and execute the order without delay;
74) Urgency grounds should in principle be limited to the two provided for by the Regulation: a) if there are legitimate grounds to believe that the property in question

will immediately be removed or destroyed; b) if there are specific investigative or procedural needs in the issuing State.

9.5. Time limits for recognition and execution of confiscation orders

90. The general rule should be to recognise and execute a confiscation order **without delay** and no later than **45 days** after the reception of the certificate (Art. 20, par. 1). In any case, a confiscation order should be enforced **without delay** and with the **same speed and priority** as for a **similar domestic case** (Art. 20, par. 3).
91. The **issuing authority** should be **informed**, by any means capable of producing a **written record**, of the decision on recognition and execution of a freezing order (Art. 20, par. 2).
92. The time limit of 45 days could be **derogated** in **exceptional circumstances** only and the executing authority should immediately inform the issuing authority by any means, giving the reasons why it was not possible to adhere to the time limits (Art. 20, par. 4). It is not specified that the information should produce a written record. Therefore, as it does not concern the rights of the person affected, the information could also be conveyed verbally. After this consultation, the issuing and executing authority should agree on an appropriate schedule for the recognition or the execution of the freezing order.
93. If the specified **time limits** are not adhered to, and even if there is **no consensus** on the timing for recognition and execution, the executing authority is obligated to **recognise** and **execute** the order **without delay** (Art. 9, par. 5).

75) Confiscation orders should be executed without delay, with the same speed and priority as for a similar domestic case and within 45 days of the reception of the certificate;
76) The issuing authority should be informed, by any means capable of producing a written record, of the decision on recognition and execution of a confiscation order;
77) The recognition of a confiscation order should always take place within 45 days of the transmission of the certificate. If this time limit is not respected, the executing authority has the duty to immediately inform the issuing authority by any means, even verbally, and schedule the recognition or execution of the order;

78) If it is not possible to respect the time limit or reach an agreement on the schedule, the executing authority is still obligated to recognise and execute the order without delay.

9.6. The Duration of the Freezing Order

94. Art. 4, par. 6, states that the freezing certificate should be either accompanied by a confiscation certificate, or contain instructions that the property should remain frozen, indicating the estimated date of transmission of the confiscation certificate.
95. The inclusion of an estimated date is an optional requirement for the freezing certificate, as Section I of Annex I states it should be indicated "if possible". Nonetheless, it is advisable to provide this information.
96. According to Art. 12, par. 2, the property shall remain frozen either until a confiscation order is transmitted or until is unenforceable or withdrawn. This implies that the Regulation does not establish a maximum duration for a freezing order .
97. A challenge can emerge in understanding the implications of a duration mentioned by the issuing authority in Section I: is it merely a general estimate, or does it compel the executing State to return the assets to the affected individuals the day after the stated expiration date??
98. Certain Member States, such as Slovenia, when acting as issuing authorities, specify a fixed duration for a freezing order that can be subject to subsequent renewals by the issuing authority after it re-evaluates the substantive reasons for freezing of assets and gathers new information from involved parties. In such cases, two scenarios may arise:
    a. The issuing authority wants to extend the duration of the freezing order. Given that no articles of the Regulation envisage a simplified procedure or a separate (simplified) certificate for such cases, the issuing State should transmit a new freezing certificate before the expiring date to consent a renewal. As the assets are already frozen in the executing country, it is recommended to inform the executing authority of the extraordinary nature of an order for extension of freezing duration and its relation to the previously issued freezing order. This is best done by directly contacting the executing authority as well as indicating the connection between the previously issued and the new order in Section H, Section C (4.) and Section D (3.) of the certificate;
    b. The issuing authority does not communicate anything to the executing authority: in such cases, the assets should be immediately returned to the person affected.
99. The duration could also be an issue for the executing authority. According to Art. 12, par. 2, the latter could ask the issuing authority to set a limit to the period for which the property is to be frozen. The request should have stringent requirements, as it must be capable of generating a written record and should enable the issuing authority to verify the request's authenticity, such as the e-CODEX platform. It is recommended not to ask the issuing authority to limit the validity of a freezing order, unless it is strictly necessary and mandatory according to the law of the executing State, as cooperation should be guaranteed. It is worth noting that the grounds for refusal based on a manifest breach of a fundamental right should not be invoked, as the right of property is only temporarily limited by a freezing order.

100. The issuing authority has the duty to respond as soon as possible, at maximum within six weeks, but it is not linked to the request of the executing authority. Indeed, it can either agree or disagree, informing the executing authority of the reasons behind the choice. If it disagrees, the executing authority is obliged to enforce the order. As a final rule, if the issuing authority does not respond, the executing authority shall no longer be obliged to enforce the freezing order.

79) It is advisable to always indicate the estimated duration of the freezing order in the certificate (Section I of Annex I);
80) The outcomes of the passage of time should be delineated. In particular, there should be an indication of whether the certificate retains its validity after the expiry of the period indicated, or whether the goods must be returned to the person affected after that period;
81) If the freezing order terminates upon reaching its due date, the sole method to extend its legal effect should be through the transmission of a new freezing certificate;
82)When the issuing authority issues an order for extension of freezing duration and transmits it to the executing authority via a new freezing certificate, the relation of such an order to the previously issued freezing order should be indicated in Section H, Section C (4.) and Section D (3.) of the certificate. Where reasonable, the issuing authority should also be informed of the new freezing certificate's extraordinary nature via a direct contact;
83) Without any further indication, the property should remain frozen either until the transmission of a confiscation order or until the order becomes unenforceable or it is withdrawn;
84) The executing authority may ask, preferably by way of the e-CODEX platform, to set a limit to the validation of the confiscation order only if it is strictly necessary and it is mandatory for its national law. The issuing authority should respond as soon as possible, at maximum within six weeks; it could agree or disagree. In the latter circumstance, the executing authority is obliged to enforce the order. If the issuing authority does not answer within six weeks, the executing authority no longer has the duty to enforce the order.

9.7. The confidentiality of the freezing order

101. Confidentiality is one of the most important issues for the best execution of a freezing order; however, it greatly hampers the right to defence of the person affected. Art. 11 tries to balance these two interests.

102. As a general rule, the executing authority should take into account the confidentiality of the investigation in the context of which the freezing order was issued (Art. 11, par. 1). The confidentiality should be operative only before the execution of the freezing order, as after the latter, the requested authority should inform the person(s) affected (Art. 11, par. 2). As a recommendation, the information should be given either together with the execution or immediately after.

103. As a derogation to the general rule, the issuing authority may ask the executing one to postpone informing person(s) affected of the execution of the freezing order, if there is the need to protect an ongoing investigation (Art. 11, par. 3). It is advisable that the issuing authority utilize this option judiciously, while also considering that restricting a right is permissible when it is necessary and proportionate. The person(s) affected should be notified as soon as it is no longer necessary to protect the ongoing investigation.

104. Finally, Art. 11, par. 4, states that if the executing authority cannot comply with the confidentiality obligations, it should notify the issuing authority immediately and, if possible, prior to the execution of the freezing order. It is advisable for the executing authority to always provide notification before the execution of the order, in order both to foster mutual cooperation and to avoid hampering ongoing investigations.

85) The executing authority should maintain confidentiality regarding the freezing order before its execution. One it has been executed or immediately before, it should inform the person(s) affected without delay;

86) The issuing authority should request to delay providing information to the affected individuals solely to safeguard an ongoing investigation, and this delay should be as brief as possible;

87) If the executing State cannot comply with the confidentiality obligations, it should always notify the issuing authority before the execution of the order;

88) The executing authority should give the issuing authority sufficient time to respond and to provide additional information, in order not to hamper the ongoing investigation. The adequate time should not be shorter than seven days.

9.8. Specific Issues on Confiscation Orders

105. According to the Regulation, a confiscation order should either follow a freezing order or be contextual to the latter (Art. 18, par. 5). However, there are some States in which a confiscation order is not linked to a freezing order: the execution of the first takes place even without the latter. In these situations, the executing authority may decide to freeze the property on its own motion in accordance with its national law, informing the issuing authority prior to the freezing to be executed, if possible (Art. 18, par. 5). In practice, it would be preferable for the freezing order to occur based on the request of the executing State, and this should only happen in two specific instances:
    a. if the law of the executing State deems it mandatory;
    b. if the procedure in the executing State takes a huge amount of time which could hamper the enforcement of a confiscation order.

106. If a confiscation order concerns a specific item of property, the issuing and executing authorities may agree – where the law of the issuing State so provides – that confiscation be carried out through the confiscation of a sum of money corresponding to the value of the property that was to be confiscated (Art. 18, par. 2). The agreement is a necessary condition for the substitution of the measure. If it is not reached, given that grounds for substitution are not provided by the Regulation, the executing authority should execute the confiscation order as requested by the issuing State, unless grounds for refusal apply.

107. A confiscation order concerning an amount of money can be substituted *ex officio* by the executing State in a confiscation order concerning items of property if it is unable to obtain payment of the amount requested (Art. 18, par. 3). This is the only case in which the Regulation allows to adopt a different measure without the consent of the issuing State.

108. A confiscation order could be transmitted to an MS which does not have the same currency. This May happen if:
    a. AN MS that has Euro as legal currency transmits the order to an MS that does not have it (Sweden, Czech Republic, Hungary, Poland, Bulgaria, Romania);
    b. AN MS that does not have Euro as legal currency (Sweden, Czech Republic, Hungary, Poland, Bulgaria, Romania) transmits the order to an MS that has it;
    c. A confiscation order is transmitted between MSs that do not have Euro as legal currency (Sweden, Czech Republic, Hungary, Poland, Bulgaria, Romania).

109. In all these situations, the executing authority "shall convert the amount of money to be confiscated into the currency of the executing State at the daily euro exchange rate as published in the C series of the Official Journal of the European Union for the date on which the confiscation order was issued" (Art. 18, par. 2). This applies to confiscation orders only, as it is a definitive measure. It is worth noting that the exchange rate is set on the day of the issuing of the confiscation order, instead of the date of the reception of the confiscation certificate. This choice has been made in order to reflect the real value of the amount to be confiscated. Although the Regulation mentions "daily euro exchange," the term "euro" should be construed to encompass any legal currency of the EU. This interpretation is necessary in cases involving confiscation orders where Member States not bound by the Regulation are concerned, as its application is otherwise unfeasible.

110. Finally, according to the Regulation, the amount of money recovered via confiscation order in an MS different from the executing State should be deducted from the amount of money to be confiscated in the latter (art. 18, par. 4). This disposition is clearly designed to guarantee the proportionality of a confiscation, as

the amount indicated in a confiscation order is unique is singular and should remain so even if its execution necessitates actions in multiple Member States (including the issuing one).

111. This rule should be read together with Art. 15, par. 3, which provides derogations to the rule of the transmission of the confiscation certificate to more than one MS at a time. With regard to the topic in question, a confiscation certificate can be transmitted to more than one MS at the same time if the value of property that can be confiscated in the issuing and executing States is not likely to be sufficient to cover the full amount covered by the onfiscateion order.

112. The issuing authority, therefore, has the duty:

a. to try covering the confiscation order in its internal territory;
b. If the amount is insufficient, the order should be sent to a single executing State, with caution taken not to exceed the monetary value specified in the confiscation order, by aggregating the confiscated amounts in both the issuing and executing States;
c. if it still is likely not to be sufficient, it can transmit the freezing certificate to more than one executing State at the same time, paying attention not to exceed the amount of money provided in the confiscation order, aggregating the confiscated amounts in both the issuing and every single executing State. The value of the assets in each MS should be carefully indicated in Section G of Annex II.

113. However, what should the executing authorities do to ascertain whether the total amount to be confiscated within their jurisdiction, when combined with those to be confiscated abroad, does not exceed the sum stipulated in the confiscation order? The executing authority has the duty to trust the issuing authority and to cooperate.

114. Nonetheless, in exceptional circumstances, the executing authority may refuse to recognise and execute the confiscation order because the certificate is incomplete or manifestly incorrect (Art. 19, lett. c). The order should be considered incomplete if Section G of Annex II ("3. Value of assets, if known, in each executing State") has not been filled in. The order should be considered manifestly incorrect if the sum of the value of assets indicated in the same Section G of Annex II is much higher than the one envisaged in the confiscation order.

89) If a confiscation order is not preceded by a freezing order or is not transmitted concurrently with it, it is advisable for the executing authorities to issue a freezing order independently only if the laws of the executing State mandate such action; or if the process in the executing State is expected to be excessively time-consuming, which might impede the execution of a confiscation order;

90) An item of property can be replaced, according to the law of the executing State, by a corresponding sum of money only if there is an agreement between issuing and executing authorities. If the agreement is not reached, the executing authority should enforce the order as requested by the issuing authority, unless a ground for refusal is applied;
91) Only for confiscation orders, the executing authority can convert the amount of money into the legal currency of its MS, if different from the one of the issuing State. The exchange rate to be considered should be the one on the issuing date of the confiscation order;
92) The amount of money recovered via confiscation order in an MS different from the executing State should be deducted from the amount of money to be confiscated in the latter. Therefore, the total amount of different confiscation certificates should be the same of the one provided in the confiscation order;
93) The executing authority should trust the issuing authority as regards to the amount to be confiscated. In exceptional circumstances only, the executing authority may refuse to recognise and execute the confiscation order because the certificate is incomplete or manifestly incorrect (Art. 19, lett. c). The order should be considered incomplete if Section G of Annex II ("3. Value of assets, if known, in each executing State") has not been filled in. The order should be considered manifestly incorrect if the sum of the value of assets indicated in the same Section G of Annex II is much higher than the one envisaged in the confiscation order.

9.9. How to distribute Costs of the FCO?

115. According to recital 49 and Art. 31, the general rule is that MS "should **not** be able to claim from each other **compensation for costs** resulting from the application of this Regulation".
116. However, there could be situations in which the **costs** are **large** or **exceptional**, for example "because the property has been frozen for a considerable period of time" (recital 49) or the execution needs to take place in many different places in the executing MS.
117. In these situations, Art. 31 provides a "**sharing procedure**": "the executing authority may submit a proposal to the issuing authority that the costs be shared [...] Such proposals shall be accompanied by a detailed breakdown of the costs incurred by the executing authority. Following such a proposal the issuing authority and the executing authority shall consult with each other" (art. 31). The consultation sessions should be "recorded by any means capable of producing a written record".
118. Unlike the EIO, which presents a closing rule where the authorities do not reach an agreement, the Regulation is silent on the topic.
119. It must also be pointed out that there is no definition of what a large or exceptional cost is.

94) As a general rule, in the absence of a definition of large and exceptional costs, the executing authority should bear the costs;
95) Only as an *extrema ratio*, the executing authority should invoke the "sharing procedure";
96) If an agreement cannot be reached, the issuing authority should either withdraw the order or bear all the costs considered large and exceptional;
97) If an agreement cannot be reached and the issuing authority neither withdraws nor bears all the exceptional costs of the order, the executing authority may refuse to enforce the order. This refusal should not be considered as a ground for refusal according to Art. 8 and 19;
98) If an agreement is reached later, or if the issuing authority later decides to bear the exceptional costs, the order should be recognised and executed;
99) It would be preferable if consultation sessions were audio recorded and the minutes of each session be drafted.

9.10. Request of several FCOs under the same FCC in a single MS

120. A MS might find it necessary to execute multiple FCOs against several affected individuals in another Member State, all transmitted together with a single FCC as part of the same proceedings. If the execution and the affected person(s) are within the jurisdictional boundaries of the same court, no issues arise. Conversely, determining the competent authority to recognize and execute an order that must be enforced in different jurisdictions becomes a challenge? The Regulation does not provide a clear rule, simply stating that the execution of FCOs "shall be governed by the law of the executing State" (Art. 23).
121. If the FCO requires execution in different territories within the executing State and several FCCs are transmitted to each executing authority, no problems arise.
122. If the FCO requires execution in different territories within the executing State and a single FCC is transmitted, two potential solutions may be applicable:
    a. national laws could designate a single authority for recognition and permit execution by various individual authorities, all under the coordination of the recognition authority. This arrangement would help prevent conflicting decisions regarding recognition. The recognition should be carried out by the authority which must enforce either the highest number of orders or, if

this is not applicable, the order with the most valuable assets. In other words, recognition and executing authorities may be different;

b. national laws could appoint a central authority with a role of coordination between the different executing authorities.

100) If the FCO requires execution in different territories of the executing State and a single FCC is transmitted, the territorial competence of the executing authority should be divided as follows: the recognition should be carried out by the authority which must enforce either the highest number of orders or, if this is not applicable, the order with the most valuable assets. The execution could be carried out by the territorial competent court, under the coordination of the recognition authority;

101) Alternatively, if the FCO requires the execution in different territories in the executing State and a single FCC is transmitted, the central authority could be appointed a coordinating role.

9.11. More FCC against the same person or item of property from different MSs

123. There is the potential for numerous orders to be issued against either the same individual, who lacks adequate assets in the executing State to fulfil the order, or the same piece of property.

124. Priority should be accorded to the grounds for postponement envisaged in Art. 10 and 21, as both provides for the possibility to postpone the recognition and execution of an order if an item was previously frozen/confiscated.

125. However, if multiple FCCs are received at the same time, or if the executing State admits multiple FCOs on the same item of property, the rules provided for in Art. 26 must be followed. Priority should be given to the victim: If there is a victim in one proceeding and not in another, the former should take precedence in execution. If there are no victims, or two or more proceedings envisage victims, the executing authority should take into account all other relevant circumstances to decide which order to execute first, including those envisaged in Art. 26.

102) If more FCCs are issued against the same person or item of property from different MSs, the executing State should prioritise the reasons for postponement;

103) If multiple FCCs are received at the same time, or if the executing State admits multiple FCOs on the same item of property, it should grant priority to the victim;

104) If there are no victims, or two or more proceedings envisage victims, the executing authority should take into account all other relevant circumstances to decide which order to execute first, including those envisaged in Art. 26.

9.12. Can the executing authority impose an alternative measure to the FCO?

126. In contrast to the EIO, which offers the executing State broad discretion to employ alternative measures that are less intrusive on fundamental rights, the Regulation is notably stricter and prioritizes upholding the principle of mutual recognition to the greatest extent possible.

127. Certainly, Article 23, paragraph 3, allows for the use of an alternative measure to an FCO only with the agreement of the issuing State, except in cases where the executing State is required to enforce a confiscation order involving a sum of money and the affected individual is unable to make the payment. In this situation, the executing authority can confiscate any item of property of the person affected (Art. 18, par. 2).

128. Consent should be given in advance filling in Section J of Annex I or Section I of Annex II. An *ex post facto* consent is not precluded, but it slows down the time needed to enforce the order. The delayed consent can be granted following a consultation procedure involving the relevant authorities.

129. Art. 23, par. 3, envisages another formal derogation to the consent of the issuing State, by way of reference to Art. 18, par. 2. However, this final rule stipulates that the executing and issuing authorities can mutually decide to replace an item of property slated for confiscation with a monetary sum. In this instance as well, an agreement is therefore required.

105) Executing authorities cannot resort to an alternative measure to the FCO issued;

106) A derogation is admitted only if there is consent on behalf of the issuing State. A general previous consent can be given by filling in Section J of Annex I or Section I of Annex II. Nonetheless, a late consent can be given after a consultation procedure between the authorities involved;

107) Another derogation is admitted where a confiscation order concerns an amount of money, and the executing authority is unable to obtain payment of that amount. In this case, the executing authority can confiscate any items or property in possession of the person(s) affected.

9.13. Postponement of the execution of freezing orders

130. Art. 10 envisages the grounds for postponement of freezing orders, which should be applied only in three exceptional circumstances. They should not be interpreted broadly and are elective.

131. The first ground for postponement may occur if the execution of a freezing order may damage an ongoing criminal investigation in the executing State, for a time that the executing authority considers reasonable.

132. The second ground for postponement may occur if the asset is already subject an existing freezing order, until the previous freezing order is withdrawn. The preceding freezing order should serve as both a national and a "European" order, while the latter should function as both an EIO and a freezing order in accordance with the Regulation. If the earlier freezing order is not revoked, it might result in the inability to execute a new freezing order (Art. 13).

133. The third ground for postponement may occur if the asset is already subject to a civil or administrative order in the executing State, until the order is withdrawn. If the previous civil/administrative order is not revoked, it might result in the inability to execute a new freezing order (Art. 13). However, this ground for postponement should apply only if the civil/administrative order has priority, under national law, over subsequent national freezing orders on criminal matters.

134. The executing authority has the duty to inform the issuing authority of the grounds for refusal, by any means capable of producing a written record (Art. 10, par. 2).

135. When the grounds for postponement cease to exist, the executing authority should immediately enforce the order, informing the issuing authority by any means capable of producing a written record (Art. 10, par. 3).

136. On the contrary, if the previous order cannot cease to exist, for example because it is converted in a confiscation order, grounds for impossibility to enforce the order may apply.

108) Grounds for postponements are exceptional and elective;
109) The postponement of the execution should immediately be communicated to the issuing authority by any means capable of producing a written record;
110) The executing authority should immediately enforce the order when the grounds for postponement cease to exist, informing the issuing authority by any means capable of producing a written record;
111) if the previous order cannot cease to exist, for example because it is converted in a confiscation order, grounds for impossibility to enforce the order may apply.

9.14. Postponement of the execution of confiscation orders

137. Art. 21 envisages the grounds for postponement of confiscation orders, which should be applied only in four exceptional circumstances. They should not be interpreted broadly and are elective.
138. The first ground for postponement may occur if the execution of a confiscation order may damage an ongoing criminal investigation, for a time that the executing authority considers reasonable.
139. The second ground for postponement may occur if there is the risk that a confiscation order concerning an amount of money could considerably exceed the amount of money requested with the order, due to the fact the execution takes place in different MSs. Not every excess amount should lead to a postponement, but only those who are considerably over the amount; small excesses should not have any effect.
140. The third ground for postponement may occur if the property is already subject to ongoing confiscation proceedings in the executing MSs. At the end of the latter, if a national confiscation is not ordered or if it is ordered but limited to certain properties of amounts, the executing authority should proceed with the execution requested by the issuing authority. If the property or the amount of money is confiscated in the

executing MS according to its national proceeding, the impossibility to execute the order should be communicated to the issuing State.

141. The fourth ground for postponement may occur if a legal remedy according to Art. 33 has been invoked. As Art. 33 envisaged the possibility for the executing State to suspend the effect of the execution where its national law so provides, if the asset was already frozen, it is highly advisable to postpone the execution of the order until a final decision.

142. The executing authority has the duty to inform the issuing authority of the grounds for refusal, by any means capable of producing a written record (Art. 21, par. 3).

143. When the grounds for postponement cease to exist, the executing authority should immediately enforce the order, informing the issuing authority by any means capable of producing a written record (Art. 21, par. 2).

144. On the contrary, if the previous order cannot cease to exist, for example because a previous confiscation procedure led to a confiscation, a ground for impossibility to enforce the order may apply.

112) Grounds for postponement should be exceptional and elective;

113) The postponement of the execution should immediately be communicated to the issuing authority by any means capable of producing a written record;

114) If the asset was just frozen, it is highly recommended to postpone the execution of a confiscation order if a legal remedy has been invoked;

115) The executing authority should immediately enforce the order when the grounds for postponement cease to exist, informing the issuing authority by any means capable of producing a written record;

116) If the previous order cannot cease to exist, for example because a previous confiscation procedure led to a confiscation, a ground for impossibility to enforce the order may apply.

9.15. Impossibility to execute an FCO

145. Articles 13 and 22 address the scenarios where the execution of freezing and confiscation orders is not possible, respectively. Impossibility to execute and grounds for refusal are different notions and present different rationales, even if the effect seems the same. The impossibility grounds act on the object which, for different reasons, cannot in nature be frozen or confiscated. The grounds for refusal, on the contrary, may or may not be invoked by the executing State and are rooted in different reasons; however, the object can be frozen or confiscated in any case.

146. If it is impossible for the requested State to execute the order, it should consult the issuing authority first, in order to check if the impossibility can be overcome (Art. 13, par. 2, and 22, par. 2); Only when it becomes impossible to overcome the impediment should the executing authority promptly inform the issuing authority (Art. 13, par.2, and 22, par. 1).

147. The Regulation refers to the "non-execution" of an order. Therefore, FCO should in any case be recognised and the impossibility to execute the order can only be communicated afterwards. Hence, it is advisable to refrain from notifying the inability to execute an FCO prior to its recognition.

148. The Regulation sets five strict hypotheses of impossibility to execute an FCO, if the property (Art. 13 par. 3):

a. Has already been confiscated;
b. Has disappeared;
c. Has been destroyed;
d. Cannot be found in the location indicated on the certificate;
e. Cannot be found because its location has not been indicated in a sufficiently precise manner, despite the consultation between issuing and executing authorities. As a ground for refusal, an incomplete certificate lacking information about the location of the property intended for freezing or confiscation should not be deemed a basis for non-recognition or non-execution.

149. If the location of a property, which either disappeared (letter b), or could not be located at the specified location in the certificate (letter d), or was not adequately pinpointed in the certificate, is subsequently determined, the executing authority may proceed with the execution of the order. The executing authority does not need a new certificate; however, it should verify whether the FCO is still valid with the issuing authority (Art. 13, par. 4). While verbal confirmation may be feasible, it is advisable to obtain written confirmation, except in situations where there are compelling and urgent reasons to forgo it

117) If it is impossible for the executing State to enforce the order, it should consult the issuing authority first, in order to check if the impossibility can be overcome; only if it was not possible to overcome the impossibility, the executing authority should notify the issuing one without delay;

118) The hypothesis of impossibility is strict;

119) The inability to execute an order due to the certificate's lack of clear indication regarding the property's location should not be regarded as a basis for non-recognition or non-execution;

120) Whether the location of the property is discovered after the impossibility to execute the FCO was notified, the executing authority can enforce the FCO without a new certificate. However, it should obtain confirmation of FCO validity from the issuing State, preferably in written form.

9.16. Termination of the execution of an FCO

150. Art. 27 provides for those cases in which the order cannot be executed or is no longer valid. In both situations, the issuing authority should withdraw the FCO without delay, immediately informing the executing authority by any means capable of producing a written record.

151. Most of the time, an order can no longer be executed as there are reasons that make it impossible to enforce the order, such as the grounds provided for by Art. 13 and 22. Sometimes, an order is no longer valid due to facts occurring in the issuing State, such as a positively invoked remedy. The passage of time should not result in the withdrawal of the order unless the freezing certificate explicitly stated a time limit for its validity.

121) If the execution of an FCO cannot be executed or is no longer valid, the issuing authority should withdraw the FCO without delay and immediately inform the executing authority by any means capable of producing a written record;

122) The passage of time should not result in the withdrawal of the order unless the freezing certificate explicitly stated a time limit for its validity.

10. GROUNDS FOR NON-RECOGNITION AND NON-EXECUTION

152. Grounds for refusal are the main derogation to the principle of mutual recognition. For this reason, in every mutual recognition instrument, the grounds for refusal are **elective** (MS "may" refuse) and must be read narrowly. Indeed, the Court of Justice stated that the execution "constitutes the rule, whereas refusal to execute is intended to be an exception which must be **interpreted strictly**"[7].

153. For the first time, the Regulation is directly applicable and can avoid transposition problems that caused many issues with regards to EAW and EIO. More specifically, some MSs made the grounds for refusal mandatory.

154. It is worth noting that the executing authority could recognise and execute the order even if a ground for refusal were applicable, the latter being only elective and not mandatory. However, a careful assessment should be done and executing authorities are strongly encouraged to refuse orders manifestly breaching fundamental rights or constitutional principle.

155. In case of **doubt**, if the executing authority is considering the rejection of an order, it should not rush to a decision: before adopting a decision in this regard, it shall **engage** the issuing authority, even though informal means, and seek **clarifications** (Art. 8, par. 2, and 19, par. 2).

123) The executing authority may reject an order only if certain grounds for refusal are met;

124) It is important to remember that grounds for refusal are elective and subject to a strict interpretation. Hence, when in doubt, the path of recognition and execution should be favoured, unless there is a clear and blatant violation of fundamental rights or constitutional principles; in such instances, refusal is strongly recommended.

125) In case of doubt, if the executing authority is willing to refuse an order, it should consult the issuing authority, even informally, and ask for clarifications.

10.1. Grounds for refusal discovered during the execution of a freezing order

156. Art. 8, par. 4, envisages the possibility that a **ground for refusal** may be **discovered** after the recognition and **during the execution of a freezing order**. This could happen either because the person affected helped the authorities, even informally, to invoke

[7] C.J.EU, G.C., 31 January 2023, *Gordi-Puigdemont and others*, C-158/21, §68.

a ground for refusal, or because the executing authority gathered information in any other possible way, even during the execution (let's think of a freezing order issued against a person that recently became a member of parliament and no one knew).

157. In this cases, Art. 8, par. 4, states that the executing authority "shall **immediately contact the issuing authority** by any appropriate means in order to **discuss** the appropriate measure to take". As the Regulation does not specify a contact for generating a particular record, verbal communications are permissible. Due to this communication:
    a. the issuing authority may **address the uncertainties** of the executing authority, and the order is **not rejected**;
    b. the issuing authority may **withdraw** the freezing order;
    c. if no solution has been reached, the executing authority may decide to **stop the execution** of the freezing order that has already been recognised.

158. According to the Regulation, it seems that the **contact** between the issuing and executing authority should take place in **the same time of the execution**. In this case, the **withdrawal** of the freezing order may be **communicated verbally**, but it must be **formally confirmed**, in **written form**, immediately after the phone call.

159. What should the course of action be if the **issuing authority cannot** be promptly **reached** or if the circumstances of the situation do **not** allow for **immediate contact**? The Regulation allows for the cessation of order execution only after a discussion between the issuing and executing authorities. However, to ensure the rights of those affected, an expansive interpretation should be suggested in cases of uncertainty: the **execution** of the freezing order should be **postponed**, even if this is not expressly envisaged by the Regulation, in order to wait for the issuing authority to be reached.

160. Finally, if the executing authority suspends the execution of the order, and the issuing authority does not withdraw it, the requested authority should **officially inform** the requesting authority of the **decision not to execute** the order.

126) If a ground for refusal is discovered during the execution of a freezing order, the executing authority should immediately contact the issuing authority by any means, even verbally, to discuss the appropriate measure to be taken;

127) After the contact: a) there could be an agreement on how to execute the order; b) the order could be withdrawn; c) the execution could be stopped. The execution should be stopped even if there is no possibility to immediately reach the issuing authority to discuss how to proceed;

128) If the issuing authority decides to withdraw the order, the latter could be withdrawn verbally, but an immediate confirmation capable of producing a written record is required.

10.2. Ne bis in idem

161. Art. 8, lett. a), and 19, lett. a), establish that FCOs may be refused if they violate the principle of *ne bis in idem*.

162. According to the C.J.EU case law, the *ne bis in idem* has two natures: it serves as a safeguard against a subsequent criminal proceeding targeting the same individual and the same actions for which they have already been conclusively acquitted or convicted; and it acts as a safeguard against double jeopardy for the same offences. In other words, it prevents double proceedings and double sanctioning against the same person for the same fact, even as regards to administrative sanctions that are criminal in nature[8]. Furthermore, according to the C.J.EU, the principle of *ne bis in idem* applies both with regards to sanctions, preventing a duplication of sanctions (administrative/criminal) or with regard to proceedings (administrative/criminal), but only when the administrative sanctions are deemed to be "criminal in nature" based on the *Engel* criteria.

163. The primary challenge for the executing authority is to detect any potential violation of the *ne bis in idem* principle because it is highly improbable that the executing authority would have knowledge of a prior conclusive judgment when asked to execute an FCO. Certainly, a prior conclusive judgment could have been rendered in a third Member State unrelated to the issuing and executing states. The defence lawyer, therefore, has a role of paramount importance in giving all the information to the executing authority.

164. Strictly related to *ne bis in idem* is the problem of ***litis pendens***, as the European concept of *ne bis in idem* does not protect against the international *litis pendens*. Therefore, if the executing authority acknowledges the existence of two or more parallel criminal proceedings for the same facts, it should proceed according to the corresponding national law implementing the **FD (JHA) 2009/948** and initiate consultation sessions.

129) The defence lawyer should have a central role in connection with *ne bis in idem* principle, as he/she can provide information on a previous final judgment;

[8] C.J.EU, Grand Chamber, 20 March 2018, *Menci*, C-524/15; C.J.EU, Grand Chamber, 20 March 2018, *Garlsson Real Estate SA*, 537/16; C.J.EU, Grand Chamber, 26 February 2013, *Åkerberg Fransson*, C-617/10.

130) In case of *litis pendens* the order should not be refused; however, the authorities involved should act according to FD (JHA) 2009/948 on the prevention and settlement of conflicts of exercise of jurisdiction in criminal proceedings.

10.3. Privileges and Immunities

165. Art. 8, lett. b), and 19, lett. b), establish that FCOs may be refused if there is a privilege or immunity under the law of the executing State that would prevent the freezing of the property concerned. However, neither Art. 8 and 19, nor recitals specify what an immunity or privilege is. Their interpretation should be left to each MS.
166. Unlike Directive (EU) 2014/41, the Regulation does not envisage the possibility to ask for the waiver of the immunity or privilege. However, even if it is not expressly provided, the principles of mutual recognition and mutual trust allow MSs to ask for the waiver; moreover, there are no provisions that forbid that.
167. If the waiver of immunity or privilege is within the competence of the executing State, the requested authority should promptly request it from the authority designated for that purpose. On the contrary, if the waiver of the immunity or privilege falls within the competence of an authority of another State or of an international organisation, the issuing State should make a formal request to the authority concerned (without resorting to MLA tools).
168. If the waiver is acknowledge by the issuing State when compiling the FCC:
    a. It should fill in Section C, n. 4, asking for the waiver in the executing State; or
    b. It should fill in Section C, n. 4, specifying that a waiver has been requested and obtained;
169. If the waiver is not known by the issuing State at the time of compiling FCC:
    a. If the executing State has jurisdiction over the waiver, the executing authority should proceed accordingly;
    b. If another State has jurisdiction over the waiver, the executing authority should be responsible for handling the waiver.

131) If there is an immunity or privilege in a third MS known at the time of the issuing of the order, the issuing authority should ask to waive the immunity or privilege before compiling the certificate. Where granted, the issuing authority should fill the FCC with Section C, n. 4, providing the information on the waiver and, if possible, attaching the waiver;

132) If there is an immunity or privilege in the executing MS, known at the time of the issuing of the order, the issuing authority fills in Section C, n. 4, requesting the waiver;
133) If there is an immunity or privilege in the executing Member State, which was not known at the time of completing the certificate, the executing authority may request a waiver;
134) If there is an immunity or privilege in a third Member State, which was known at the time of completing the certificate, the executing authority should take responsibility for the waiver;
135) The request for a waiver should be formal, but (MLA) tools should be avoided.

10.4. Limitation to Criminal Liability regarding the Freedom of the Press and Freedom of Expression

170. Art. 8, lett. c), and 19, lett. c), establish that FCOs may be refused if there are rules on the determination or limitation of criminal liability that relate to the freedom of the press or the freedom of expression in other media that prevent the execution of the freezing order.
171. This ground for refusal aims to protect "constitutional rules related to freedom of the press or freedom of expression in other media," considering that some Member States may have limitations on criminal liability in these areas. For example, in Italy the freedom of the press excuses defamation if the information is true, of general interest and written in a polite manner (Art. 51 Criminal Code).
172. In mutual recognition instruments, this ground for refusal is barely ever applied.

136) The only suggestion here is to adhere to the standard practice of seeking consultation before making a refusal.

10.5. Certificate incomplete or manifestly incorrect

173. Art. 8, lett. c), and 19, lett. c), establish that FCOs may be refused if FCCs are incomplete, manifestly incorrect or have not been completed following the consultation procedure.

174. A certificate is incomplete when it lacks information deemed essential for its execution. Not all missing information, however, should lead to a refusal.

175. By referring to a certificate as "manifestly" incorrect, the Regulation wants to "forgive" minor mistakes that do not affect the comprehension of the FCC. A certificate could be manifestly incorrect if it is not translated into a language accepted by the executing State.

176. It is important to recall that, according to Art. 13 and 22, a certificate lacking information on the location of the property to be frozen or confiscated may give rise to the impossibility to execute the order. Impossibility to execute and refusal are different notions, as the first requires solely a notification to the issuing State, while the second prescribes a decision to be issued. Moreover, the impossibility to execute an order is revocable and the FCO remains valid, while a refusal is permanent.

137) MSs should adopt a flexible approach in assessing the incompleteness or incorrectness of an FCC;

138) A consultation procedure is mandatory. Informal consultations (phone calls) could be allowed to clarify minor misunderstandings;

139) If, even after the consultation process, the executing authority cannot ascertain the requirements, it may decline to execute the order;

140) A lack of information on the location of the property to be frozen or confiscated should not be considered a ground for refusal, as it may give rise to the impossibility to execute an FCO only.

10.6. Territoriality Clause

177. Art. 8, lett. d), and 19, lett. d), establish that FCOs may be refused if three conditions apply:

a. It relates to a criminal offence committed, wholly or partially, outside the territory of the issuing State;
b. The criminal offence is committed, wholly or partially, in the territory of the executing State;
c. The conduct does not constitute a criminal offence under the law of the executing State (double criminality condition).

178. This ground for refusal reflects the influence of earlier mutual assistance instruments, aimed at preventing an abusive extraterritorial exercise of jurisdiction.

141) The only recommendation is to follow the general rule of consulting before refusing.

10.7. Double Criminality

179. Art. 8, lett. e), and 19, lett. f), establish that FCO may be declined if it does not meet the requirement of double criminality, with two exceptions:
   a. in cases involving taxes, duties, customs, or exchange regulations, the recognition or execution of the freezing order shall not be declined based on the fact that the law of the executing State does not impose identical taxes or duties or does not have identical regulations concerning taxes, duties, customs, and exchange as the law of the issuing State;
   b. if the act constitutes one of the 32 criminal offences listed in Art. 3 (previously harmonised at EU level), where those acts are punishable in the issuing State by a custodial sentence of a maximum of at least three years.

180. The Court of Justice has recently assessed how to interpret the requisite of double criminality:
   a. "The application of the condition of double criminality of the act **cannot require** the executing judicial authority to **verify** that the impairment of the **legal interest protected** by the law of the issuing Member State is also a constituent element of the offence under the law of the executing Member State"[9];
   b. The executing State should only verify if "the acts concerned occurred in the territory of the issuing Member State, those acts **would also have constituted an offence** under the law of the executing Member State, **irrespective of the constituent elements** of that offence and of how the offence is classified in the issuing Member State"[10].

181. Recital 20 also states that "when assessing double criminality, the competent authority of the executing State should verify whether the factual elements underlying

[9] C.J.EU, 14 July 2022, *K.L. (Procureur général près la cour d'appel d'Angers)*, C-168/21, §49.
[10] C.J.EU, 14 July 2022, *K.L. (Procureur général près la cour d'appel d'Angers)*, C-168/21, §56.

the criminal offence in question [...] would also, per se, be subject to a criminal penalty in the executing State".

142) In assessing double criminality, the executing State should not take into account the legal interest protected by the criminal offence. On the contrary, it should only verify if the acts would have constituted a criminal offence in the requested State, irrespective of the constituent elements or legal classification;
143) The 32 offences listed in Art. 3 should not be refused under the double criminality condition;
144) Tax and duty offenses should not be rejected solely because the law of the executing State does not encompass them.

10.8. Fundamental Rights Clause

182. Cooperation, mutual trust and mutual recognition are cornerstones in the AFSJ but they cannot contrast fundamental rights: priority must be granted to the protection of fundamental rights.
183. Even if the roadmap of Stockholm harmonised many procedural rights and participation to the EU should grant a minimum standard for the protection of fundamental rights, it cannot be excluded that the latter might be violated.
184. Art. 8, lett. f), and 19, lett. h), establish that an FCO may be refused if "in exceptional situations, there are substantial grounds to believe, on the basis of specific and objective evidence, that the execution of the freezing order would, in the particular circumstances of the case, entail a manifest breach of a relevant fundamental right as set out in the Charter, in particular the right to an effective remedy, the right to a fair trial or the right of defence".
185. It is worth noting that Art. 53 of the Charter recalls the protection of fundamental rights accorded by the ECHR and national constitutional principles.
186. The Regulation links this ground for refusal to a high level of probability of a manifest breach of fundamental rights. This means that not every breach of fundamental rights should lead to the refusal of an FCO; only those offenses that significantly affect the core of the right are eligible to lead to a rejection. Moreover, the rights violated should be set out by the Charter.
187. A minor breach should be intended as a procedural deviation from the exact procedure that should have been followed, without totally erasing the essential core of the fundamental right.

188. It is worth noting that proportionality is a cornerstone in assessing a legitimate limitation of a fundamental right (art. 52 of the Charter). Therefore, being proportionality enshrined in the Charter, its manifest breach could lead to a refusal.

145) Fundamental rights should not be compromised by judicial cooperation. Therefore, executing authorities are strongly advised to reject an order that infringes upon fundamental rights, even though this ground for refusal is optional;
146) Only a manifest breach of fundamental rights set out in the Charter, in the ECHR and in national constitutional principles should lead to a refusal;
147) A manifest breach of proportionality should lead to a refusal, according to Art. 52 Charter of Nice;
148) Minor infractions, such as procedural deviation from the norm, which do not undermine the core essence of the right, should not result in rejection.

10.9. The Rights of the affected Individuals

189. This basis for rejection is specifically outlined for confiscation orders and is linked to the protection of the rights of those affected, primarily referring to third parties in relation to the accused or defendant.
190. According to the Regulation (Art. 2, par. 1, n°10), affected individuals are:
   a. those against whom an FCO is issued. This is the most simple and common case, where the affected person essentially corresponds to the defendant or the individual who has been convicted;
   b. those that own the property covered by the order. In these cases, there will be, in practice, two different individuals affected in relation to the same proceedings and the same property. This is crucial as it may be the case that the owner is only the person formally entitled to the property, but the actual user is the defendant (possibly together with the former, e.g., the defendant and his spouse). Furthermore, the necessity for this provision arises from Directive 2014/42/EU, which, in Article 6, standardizes the confiscation of assets held by "direct" third parties, involving an order directly issued against a third party. However, the Directive did not take into account the possibility of "indirect" third parties' confiscation, consisting of a seizure of assets owned by a third party during the execution of a confiscation measure adopted against the defendant. The interpretation of the Regulation should not be limited to 'direct' third party confiscation, but

should be extended to all situations in which a third party who owns the property is affected (directly or indirectly) by an order;

c. those whose rights in relation to that property are directly prejudiced by the order under the law of the executing State. This is a residual hypothesis in which everyone who is prejudiced by an order – and who is not the defendant or owner (e.g. lessee or a mortgage hypothec holder on the confiscated asset) – may exercise the rights envisaged by the Regulation. In any case, it is not completely clear how to interpret that a right is "directly" prejudicated. In November 2023, the Constitutional Court of Slovenia ordered, in case M-M AGMA, a district court to initiate a preliminary ruling procedure regarding the question if a mortgage (hypothec) holder should be considered an affected party in a procedure of cross-border confiscation of property encumbered with a hypothec in his name. What is more, the hypothec was obtained in bankruptcy proceedings under the same local court competent for the execution of the cross-border confiscation order. When dealing with this case, the CJEU will likely further elaborate on the criteria under which a person ought to be treated as an affected person and thereby obtain rights under the Regulation. Even though the case primarily concerns cross-border confiscation under Framework Decision 2006/783/JHA, the CJEU's ruling should be applicable to the Regulation. Be that as it may, Directive 2014/42/EU in recital n. 24 stipulates that the rights of bona fide third parties should not be prejudiced by confiscation of assets. This means that any party who acquired the property in good faith and whose rights are be affected in any meaningful way ought to be treated as an affected party within the meaning of the Regulation. It stands to reason that this would include, for example, bona fide hypothec holders in so far as their rights are affected and their options to reclaim the loan are diminished under the applicable national procedure for disposal of confiscated assets.

191. It must be pointed out that the person affected may be both a natural and a legal person and an "order issued against a legal person shall be executed even where the executing State does not recognise the principle of criminal liability of legal persons" (Art.23, para. 2).

192. Art. 19, lett. e), establish that an FCO may be refused if "the rights of person(s) affected would make it impossible under the law of the executing State to execute the confiscation order, including where that impossibility is a consequence of the application of legal remedies in accordance with Article 33".

193. The wording of the Article is not clear. Nevertheless, the rights of the affected person(s) that might render the execution of the order unfeasible could be interpreted as the property rights of innocent third parties who have acquired the asset or received a bequest or monetary sum

149) Careful consideration should be given to the definition of the term "affected person" ;

150) This reason for refusal should be cited concerning third parties in relation to the accused or defendant;

151) The rights affected are not limited to the fundamental rights envisaged in the Charter.

10.10. Awareness of the Trial

194. A confiscation order can only be declined if the individual it was issued against did not personally attend the trial, unless specific circumstances, as outlined in Article 19, paragraph g), indicate that they were cognizant of the proceedings.

152) Complete Section H of Annex II as carefully as possible.

11. DUTY TO INFORM AFFECTED PERSON(S) AND LEGAL REMEDIES

11.1. Obligation to inform affected person(s)

195. In order to fully exercise their right to defence, person(s) affected must be informed of the execution of an FCO. For this reason, under Art. 32, person(s) affected shall be informed **without delay** of the execution of an FCO. This information should contain at least the **name of the issuing authority**, the **remedies available** and **a brief description of the reasons** of the FCO. Even if not legally provided, it is important to provide information on the rights to **defence**, to a **lawyer**, to **translation**, to **access to documents** and to be granted **legal aid**; only in this way the rights of person(s) affected could be fully guaranteed.

196. If the executing authority has any doubt or problem to identify the person(s) affected, it should ask for the aid of the issuing authority.

197. An **exception** to the rule of information without delay is set up by Art. 11, which is thought to guarantee the confidentiality of the investigation. The issuing authority can ask for a postponement of informing person(s) affected of the executed **freezing order** (not confiscation order) to **protect ongoing investigations**. As soon as it is no longer necessary, the issuing authority shall inform the executing authority so that the latter can inform the person(s) affected.

153) The executing authority should always inform, without delay, the person(s) affected of the execution of an FCO. The information should contain: the name of the issuing authority; the remedies available; a brief description of the reasons of the FCO; information on the rights to defence, to a lawyer, to translation, to access to documents and to be granted legal aid;

154) If the executing authority has any doubt or problem to identify the person(s) affected, it should ask for the aid of the issuing authority, even informally;

155) A derogation to immediate information could be set for freezing orders (not confiscation orders) to protect ongoing investigations, but it must be applied narrowly, in order not to obstruct the right to defence;

156) The issuing authority should indicate in Section F of Annex I the time needed for postponement, which can be deferred if necessary. However, as soon as the postponement is no longer needed, even before the time indicated in Section F, the issuing authority should immediately inform the executing authority;

157) Given that the right to information is essential for the complete exercise of the right to a legal remedy, any breach of the obligation to inform affected individuals should result in an internal procedural nullity.

11.2. Legal Remedies

198. Article 33 of the Regulation resembles an article more commonly found in directives rather than regulations, as it grants MSs considerable latitude to tailor remedies to their respective national legal frameworks.
199. Art. 33 obliges MSs to introduce effective legal remedies against the decision on the recognition and execution of FCOs in the executing State, according to the law of the latter. This means that every person affected in every single MS has the right to invoke an effective legal remedy; unfortunately, the Regulation did not establish uniform minimum procedural rules to be adhered to.
200. Being a remedy against the decision on the recognition and execution, every MS should introduce one if it is not present. By way of example, Italy does not provide a general appeal against decision on the recognition or the execution of mutual recognition instruments; therefore, it must introduce an *ad hoc* remedy for FCO.
201. A legal remedy can have suspensive effect only as regards to confiscation orders, if the national law of the executing State so provides. A suspensive effect can be effective only if a suspensive decision is adopted before the management or disposal of the assets. It is therefore necessary for MSs to respect the duty to inform person(s) affected as soon as possible and before the management or disposal of the assets. Moreover, even if it is not expressly provided, in order to guarantee the rights of the person(s) affected, a good practice for MS would be to introduce a suspensive effect if it does not exist in the internal legal system.
202. Freezing orders should not be entitled to suspension, as the wording of the Regulation dos not provide it. Moreover, a suspensive effect for confiscation order is justified by the definitive nature of the measure.
203. Substantive reasons for issuing FCOs can be invoked only in the issuing State (such as the reasons behind the order or its legitimacy). Therefore, in the executing State, only unapplied grounds for refusal can be invoked.
204. If it is declared that an FCO should not have been recognised or executed, the assets should immediately be returned to the person(s) affected.
205. It should be noted that the *Gavanozov II* judgment of the C.J.EU[11] ruled mandatory to provide a legal remedy in the issuing State against every investigative measure. Only with this provision can an EIO be issued and recognised. The *ratio* is to fully guarantee the right to an effective legal remedy. The same principles could apply to the FCO domain. Consequently, if a national system does not envisage a legal remedy against the FCO, the latter should not be issued and recognised.

[11] C.J.EU, 11 November 2021, *Gavanozov II*, C-852-19.

158) Remedies in the executing State pertain to the decision regarding the recognition and execution of an FCO. Consequently, Member States should establish a specific remedy if they do not already have one in place ;
159) The remedy must be effective and every person affected should invoke it;
160) The law that governs remedies in the executing State is the law of the executing State itself;
161) Suspensive effect is dedicated only to confiscation orders if the law of the executing State so provides. However, it is preferable for each Member State to introduce the suspensive effect in order to fully guarantee the right of defence;
162) The suspensive effect requires a swift awareness of the decision regarding recognition and execution → particular attention should be paid to the duty to inform person(s) affected on the decision of the recognition and execution;
163) Suspensive effect should not apply to freezing orders;
164) Substantive reason on the issuing of the order should be invoked only in the issuing State;
165) If a national legal system of the issuing authority does not envisage legal remedies against FCOs, FCOs should neither be issued nor recognised (lawmakers are encourages to provide legal remedies if inexistent);
166) The reasons to appeal in the executing State are limited to issues concerning the decision on the recognition and the execution → the reasons are limited to grounds for refusal that should have been applied;
167) If it is declared that an FCO should not have been recognised or executed, the assets should immediately be returned to the person(s) affected.

11.3. Specific Issues on Legal Remedies

206. As discussed earlier, the execution of FCOs in multiple Member States should not result in exceeding the specified amount in the order . However, if this situation occurs, the person(s) affected should be granted the right to an effective legal remedy. To be effective, the remedy should lead to a reduction of the amount confiscated in order to be compliant with the FCO. Therefore, the individual affected should be entitled to request that the issuing authorities withdraw those FCCs that surpass the specified amount in the FCO.
207. There are some States, such as Italy, that allow the person(s) affected to pay a deposit to change the frozen assets. Since Article 18 allows the use of an alternative

measure only with the issuing State's consent, two possible approaches can be considered:

a. the issuing State specifies in Annex I that it accepts a sum of money in lieu of a specific item, so that the person(s) affected could facilitate the exchange in the executing State;
b. the issuing State does not indicate anything. In this case, as the change requires at least a new freezing certificate (if not a new freezing order), the person(s) affected should ask the issuing authority to withdraw the former.

168) If the execution of FCO overcomes the amount to be frozen or confiscated, the person affected should ask the issuing authority to withdraw the FCC in part exceeding the amount envisaged in the FCO;

169) If the person(s) affected want to change the frozen asset with an equivalent sum of money, they could either manage the change in the executing State, if the issuing authority consented to it while transmitting the certificate; or ask the issuing authority to withdraw the certificate and issue another one at the same time, if the requesting authority did not consent to change while transmitting the certificate.

12. MANAGEMENT AND DISPOSAL OF FROZEN AND CONFISCATED PROPERTY

208. Art. 28 establishes that the management of frozen and confiscated assets is governed by the law of the executing State, which has the duty to prevent the depreciation in value of the frozen and confiscated property.

209. As to prevent the mentioned depreciation in value, the executing State should establish "a national centralised office responsible for the management of frozen property, with a view to possible later confiscation, as well as for the management of confiscated property" (Recital 47). Moreover, it should be able to sell or transfer frozen and confiscated properties.

210. The main problems arise when the value of the frozen or confiscated property is linked to the flow of the market, such as action and cryptocurrencies. In this scenario, even if the property has been sold, any decrease in its value is prevented due to depreciation; however, if the value increases, the person(s) affected could be damaged if at the time of the trial they are acquitted or have the right to have the property returned. There is no EU-wide standard regarding this matter, and it would be

beneficial to amend the Regulation to establish a harmonized framework. In the meantime, a general approach could be to sell the properties subject to the flow of the market, with a compensation to the person(s) affected who have the right to restitution if the value of the assets increases.

211. Frozen money is subject to inflation. Therefore, it may happen that the real value of the money, at the moment of restitution, is less than the real value frozen. There is no general rule in the EU on the topic and an amendment of the Regulation should be useful in order to have a harmonised framework. In the meantime, a general approach could be to sell the properties subject to the flow of the market; compensation should be provided to the affected individual(s), who have the right to restitution if the value of the assets increases.

212. Finally, specific rules should apply as regards cultural objects according to Directive (EU) 2014/60.

170) The executing State should manage frozen and confiscated properties according to its national law, preventing the depreciation in value;

171) Except for cultural objects, the executing State should sell or transfer properties which risk depreciation;

172) Assets that are subject to market fluctuations should be sold, and individuals affected should receive compensation. If the value of the assets increases, they retain the right to restitution.

13. RESTITUTION OF FROZEN PROPERTY TO THE VICTIM

213. Article 29 stipulates that the issuing authority may request the return of the frozen property to the victim, either within the freezing certificate or subsequently, under three cumulative conditions:

a. the victim's title to the property is not contested;
b. the property is not required as evidence in criminal proceedings in the executing State;
c. the rights of person(s) affected are not prejudiced.

214. If the above-mentioned conditions are not met, a consultation among issuing and executing authority should take place. If no solution can be found, the executing State may decide not to return the frozen property to the victim.

215. The possibility to return frozen property to the victim should be used as little as possible. Indeed, a freezing order is a temporary measure with a view to the

confiscation thereof and could be withdrawn at any time. Therefore, it is advisable to wait to return the property to the victim until a confiscation order is executed.

173) Restoring frozen property to the victim should be a sparingly used option since a freezing order, being a temporary measure, can be revoked at any time;

174) Restitution of property to the victim should take place only after the execution of a confiscation order.

14. DISPOSAL OF CONFISCATED PROPERTY OR MONEY OBTAINED AFTER SELLING SUCH PROPERTY

14.1. Restitution and Compensation to Victims

216. According to Art. 30, absolute priority should be given to restitution to and compensation of victims. Only in cases where there are no victims to compensate or return the assets to, or if the victims are content with the resolution, can both the issuing and executing States take ownership of the confiscated assets for themselves.

217. The decision to compensation of or restitution to victims should be envisaged in Section J of Annex 2; only if it is not possible could the decision be communicated at a later stage (par. 1). Even if it is not provided for by the Regulation, subsequent communications should be made in the written form and should guarantee the authenticity of the decision; therefore, the e-CODEX should be the rule.

218. Restitution and compensation follow different rules.

219. The decision on restitution may be issued either by the issuing authority of the confiscation order or another competent authority in the issuing State; the details on the authority who issued the decision on restitution should be indicated in Section J of Annex 2. It is recommended, even if not mandatory, to attach the decision to the certificate or to the subsequent communication.

220. The execution of the decision on restitution should take place as soon as possible. The executing authority is entitled to directly transfer the property to the victim. However, if it is not possible – for example because a sum of money is to be transferred to the bank account of the victim whose IBAN, SWIFT and BIC are unknown to the executing authority; or because a real estate needs a joint action in the registries of the issuing and executing State - the executing authority should ask the issuing

State to help enforce the decision. The communication between authorities should occur in written form, preferably utilizing the e-CODEX platform.

221. It is possible that while executing the confiscation order, a monetary sum has been acquired in substitution of the property originally thought to be confiscated. It could happen if:
    a. The decision to return the property to the victim has been transmitted at a later stage and, in the meantime, the executing authority had to sell it as to prevent a depreciation in value;
    b. During the execution of the confiscation order, it had been impossible to confiscate the very item of property (for instance because sold or transferred), but a sum of money was available to be seized.

    In this situation, the same rule concerning restitution of items of property is applicable; the only difference relates to what is given to the victim: an amount of money instead of an item of property.

222. As regards compensation, Art. 30, par. 4, only provides the possibility to compensate the victim with a sum of money obtained as a result of the execution of a confiscation order. Nonetheless, if an item of property has been confiscated and can be sold, the sum of money obtained by the sale should be given to the victim first (par. 6, lett.. a) and 7). If, on the contrary, the item of property cannot be sold, the property should be given to the victim if the law of the executing State so provides and within the limits of the compensation decision; indeed, Art. 30, par. 6, lett. c) states that if the item of property cannot be sold, it "may be disposed of in another way in accordance with the law of the executing State".

223. It is recommended, even if not mandatory, to attach the decision on compensation to the certificate or to the subsequent communication, if possible translated into a language accepted in the executing State or in English.

224. If a decision on compensation or restitution is ongoing, the issuing State should inform the executing authority. The latter, even if the order has already been executed, should refrain from disposing of the confiscated property. It is advisable to indicate an estimated date by which the decision should be taken, as to avoid uncertainty of the executing authority. If it is not possible, semestral contacts among authorities, in order to update the ongoing procedure, could be a best practice.

175) Victims should be given top priority;

176) The decision to provide compensation or restitution to victims should be envisaged in Section J of Annex 2; only if it is not possible could the decision be communicated in a later stage. Subsequent communications should be made via the e-CODEX platform;

177) The ruling on restitution can be issued by either the issuing authority of the confiscation order or another competent body in the issuing State; specifics regarding the authority responsible for issuing the restitution decision should be provided in Section J of Annex 2;

178) The execution of the decision on restitution should take place as soon as possible. The executing authority is entitled to directly transfer the property, or the sum of money obtained in substitution of the property, to the victim. However, it this is not possible, the executing authority should ask the issuing State to help enforce the decision. The contacts between authorities should take place via e-CODEX platform;

179) Art. 30, par. 4, only provides the possibility to compensate the victim with a sum of money. Nonetheless, if an item of property has been confiscated and it can be sold, the sum of money obtained by the sale should be given to the victim first. If, on the contrary, the item of property cannot be sold, the property should be given to the victim if the law of the executing State so provides and within the limits of the compensation verdict;

180) It is advisable, even if not mandatory, to attach the decision on restitution or compensation to the certificate or to the subsequent communication, if possible translated into a language accepted in the executing State or in English;

181) If a decision on compensation or restitution is ongoing, the issuing State should inform the executing authority, as to consent the latter to refrain from disposing of the confiscated property, even if the order has already been executed. It is advisable to indicate an estimated date by which the decision should be taken, as to avoid uncertainty of the executing authority. If direct communication is not feasible, establishing biannual meetings between authorities to keep each other informed and update the ongoing procedure could be considered a best practice.

14.2. Management and Disposal without Victims

225. Disposing of a sum of money should follow certain rules with or without an agreement among issuing and executing authorities (Art. 30, par. 7).

226. As a priority, MSs could agree to dispose of the money according to their needs. Annex II, however, does not provide the possibility to set an agreement. Therefore, the issuing and executing authority should trade via informal and formal channels: a first agreement could be reached by phone call; the definitive agreement should always take place in written form, preferably via e-CODEX.

227. If no agreement is reached, two rules envisaged in Art. 30, par. 7, will apply:
    a. If the amount of money is equal to or less than €10.000,00, the amount of money should accrue to the executing State;
    b. If the amount of money is more than €10.000,00:
        i. 50% should be transferred to the issuing State;
        ii. 50% should remain in the disposal of the executing State.

228. Disposal of a property follows different rules (Art. 30, par. 6):
    a. the property may be sold, in which case the proceeds of the sale follow the general rule for money;
    b. the property may be transferred to the issuing State provided that, where the confiscation order covers an amount of money, the issuing authority has given its consent to the transfer of property to the issuing State;

c. if the property cannot be sold or transferred, it may be disposed of in another way in accordance with the law of the executing State;
d. the property may be used for public interest or social purposes in the executing State in accordance with its law, subject to the consent of the issuing State.

182) Disposal of a sum of money should be governed by an agreement between issuing and executing MSs. The trade could take place via informal and formal channels: a first agreement could be reached by way of phone call; the definitive agreement should always take place in written form, preferably via e-CODEX;

183) It is recommendable to fill in the part of Section K of Annex II concerning "the contact details of the person(s) to contact for additional information or to make practical arrangements for the execution of the order or the transfer of the property";

184) In the absence of an agreement only, the rules envisaged in Art. 30, par. 7, should apply.

15.CSR IN BRIEF

Regulation (EU) 2018/1805, a pivotal component of establishing the Area of Freedom, Security, and Justice, serves to streamline the acknowledgement of cross-border freezing and confiscation orders (FCO) within the European Union. Despite aiming to enhance the limited cross-border freezing and confiscation rate, persistent challenges stem from mistrust among MSs. The Regulation strives for automatic recognition while retaining few traits of conventional mutual legal assistance mechanisms. Notably, the principle of automatic recognition is tempered by stipulated grounds for refusal. Although these grounds are circumscribed, they temper the concept of automatic recognition. The FORCE Project introduces Common Standards and Recommendations (CSR) to guide practitioners, fostering an effective and equitable Regulation application while safeguarding fundamental rights. These CSR, predicated on necessity, proportionality, minimal refusal grounds, dialogue, and recognition of all FCO types, have garnered validation from practitioners and academics for ongoing enhancement, acknowledging their dynamic nature adaptable to future practices.

The jurisdiction of the Regulation, outlined in Article 1, revolves around the mutual recognition and enforcement of FCO across Member States in the context of criminal

proceedings. It excludes FCO issued on civil or administrative matters. However, the concept of "proceedings in criminal matters" is intricate, influenced by the *Engel* criteria assessing domestic classification, the nature of the offence, and the severity of the penalty. The Court of Justice of the European Union (C.J.EU) employs these criteria to ascertain the criminal nature of a measure. Although these criteria provide guidance, the concept remains nuanced, warranting authorities to communicate in cases of uncertainty. Recital 13 extends the scope of "criminal matters" to encompass different FCOs, irrespective of Directive 2014/42/EU, encompassing criminal investigations as well. Adequate safeguards protecting the fair trial rights of defendants must be upheld. The concept of non-conviction-based confiscation (NCBC) engenders discussions, with the Regulation endorsing its recognition while upholding the right to property and a fair trial. NCBC systems adhering to legality, legitimate purpose, and proportionality can align with the European Convention on Human Rights (ECHR). Harmonizing NCBC with Article 6 ECHR necessitates avenues for challenges, reasonableness, and proportionality. In light of potential infringements upon property rights, the C.J.EU and ECtHR safeguard standards should be maintained for recognition. Recital 13 supports the recognition of FCO not existing in the legal framework of the executing state, while Article 23 mandates recognising FCO targeting legal entities. Despite the nuanced delineation of "criminal matters," the *Engel* criteria offer guidance, but consultation between authorities remains crucial in uncertain cases. The recommended utilization of Annex I and II, coupled with enforcing orders for legal entities, reinforces mutual recognition and trust principles.

The Regulation and Directive (EU) 2014/41 interplay concerning the European Investigation Order (EIO) assumes significance. Both instruments, oriented towards criminal matters, can be mutually reinforcing. The EIO, primarily designed for obtaining evidence, can complement the freezing order under the Regulation, which does not serve evidentiary purposes. Article 32 of the EIO directive simplifies the process of issuing an EIO for the preservation of evidence. When assets are targeted for freezing and subsequent confiscation, simultaneous issuance of an EIO and a freezing order is plausible. While these tools serve distinct functions, synergies can be leveraged through shared information facilitated by Section D of Annex I and II. Issuing an EIO initially to acquire asset particulars can expedite the execution of freezing orders. The EIO and the Regulation should be deployed in tandem, with EIO contributing to information collection for freezing orders. Freezing orders pursued for preventive or evidentiary ends should adhere to their respective instruments, considering the peril of asset disposal. The simultaneous issuance of EIO and freezing orders supports cases requiring both evidence collection and preservation. Lastly, where the issuing authority extends the freezing duration by adoption of a new order, it should adhere to the guidelines delineated in the Regulation.

The designation of competent issuing and executing authorities rests with individual Member States (MS), which can appoint central authorities to assist with administrative tasks related to FCO. The European Judicial Network (EJN) supplies a catalogue of competent and central authorities. Eurojust and the EJN can facilitate the identification of appropriate authorities. Validation of authority competence can be accomplished through the EJN's Judicial Library. For issuing authorities, designations encompass judges, courts, public prosecutors, or another validated competent authority endorsed by the issuing state. The appointment of administrative authorities vested with prosecutorial powers is

discouraged, but tax and administrative bodies can issue validated FCOs. The European Public Prosecutor's Office (EPPO) can assume the role of an issuing authority, necessitating contemplation of its hybrid nature, particularly when assigning measures with evidentiary ends to MSs other than those bound by the EPPO Regulation. While the role of victims remains under-addressed, they should possess the right to request FCOs for restitution and compensation. The executing authority shoulders the responsibility of recognising and executing FCOs. Central authorities, distinct from issuing and executing authorities, can facilitate communication and coordination. MSs are advised to designate central authorities to facilitate these processes.

Linguistic challenges create hurdles in cross-border cases, as the Regulation refrains from mandating a common language but rather 'encourages' the use of official EU languages. Several MS do not accept languages beyond their own – issues related to translation span from substandard quality to the absence of collaboration or available translators. A potential solution is the widespread utilization of English for Freezing and Confiscation Certificates (FCC) due to its prevalence in international contexts. Urgent scenarios could benefit from the acceptance of English. Translating FCC is recommended. Particular attention should be devoted to individuals affected by language barriers who may not comprehend English or accepted languages. Establishing a centralised list of proficient translators with legal expertise is valuable at the EU level.

In the initial phase of issuing orders under the Regulation, specific prerequisites must be fulfilled for FCCs. Unlike Directive (EU) 2014/41, the Regulation lacks detailed specifications on mandatory and discretionary information for FCCs. To ensure effective execution, FCC should be comprehensive. Common pitfalls encompass vague descriptions, inadequate classification of offences, and incomplete personal data. Sections A, C, D, E, L, and M are obligatory for freezing orders. Sections A, B, C, D, E, F, H, and K are mandatory for confiscation orders. The summary of facts and justifications should be precise. The completion of FCCs can be facilitated through the EJN compendium, with .pdf file transmission and digital signatures compliant with the eIDAS Regulation. The principles of necessity and proportionality are paramount, prompting issuing authorities to conduct cost-benefit analyses to avoid burdening executing authorities, particularly concerning minor offences or properties of nominal value. The assessment of proportionality should invariably consider fundamental rights, and executing authorities should recognise and execute FCOs, even those that might seem superfluous or disproportionate.

In the subsequent phase of the process, the transmission of Freezing and Confiscation Certificates (FCC) comes into focus. Articles 4 and 14 stipulate that certificates should be transmitted through means that generate written records and affirm authenticity. Usual modes include postal mail, emails, and secure channels provided by Eurojust and the EJN. The recently established e-CODEX platform, pursuant to Regulation (EU) 2022/850, is anticipated to facilitate cross-border data exchange, furnishing a secure and efficient avenue for transmitting communications related to mutual recognition instruments encompassing FCCs. The digitalization of proceedings and the deployment of e-signatures are pivotal for streamlining the process. It is advisable to use the e-CODEX system for transmission, which requires both awareness and resource allocation to ensure accessibility. Ordinarily, FCCs should be transmitted to a single MS simultaneously, although exceptions apply for specific items or amounts. Staying within the stipulated

amounts in freezing or confiscation orders is imperative. In cases where circumstances might lead to considerable exceedance, communication between issuing and executing authorities assumes paramount importance. The executing authority can delay the execution of a confiscation order if it is projected to surpass the specified amount substantially.

Upon receipt of an FCC, the executing authority must register the request, ensure conformity with legal requisites, and proceed with the acknowledgement and execution process. Establishing an automated system to centralise FCC information holds significance for reporting objectives. Incoming FCC should be treated analogously to national orders and executed accordingly. When an FCC is directed to an inappropriate State or authority, pertinent corrective measures must be taken. If issued by an administrative or tax authority identified as a judicial authority, the executing authority can assess compliance with Article 2, with exceptions being contemplated. The executing authority is entitled to validate competence but not jurisdiction. Timeframes for acknowledgement and execution should mirror domestic cases, with the executing authority communicating its decision to the issuing authority. In cases of urgency, stringent timelines come into play. When compliance with time limits is not met, or divergence of scheduling arises, the executing authority is still obliged to expedite execution. Urgency should be confined to the specified grounds.

Confiscation orders should generally be executed promptly, with the execution occurring within 45 days from the receipt of the certificate. The executing authority must apprise the issuing authority of the decision on acknowledgement and execution. In scenarios denoting urgency, rigorous timelines are enforced. The duration of a freezing order can be stipulated, although the Regulation does not specify a maximum time limit. The issuing authority could petition renewals of freezing orders before expiration. The ramifications of the duration differ, with possibilities encompassing the return of assets or the renewal of the order. If deemed necessary, the executing authority can request the issuing authority to designate a limit on validity. Preserving the confidentiality of freezing orders is pivotal for execution and balancing the right to defence. The executing authority should uphold confidentiality prior to execution and communicate with affected parties after the execution. In situations where the confidentiality of an ongoing investigation is to be preserved, the issuing authority may postpone notification to affected parties, and the executing authority should intimate the issuing authority if upholding confidentiality obligations becomes untenable.

When a confiscation order is not preceded by a freezing order, the executing authority can issue a freezing order *ex officio* if permissible under its national law or if the execution process would otherwise be significantly delayed. The substitution of property with a monetary sum necessitates concurrence between the issuing and executing authorities; in the absence of such concurrence, the executing authority is obligated to execute the order as requested. If a confiscation order pertains to a monetary sum and necessitates conversion into a different currency, the exchange rate is determined on the day of the order's issuance. Amounts recuperated in a different MS are deducted from the total value of the confiscation order. While executing authorities, in principle, trust issuing authorities regarding the quantum of confiscation, they possess the prerogative to decline execution if the certificate is incomplete or conspicuously erroneous. The Regulation's stance on cost-sharing for extraordinary cases is outlined in Article 31. In scenarios where the costs

are substantial or atypical, the executing authority can propose cost-sharing, entailing consultations between the executing and issuing authorities.

Concerning the acknowledgement and execution of multiple freezing orders within a single MS, if the orders pertain to different jurisdictions, the *modus operandi* is typically governed by the law of the executing State. In scenarios where a single freezing certificate covers various territorial districts, conceivable solutions encompass designating a recognition authority and coordinating executing authorities or assigning central authority status to facilitate coordination. In cases where the execution of confiscation orders is mandated in different territories of the executing state, and a solitary freezing certificate is transmitted, the division of territorial competence can be achieved by vesting the recognition authority with the management of multiple orders or assigning the execution to territorially competent courts under the coordination of the recognition authority. Alternatively, the central authority could undertake the role of coordination.

When confronted with multiple freezing or confiscation orders targeting the same individual or property from different Member States (MS), precedence should be accorded to grounds for postponement delineated in Articles 10 and 21. These grounds permit the deferral of execution if an asset has previously been frozen or confiscated or in instances where specific circumstances arise. In situations wherein multiple FCCs are concurrently received, primacy should be granted to the order associated with a victim, if relevant. In cases devoid of victims or marked by conflicting victim situations, pertinent circumstances should be considered, encompassing those enumerated in Article 26.

Regarding the imposition of alternative measures to FCO, the Regulation curtails the discretion of the executing authority to resort to alternatives. Unlike the EIO, the executing state can only resort to alternative measures to FCO with the acquiescence of the issuing state. An exception emerges when a confiscation order pertains to a sum of money the person affected cannot remit; in such instances, the executing authority can seize alternative property items. Consent must be acquired in advance or through a consultation process among the relevant authorities.

Articles 10 and 21 introduce grounds for postponing the execution of freezing and confiscation orders. These grounds are extraordinary and optional, conceived to preserve ongoing investigations, prevent dual freezing/confiscation, and accommodate civil/administrative orders. The concept of impossibility to execute orders (Art. 13 and 22) pertains to situations where the subject of freezing/confiscation lies beyond reach due to factors like prior confiscation or destruction. It is advisable that the executing authority consult with the issuing authority before conveying the impossibility, and explicit scenarios demarcate instances of impossibility, such as the disappearance of the asset or the absence of precise location indications. If the location is subsequently ascertained, the executing authority can proceed with the execution, either with or without verbal/written affirmation from the issuing state.

Lastly, Article 27 outlines circumstances warranting the termination of a freezing or confiscation order. These encompass the incapacity to execute the order or its nullity. In such cases, the issuing authority must promptly rescind the order and notify the executing authority. The Regulation eschews automatic withdrawal of orders due to the passage of time unless the order explicitly stipulates the loss of validity after a designated time threshold.

Grounds for refusal operate as exceptions to the principle of mutual recognition, and their application should be narrow and discretionary. The executing authority may recognise and execute an order even in the presence of a ground for refusal, underscoring mutual trust. However, prudence is advised, and orders that could infringe upon fundamental rights or constitutional principles should be declined. In cases of uncertainty, the executing authority should liaise with the issuing authority, striving to reach a decision conducive to the interests of both parties.

If a ground for refusal surfaces during the execution of a freezing order, the executing authority must promptly initiate communication with the issuing authority to deliberate on the appropriate course of action. Potential outcomes include arriving at an agreement, withdrawing the order, or suspending execution. Close communication between the issuing and executing authorities should be upheld during the execution process. If an immediate resolution remains elusive, an expansive interpretation suggests postponing execution while pursuing consultation with the issuing authority.

The "*ne bis in idem*" principle precludes dual proceedings or penalties for the same offence. Defence counsel assumes a pivotal role in apprising the executing authority of any preceding final judgments. The doctrine of *lis pendens*, not shielded by "*ne bis in idem*," necessitates consultation and resolution per pertinent legal norms.

Privileges and immunities, coupled with constraints on criminal liability concerning freedom of the press and expression, can culminate in refusal under specific conditions. Flexibility in evaluating incomplete or inaccurate certificates is encouraged, with formal consultation and amicable resolutions sought for minor misunderstandings. The territoriality clause introduces three conditions for refusal based on the place of the offence and criteria related to criminality, designed to thwart abuses of extraterritorial jurisdiction.

Double criminality requirements are contingent on the executing state's legislation and whether the actions would constitute an offence therein. Exceptions encompass designated criminal offences and tax-related transgressions. Safeguarding fundamental rights takes precedence, allowing refusal if substantial grounds exist to believe that execution would unequivocally violate Charter rights. Proportionality and the essence of the right are pivotal determinants in ascertaining a violation.

In summation, while grounds for refusal are present, they warrant cautious handling, considering the principles of mutual recognition and the protection of fundamental rights. Consultation, flexibility, and a judicious evaluation are pivotal in fostering practical cooperation while upholding justice and rights.

The ground for refusal, labelled "Rights of the Person(s) affected," pertains to confiscation orders and safeguards the interests of individuals impacted by the order, encompassing third parties beyond the defendant or owner. Person(s) affected encompass the defendant, property owners, and those directly disadvantaged by the order. Even legal entities are encompassed, with execution mandated, even if the executing state does not acknowledge criminal liability. The criterion for refusal arises if the rights of person(s) affected would render execution impossible under the law of the executing state due to legal remedies. Another refusal ground emerges in the context of confiscation orders,

wherein the recipient did not personally attend the trial but can be substantiated to have been aware of it based on specific circumstances.

The segment addressing the "Duty to Inform Person(s) affected and Legal Remedies" underscores the obligation to notify affected individuals about the execution of an FCO promptly. This communication should encompass the name of the issuing authority, available remedies, reasons for the order, and rights to defence. If the executing authority encounters challenges in identifying affected individuals, it can seek assistance from the issuing authority. However, an exception exists for freezing orders where delays in information dissemination can be sought to preserve ongoing investigations. Article 33 confers the latitude to MS to adapt legal remedies to their national legal frameworks, ensuring effective recourse for affected individuals. The suspensive effect of a remedy is permissible for confiscation orders if the executing state's law permits it. A foundational tenet of this process is the prompt notification of person(s) affected, with any violation warranting procedural nullification. A salient concern arises when the execution of an FCO exceeds the stipulated amount, wherein person(s) affected should possess the right to seek a reduction and withdrawal of surplus freezing certificates from the issuing authority. For modifying frozen assets with money, the options hinge on whether the issuing authority concurs with the alteration upon transmission of the certificate.

The "Management and Disposal of Frozen and Confiscated Property" section elucidates the execution and preservation of frozen and confiscated assets. It is stipulated that the executing state should manage these assets in consonance with its laws, preventing the depreciation of value. Establishing a national central office is recommended for property management to facilitate this. However, challenges arise when the value is contingent on market trends, such as in the case of cryptocurrencies. Without a unified EU rule, a general approach could involve the sale of market-dependent assets with compensation if their value appreciates. The restitution of frozen property to victims should be minimised due to its temporary nature, preferably occurring after the execution of a confiscation order.

The "Restitution of Frozen Property to the Victim" section addresses the return of frozen assets to victims. Certain conditions must be fulfilled; consultation between issuing and executing authorities is mandated unless met. Victim restitution should be prioritized, although the process should be circumscribed and deferred until after the execution of a confiscation order.

The "Disposal of Confiscated Property and Return to the Issuing State" section relates to the final destination of confiscated assets. The executing state can decide whether to retain or remit the assets to the issuing state. Consultation between the two authorities is advised, particularly in complex cases, focusing on efficient execution, equitable distribution, and international cooperation. If the executing state opts for retention, its national legal framework should govern the subsequent course of action, encompassing asset sale, rental, or use. In instances of remittance, the executing state must defray the costs unless an agreement or regulations dictate otherwise.

In conclusion, the Regulation is a cornerstone of the European Union's efforts to establish an Area of Freedom, Security, and Justice. Rooted in the principle of mutual recognition, the Regulation seeks to enhance cross-border cooperation in the freezing and confiscating of assets linked to criminal proceedings. While aiming for automatic recognition, the Regulation also incorporates grounds for refusal to ensure the protection of fundamental

rights and legal principles. Through careful communication, consultation, and cooperation between Member States, the Regulation strives to balance mutual trust, effective execution of orders, and safeguarding the rights of affected individuals. The FORCE Project's Common Standards and Recommendations further contribute to the harmonization and practical application of the Regulation, reflecting its dynamic nature and adaptability to future practices.

16.CSR IN BULLET POINTS

1) The concept of **criminal proceedings** is flexible and ambiguous, making it impractical to offer a comprehensive guideline on their nature, other than adhering to the ***Engel* criteria**. Therefore, liaising with **authorities**, in case of doubt, is strongly recommended, in order to solve any doubts;
2) Types of confiscation envisaged in the proposal for a Directive on asset recovery and confiscation (COM/2022/245), if definitively adopted, should be considered as falling in the scope of proceedings in criminal matters;
3) Annex I, Section E (for freezing orders), and Annex II, Section F (for confiscation orders) should be filled in with "other relevant information" with a brief description of the nature of the proceedings on criminal matters and an affirmation of compliance with fundamental rights, including the safeguards mandated by the Charter and the ECHR;
4) The issuing authority should declare in Annex II, Section F, "other relevant information", that a NCBC order respects the safeguards provided for by the C.J.EU and that the ECtHR have been respected; the executing authority, in turn, should trust the declaration of the issuing authority;
5) The executing State should always recognise an FCO that does not exist in its legal system, except for those cases in which a ground for refusal could be invoked;
6) The executing authority should always enforce an order concerning legal persons, even if it does not provide for the criminal liability of the latter.
7) FCC transmitted on or after 19 December 2020 must be acknowledged and enforced, irrespective of whether the underlying FCO was issued before that date.
8) In order to have the best disaggregation possible, MS should notify the European Commission of the statistics including the following voices: 1) the number of freezing orders and confiscation orders received by a Member State from other Member States that were recognised; 2) the number of freezing orders and confiscation orders received by a Member State from other Member States that were executed; 3) the number of freezing orders and confiscation orders received by a Member State from other Member States that were refused; 4) the number of cases in which a victim was compensated or granted restitution of the property obtained by the execution of a confiscation order under this Regulation; 4) the average period required for the execution of freezing orders and confiscation orders under this Regulation; 5) the number of requests for freezing orders to be executed in another Member State; 6) the number of requests for confiscation orders to be executed in another Member State; 7) the value or estimated value of the property recovered following execution in another Member State.
9) The EIO and the Regulation should be used as speaking instruments. If it does not impede the investigation, if it does not reveal the strategy of the issuing authority,

and if urgent circumstances exist, an EIO should be issued before an FCO. This is done with the aim of gathering all the necessary information to complete Section D of Annex I and/or II.

10) A freezing order with preventive ends (the prevention of destruction, transformation, removal, transfer or disposal of property with a view to the confiscation thereof) should be issued according to the Regulation;
11) A freezing order with probatory ends (the prevention of destruction, transformation, removal, transfer or disposal of an item that may be used as evidence) should be issue according to Directive (EU) 2014/41 on the EIO;
12) A freezing order with preventive ends should be issued only if there is a risk of destruction, transformation, removal, transfer or disposal of property that could be confiscated;
13) An EIO and a freezing order should be sent together if there are probatory and preventive needs;
14) An order thought to extend the duration of previously established freezing of assets should by treated as a freezing order within the meaning of the Regulation and transmitted to the executing authority by issuing and transmission of a new freezing certificate.
15) Always keep in mind the goals of freezing and confiscation orders.
16) A freezing order may not precede a confiscation order.
17) To check the competence of an authority, always verify the Judicial Library of the European Judicial Network available at the following link: EJN | Judicial Library (europa.eu);
18) In case of doubt, always ask the contact point of the Eurojust of the EJN.
19) A public prosecutor who is not independent from the executive branch is authorized to issue a freezing order, which must consequently be acknowledged, unless there are grounds for refusal.
20) AN MS cannot appoint administrative authorities as having the same powers of a PP. If it happens, an order should be refused.
21) EDP should be intended as issuing authorities towards Hungary, Poland and Sweden (as far as Poland and Sweden won't join EPPO);
22) EDP should assign freezing orders, instead of resorting to the Regulation;
23) According to national criminal procedure codes, victims should be entitled to ask their national authorities to issue an FCO, with a view to compensation and restitution;
24) The decision to deny a freezing order requested by the victim should be accompanied by a rationale.
25) It is advisable to appoint a central authority;
26) The central authority should aid national competent authorities and those of other Member States in establishing communication and fostering judicial cooperation. It should also serve as a central coordinating body;
27) The central authority may be requested to provide assistance in situations where there are communication challenges with the executing authority or when issues arise regarding the origin and authenticity of the order or the freezing/confiscation measure.
28) AN FCC should be accepted in English, at least in urgent cases. Ideally, the MS would notify the EC that they accept English, at least in urgent cases;
29) In particularly challenging situations, the key components of the FCO upon which the FCC is based can be translated, and both documents should be submitted together, except in urgent cases where the translation of the measure may be delayed;

30) It would be recommendable to translate the FCC in a language spoken by the individual affected, at least after the execution of the order;
31) It would be recommendable to establish, at EU level, a central list of authorised translators who can guarantee the highest quality of translation and who can be contacted quickly;
32) Translators should have specific legal skills.
33) With regard to freezing certificates, only Sections A, C, D, E, L, M are mandatory. As regards the confiscation order, only Sections A, B, C, D, E, F, H, K, M are mandatory. For both FCO, other Sections are strongly recommended. Particular attention must be paid to the summary of the facts and the grounds for freezing, as this consents the executing authority to fully comprehend the freezing order and the freezing certificate. It is important to remember that other MSs do not know the legal system of the issuing State; therefore, the description of the crime, the type of freezing measure and the grounds for freezing should be described as precisely as possible;
34) AN FCC should be filled in using the compendium provided for by the EJN, available here: European Judicial Network (EJN) (europa.eu). The compendium gives the possibility to choose the language of the form, to save progress and to download the final request both in .pdf and .docx.;
35) Only file extensions in .pdf format (native digital) should be submitted;
36) Only Digital Signatures according to the eIDAS Regulation (Regulation (EU) N°910/2014) should be used;
37) If multiple individuals are affected or if there are numerous items of property to be seized or confiscated, the EJN compendium form should only be completed with the primary person affected and the primary property. Subsequently, the form should be downloaded in Word format and filled out as required;
38) Never modify the form, except for what stated in the previous point;
39) Never use handwriting.
40) Issuing authorities should be careful in issuing an FCO concerning minor offences or low value properties, as to avoid the overburdening of the executing authority. In doing so, a high level of attention should be paid to a cost-benefit analysis;
41) In issuing an order, fundamental rights should always be taken into account to assess proportionality;
42) The executing authority should, in any case, recognise and execute an FCO, even if the latter is thought to be unnecessary or unproportionate.
43) The victim should have at least a 'solicitor' power in the issuing procedure;
44) The definition of victim should be the same of the one provided for by Directive 2012/29/EU;
45) It would be preferrable, until the entry into force of Regulation 2023/2844/EU (at latest 18 January 2028), to use the e-CODEX system for the transmission of FCCs and any related communications;
46) It will be mandatory, as soon as the Regulation 2023/2844/EU entries into force (at latest 18 January 2028), to use the platform based on e-CODEX;
47) It is essential, in the meantime, to widely promote awareness of the e-CODEX Regulation;
48) It is crucial for Member States to allocate financial and human resources to ensure that national authorities have access to the e-CODEX system. This is essential for the ongoing digital transformation of the justice system, which is becoming increasingly imperative due to the relentless progress of technology;
49) FCC should be native digital .pdf files;

50) Only Digital Signatures according to the eIDAS Regulation (Regulation (EU) N°910/2014) should be used to sign certificates, even before the entry into force of Regulation 2023/2844/EU (on this topic 1 May 2025).
51) The general rule should be the transmission of an FCC to a single MS at a time;
52) If adhering to the general rule is not feasible, then the exception outlined in Article 5 and 15 should be strictly followed;
53) Regarding a sum of money or its equivalent in freezing/confiscation, the cumulative amount frozen/confiscated across various Member States must not exceed the specified amount in the FCO (Art. 16, par. 2);
54) Section G of Annex I and II should always be filled in;
55) With regards to confiscation orders concerning an amount of money, the issuing authority should notify the issuing authority of the circumstances envisaged in Art. 16, par. 3, in order to avoid confiscation to exceed the maximum provided for by the confiscation order. As a recommendation, it is advisable to, at the very least, relay the same information concerning freezing orders as well;
56) The executing authority may postpone the execution of a confiscation order if it believes there is a risk that the total amount obtained from the execution of that confiscation order might considerably exceed the amount specified in the confiscation order.
57) Efforts should be made to centralize all information concerning incoming and outgoing FCCs within a single entity for statistical purposes;
58) Incoming FCO should be treated as domestic cases;
59) If FCCs are directed to the wrong State, they should be bounced back by the executing authority, informing the issuing authority accordingly;
60) If FCCs are directed to the wrong authority of the right State, they should be transmitted by the executing authority to the competent executing authority, informing the issuing one accordingly.
61) As a general rule, the executing authority should NOT check whether the issuing authority has judicial nature under its national law;
62) The check should be conducted in exceptional circumstances, when the executing authority has serious grounds to believe that the issuing authority might not be a judicial authority in the meaning of Art. 2;
63) If so, the executing authority can ask the issuing one to have the FCO validated by a judge, court or PP;
64) If the issuing authority does not validate the order, the executing authority may refuse the order or, in case of doubt, refer a preliminary question to the C.J.EU.
65) The executing authority is entitled to check the competence to issue an FCO according to Art. 2 of the Regulation;
66) The executing authority is not entitled to check the jurisdiction of a competent authority and should entrust the issuing authority;
67) Compliance with the jurisdiction of the issuing authority is a matter to be discussed exclusively in the issuing State.
68) Freezing orders should be executed without delay and with the same speed and priority as for a similar domestic case;
69) The decision on recognizing and executing a freezing order should be conveyed to the issuing authority through any method that can create a written record;
70) The issuing authority could indicate in Section B of Annex I the need for the execution on a specific date. The executing authority should execute the order on the date indicated;
71) The issuing authority could need coordination for the execution in (different) execution State(s) of the freezing order. The issuing State should indicate in Section

B of Annex I one or more possible dates for the coordinated execution, as to facilitate and speed-up an agreement of the involved authorities. If an agreement cannot be reached, it is advisable to execute the order on a date specified by the issuing authority, or at the very least, on a date close to the one(s) indicated in Section B of Annex I;

72) In case of urgency, the recognition should take place within 48 hours after the transmission of the certificate and the execution should be carried out within 48 hours after the recognition. If these time limits are not respected, the executing authority has the duty to immediately inform the issuing authority by any means, even verbally, and schedule the recognition or execution of the order;

73) If it is not possible to respect the time limits and an agreement on the schedule is not reached, the executing authority is obligated to promptly to recognise and execute the order without delay;

74) Urgency grounds should in principle be limited to the two provided for by the Regulation: a) if there are legitimate grounds to believe that the property in question will immediately be removed or destroyed; b) if there are specific investigative or procedural needs in the issuing State.

75) Confiscation orders should be executed without delay, with the same speed and priority as for a similar domestic case and within 45 days of the reception of the certificate;

76) The issuing authority should be informed, by any means capable of producing a written record, of the decision on recognition and execution of a confiscation order;

77) The recognition of a confiscation order should always take place within 45 days of the transmission of the certificate. If this time limit is not respected, the executing authority has the duty to immediately inform the issuing authority by any means, even verbally, and schedule the recognition or execution of the order;

78) If it is not possible to respect the time limit or reach an agreement on the schedule, the executing authority is still obligated to recognise and execute the order without delay.

79) It is advisable to always indicate the estimated duration of the freezing order in the certificate (Section I of Annex I);

80) The outcomes of the passage of time should be delineated. In particular, there should be an indication of whether the certificate retains its validity after the expiry of the period indicated, or whether the goods must be returned to the person affected after that period;

81) If the freezing order terminates upon reaching its due date, the sole method to extend its legal effect should be through the transmission of a new freezing certificate;

82) When the issuing authority issues an order for extension of freezing duration and transmits it to the executing authority via a new freezing certificate, the relation of such an order to the previously issued freezing order should be indicated in Section H, Section C (4.) and Section D (3.) of the certificate. Where reasonable, the issuing authority should also be informed of the new freezing certificate's extraordinary nature via a direct contact;

83) Without any further indication, the property should remain frozen either until the transmission of a confiscation order or until the order becomes unenforceable or it is withdrawn;

84) The executing authority may ask, preferably by way of the e-CODEX platform, to set a limit to the validation of the confiscation order only if it is strictly necessary and it is mandatory for its national law. The issuing authority should respond as soon as possible, at maximum within six weeks; it could agree or disagree. In the latter

circumstance, the executing authority is obliged to enforce the order. If the issuing authority does not answer within six weeks, the executing authority no longer has the duty to enforce the order.

85) The executing authority should maintain confidentiality regarding the freezing order before its execution. One it has been executed or immediately before, it should inform the person(s) affected without delay;

86) The issuing authority should request to delay providing information to the affected individuals solely to safeguard an ongoing investigation, and this delay should be as brief as possible;

87) If the executing State cannot comply with the confidentiality obligations, it should always notify the issuing authority before the execution of the order;

88) The executing authority should give the issuing authority sufficient time to respond and to provide additional information, in order not to hamper the ongoing investigation. The adequate time should not be shorter than seven days.

89) If a confiscation order is not preceded by a freezing order or is not transmitted concurrently with it, it is advisable for the executing authorities to issue a freezing order independently only if the laws of the executing State mandate such action; or if the process in the executing State is expected to be excessively time-consuming, which might impede the execution of a confiscation order;

90) An item of property can be replaced, according to the law of the executing State, by a corresponding sum of money only if there is an agreement between issuing and executing authorities. If the agreement is not reached, the executing authority should enforce the order as requested by the issuing authority, unless a ground for refusal is applied;

91) Only for confiscation orders, the executing authority can convert the amount of money into the legal currency of its MS, if different from the one of the issuing State. The exchange rate to be considered should be the one on the issuing date of the confiscation order;

92) The amount of money recovered via confiscation order in an MS different from the executing State should be deducted from the amount of money to be confiscated in the latter. Therefore, the total amount of different confiscation certificates should be the same of the one provided in the confiscation order;

93) The executing authority should trust the issuing authority as regards to the amount to be confiscated. In exceptional circumstances only, the executing authority may refuse to recognise and execute the confiscation order because the certificate is incomplete or manifestly incorrect (Art. 19, lett. c). The order should be considered incomplete if Section G of Annex II ("3. Value of assets, if known, in each executing State") has not been filled in. The order should be considered manifestly incorrect if the sum of the value of assets indicated in the same Section G of Annex II is much higher than the one envisaged in the confiscation order.

94) As a general rule, in the absence of a definition of large and exceptional costs, the executing authority should bear the costs;

95) Only as an *extrema ratio*, the executing authority should invoke the "sharing procedure";

96) If an agreement cannot be reached, the issuing authority should either withdraw the order or bear all the costs considered large and exceptional;

97) If an agreement cannot be reached and the issuing authority neither withdraws nor bears all the exceptional costs of the order, the executing authority may refuse to enforce the order. This refusal should not be considered as a ground for refusal according to Art. 8 and 19;

98) If an agreement is reached later, or if the issuing authority later decides to bear the exceptional costs, the order should be recognised and executed;
99) It would be preferable if consultation sessions were audio recorded and the minutes of each session be drafted.
100) If the FCO requires execution in different territories of the executing State and a single FCC is transmitted, the territorial competence of the executing authority should be divided as follows: the recognition should be carried out by the authority which must enforce either the highest number of orders or, if this is not applicable, the order with the most valuable assets. The execution could be carried out by the territorial competent court, under the coordination of the recognition authority;
101) Alternatively, if the FCO requires the execution in different territories in the executing State and a single FCC is transmitted, the central authority could be appointed a coordinating role.
102) If more FCCs are issued against the same person or item of property from different MSs, the executing State should prioritise the reasons for postponement;
103) If multiple FCCs are received at the same time, or if the executing State admits multiple FCOs on the same item of property, it should grant priority to the victim;
104) If there are no victims, or two or more proceedings envisage victims, the executing authority should take into account all other relevant circumstances to decide which order to execute first, including those envisaged in Art. 26.
105) Executing authorities cannot resort to an alternative measure to the FCO issued;
106) A derogation is admitted only if there is consent on behalf of the issuing State. A general previous consent can be given by filling in Section J of Annex I or Section I of Annex II. Nonetheless, a late consent can be given after a consultation procedure between the authorities involved;
107) Another derogation is admitted where a confiscation order concerns an amount of money, and the executing authority is unable to obtain payment of that amount. In this case, the executing authority can confiscate any items or property in possession of the person(s) affected.
108) Grounds for postponements are exceptional and elective;
109) The postponement of the execution should immediately be communicated to the issuing authority by any means capable of producing a written record;
110) The executing authority should immediately enforce the order when the grounds for postponement cease to exist, informing the issuing authority by any means capable of producing a written record;
111) if the previous order cannot cease to exist, for example because it is converted in a confiscation order, grounds for impossibility to enforce the order may apply.
112) Grounds for postponement should be exceptional and elective;
113) The postponement of the execution should immediately be communicated to the issuing authority by any means capable of producing a written record;
114) If the asset was just frozen, it is highly recommended to postpone the execution of a confiscation order if a legal remedy has been invoked;
115) The executing authority should immediately enforce the order when the grounds for postponement cease to exist, informing the issuing authority by any means capable of producing a written record;
116) If the previous order cannot cease to exist, for example because a previous confiscation procedure led to a confiscation, a ground for impossibility to enforce the order may apply.
117) If it is impossible for the executing State to enforce the order, it should consult the issuing authority first, in order to check if the impossibility can be overcome; only if

it was not possible to overcome the impossibility, the executing authority should notify the issuing one without delay;

118) The hypothesis of impossibility is strict;

119) The inability to execute an order due to the certificate's lack of clear indication regarding the property's location should not be regarded as a basis for non-recognition or non-execution;

120) Whether the location of the property is discovered after the impossibility to execute the FCO was notified, the executing authority can enforce the FCO without a new certificate. However, it should obtain confirmation of FCO validity from the issuing State, preferably in written form.

121) If the execution of an FCO cannot be executed or is no longer valid, the issuing authority should withdraw the FCO without delay and immediately inform the executing authority by any means capable of producing a written record;

122) The passage of time should not result in the withdrawal of the order unless the freezing certificate explicitly stated a time limit for its validity.

123) The executing authority may reject an order only if certain grounds for refusal are met;

124) It is important to remember that grounds for refusal are elective and subject to a strict interpretation. Hence, when in doubt, the path of recognition and execution should be favoured, unless there is a clear and blatant violation of fundamental rights or constitutional principles; in such instances, refusal is strongly recommended.

125) In case of doubt, if the executing authority is willing to refuse an order, it should consult the issuing authority, even informally, and ask for clarifications.

126) If a ground for refusal is discovered during the execution of a freezing order, the executing authority should immediately contact the issuing authority by any means, even verbally, to discuss the appropriate measure to be taken;

127) After the contact: a) there could be an agreement on how to execute the order; b) the order could be withdrawn; c) the execution could be stopped. The execution should be stopped even if there is no possibility to immediately reach the issuing authority to discuss how to proceed;

128) If the issuing authority decides to withdraw the order, the latter could be withdrawn verbally, but an immediate confirmation capable of producing a written record is required.

129) The defence lawyer should have a central role in connection with *ne bis in idem* principle, as he/she can provide information on a previous final judgment;

130) In case of *litis pendens* the order should not be refused; however, the authorities involved should act according to FD (JHA) 2009/948 on the prevention and settlement of conflicts of exercise of jurisdiction in criminal proceedings.

131) If there is an immunity or privilege in a third MS known at the time of the issuing of the order, the issuing authority should ask to waive the immunity or privilege before compiling the certificate. Where granted, the issuing authority should fill the FCC with Section C, n. 4, providing the information on the waiver and, if possible, attaching the waiver;

132) If there is an immunity or privilege in the executing MS, known at the time of the issuing of the order, the issuing authority fills in Section C, n. 4, requesting the waiver;

133) If there is an immunity or privilege in the executing Member State, which was not known at the time of completing the certificate, the executing authority may request a waiver;

134) If there is an immunity or privilege in a third Member State, which was known at the time of completing the certificate, the executing authority should take responsibility for the waiver;
135) The request for a waiver should be formal, but (MLA) tools should be avoided.
136) The only suggestion here is to adhere to the standard practice of seeking consultation before making a refusal.
137) MSs should adopt a flexible approach in assessing the incompleteness or incorrectness of an FCC;
138) A consultation procedure is mandatory. Informal consultations (phone calls) could be allowed to clarify minor misunderstandings;
139) If, even after the consultation process, the executing authority cannot ascertain the requirements, it may decline to execute the order;
140) A lack of information on the location of the property to be frozen or confiscated should not be considered a ground for refusal, as it may give rise to the impossibility to execute an FCO only.
141) The only recommendation is to follow the general rule of consulting before refusing.
142) In assessing double criminality, the executing State should not take into account the legal interest protected by the criminal offence. On the contrary, it should only verify if the acts would have constituted a criminal offence in the requested State, irrespective of the constituent elements or legal classification;
143) The 32 offences listed in Art. 3 should not be refused under the double criminality condition;
144) Tax and duty offenses should not be rejected solely because the law of the executing State does not encompass them.
145) Fundamental rights should not be compromised by judicial cooperation. Therefore, executing authorities are strongly advised to reject an order that infringes upon fundamental rights, even though this ground for refusal is optional;
146) Only a manifest breach of fundamental rights set out in the Charter, in the ECHR and in national constitutional principles should lead to a refusal;
147) A manifest breach of proportionality should lead to a refusal, according to Art. 52 Charter of Nice;
148) Minor infractions, such as procedural deviation from the norm, which do not undermine the core essence of the right, should not result in rejection.
149) Careful consideration should be given to the definition of the term "affected person" ;
150) This reason for refusal should be cited concerning third parties in relation to the accused or defendant;
151) The rights affected are not limited to the fundamental rights envisaged in the Charter.
152) Complete Section H of Annex II as carefully as possible.
153) The executing authority should always inform, without delay, the person(s) affected of the execution of an FCO. The information should contain: the name of the issuing authority; the remedies available; a brief description of the reasons of the FCO; information on the rights to defence, to a lawyer, to translation, to access to documents and to be granted legal aid;
154) If the executing authority has any doubt or problem to identify the person(s) affected, it should ask for the aid of the issuing authority, even informally;
155) A derogation to immediate information could be set for freezing orders (not confiscation orders) to protect ongoing investigations, but it must be applied narrowly, in order not to obstruct the right to defence;
156) The issuing authority should indicate in Section F of Annex I the time needed for postponement, which can be deferred if necessary. However, as soon as the

postponement is no longer needed, even before the time indicated in Section F, the issuing authority should immediately inform the executing authority;

157) Given that the right to information is essential for the complete exercise of the right to a legal remedy, any breach of the obligation to inform affected individuals should result in an internal procedural nullity.
158) Remedies in the executing State pertain to the decision regarding the recognition and execution of an FCO. Consequently, Member States should establish a specific remedy if they do not already have one in place ;
159) The remedy must be effective and every person affected should invoke it;
160) The law that governs remedies in the executing State is the law of the executing State itself;
161) Suspensive effect is dedicated only to confiscation orders if the law of the executing State so provides. However, it is preferable for each Member State to introduce the suspensive effect in order to fully guarantee the right of defence;
162) The suspensive effect requires a swift awareness of the decision regarding recognition and execution → particular attention should be paid to the duty to inform person(s) affected on the decision of the recognition and execution;
163) Suspensive effect should not apply to freezing orders;
164) Substantive reason on the issuing of the order should be invoked only in the issuing State;
165) If a national legal system of the issuing authority does not envisage legal remedies against FCOs, FCOs should neither be issued nor recognised (lawmakers are encourages to provide legal remedies if inexistent);
166) The reasons to appeal in the executing State are limited to issues concerning the decision on the recognition and the execution → the reasons are limited to grounds for refusal that should have been applied;
167) If it is declared that an FCO should not have been recognised or executed, the assets should immediately be returned to the person(s) affected.
168) If the execution of FCO overcomes the amount to be frozen or confiscated, the person affected should ask the issuing authority to withdraw the FCC in part exceeding the amount envisaged in the FCO;
169) If the person(s) affected want to change the frozen asset with an equivalent sum of money, they could either manage the change in the executing State, if the issuing authority consented to it while transmitting the certificate; or ask the issuing authority to withdraw the certificate and issue another one at the same time, if the requesting authority did not consent to change while transmitting the certificate.
170) The executing State should manage frozen and confiscated properties according to its national law, preventing the depreciation in value;
171) Except for cultural objects, the executing State should sell or transfer properties which risk depreciation;
172) Assets that are subject to market fluctuations should be sold, and individuals affected should receive compensation. If the value of the assets increases, they retain the right to restitution.
173) Restoring frozen property to the victim should be a sparingly used option since a freezing order, being a temporary measure, can be revoked at any time;
174) Restitution of property to the victim should take place only after the execution of a confiscation order.
175) Victims should be given top priority;
176) The decision to provide compensation or restitution to victims should be envisaged in Section J of Annex 2; only if it is not possible could the decision be communicated

in a later stage. Subsequent communications should be made via the e-CODEX platform;

177) The ruling on restitution can be issued by either the issuing authority of the confiscation order or another competent body in the issuing State; specifics regarding the authority responsible for issuing the restitution decision should be provided in Section J of Annex 2;

178) The execution of the decision on restitution should take place as soon as possible. The executing authority is entitled to directly transfer the property, or the sum of money obtained in substitution of the property, to the victim. However, it this is not possible, the executing authority should ask the issuing State to help enforce the decision. The contacts between authorities should take place via e-CODEX platform;

179) Art. 30, par. 4, only provides the possibility to compensate the victim with a sum of money. Nonetheless, if an item of property has been confiscated and it can be sold, the sum of money obtained by the sale should be given to the victim first. If, on the contrary, the item of property cannot be sold, the property should be given to the victim if the law of the executing State so provides and within the limits of the compensation verdict;

180) It is advisable, even if not mandatory, to attach the decision on restitution or compensation to the certificate or to the subsequent communication, if possible translated into a language accepted in the executing State or in English;

181) If a decision on compensation or restitution is ongoing, the issuing State should inform the executing authority, as to consent the latter to refrain from disposing of the confiscated property, even if the order has already been executed. It is advisable to indicate an estimated date by which the decision should be taken, as to avoid uncertainty of the executing authority. If direct communication is not feasible, establishing biannual meetings between authorities to keep each other informed and update the ongoing procedure could be considered a best practice.

182) Disposal of a sum of money should be governed by an agreement between issuing and executing MSs. The trade could take place via informal and formal channels: a first agreement could be reached by way of phone call; the definitive agreement should always take place in written form, preferably via e-CODEX;

183) It is recommendable to fill in the part of Section K of Annex II concerning “the contact details of the person(s) to contact for additional information or to make practical arrangements for the execution of the order or the transfer of the property”;

184) In the absence of an agreement only, the rules envisaged in Art. 30, par. 7, should apply.

17. RECOMMENDATIONS FROM CONSULTATIONS WITH PRACTITIONERS

In order to guarantee that the FORCE Commons Standards and Recommendations are in line with the current practices, the drafted version was assessed by experts, and stakeholders, during 2 phases: a) Discussion on the FORCE Community; b) Consultation Sessions with academics and representatives of international networks. Participants suggested the following recommendations to be included in the CSR and take in into account in case of legislative amendments to Regulation 2018/1805:

1) The Regulation must clearly state that a refusal can only be issued when the Certificate is not presented or clearly does not correspond to the Confiscation Decision. In cases of incompleteness, efforts should be made to rectify it rather than immediately declaring a refusal of recognition.
2) Introduce a deadline for the conclusion of proceedings to discipline the court, as any delay in execution undermines the application of this institution. Similar limitations exist in the execution of EAW and EIO.
3) Provide for the possibility of reopening proceedings to ensure the objectives of the Regulation are met and minimize unlawful acts.
4) Establish a procedure for the management and storage of confiscated property.
5) Envisage the conduct of fast-track proceedings in cases where there are sufficient grounds to believe that the confiscated property may be concealed, destroyed, or disposed of.
6) Establish a mechanism and procedure for initiating new proceedings to award equivalent assets when they are lost, concealed, or disposed of, and provide for criminal liability for the perpetrator.
7) Oblige the court to register a prohibition on legal disposal of the confiscated property with the Registration Office at the location of the immovable property from the moment the proceedings in the receiving state are initiated.
8) Explicitly state that disputes over the property and claims by third parties should be resolved in accordance with domestic civil legislation, and proceedings for the recognition of the confiscation order should be suspended until the resolution of such disputes.
9) Specify who, between the issuing and executing authority, should handle the sale of the asset if it becomes necessary due to the costs of its management.
10) It is recommended that the State managing the asset sent an application/opinion on the sale of the asset to the requesting state in order to obtain its endorsement for the sale

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18.4. Reports

FORCE Comparative Report on the Implementation of Regulation (EU) 2018/1805;

FORCE National Reports of all EU Countries on the Implementation of Regulation (EU) 2018/1805;

FORCE Report on confiscation and freezing orders practical issues;

FORCE Interviews with practitioners in 14 selected MS.

18.5. Italian Consultation Sessions

Summary of the minutes of the consultation session held remotely on 23 October 2023:

After a brief introduction of the project, the first speaker emphasized the importance of the definitions of “Proceeding and Criminal Matters” and the relevance of the measure considered by the Regulation to criminal matters. She pointed out, however, that the placement of preventive measures (Italian *“misure di prevenzione”*) remains complex, as they undoubtedly fall within the measures considered by the Regulation but may not belong (or might not belong) to the aforementioned definitions. The same speaker also addressed the theme of the victim, suggesting a connection with Directive 2012/29 regarding restitution following the application of the Regulation. A second speaker emphasized the importance of this aspect concerning the valorization of the victim.

Another intervention highlighted, on the one hand, the need to allow the authority responsible for executing the measure to assess the proportionality of the measure,

particularly regarding the hypothesis of multiple perpetrators in the offense. On the other hand, the importance of the defender in introducing the exception related to ne bis in idem was stressed, as the proceeding authority is unlikely to know the "judicial" history of the individual.

Summary of the minutes of the consultation session held remotely on 25 October 2023:

After a brief introduction of the project, the first speaker introduced the theme of the presumption of innocence, emphasizing that no references were found within the shared report by the organizers. After a brief discussion on the impact of confiscation and freezing orders in practice, the presumption of innocence was not labelled as fundamental for the CSR.

Italian "*misure di prevenzione*" (preventive measures) were the second theme on the floor, as they are a freezing and confiscation measure, related to a criminal offence, imposed by a criminal judge but following administrative rulings.

The third theme concerned the lawyer's difficulty in obtaining information from the proceeding authority, resulting in a lack of defense powers that are undoubtedly in conflict with fundamental principles. Informational space recognized for the defense should not be seen as a hindrance to the proceedings but as an opportunity that must be necessarily recognized. This cannot be replaced by the provision of the possibility to appeal the final decision. Moreover, language issues were indicated as precluding effective defence.

Another speaker highlighted the lack of adequate protection for the rights of third parties in good faith affected by preventive measures.

Summary of the minutes of the consultation session held remotely on 27 October 2023:

After a brief introduction of the project, the first speaker raised the theme of "*misure di prevenzione*" (preventive measures), as they are a freezing and confiscation measure, related to a criminal offence, imposed by a criminal judge but following administrative rulings. He developed the theme of the qualification of the "victim" and suggests the possibility of attempting to crystallize a definition. Finally, he cites the new proposal for a European directive (22/245) and highlights that the Regulation may have influenced its content, inviting further exploration.

Another speaker highlighted a concrete difficulty he has encountered in executing freezing orders, namely their conciseness, which often prevents a correct assessment of both the respect for fundamental rights and the existence of the double criminality requirement. He also emphasizes that the execution of these orders often compromises investigative secrecy, and there is a need to improve coordination of investigations.

18.6. Slovenian Consultation Session

Summary of the minutes of the consultation session held in presence on 29 November 2023:

The consultation began with a presentation of the project and of the Regulation.

During the discussion, the attention was drown to the Constitutional Court judgement Up-500/23, U-I-85/23 from 19. 10. 2023, where the Constitutional court has recently considered the Regulation. In the judgement, the Constitutional Court explained that the

content of the right to private property from Article 33 of the Constitution in a specific case depends on the interpretation of point d) the second paragraph of Article 8 of the Framework Decision 2006/783/PNZ, which stipulates that the rights of bona fide third parties can be a reason to refuse the recognition or execution of the confiscation order, and the first paragraph of Article 17 of the EU Charter of Fundamental Rights, which stipulates the right to legally acquired property, while ensuring the protection of rights in case these persons are acting in good faith. The question is whether, according to EU law, third parties, whose rights must be considered in the process of execution of a decision on confiscation of illegal assets, are also holders of forced mortgages acquired before the recognition of the court decision of another member state or before the temporary security of its execution. The Constitutional Court emphasized that the unified interpretation of EU law is the exclusive competence of the Court of Justice of the European Union. Since there is no legal remedy under Slovenian law against the contested decision of the court panel, and at the same time its decision depends on the interpretation of EU law, the court panel is obliged to initiate a preliminary ruling procedure before the EU Court of Justice. The Constitutional Court concluded that, in a specific case, the hearing senate decided on an issue that, due to the transfer of the exercise of sovereign rights to the EU, it cannot decide on its own. The Constitutional Court therefore decided that Article 22 had been violated in relation to the first paragraph of Article 23 of the Constitution.

Another topic pointed out concerned the issue of extending the freezing order. The problem raised was that the executing authorities abroad often do not know what they wish with an extension. In principle, they do not send new orders for extension, or they do not issue new certificates, but inform the executive authorities about the renewal in an informal way (e-mail, call, etc.). That is why the speaker was reluctant to the proposal from the standards that a new certificate should always be issued when the decision to extend the order is made. However, if the certificate has already been issued, she emphasized that it is always necessary to establish communication with the executing authority at the same time and explain that it is only an extension. She also drew attention to the inconsistent practice regarding legal remedies in Slovenia regarding where to appeal when issuing a freezing order or recognizing an order from abroad - to an extrajudicial panel or to a higher court (the practice in Slovenia is said to be different in this regard).

Finally, the experts were generally satisfied with the presented standards and that the response from the practitioners and experts was good. The draft standards have also been sent to all participants.

18.7. Bulgarian Consultation Session

Summary of the minutes of the National Consultation Meeting on FORCE's Common Standards and Recommendations, held in Sofia, Bulgaria on October 27, 2023.

Following the introduction and the presentation of the draft CSR, participants at the meeting were engaged in a discussion on the main points that the report regards as well as the overall legal framework that is under consideration. Overall, participants were unanimous in agreeing that the CSR is relevant and to the point. Furthermore, representatives from the prosecutor's office wanted to underline some key overarching issues, that relate to the freezing and confiscation regime, where there is room for improvements.

To enhance the effectiveness of asset confiscation measures within the European Union EU, a critical imperative lies in fostering improved coordination and information exchange among EU member states and pertinent agencies. Central to this endeavour is the establishment of a centralized database, envisioned to serve as a hub for the efficient dissemination of critical data and the cultivation of collaborative efforts among authorities. This collective synergy aims to elevate the detection and tracking of assets susceptible to confiscation, thereby strengthening the overall enforcement mechanism.

Prosecutors were adamant that in order to fortify the execution of asset confiscation measures, the strategic allocation of resources toward comprehensive training programs is warranted. These programs must be intended to benefit various stakeholders, including law enforcement agencies, judges, and legal professionals. By enhancing their comprehension of the intricate legal framework and procedural intricacies associated with asset confiscation, this investment ensures a more informed and adept cadre of professionals who can effectively contribute to the enforcement of confiscation measures.

An essential facet of the asset confiscation landscape pertains to victim support services. This dimension necessitates the allocation of resources, with particular emphasis on cases entailing organized crime and financial malfeasance, where victims often suffer considerable losses. Such support services are poised to not only mitigate the adverse consequences experienced by victims but also promote their willingness to collaborate with law enforcement authorities. Additionally, they contribute to the cultivation of a tangible sense of justice within affected communities.

Representatives from the National Institute for Justice expressed the opinion that in order to instil public trust and safeguard against potential misuse of discretionary powers, the promotion of transparency is paramount in the asset confiscation process. While ensuring that the public has access to pertinent information, it is imperative to strike a balance by preserving individual privacy rights. Moreover, the implementation of mechanisms designed to oversee and uphold accountability principles is integral to maintaining the integrity of asset confiscation endeavours.

To perpetually assess the effectiveness of asset confiscation measures, the establishment of a systematic evaluation framework is indispensable. Member states should be obliged to periodically submit comprehensive reports detailing their endeavours and outcomes. This system enables peer review and the dissemination of best practices, ensuring the refinement of enforcement strategies. Maintaining a legal framework characterized by adaptability is paramount. As the landscape of asset recovery evolves, marked by emerging financial technologies and novel methods of concealing assets, this flexibility ensures

18.8. Meeting with French Asset Recovery Office

Summary of the minutes of the meeting held with the Asset Recovery Office of France (*Agence de gestion et de recouvrement des avois saisis et confisqués* - AGRASC). After a brief introduction of the project, the theme on the floor concerned the recognition of measures that do not exist in France. They are always executed if they are connected to a criminal act. The second topic was about language issues and (poor) quality of translations; it was shown that in France there is a strict interpretation of France as only language accepted. The third topic was related to the lack of documentation: a speaker complained about the non-transmission of the conviction on which the confiscation order is grounded (even if the Regulation does not require it). The lack of documentation, in the French ARO opinion, leads to the refusal of the order. The fourth topic insisted on the

necessity of hearing third parties, as in France it is required as a precondition of the recognition of an order. The fifth topic regarded the disposal of frozen and confiscated assets. French ARO suggested specifying who, between the issuing and executing authority, should handle the sale of the asset if it becomes necessary due to the costs of managing it. In addition, it recommended that the State managing the asset sent an application/opinion on the sale of the asset to the requesting state in order to obtain its endorsement for the sale.

18.9. Luxembourgish Consultation Session

Summary of the minutes of the consultation session held in Luxembourg, 26 February 2024.

Following a succinct introduction of the project, the floor was opened to practitioners to deliberate on the pivotal themes emanating from the draft of the CSR, with a particular focus on the challenges associated with the mutual recognition of freezing and confiscation orders.

Some speakers highlighted the complications related to linguistic issues, pinpointing the challenges posed by substandard translations. Those practitioners noted that Luxembourg recognizes three official languages (French, German, and Luxembourgish), stipulating that orders must be drafted exclusively in these languages, a requirement that issuing authorities must duly acknowledge. Subsequent discussions revolved around the criticality of establishing clear timelines. Participants argued that, particularly when Luxembourg acts as the issuing state, the process of recognizing and executing orders can become unduly protracted. A proposal was tabled suggesting Member States consider instituting specific deadlines (such as 45 or 60 days) to expedite these procedures, although this recommendation faced opposition from some participants, who highlighted the practical difficulties of adhering to such stringent timelines. Another group of speakers highlighted the importance of meticulously filling the relevant certificates. They recounted instances where, akin to other mutual recognition instruments, certificates were submitted with incomplete information, thus undermining the whole recognition and execution process.

Lastly, attention was drawn to the imperative of effective communication, particularly the provision of pertinent documentation to the individuals affected by FCOs. It was pointed out that the current regulation falls short of specifying the exact nature of information that should be made available to the concerned parties, indicating a gap that warrants attention in the CSR.