



NATIONAL APPROACHES TO THE RECOGNITION OF FREEZING AND CONFISCATION ORDERS IN THE EU

Policy Brief

Regulation (EU) 2018/1805 plays a pivotal role in the European Union's fight against crime, particularly in tackling cross-border financial crimes, including money laundering, terrorism financing, and organised crime. It establishes a consistent legal framework across Europe for issuing freezing and confiscation orders, complemented by standardised forms to enhance cooperation. The Regulation empowers competent authorities to immobilise or confiscate assets in other EU member states by submitting a request that obligates the recipient country, irrespective of whether such a legal mechanism exists within their national law. Thus, the Regulation aims primarily to bolster judicial collaboration through the principle of mutual recognition. However, its efficacy has been impeded by notable disparities among legal systems and a pervasive unfamiliarity with its provisions. The variance in legal traditions and entrenched procedural norms has led to a divergent level of implementation across member states. Additionally, EU member states must amalgamate two distinct systems to adhere to requests for freezing and confiscation emanating from non-EU states and EU nations not encompassed by this Regulation, specifically Denmark and Ireland.

A Diversity of National Approaches

Ensuring the effective and efficient implementation of Regulation (EU) 2018/1805 across the EU is still ongoing. Preliminary analysis reveals that, except for Poland and Portugal, most EU member states have

KEY POINTS

- Most EU member states have passed additional rules or amendments to facilitate the implementation of Regulation 2018/1805.
- The most common gaps are found in the efficient transmission of freezing certificates between authorities under the provisions relating to the methods of transfer, the applicable language and the competency of national authorities.
- Various grounds for non-recognition and non-execution of orders are the most common reasons for the lack of practical application of the Regulation at the national level.
- Only a few states addressed handling cases with legal entities, respecting the rights of accused and third parties through appeal mechanisms, and facilitating the return of seized property to victims.
- It is essential to strengthen and raise awareness of Regulation 2018/1805 to support its efficacy as a tool for asset recovery and EU-wide cooperation against financial crimes.



enacted supplementary rules or amendments to facilitate its practical application and bridge existing legislative gaps. Some countries, like Luxembourg, have introduced specific legislation to implement the Regulation. The Netherlands, Estonia, and France have amended criminal codes or procedural laws. For example, Lithuania has passed laws to implement the Regulation and amend existing criminal codes or procedures. Elsewhere, gaps were addressed by including changes to laws on money laundering or mutual assistance in criminal matters, as seen in Cyprus, Belgium, Hungary, Slovenia, Germany, and Bulgaria. Certain jurisdictions, including Italy, Latvia, Austria, Slovakia, Cyprus, Croatia, and Spain, have issued soft law documents, with or without public consultation, to gather feedback on prospective national legislation. Most of these legislative actions were undertaken either to embody the Regulation's overarching guidelines or to introduce laws to foster cooperation among member states.

Efficient Transmission of Certificates Between Competent Authorities

An outlining practical challenge to the effective application of Regulation (EU) 2018/1805 is the effective sharing and compilation of freezing certificates amongst authorities. Member states have approached this challenge twofold: by adopting specialised legislation on the subject matter or introducing rules amending criminal procedures. Most provisions enacted by Member States address the methods of certificate transmission, the languages accepted, and the appropriate authorities to issue or receive the orders. Other norms provide instructions for safely exchanging certificates, such as utilising Europol's SIENA platform, which enables direct information exchange between EU Asset Recovery Offices, or the EGMONT secure web, which Financial Intelligence Units use to share financial data on money laundering and terrorist financing safely. Nearly all jurisdictions bound by the Regulation have introduced particular soft law instruments that include provisions for document transmission. Member States like Slovakia, Cyprus, Malta and Croatia have decided to enact hard and soft laws to tackle the challenge. Regulation (EU) 2023/2844 of the European Parliament and of the Council of 13 December 2023 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 will contribute to resolving issues on

the transmission of certificates by introducing an e-codex platform.

Fast and Thorough Evaluation of Urgent Freezing and Confiscation Orders

Another practical issue that has drawn substantial legal attention is how to conduct a fast and thorough evaluation of freezing and confiscation orders, especially in urgent cases. While some states (Cyprus, Malta, and Bulgaria) have adopted no new regulations beyond those already in force, other EU members introduced or modified applicable legislation, facilitating communication between relevant authorities (Slovakia, Sweden or Slovenia).

Time limits are a critical factor in efficiently handling freezing and confiscation orders. Attaining practical judicial cooperation depends on the duration of the proceedings for recognition and execution of the measures. Slovakia and Estonia made it explicit in their legal addition that freezing orders must be recognised within 24 hours of receipt. In Lithuania, the law only specifies when the decisions must be made; the judgment should be rendered within three days. Certain countries, such as Croatia, Austria, or Belgium, have made it legally binding that orders arising from the Regulation must be handled urgently and within a strict time frame. Other Member States, like Slovakia and Sweden, have implemented new provisions to improve the asset's freezing or confiscation efficiency in certain specific and urgent cases. In Sweden, the prosecution may hold the dispatch until the urgent freezing order is carried out, if there are reasons to believe that the dispatch will be received at a transport undertaking. In Slovenia, criminal proceedings linked with the Regulation are legally permitted to skip the line and be handled before others, in contrast to the custom of handling cases in the order they arrive or are filled at the courthouse.

Denial on Grounds for Non-recognition and Non-execution

The Regulation has also set a limited number of grounds for refusing freezing or confiscation requests. In this respect, several member states did not consider it necessary to specify what is already provided in the Regulation (Cyprus, Romania, Finland, Lithuania, Bulgaria). However, as it is a complex legal matter open to interpretative issues, other countries deemed it essential to introduce additional national

provisions (Czech Republic, Slovakia, Austria, Finland, Sweden, Estonia, Hungary and Slovenia). These additions usually fall into two major categories. National regulations regarding procedural aspects address three core areas: timely notification to the issuing authorities, the right of competent authorities to refuse an order, and managing orders based on the grounds of non-recognition or non-execution subsequently arising. In instances where national regulations concerning interpretive matters are deemed applicable, states have prioritised the problem of double criminality and, more broadly, the protection of fundamental rights in the case of non-recognition or non-execution of orders. Among all member states, Estonia stands out for having created a thorough domestic legislation meant to address some of the most contentious problems in this aspect. Slovakia and Finland have also introduced specialised norms that specifically address procedural aspects of handling cases involving non-execution or non-recognition.

Instructions on Specific Subjects

Several Member States have chosen to introduce specific instructions for handling cases involving legal persons. For instance, Latvia is one of the few countries that passed legislation prohibiting the confiscation of a legal person's property if their registered legal address is in another European country. Poland enables applying relevant criminal confiscation protocols to collective entities for acts prohibited under penalty.

Several member states have also established legal frameworks to safeguard the rights of suspects, accused and third-parties' rights affected by the freezing and confiscation regimes. Most provisions concern the possibility of appealing the order before competent courts, being duly informed of the procedure for recognising a pending order or making statements related to one's property interests.

Research stipulates that few Member States have adopted specialised norms to protect victims' rights. Most applicable provisions focus chiefly on facilitating the return of seized property to victims, as is the case in the Czech Republic, Finland and Croatia. Some notable measures, however, include requiring prosecutors to justify not returning property to victims, as it is legally required in Sweden, or notifying victims of asset freezing and confiscation orders, as established by Cyprus.

What's Next

The Regulation's implementation has encountered uneven application and a notable lack of uniformity across the Union. This variability underscores the necessity for a concerted effort to not only familiarise practitioners with the Regulation but also to harmonise its application.

Developing **EU-wide guidelines to standardise the application of Regulation (EU) 2018/1805** across all member states would include creating uniform procedures for the issuance, recognition, and execution of freezing and confiscation orders, ensuring consistent and efficient cross-border cooperation. This approach should be complemented by implementing comprehensive training programs for legal practitioners, judicial authorities, and law enforcement agencies across the EU to improve their understanding and familiarity with the Regulation. Programmes should include case studies, best practices, and interactive workshops to address practical challenges in the Regulation's application.

Encouraging **member states to review and, if necessary, amend their national legislation to align more closely with Regulation (EU) 2018/1805** objectives could involve simplifying legal procedures, removing bureaucratic hurdles, and ensuring that domestic laws facilitate rather than hinder the Regulation's mutual recognition principle.

Establishing a **centralised EU database for freezing and confiscation orders** would also improve transparency and expedite processing. An alternative approach is seen in enhancing existing information sharing and cooperation mechanisms among EU member states, including using platforms like Europol's SIENA and the EGDMONT secure web.

Conducting **regular evaluations of the Regulation's implementation and impact**, identifying areas for improvement and adapting the legal framework as necessary could involve gathering feedback from practitioners, analysing the effectiveness of mutual recognition mechanisms, and making adjustments to address evolving challenges in asset recovery and anti-money laundering efforts.

Beyond the EU, engaging with non-EU countries and international organisations to extend the principles of mutual recognition and judicial cooperation in asset recovery is vital to addressing the global nature of financial crimes and implementing a more comprehensive approach to ensuring that crime does not pay.

FORCE (Freezing Orders and Confiscation orders: Effort for Common Standards) aims at improving judicial cooperation in the recovery of illicit assets by investigating practical obstacles to the implementation of **Regulation (EU) 2018/1805** on the mutual recognition of confiscation and freezing orders. It also seeks to mitigate disparities in training by creating comprehensive resources for legal professionals, policy-makers, scholars and the general public.

FORCE seeks to bridge the gaps between legal systems across the EU by highlighting the existing national provisions and strengthening the mutual cooperation and understanding between practitioners who deal with the practical application of the Regulation.

To achieve this goal, **FORCE** has developed a comprehensive Digital Ecosystem, which incorporates the following modules that could help practitioners in their efforts to ensure that judicial decisions related to the freezing and confiscation of assets derived from criminal activities can be recognized and enforced across all EU Member States more effectively and efficiently than before.



A **Knowledge Sharing Repository**, an interactive map of information regarding freezing and confiscation rules and practices in all EU Member States. For each EU MS a web interface displays the description of the inner freezing and confiscation instruments; links to the relevant legislation and soft law; list of contact points and authorities competent for CFO; useful contacts such as victims' associations, services and organizations dealing with the administration of confiscated properties; and links to national legal persons registers.



A **Virtual Learning Environment** on the Regulation and its implementation, developed to effectively train practitioners and to raise awareness on the existing EU instruments in the field of mutual recognition of freezing and confiscating orders. It hosts an Online Open Course and Case simulations to further assist in the bridging of national discrepancies or lack of training in relation to CFO.



A **FORCE Community**, a digital forum facilitating the information exchange between practitioners and experts, working in the field of freezing and confiscation orders. The registered users can also share opinions and suggestions related to FORCE's products and their efficacy.