EUROJUST

Casework Report on Regulation 2018/1805

on the Mutual Recognition of Freezing and Confiscation Orders

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Executive summary

Background. Regulation (EU) 2018/1805 of the European Parliament and of the Council of 14 November 2018 on the mutual recognition of freezing and confiscation orders aims to strengthen judicial cooperation in asset recovery across the European Union. This report analyses Eurojust casework on the practical application of this instrument and is intended to support national authorities in applying the Regulation effectively and combating transnational crime. It outlines key legal and practical challenges, shares best practices and highlights Eurojust's role in resolving issues.

While the Regulation is very much used in practice and it has significantly improved cooperation in this field, it is not yet fully effective. Early practice demonstrates both progress and persisting gaps. Eurojust has played a key role in facilitating coordination, and most cases have resulted in successful execution of orders. Nevertheless, obstacles remain, both those arising from new provisions of the Regulation and those inherited from earlier instruments. In some cases, national practices and legal traditions have prevailed over the Regulation's principle of direct applicability, undermining speed and predictability. Divergent interpretations of core legal concepts, and different procedures for executing these measures, highlight the lack of harmonisation across Member States. Practical shortcomings also persist in the use of the certificate, where incomplete or vague drafting leads to refusals, and in the area of victim restitution, where restrictive national rules and conflicting claims often delay outcomes. Together, these factors illustrate that the full potential of mutual recognition has not yet been realised.

Eurojust's operational experience shows that early involvement, proactive consultation between issuing and executing Member States and precise, carefully drafted certificates are decisive in overcoming these challenges. The Regulation's new provisions on restitution of frozen assets represent a significant step forward, but further EU level guidance and closer alignment of national practices are needed to ensure that victims' rights are effectively protected and that outcomes are predictable across jurisdictions.

Main findings and recommendations. As asset recovery continues to receive significant legislative attention across the EU, Eurojust plays a central role in assisting judicial authorities navigate complex legal and procedural challenges. The **key challenges** identified in the report are the following.

- The Regulation has significantly improved cross-border freezing and confiscation, especially thanks to its broad scope of application. However, in some occasions, national practices override its direct applicability, slowing procedures and undermining the primacy of EU law.
- The lack of harmonisation between Member States' legal frameworks on freezing and confiscation, resulting in divergent interpretations and varying approaches to the freezing of certain assets, does sometimes represent an obstacle to effective asset recovery.
- Operationally, the freezing and confiscation certificates are not sufficiently user-friendly and often poorly drafted, which may lead to refusals. The certificates must be treated by practitioners as a key tool with precise details and links to judicial decisions.
- The restitution of assets to victims, though a major step forward, remains complex in practice due to restrictive national rules and delays. Furthermore, conflicting claims arising from multiple victims in different jurisdictions, underline the need for coordination through Eurojust and clearer guidance from the EU legislator.

Eurojust has identified the following **best practices** to strengthen the execution of freezing and confiscation orders.

- **Drafting and content of certificates**. Certificates should contain comprehensive information, including the contact details of the competent national confiscation unit, clear instructions for the return of assets and any other relevant details that will aid execution. Particular care should be taken when explaining the link between the offence and the property to be frozen or confiscated, especially by completing Section C.4 in cases involving shell companies or straw persons.
- **Coordination between issuing and executing Member States**. Prior consultation with the executing Member State is strongly recommended to address potential legal differences when it comes to the modalities for executing the freezing order, considering the specific type of asset targeted by the certificate.
- **Freezing of companies and undertakings**. Considering the profoundly different rules governing the freezing of companies at the national level, issuing authorities are recommended to indicate clearly in the certificate whether they request to freeze only the company's shares, or also their assets or the actual undertaking itself by appointing a judicial administrator. Given that some options might not be available under the law of the executing Member State, it is suggested to involve Eurojust in order to explore all possible solutions in consultation with the executing authorities thereby minimising the chances of refusals.
- **Protection of victims' rights**. The Regulation's provisions on direct applicability and remedies for affected persons should be used proactively to secure restitution and compensation in cross border cases. In jurisdictions where confiscation serves only the interests of the State, solutions may nonetheless be available under Article 29 or through reforms of national confiscation objectives.
- **Ensuring cost-effectiveness**. Anticipating significant storage and transport costs is essential, and it is recommended to communicate such costs early to the issuing Member State. Executing authorities should also consider the early sale of assets to reduce storage costs.
- **Role of Eurojust and inter-agency cooperation**. It is recommended that Eurojust be involved at an early stage to facilitate cross-border communication, ensure rapid freezing of assets (especially in case of joint action days), facilitate consultation and find solutions to issues deriving from divergent national laws governing execution, advise on the application of EU rules, and coordinate victim restitution and compensation. Strengthening cooperation with financial intelligence units, prosecutors and private-sector actors further enhances the ability to secure assets and protect the interests of victims.

Conclusion. This report concludes that the Regulation has created a stronger and more coherent framework for asset recovery, but its effectiveness ultimately depends on its consistent implementation in practice. By applying the identified best practices, addressing persistent divergences and engaging Eurojust at an early stage, Member States can ensure that mutual recognition functions as intended and that illicit assets are swiftly confiscated and, where possible, returned to victims.

Introduction

This is the first Eurojust casework report on the application of Regulation (EU) 2018/1805 on the mutual recognition of freezing orders and confiscation orders (hereinafter, 'the Regulation') ([1]). Over the years, Eurojust has developed practical knowledge of the issues, solutions and best practices that can significantly contribute to effectiveness of the recovery of criminal assets ([2]). In 2024 alone, Eurojust supported national authorities in the freezing of approximately EUR 1.4 billion. The practical knowledge relevant to the application of the Regulation is summarised in this report.

The Regulation is among a number of EU legislative instruments that have been adopted in recent years that directly or indirectly aim at improving the recovery of criminal assets. These include Directive 2018/1673 on combating money laundering by criminal law ([3]), Directive 2019/1153 on the use of information for the prevention, detection, investigation or prosecution of criminal offences ([4]), Directive 2024/1226 on the criminalization of the violation of sanctions ([5]) and Directive 2024/1260 on asset recovery and confiscation ([6]). At the time of writing, negotiations of an additional protocol in the area of criminal asset recovery to the Council of Europe Warsaw Convention ([7]) are ongoing.

Between 20 December 2020 and 31 May 2025, 928 cases where the application of the Regulation was an issue were registered at Eurojust. This report is based on a selection of those cases, without intending to be exhaustive. Cases were selected for their legal or practical relevance, recurring issues and best practices. The analysis was enriched by input from Eurojust National Desks.

National Desks were asked to report on challenges and best practices across several core topics:

- scope of application, particularly how 'proceedings in criminal matters' are applied in practice;
- direct applicability and ongoing misunderstandings about the Regulation's legal nature and primacy;
- time limits for recognising and executing orders and maintaining freezing measures;
- victim restitution and compensation, especially differing requirements for confiscation before restitution;
- rights of affected persons, including legal standing and ability to challenge execution;
- exceptional costs, particularly the cost-sharing rules;

([1]) Regulation (EU) 2018/1805 of the European Parliament and of the Council of 14 November 2018 on the mutual recognition of freezing orders and confiscation orders (OJ L 303, 28.11.2018, p. 1, ELI: http://data.europa.eu/eli/reg/2018/1805/oj).
([2]) Eurojust, Report on Eurojust's casework in asset recovery, 2019, https://www.eurojust.europa.eu/publication/report-eurojusts-casework-asset-recovery; Eurojust, Eurojust Report on Money Laundering, 2022, https://www.eurojust.europa.eu/publication/eurojust-report-money-laundering.
([3]) Directive (EU) 2018/1673 of the European Parliament and of the Council of 23 October 2018 on combating money laundering by criminal law (OJ L 284, 12.11.2018, p. 22, ELI: http://data.europa.eu/eli/dir/2018/1673/oj).
([4]) Directive (EU) 2019/1153 of the European Parliament and of the Council of 20 June 2019 laying down rules facilitating the use of financial and other information for the prevention, detection, investigation or prosecution of certain criminal offences, and repealing Council Decision 2000/642/JHA (OJ L 186, 11.7.2019, p. 122, ELI: http://data.europa.eu/eli/dir/2019/1153/oj)
([5]) Directive (EU) 2024/1226 of the European Parliament and of the Council of 24 April 2024 on the definition of criminal offences and penalties for the violation of Union restrictive measures and amending Directive (EU) 2018/1673 (OJ L, 2024/1226, 29.4.2024, ELI: http://data.europa.eu/eli/dir/2024/1226/oj).
([6]) Directive (EU) 2024/1260 of the European Parliament and of the Council of 24 April 2024 on asset recovery and confiscation (OJ L 2024/1260, 2.5.2024, ELI: http://data.europa.eu/eli/dir/2024/1260/oj).
([7]) Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (Warsaw, 2005), CETS 198, https://www.coe.int/en/web/conventions/full-list?module=treaty-detail&treatynum=198.

- additional issues, such as communication, urgency, translation, certificate content, execution delays and grounds for refusal.

1. Scope of the Regulation

1.1. Adoption time frame

The Regulation has applied from 19 December 2020, replacing Framework Decision 2003/577/JHA on freezing orders (hereinafter, 'FD 2003') ([8]) and Framework Decision 2006/783/JHA on confiscation orders (hereinafter, 'FD 2006') ([9]). This effectively meant that it became applicable to freezing and confiscation certificates transmitted on that day and thereafter. Freezing certificates and confiscation certificates transmitted prior to that day follow the legal regimes of FD 2003 and FD 2006 until the final execution of the freezing order or confiscation order. In the early days of initial application of the Regulation, Eurojust's support was crucial for clarifying the new legal framework to the national authorities involved ([10]). For instance, in several cases, freezing certificates were wrongly issued under FD 2003, which required the freezing certificates to be reissued in accordance with the Regulation.

Another issue observed in cases brought to Eurojust was whether assets already seized under FD 2003 could be returned to the victim according to the new provisions of the Regulation. This is because FD 2003 did not provide for the possibility of returning assets to the victim. In this situation, the solution found with the intervention of Eurojust was to issue a new freezing or confiscation certificate under the Regulation, to allow for the restitution or compensation of victims.

1.2. Territorial scope

The Regulation is applicable in all EU Member States with the exception of Ireland and Denmark. As a result, cooperation with Ireland and Denmark is still based on the previous instruments, such as FD 2003 and FD 2006. Sometimes Eurojust was requested to clarify what instrument is to be used where the freezing or confiscation order is to be executed in those two Member States ([11]). Furthermore, this has sometimes caused issues in Eurojust casework in relation specifically to the new regime for restitution of frozen assets to victims, as, unlike the Regulation, the other cooperation instruments do not enable this option ([12]).

1.3. Material scope

One of the main novelties of the Regulation, compared with previous instruments in this field, is its broad scope of application. It covers any freezing and confiscation order issued by a Member State 'within the framework of proceedings in criminal matters', extending beyond criminal proceedings in a

([8]) Council Framework Decision 2003/577/JHA of 22 July 2003 on the execution in the European Union of orders freezing property or evidence, (OJ L 196, 2,8,2003, p. 45, ELI: http://data.europa.eu/eli/dec_framw/2003/577/oj).
([9]) Council Framework Decision 2006/783/JHA of 6 October 2006 on the application of the principle of mutual recognition to confiscation orders (OJ L 328, 24.11.2006, p. 59, ELI: http://data.europa.eu/eli/dec_framw/2006/783/oj).
([10]) For this purpose, when the Regulation became applicable Eurojust also published a Note on the Regulation (EU) 2018/1805 on the mutual recognition of freezing orders and confiscation orders – A new legal framework for judicial cooperation in the field of asset recovery, 2020, https://www.eurojust.europa.eu/publication/note-regulation-eu-20181805-mutual-recognition-freezing-orders-and-confiscation-orders.
([11]) These instruments were initially displayed as 'not in force' in EUR-Lex. A Eurojust National Desk noticed this issue and a correction was issued by the end of 2023.
([12]) Additional challenges and issues encountered in the application of the previous instruments and still applicable to cooperation with Denmark and Ireland are presented in Eurojust, Report on Eurojust's casework in asset recovery, 2019, https://www.eurojust.europa.eu/publication/report-eurojusts-casework-asset-recovery.

strict sense, while excluding orders issued within the framework of proceedings in civil and administrative matters (Article 1). Therefore, the Regulation covers any type of freezing and confiscation order adopted in proceedings in criminal matters existing under the law of the issuing State (Article 2(3)(d)). These may include, for instance, value-based confiscation, non-conviction-based confiscation, extended confiscation and third-party confiscations, even where such measures are unknown to the executing State's legal system ([13]).

Considering the significant differences in the confiscation measures available across Member States, Eurojust's intervention has been often crucial for clarifying the specificities of the confiscation powers existing in the issuing State and thereby ensuring a smooth execution of the certificates.

Different types of freezing and confiscation orders adopted in criminal proceedings. Eurojust casework demonstrates that the Regulation is frequently applied to enforce a wide range of freezing and confiscation orders existing under the national law of the issuing State, and that the executing authorities are open to recognise such orders even where equivalent measures do not exist in their own legal framework. This is particularly evident in relation to non-conviction-based confiscations. In such cases, however, Eurojust's intervention has often been crucial for clarifying the nature of the measure under the issuing State's law and preventing misunderstandings.

For instance, in one Member State, it is possible to order the confiscation of cultural goods that were illicitly exported outside its territory, even where the criminal proceedings are dismissed because they have become statute barred or because the author of the crime has remained unknown. In one Eurojust case, a confiscation certificate based on a similar decision had been initially refused because, according to the executing authorities, a decision of dismissal of the case could not be considered as a final confiscation decision. However, thanks to the clarifications provided by Eurojust on the relevant national law in the issuing State, the confiscation was subsequently executed.

Proceedings in criminal matters. Complex questions may arise where the freezing or confiscation measure is adopted outside criminal proceedings in the strict sense, as allowed under Article 1, which refers to the broader notion of 'proceedings in criminal matters'. In these situations, practitioners can struggle to determine whether the measures fall within the scope of the Regulation. This difficulty stems both from limited knowledge of the specific rules in the issuing State's legal framework and from the lack clarity of the notion of 'proceedings in criminal matters', which constitutes a new autonomous concept under EU law ([14]).

In particular, an example of measures adopted outside strictly criminal proceedings are the preventive, non-conviction-based confiscation measures existing in Italian anti-mafia legislation that are adopted in an autonomous set of proceedings ([15]). Very often, the requested authorities executed those measures without raising any particular concerns. There have, however, been instances in which, following requests for additional information from the executing authorities, Eurojust has assisted in clarifying the precise nature of these measures and their qualification as adopted in 'proceedings in criminal matters'. In the vast majority of cases seen at Eurojust, the additional information provided removed doubts as to the nature of those proceedings, and certificates issued for said measures were finally

([13]) Unlike in the previous legal framework, under the Regulation it is not possible to refuse the execution of a freezing or confiscation order where there is no comparable domestic measure in the executing Member State, as this does not constitute a ground for refusal.

([14]) Recital 13. This is one of the questions raised before the Court of Justice of the European Union in Case C-8/24 (pending) *Zapatismo državno odvjetništvo.*

([15]) Italian legislative decree of 6 September 2011, n. 159, https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legislativo:2011-09-06;159.

executed in other Member States based on the Regulation. However, in some cases, there have been difficulties in determining the competent authority in the executing State. This was because confiscation measures outside criminal proceedings do not exist in some jurisdictions. As a result, national law only designated authorities competent for the execution of certificates issued either in the investigation phase or during the trial stages, with none of those authorities considered competent for executing measures issued outside a criminal proceeding. Furthermore, in at least one case, the executing authority refused to execute this type of measure by adopting a strict interpretation of 'proceedings in criminal matters' as being equivalent to 'criminal proceedings', in contrast with the wording of the Regulation.

Civil responsibility. The Regulation applies only to freezing and confiscation orders issued within the framework of proceedings in criminal matters and excludes civil or administrative proceedings. However, in some cases seen at Eurojust, especially in the first days of application of the Regulation, national authorities issued freezing certificates pertaining to civil liability arising from the alleged commission of the crime, and thus clearly not to freezing for the purposes of future confiscation. Eurojust's intervention was key in clarifying that the Regulation cannot be used for those purposes.

1.4. Relationship with other instruments

The Regulation operates within a context of multiple other mutual recognition instruments, and there have been cases at Eurojust in which difficulties arose concerning the relationship between the Regulation and other judicial cooperation instruments.

European investigation orders (hereinafter 'EIOs'). Most frequently, difficulties arise concerning the relationship between the Regulation and the EIO when requesting temporary restrictions on property. The two instruments have a different scope of application and choosing the correct one depends on the purpose pursued: certificates under the Regulation should be used when the property constitutes proceeds of crime and the freezing is thus aimed at subsequent confiscation; whereas, an EIO is required when the property constitutes evidence and the seizure constitutes an investigative measure. This difference is clear in principle, yet in practice it may not always be so straightforward to determine the exact purpose of the measure in advance ([16]).

Transfer of proceedings. Another complex scenario encountered in Eurojust casework is the effect of transferring proceedings to another Member State on existing freezing certificates, since national provisional measures usually cease to have any effect once the proceedings are transferred. Challenges were encountered when a Member State taking over the proceedings indicated that they first need to take over the proceedings, after which point they can then ask for their national freezing order, and subsequently the freezing certificate. In similar cases, Eurojust facilitated coordination between the national authorities concerned to ensure that the assets remained continuously frozen, where necessary, through the issuance of new freezing certificates or domestic freezing orders ([17]).

([16]) These difficulties have been described also in Council, *Final report on the tenth round of mutual evaluations on the implementation of the European Investigation Order (EIO)*, 10 December 2024, no. 15834/1/24/REV1, https://data.consilium.europa.eu/doc/document/ST-15834-2024-REV-1/en/pdf. and in Eurojust, *Report on Eurojust's casework in the field of the European Investigation Order*, 2020, https://www.eurojust.europa.eu/publication/report-eurojust-casework-european-investigation-order.

([17]) Eurojust, *Eurojust report on the transfer of proceedings in the European Union*, 2023, https://www.eurojust.europa.eu/it/publication/eurojust-report-transfer-proceedings-european-union.

2. Content and form of the certificate

2.1. Incomplete certificate and requests for additional information

In addition to language-related issues (see section 4), Eurojust often helped clarify issues concerning the content or form of the freezing certificates or the confiscation certificates. In Eurojust casework, certificates often lacked clarity or were vaguely or unclearly drafted, prompting requests for additional information. Certain issues were easily resolved. For instance, in some cases the underlying national freezing or confiscation order was missing, or its original was not provided (for those Member States that, under their national law, require the original and not a copy). In other instances, the description of the case was incomplete, the reference to the legal provisions was absent or there was no information on remedies. Other certificates were, from the perspective of the executing Member State, insufficiently specific or lacked information and required clarification. In general, Eurojust's assistance has helped issuing and executing authorities to understand and overcome these issues to avoid refusals of execution (see section 5).

Third-party confiscation. Where freezing or confiscation orders target property not directly owned by the accused but by third parties, executing authorities frequently request additional information on the link between the owner of the property with the accused and with the offence, and on the owners' lack of good faith. This occurs, for instance, where the accused or convicted person does not hold any asset in their own name, but property is formally registered to family members or to shell companies represented by straw persons, and no explanation is provided in the certificate on their connection with the accused. In such situations, Eurojust has facilitated a dialogue by transmitting the underlying confiscation order, which demonstrated how the main perpetrator exercised control over the property, or by providing specific clarifications that enabled execution of the order. As a best practice in third-party confiscation cases, detailed information should be included either in section C.4 of the freezing certificate ('any other information that will assist with the execution of the confiscation order') or in section F.4 of the confiscation certificate ('relationship between the property and the criminal offence'), with a view to avoiding subsequent requests for additional information.

Indication of suspect/affected persons. Another frequent issue with the content of freezing and confiscation certificates concerns the incorrect identification of the position of the affected person in the proceedings in section C, whether as the owner or the person against whom the order is directed. Sometimes, information is provided only on the person against whom the order is directed but not on the owner of the property, or vice versa. Other times, it is not clear whether the owner of the property is also the person against whom the order is directed. In this context, it is relevant to mention that in the form there is no designated box to indicate who is the suspect or the accused person. Therefore, executing authorities often request clarifications in order to be able to execute the request. Eurojust has helped by facilitating the re-issuance of the certificate or the provision of such information.

A Eurojust case on this issue is indicative. An urgent freezing certificate was issued in relation to a fraud and targeting the bank account to which the suspect had immediately transferred the funds after having received the payment from the victim. However, section C of the certificate mentioned only the person against whom the freezing was directed, without indicating the different owner of the bank account in question, which was only mentioned in the description of the facts. The executing authority considered that, in the absence of any prima facie involvement of the owner of the bank account in the criminal offence, the bank account's owner must be considered a bona fide third party with the consequence that the freezing cannot be executed. Subsequently, thanks to the intervention of Eurojust, additional

information was exchanged to clarify that the owner of the bank account to be frozen was actually also a suspect in the proceedings so that the certificate could be successfully executed.

3. Communication and language

3.1. Translation

With regard to translation, Articles 6 and 17 of the Regulation require the issuing authority to provide the executing authority with a translation of the freezing or confiscation certificate in the language of the executing State, or in any other language that the executing State accepts. In addition, Member States are encouraged to accept freezing and confiscation certificates 'in one or more official languages of the Union other than their official language' (recital 28). In practice, the issue of translation sometimes leads to difficulties.

Quality of translations. In many cases, Eurojust assisted in clarifying misunderstandings due to poor, incomplete or unclear translations. Sometimes there were difficulties trying to find the closest term or explanation in the language of the executing Member State to a legal concept of the issuing Member State. With the clarification by Eurojust, it was possible to smoothly execute freezing or confiscation orders.

Specific language regimes. An additional issue encountered in practice concerns the differences between the language regime applicable to the Regulation and other mutual recognition instruments, such as the EIO. For instance, some Member States accept translation into English for EIOs, whereas for freezing and confiscation certificates they require a translation into their own language. This risks leading to misunderstandings, and the choice of a uniform language regime by the same Member State for all instruments would be ideal.

Transmission and translation of the underlying national order. The transmission of the national freezing or confiscation order in its original language, in addition to the certificate, is required only where the executing Member State has made a specific declaration to that effect (Article 6(2)), and only some Member States have done so. This fragmented regime is not easy for practitioners to navigate and Eurojust is often consulted on the requirements applicable to the specific Member State concerned. Furthermore, Eurojust casework shows that executing authorities of Member States that have not made such declaration sometimes still request to receive the national order, and Eurojust needs to intervene to clarify. Furthermore, in several cases, the translation of the freezing order underpinning the freezing certificate is also requested, even though it is clearly not required under the Regulation (Article 6(2)). This request is often a practical way for the executing authority to remedy insufficient information in the certificates and to overcome the limitations of the form. The executing authorities often need information on how the criminal offence under investigation is linked to the asset(s) to be frozen, which is sometimes not well explained in the certificate. This can possibly be explained by the fact that freezing certificate form does not explicitly provide a designated space for such information, thereby leaving it up to national authorities to determine whether and how to include it under 'summary of the facts'. In order to understand this, the executing authorities therefore ask for the translation of the domestic order as a way to potentially find this information. This issue is similar to what has been observed in relation to the EIO, where the underlying judicial decision for the requested investigative measures,

especially searches and seizures, was requested to understand the connection ([18]). Overall, similar requests for translation stand in the way of a speedy execution of freezing measures, as money is moved within days or even hours, and translation may take several days. Therefore, it is advised to fill in the certificates in a comprehensive and detailed manner to avoid undue requests for transmission and translation of the underlying national order.

3.2. Competent authorities

In several cases, as explicitly acknowledged in the Regulation (recital 24), Eurojust was asked to assist in identifying the competent authority in the executing State (Article 2(9)), as legal diversity between the Member States can make it a cumbersome task in practice. This is especially problematic where a freezing certificate targets several assets located in different areas of the same country, such as bank accounts opened with different banks. Some Member States have opted for a fragmented approach when identifying the competent executing authorities, for instance based on the location of the assests, so as a result different authorities should be addressed for the execution of the same certificate. The involvement of Eurojust in similar cases is crucial for ensuring the timely transmission of the certificate, especially given the urgency inherent in freezing orders.

3.3. Information on the outcome of the execution

Sometimes, issues have been encountered in Eurojust casework concerning the information obligations of the authorities involved, such as the obligation of the executing authority to report on the execution of the order (Article 7(2)). In most cases, the executing authorities do inform the issuing authorities proactively and in a detailed manner of the result of the execution by giving a description of the property frozen. However, difficulties persist when no information is provided on the exact amount frozen, for instance on a bank account. Such gaps often result in follow-up requests for clarification facilitated by Eurojust. In some instances, the executing authorities have even required an EIO before providing this information, in contrast with the clear wording of Article 7(2) of the Regulation.

([18]) Council, *Final report on the tenth round of mutual evaluations on the implementation of the European Investigation Order (EIO)*, 10 December 2024, no. 15834/1/24/REV1, https://data.consilium.europa.eu/doc/document/ST-15834-2024-REV-1/en/pdf.

4. Grounds for refusal

As an instrument based on the principle of mutual recognition, the Regulation allows for the possibility – but not the obligation – of non-execution of freezing and confiscation orders, and only in a limited number of cases exhaustively listed in the Regulation. The specific grounds for refusal are more limited than under the previous regime; they do not include the proportionality principle and they differ partly for freezing and for confiscation orders (Article 8 and Article 19, respectively). For instance, the existence of a privilege or immunity, the rights of affected persons and the adoption of the order in absentia are applicable only to confiscation orders.

An important new aspect is the explicit inclusion of risks of violations of fundamental rights as (exceptional) grounds for refusal (Article 8(1)(f) and Article 19(1)(h)). So far, Eurojust has not seen any cases where the grounds for refusal related to fundamental rights in the Regulation has been invoked, and the interpretation of this ground for refusal is the subject of a preliminary reference currently pending before the Court of Justice of the European Union (hereinafter 'CJEU') in Case C-8/24 ([19]) – which is called to clarify the standards of review of this ground for refusal, notably whether a two-step assessment similar to the European arrest warrant mechanism is required, or whether a single assessment is required in this specific case.

Article 8(1)(c), incomplete or manifestly incorrect certificate. The ground for refusal most frequently encountered in Eurojust casework is for a incomplete or manifestly incorrect certificate. In many cases, the additional information provided through Eurojust's involvement is sufficient to allow the execution of the order (see section 3 above). However difficulties arise where no additional information is transmitted due to a lack of timely action by the issuing authorities, or where the information transmitted is not considered sufficient by the executing authority. For instance, in one case, the executing authorities noticed a discrepancy between the freezing certificate and the underlying freezing order in terms of object of the freezing (shares of a company). Following consultation, the issuing authority merely confirmed the discrepancy but never followed up to integrate and correct the certificate; therefore its execution was refused. It is interesting to note that, before relying on this ground for refusal, executing authorities firstly consult the issuing authorities, giving them an opportunity to provide additional information in line with Article 8(2).

Article 19(1)(e), rights of the affected persons. The Regulation allows national authorities to refuse the execution of (exclusively) confiscation orders where 'the rights of affected persons 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 13'. Eurojust casework shows that this ground for refusal has been applied in practice, often in relation to confiscation of cultural goods owned by third parties, where the issuing authorities did not properly investigate the possible good faith of the current owner or where that person did not have the possibility to intervene in the proceedings leading to the confiscation. For instance, in one case the authorities of a Member State issued a certificate for the confiscation of ancient vases owned by an auction house in another Member State, which constituted proceeds of the criminal offence of illicit exportation of cultural goods from unlawful excavations. Despite Eurojust's support, the competent authorities of that Member State refused to execute the certificate on this ground, based on the fact that it had not been sufficiently established that the owner was acting in bad faith.

([19]) Opinion of Advocate General Richard de la Tour delivered on 12 June 2025, Case C-8/24, ECLI:EU:C:2025:430, https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:62024CC0008.

In some cases, the early involvement of Eurojust has led to the detection of deficiencies in the confiscation order aimed at the recovery of cultural goods, thereby preventing any objections from being raised by the executing authorities at a later stage. In particular, when examining the certificate received for further transmission, Eurojust noticed that the owner of the cultural good was not given the possibility to participate in the national confiscation proceedings and that the confiscation order did not address the issue of their lack of good faith. Therefore, the issuing authorities were invited to remedy those shortcomings before transmitting the certificate, otherwise its execution would have likely been refused. These cases show how Eurojust can play a key role not only in streamlining cooperation, but also in ensuring the fundamental rights of affected persons.

Additional grounds for refusal not provided for in the Regulation. There have been some cases in which the execution of the certificate was refused based on grounds existing under national law, different and additional to those exhaustively listed in the Regulation. For instance, in one case, a confiscation certificate was not executed on grounds related to limitation periods, as the certificate was transmitted beyond the maximum time period from the date of the final judgment applicable under the law of the executing State. In another case, a freezing certificate was not executed on the ground that, according to the executing authority, there was insufficient evidence against the accused, as the bank in the executing Member State had indicated in writing that the suspected company was a legal entity and that there were no illegal activities carried out by the company.

Impossibility to execute the order. In addition to grounds for refusal in the strict sense, Eurojust casework also shows that in many cases the certificates cannot be executed due to it being impossible to retrieve the assets (Articles 13 and 22). This occurs especially with freezing of bank accounts, where during execution it becomes evident that no money is available on that account.

5. Execution

5.1. Issues related to the type of property

The Regulation may be used to enforce orders targeting property of any kind (Article 2(3)). In most Eurojust cases, freezing and confiscation orders concern bank accounts, movable goods such as vehicles and luxury items, and real estate. Some cases, however, involve other types of property, including companies. The type of property targeted can give rise to specific practical issues in both the execution of the certificate and the subsequent management of frozen or confiscated assets. These challenges often arise from divergences between the national law of the issuing and the executing Member State, which governs both execution (Article 23(1)) and management (Article 28). Eurojust very often provided crucial assistance in this respect, as explicitly acknowledged in the Regulation (recital 43).

Freezing of companies and undertakings. In several Eurojust cases, certificates request the freezing or confiscation of a company or undertaking owned by the accused or convicted person. In principle, a company may be frozen in different ways: by targeting its shares, by freezing its assets or even by restricting its business activities. In cases where the certificate only indicated the name of the company as object of the freezing, Eurojust assisted in clarifying to the executing authorities what measure was actually requested. In some cases, however, the specific modality requested by the issuing State was not available under the national law of the executing State that regulates the execution of the freezing (Article 23(1)). For instance, in some Member States the freezing of a company's shares does not automatically entail the freezing of its assets, which must either be requested specifically or is not

possible at all; therefore, the execution had to take place according to the more limited possibilities available under the law of the executing State.

Most complexities arise when the issuing State requests the freezing not only of the company and its assets, but also of the actual undertaking by appointing a judicial administrator that takes over the business management in order to ensure its continuity. This possibility currently exists only in few Member States. Therefore, in cases where that possibility was not provided under national law, the executing authority often denied the request and simply froze the company's assets, thus terminating the business activities. Differently, in one case, an alternative solution was explored with the support of Eurojust. Despite the absence of any rules on the freezing of undertakings in that particular legal system, the executing authority tried for the first time to ensure the requested freezing of two restaurants by appointing two judicial administrators by way of analogy with internal rules on insolvency procedures, and by requiring them to act in coordination with the judicial administrators appointed in the issuing State. This 'joint management' solution made it possible to keep the restaurants operational while under freezing, which proved highly profitable. At the same time, it demonstrated that, despite the willingness to cooperate in a spirit of mutual recognition, the underlying issues caused by the lack of harmonisation of national laws on management of frozen assets could not be fully resolved ([20]). In the absence of specific rules on management of frozen businesses in the executing State, the powers of the judicial administrator were limited to overseeing the financial management of the business and did not extend to removing suspects from their day-to-day activities. This ultimately led the authorities involved to consider the alternative solution of an early sale of those restaurants.

Eurojust casework shows that, when requesting the freezing or confiscation a company or an undertaking, it is a best practice to indicate in detail in the certificate not only the name of the company but also whether this includes only the shares, its assets or the actual undertaking itself by appointing a judicial administrator. Furthermore, it is very useful to involve Eurojust even before the issuing of a certificate in order to facilitate consultation with the executing State on the applicable legislation and possibilities available under their national law for the actual execution of the freezing and subsequent management of the assets.

Real estate properties. The rules on how to freeze a real estate property vary a lot across Member States, and this may lead to complexities in practice. In one case, issues arose in relation to apartments belonging to the suspects being rented to third persons. Under the law of the issuing State, the freezing order covers not only the property itself but also the income it generates, notably the rent. In that scenario, at the domestic level, a judicial administrator is appointed who will manage the income of the property, which will be withhold from the suspect. However, the law of the executing State did not provide for similar rules: the freezing implies only a prohibition of disposing of the property, but the suspect/owner continues to receive its earnings and a judicial administrator may be appointed only once the property is confiscated. This was clarified during a coordination meeting at Eurojust and a concrete solution was found to address this issue: on specific request of the issuing authority transmitted in the framework of the previous freezing certificate, it was possible for the executing State to separately freeze the rent received from those properties on the suspect's bank account.

([20]) These difficulties might be addressed in the future with the implementation of Article 20 of Directive (EU) 2024/1260 on asset recovery, which establishes that, in order to ensure that frozen property maintains its economic value, Member States should put in place effective management measures. These measures include the efficient management of entities, such as undertakings, that should be preserved as a going concern, while taking the measures necessary to ensure that the suspect or accused person does not benefit directly or indirectly from the ongoing operations of such an entity or, where appropriate, measures of supervision regarding the control of such an entity (recital 41).

In some countries, freezing of immovable property is registered in the land register for a limited period of time. Yet, under the national law of the executing State, registration of the freezing in the land register can take two different forms with different consequences. The preventive register of the freezing creates a right of preference for the authority ordering the freezing, it consists of a legal title that can be invoked towards third parties; it prevents fraud, but it does not prevent the sale of the property. 'Prohibition of disposal' establishes the prohibition of disposal, but it does not create a right of preference towards third parties; it only ensures that the asset cannot be sold. To avoid these problems, when recognizing a freezing order, judicial authorities should specify the modality by which registration should take place and order the effective execution of both options, i.e. both a 'preventive register of the freezing' and a 'prohibition of disposal'.

5.2. Duration of freezing orders

Eurojust casework shows that issues often arise with the duration of freezing orders, and this is linked to differences between national laws. Article 12 requires that the freezing is maintained until the final decision on the execution of the subsequent confiscation certificate, unless the freezing order is revoked or ceases to have effects in the issuing State. Nevertheless, some issuing States reissue freezing orders periodically under national law and unnecessarily request the prolongation of the freezing order to the executing State. Conversely, in some executing States the freezing order has a limited duration in time (e.g. six months), and therefore the executing authorities unduly require the issuing State to transmit a new decision with additional reasoning justifying the prolongation of a freezing order. These practices, rooted in differences in national law that are not compatible with the Regulation, risk leading to unnecessary delays and complexities.

5.3. Time-limits, urgency and execution on a specific date

The Regulation establishes time limits for the recognition and execution of freezing and confiscation orders (Article 9 and Article 20). Furthermore, when it comes to freezing orders, the issuing authority has the possibility to indicate urgency or request the execution on a specific date (Article 9). Member States, however, both from the issuing and the executing perspectives, differ in their interpretations of urgency; while some treat all freezing orders as urgent, others apply a broader margin for discretion.

Non-compliance with time limits. Despite Eurojust's involvement, the average recognition or execution of freezing orders differs between Member States to Member State and it can range from 10 days to several months. There is divergence in domestic approaches towards these deadlines, especially since for ordinary/non-urgent freezing orders the Regulation does not provide specific time limits but only a duty to execute it 'without delay'.

Execution of the freezing order on a specific date. Eurojust is regularly involved in cases where the execution of the freezing certificate should take place on a specific date (Article 9(2)). This occurs especially in 'joint action days', where several coercive measures such as freezings, arrests and searches must take place simultaneously in different Member States to ensure their effectiveness. In these cases, Eurojust's support is crucial for ensuring coordination between the authorities involved, and in all similar cases it ensured the successful execution of the freezing on a commonly agreed date. A best practice in these cases is to transmit the freezing order well in advance before the expected action day and engage in preliminary consultations.

5.4. Postponement of execution

The execution of a freezing or confiscation order may be postponed where the property is already the subject of an existing freezing order or of ongoing confiscation proceedings in the executing Member State (Article 10(1)(b) and Article 21(1)(c)). This situation arises often in practice, mostly in cases where fraud is investigated in the issuing State while the related money laundering is pursued in the executing State.

It is important to note that, in similar situations, postponement of the execution of the certificate is not an obligation, as the text of the Regulation explicitly provides that authorities 'may postpone'. In this regard, Eurojust casework shows that Member States have different approaches. Sometimes, the execution of the certificate is indeed postponed simply based on the existence of a domestic freezing order in the executing State. However, in similar cases, very often no information is provided on the duration of the expected postponement. Furthermore, the postponement of execution until the end of the proceedings in the executing State risks becoming in reality a form of non-execution. For instance, in one Eurojust case, after two years the execution of the freezing was still being postponed. By contrast, in other cases, the freezing certificate is executed immediately despite the same property also being subject to a freezing order in domestic proceedings. This solution is often encouraged by Eurojust as a good practice, if possible under national law, as this ensures that the freezing will be preserved even if one of the two orders, for instance, is not renovated or revoked.

6. Rights of affected persons

While introducing a more effective system for cross-border asset recovery, the Regulation also raises the standard of protection for persons affected by freezing or confiscation orders (Article 1(2) and recital 15). The definition of 'affected person', both natural and legal persons, includes the person against whom the order is issued, the person who owns the property targeted by that order and any third parties whose rights in relation to that property are directly prejudiced by that order, including bona fide third parties under the law of the executing Member State (Article 2(10)). Cooperation between Member States requires that the rights of these individuals or entities are respected throughout the enforcement process. In particular, affected persons are entitled to be informed of the decision to execute the certificate (Article 32) and to an effective legal remedy in the executing Member State against its execution (Article 33). This is complementary to the right to an effective legal remedy in the issuing Member State to challenge the substantive reasons of the freezing or confiscation order ([21]). Finally, the rights of affected parties in confiscation procedures are protected by a specific ground for refusal (see section 5.2 above).

6.1. Information and confidentiality

The right of affected persons to be informed of the decision to execute the certificate is to be reconciled with the obligation to ensure the confidentiality of the investigations in the issuing Member State (Article 11). Eurojust sometimes helps the national authorities involved in addressing these issues. For instance, in one case, the freezing certificate included the request to maintain the confidentiality of the information in the order after its execution (section F of the certificate) in light of the secrecy of the investigations pursuant to Article 11(2). However, the executing authority noted that its national law requires the decision to be notified to the affected person, namely the owner of the bank account,

([21]) Article 8 of Directive (EU) 2014/42 (replaced by Article 24 of Directive (EU) 2024/1260).

immediately after its execution in order to allow for the effective exercise of the legal remedy. Therefore, it informed the issuing authority thereof prior to the execution of the certificate (Article 11(4)).

6.2. Legal remedies

Eurojust casework shows that affected persons often make use of the legal remedies available in the executing State against the execution of freezing or confiscation orders. It is noteworthy that proceedings on such legal remedies, as with other mutual recognition instruments, may at times be protracted. In one particular case, proceedings concerning the execution of a confiscation certificate against a third party have been pending in a Member State for more than two years. Although the Regulation allows legal remedies to have suspensive effect, it is questionable whether such delays are compatible with the overarching objective of the Regulation, namely to ensure the swift recovery of illicit assets.

In several cases, Eurojust's involvement was crucial for ensuring the effective exercise of the rights of affected persons. For instance, in some cases, once the freezing certificate was executed, Eurojust reminded the issuing authorities to also serve the underlying freezing order to the third-party owners of the property located abroad in order to allow them to possibly exercise their legal remedies in the issuing Member State, and facilitated the execution of the subsequent mutual legal assistance request (hereinafter 'MLA') for serving the corresponding procedural acts on those persons.

6.3. Bona fide third parties

When third parties are affected by a freezing or confiscation order, it is important that the issuing Member State provide sufficient details in the certificate explaining how the third person is linked to the offence and Eurojust is often consulted on this issue (see section 3 above). In light of the principle of mutual recognition, however, it is questionable whether the executing authority may review the merits of the freezing order or reassess the issuing authority's findings on the good faith of the third person owning the property. This question arises particularly with freezing orders, since, unlike for confiscation orders, the Regulation does not provide grounds for refusal relating to the rights of affected persons under the law of the executing Member State in light of the inherently provisional and urgent nature of freezing measures, which aim only to prevent the disappearance of potential illicit assets at an early stage of the investigation.

Nevertheless, Eurojust casework shows that such reviews occasionally occur, especially in fraud cases where funds paid by a victim were immediately transferred to a third party's bank account and the executing State found no evidence of money laundering within its jurisdiction, or when fraudulently acquired goods were quickly resold to another person. In these situations, refusal was generally based on claims of an incomplete certificate (Article 8(1)(c)) or on broader arguments relating to fundamental rights and proportionality, without being clearly linked to any explicit grounds for refusal.

In one case, however, an executing authority that was initially reluctant eventually carried out the freezing order after Eurojust underlined both the availability of legal remedies for the affected person in the issuing State and the importance of upholding the principle of mutual recognition.

To avoid such difficulties, Eurojust casework has identified as good practice the simultaneous issuing of a freezing certificate and an EIO. This approach not only facilitates the execution of the freezing order but also enables a prompt response to legal remedies raised by affected persons, since additional evidence can be collected to demonstrate the lack of good faith of the property owner. This practice has proved effective in cases involving the freezing of illicitly exported cultural goods from auction houses,

where, after urgent freezing measures were taken, EIOs were issued to verify whether the affected entities possessed the necessary export certificates and had complied with their due diligence obligations.

7. Management of frozen property and costs

Once the freezing order is executed, and with the exception of restitution to the victim (see section 9 below), the frozen property is to remain in the executing State until a confiscation certificate has been transmitted; the executing State will manage the property in accordance with its national law and with a view to preventing a depreciation in value (Article 28). The management and custody of frozen property for prolonged periods awaiting a final confiscation can entail high costs for the executing State, and may also cause a depreciation in its value. Therefore, different solutions have been explored in Eurojust cases to address these issues, in particular the early sale of frozen property (Article 28(2)) and the sharing of large and exceptional costs with the issuing State (Article 31, which explicitly provides for Eurojust's consultation role).

7.1. Large and exceptional costs

One option available to the executing authorities is to consult the issuing authorities (with the support of Eurojust if needed) with a view to sharing any large and exceptional costs (Article 31 (2)). This has sometimes occurred in Eurojust casework, especially where the asset recovered are large cargos. In one such case, the executing authority informed the issuing authority of the exceptionally high storage costs, without indicating the exact amount. Subsequently, the executing authority proposed equal sharing of the storage costs (EUR 278 000). The Regulation does not provide any criteria on how to share the costs so Eurojust assisted the involved authorities in finding an agreement for the cost sharing. One best practice identified in such cases is to inform the issuing authority of the storage costs as early as possible.

Such practical issues highlight the need for more concrete and harmonised recommendations. Possible solutions could include standard cost-sharing clauses, early-notice triggers, defined thresholds and protocols for documenting sales.

7.2. Early sale of frozen property

Another option explicitly provided in the Regulation to avoid a depreciation in value and high maintenance costs is the early sale of frozen assets before their final confiscation (Article 28(2)). This possibility should by now be available in all Member States ([22]), and indeed it has been adopted in practice in Eurojust casework. This occurred especially in situations of a potential substantial loss in value of the frozen property or if the storage costs of the assets were disproportionate to the value of the assets. For instance, in some cases, the executing authority advised that maintaining the storage of a yacht or a plane that was frozen as too costly, and asked the issuing authority if an order for the sale of the seized yacht could be issued. With Eurojust's assistance, the issuing authority agreed and an order for sale under this condition was transmitted to the executing Member State for enforcement.

These cases also show that, even though the Regulation clearly confers the decision on an early sale to the executing authority, in accordance with their domestic law, this is almost always the object of consultation with the issuing authorities. Indeed, the executing authorities may be reluctant to take full

([22]) Article 10 of Directive (EU) 2014/42.

responsibility for such a decision, which may subsequently lead to claims for compensation if a confiscation order is not eventually adopted in the issuing State. However, the issuing authorities are not always entitled to give permission. For instance, in a Eurojust case, the authorities executed a certificate requesting the freezing of an undertaking, notably an ice cream shop, by freezing all its assets, consisting mainly in ice cream machines. To avoid depreciation, the executing authorities asked for the issuing authorities' authorisation to proceed to an early sale of such equipment. The issuing authority clarified they did not have the authority to take such a decision, not only because the Regulation assigns it to the executing authorities but also because they would not be competent to take such a decision under their own national law, which confers that power to a judge. Therefore, the issuing authorities simply took note of that intention to sell the property and the executing authorities proceeded to sell it autonomously. In another case, the issuing authority accompanied the freezing certificate with a request to the executing authority to sell the assets in question (cars, motorbikes) as soon as possible to avoid a loss in value of the assets and high storage costs.

8. Compensation and restitution to victims

The Regulation represents a major step forward in protecting victims' rights in cross-border criminal cases involving the freezing and confiscation of assets. For the first time, it establishes a legal framework that prioritises victims' rights to compensation and restitution above competing interests of the issuing and executing Member States. This is a notable departure from the earlier legal framework, which did not explicitly address the role of victims in cross-border asset recovery proceedings.

The decision on the right to restitution or compensation lies with the issuing Member State, which may request its enforcement to the executing Member State (Article 29(1) and Article 30(1)). This can occur at two different stages. Firstly, at the freezing stage, the executing authority has a duty to restitute the frozen assets to the victim before any final decision on the confiscation of the assets, if so requested by the issuing Member State and provided that certain conditions are met (Article 29). This possibility is limited to restitution, and it does not extend to compensation. Subsequently, once the property has been confiscated in the executing State and the issuing State has ordered the restitution or compensation of the victim, the executing State has a duty to transfer the property or the equivalent amount of money to the victim (Article 30(1)–(5)). Restitution or compensation thus take precedence over any other form of disposal of the confiscated assets.

Not surprisingly, Eurojust casework shows that the practical application of these new rules has raised several questions, especially concerning the restitution of frozen assets to victims, which represents a true novelty for certain national systems.

8.1. Restitution of frozen property

In Eurojust casework, it often occurs that the executing Member State is requested to restitute the frozen assets to the victim in the issuing Member State pursuant to Article 29. This happens mostly in relation to fraud offences. In many cases this procedure took place smoothly and successfully; however, in others issues arose and some requests were refused for reasons linked to a lack of adaptation of national laws to the new EU rules.

Conditions for restitution of frozen assets. On many occasions, Eurojust helped to clarify the conditions for restitution set by Article 29, namely that the victim's ownership of the property is not contested, the property is not required as evidence in ongoing criminal proceedings in the executing State and the rights of other affected persons are protected. In particular, information was provided to explaining how the victim's title to the property is not contested and the rights of affected persons are not prejudiced.

In other cases, different authorities in the same executing State argued that their national system allows for the restitution of assets to the victim only following a final confiscation decision, and not at the freezing stage. Although Eurojust recalled the direct applicability of the Regulation and stressed that, where all conditions are met, the obligation to restitute frozen assets to the victim is not dependent on national law, the executing State started internal consultations that lasted several months. This eventually confirmed it was not possible to restitute frozen assets to the victims with arguments based on national law and without addressing the direct applicability of Article 29.

In some cases observed at Eurojust, the executing authority of the same Member State made a distinction between the type of property to be restituted. They argued that, during the investigation stage, their national legislation limits restitution to the victim only in relation to movable property and indeed a request for restitution concerning a stolen luxury watch was successful. To the contrary, restitution of other intangible assets, such as money in a bank account, could be ordered only following a final court verdict against the account holder. These difficulties are further compounded in cases such as fraud, where the perpetrator remains unidentified or the account holder (acting as a straw man) is never prosecuted, resulting in the absence of a final verdict. In such circumstances, restitution of the bank deposits to the victim is precluded, notwithstanding the clear wording of the Regulation.

Another recurring issue concerns requests for restitution of frozen assets to victims in cases where investigations are directed against unknown suspects, as frequently occurs in online fraud cases. In some Member States, the absence of an identified perpetrator and thus the lack of any prospect of a conviction to support a future confiscation order has prevented the restitution of the assets to the victims.

Finally, in some cases, the existence of insolvency procedures against the company owner of the frozen assets (in particular bank accounts) represented an additional obstacle to effective restitution to the victims under the Regulation. In some Member States, pursuant to national law, all assets belonging to the company must automatically be transferred into the insolvency procedure, even if frozen in criminal proceedings. As a result, victims can seek protection only within that framework.

How to return frozen assets to the victim. In other cases, once a decision on restitution was taken, the challenge became how to implement it in practice, since Article 29(2) refers back to the procedural rules of the executing State to determine the modalities of the restitution, where necessary for cooperation with the issuing State. In particular, this occurs in situations where money is frozen in bank accounts in the executing State. For example, in a case where this challenge occurred the issuing State argued that the money should be transferred directly to the bank account of the victim. However, this

option was not possible for the executing State, which either requested a guarantee from the issuing judicial authority confirming that account, or was able to transfer it only to a bank account of the issuing judicial authority, which would then take care of sending it to the victim. This latter option was eventually followed but proved difficult in practice, as judicial authorities are not always entitled to have a bank account for similar purposes. Even though the outcome was successful, these practical questions led to significant delays in the restitution, which took place several months after it was requested. As regards specific movable objects, different solutions are also adopted in practice. In some cases, the physical handover is dealt with by police authorities; in other cases, the executing State required the victim to travel there to physically collect the property (money frozen in a bank account as along with other frozen assets, such as a phone). This also caused significant delays and created an additional burden on victims. These cases show the limits of a lack of detailed rules in the Regulation, and often even at the national level, on the practical mechanisms for how to return frozen assets to victims.

Delays for restitution of frozen assets. Even though the Regulation provides that restitution to the victim should take place as soon as possible (Article 29(2)), Eurojust casework shows that in practice the time needed to take a decision and implement it varies significantly. Sometimes it takes place very swiftly – for instance, in one case, the restitution to a victim of fraud of around EUR 500 000 frozen on a bank account was completed in less than two months. However, in other cases, the procedure can be quite lengthy, and there have been cases in which the actual restitution to the victim took place more than a year after the request was submitted.

Multiple victims in several Member States and insufficient funds. Restitution and compensation to victims pose complex challenges where the criminal offences have injured a large number of individuals in different Member States. This occurs very often in online investment fraud cases involving subsequent money laundering. As a consequence, parallel proceedings are opened in several Member States, within which different national authorities issue freezing certificates targeting the same criminal assets (such as bank accounts or crypto-wallets). In some instances, those assets are also subject to domestic freezing orders. However, given the significant damage in such cases, often amounting to millions, the assets frozen are never sufficient to compensate all victims. Unfortunately, the Regulation is silent on this matter. Similar questions have arisen in other cases, including how to prioritise competing requests and whether to inform the national authorities of other Member States with linked investigations – which have not yet issued freezing certificates – of the existence of the frozen assets. Another question is whether the victims can be considered affected persons under Article 2(10) if the enforcement of a restitution order in total to one victim can impair the possibility of other victims receiving restitution, at least in part. In these cases, Eurojust facilitated coordination among the authorities involved, including the exchange of information on the execution of multiple freezing certificates, and supported efforts to reach an agreement on asset sharing. Such agreements have taken different forms, for example proportionate sharing based on the number of victims and damages incurred per country or priority being given to the Member State that submitted the request first, insofar as the legal framework in the respective jurisdictions allowed.

Furthermore, in some Member States, restitution is only possible when there is only one victim transferring money to one bank account. In one fraud case, the public prosecutor froze EUR 50 million in the framework of a domestic investigation. However, it was established that the victim was in another Member State, and so the prosecutor proposed that the authorities of the other Member State issue a freezing certificate. The domestic freezing would then be cancelled and the proceedings would be transferred to the other Member State. However, this proposal could not be considered, as, according to the domestic law of the Member State where the victim was, restitution is only possible when there is

only one victim transferring money to the bank account. In this case, if the authorities of that Member State were to establish that multiple victims sent money to one bank account, they could continue with the restitution procedure. As a result, the money remained frozen in the framework of the domestic investigation.

The Regulation offers little clarity on how to prioritise claims where multiple victims are involved. Further guidance is needed on the criteria to be applied for the proportional distribution of assets, together with clear notification obligations between authorities in parallel proceedings. The adoption of a sample coordination protocol could also support practitioners in achieving greater consistency and fairness in cross-border restitution.

8.2. Disposal of confiscated property

The application of Article 30 in relation to the disposal of confiscated property for the purpose of restitution or compensation of victims has posed difficulties in some cases. For instance, in one case, proceeds from a crime were frozen in the executing State with a view to compensating victims of fraud. Subsequently, a final judgment was issued in the issuing State convicting the accused and recognising the specific claims of the victims, but without taking any decision on the confiscation of the property located in the executing State. This was due to the absence of any obligation under the issuing State's domestic legislation to rule on assets located abroad. As a result, there was no confiscation decision that could serve as a legal basis for restitution of the confiscated property to the victims. Consequently, the authorities of the issuing State were unable to apply the relevant provisions of the Regulation, and the executing State lifted the freezing order. During the entire trial stage, however, the property remained frozen in the executing State, which had to bear the full costs of maintenance (including airport parking fees and the upkeep of an aircraft).

8.3. Member States as a victim

While it is clear that the definition of 'victim' is left to the issuing Member State and that it can include legal persons (recital 45), in some cases the question arose whether a Member State could also be regarded as victim of the offence for the purposes of restitution under the Regulation. Following clarifications provided via Eurojust on the applicable law in the issuing Member State, the executing authorities eventually acknowledged that the State could also be entitled to restitution. For instance, this occurred in a large case of fraud to unlawfully obtain public funds from the State and subsequently engage in money laundering. The Member State concerned suffered direct economic damage from the fraud and, with the support of Eurojust, more than EUR 3 million frozen in another Member State were finally restituted based on Article 29. Confiscated property was also successfully restituted to a Member State in accordance with the Regulation in cases of illicitly exported cultural and archaeological goods belonging to its cultural heritage, for instance an ancient Roman statue and ancient vases confiscated from an auction house and a museum abroad, respectively. However, on other occasions, illicit assets were restituted to a State in cases involving other types of criminal offences, such as drug trafficking and membership in a criminal organisation, where there was no direct link between the State and the offence, but the State was regarded as a victim in the issuing Member State merely by virtue of being the owner of the legal interest protected by the offence.

9. Main findings and recommendations

Asset recovery continues to receive significant legislative attention across the EU, with Eurojust playing a central role in assisting judicial authorities in navigating complex legal and procedural challenges. As a forum for coordination and dialogue, Eurojust supports cooperation between Member States, particularly where differences in legal systems, languages and national practices complicate cross-border asset recovery efforts. Recent developments, including the new Directive on asset recovery and confiscation, the anti-money laundering package, and the 2024 Directive criminalising violations of Union restrictive measures, reflect the EU's determination to ensure that criminals cannot profit from crime.

At the same time, the first years of applying the Regulation demonstrate both its potential and its limits. While it has introduced **significant improvements in cross-border freezing and confiscation, especially thanks to its broad scope of application, its direct applicability is not yet fully effective**. Domestic practices and national legal traditions sometimes prevail over the clear wording of the Regulation – for example, re-issuance demands and restitution refusals in the absence of a national equivalence. These practices slow procedures and undermine the primacy of EU law. It is essential that issuing authorities explicitly cite the relevant provisions of the Regulation and that persistent divergences are addressed through Eurojust's coordination mechanisms.

Another obstacle lies in the **lack of harmonisation between Member States'** legal frameworks. Divergent interpretations of 'proceedings in criminal matters', varying registry practices for real estate and inconsistent approaches to freezing undertakings or company shares create uncertainty and delays. While Eurojust has often been able to identify competent authorities, clarify practices or propose functionally equivalent measures, these case-by-case solutions cannot overcome the structural absence of alignment in national systems.

Practical experience also highlights that **the certificate is not sufficiently user-friendly**. Incomplete or vague drafting is the most common ground for refusal, with errors in identifying suspects or owners, insufficient property descriptions or lack of a clear nexus between the asset and the offence. The more details are included, the smoother the process. Issuing authorities should therefore treat the certificate as a key operational instrument, drafted with care and supplemented with precise extracts from underlying judicial decisions when needed.

Finally, the introduction of **restitution of frozen assets to victims represents a major step forward, but one that remains operationally complex**. While some cases show swift and effective restitution, others have been marked by delays, refusals or conflicting claims arising from restrictive national rules, banking formalities or multiple victims in different jurisdictions. These challenges underline the need for early clarification of ownership and affected persons' rights, along with clear modalities for transferring assets. In large-scale frauds with numerous victims, early Eurojust coordination is essential for agreeing on allocation principles and preventing inconsistent or inequitable outcomes. However, some clear guidance from the EU legislator would also be desirable.

From over 900 cross border cases in the past four and a half years, Eurojust has identified key legal and practical challenges and highlighted solutions and best practices for practitioners through coordination and advice in relation to many different aspects, and not only those in which the Regulation acknowledges a specific role for Eurojust. Its support via meetings, legal analysis and guidance has been vital in overcoming difficulties. Practitioners are encouraged to involve Eurojust early, especially in complex or high-value cases, to ensure the timely recovery of assets and restitution for victims. Based

on this experience, **Eurojust has identified the following best practices** to improve the execution of freezing and confiscation orders under the Regulation, grouped by key operational themes.

- **Drafting and content of certificates.** Certificates should contain comprehensive information, including the contact details of the competent national confiscation unit, clear instructions for the return of assets, and any other relevant details that will aid execution. Particular care should be taken when explaining the link between the offence and property to be frozen or confiscated, especially by completing section C.4 in cases involving shell companies or straw persons.
- **Coordination between issuing and executing Member States.** Prior consultation with the executing Member State is strongly recommended to address potential legal differences when it comes to the modalities for executing the freezing order, considering the specific type of asset targeted by the certificate.
- **Freezing of companies and undertakings**: considering the profoundly different rules governing the freezing of companies at the national level, issuing authorities are recommended to indicate clearly in the certificate whether they request to freeze only the company's shares, or also their assets or the actual undertaking itself by appointing a judicial administrator. Given that some options might not be available under the law of the executing State, it is suggested to involve Eurojust in order to explore all possible solutions in consultation with the executing authorites thereby minimizing the chances of refusals.
- **Protection of victims' rights.** The Regulation's provisions on direct applicability and remedies for affected persons should be used proactively to secure restitution and compensation in cross-border cases. In jurisdictions where confiscation serves only the interests of the Member State, solutions may nonetheless be available under Article 29 or through reforms of national confiscation objectives.
- **Ensuring cost-effectiveness.** Anticipating significant storage and transport costs is essential, and such costs should be communicated early to the issuing Member State. Executing authorities should also consider the early sale of assets to reduce storage costs.
- **Role of Eurojust and inter-agency cooperation.** It is recommended to involve Eurojust at an early stage to facilitate cross-border communication, ensure rapid freezing of assets (especially in case of joint action days), facilitate consultation and finding solutions to issues deriving from divergent national laws governing execution, advise on the application of EU rules, and coordinate victim restitution and compensation. Strengthening cooperation with financial intelligence units, prosecutors and private-sector actors further enhances the ability to secure assets and protect the interests of victims.

These findings highlight both the progress achieved and the work still to be done. The Regulation has created a stronger and more coherent EU framework for asset recovery, but its effectiveness ultimately depends on how it is applied in practice. Ensuring direct applicability, overcoming national divergences and improving the quality of certificates are essential to making mutual recognition function as intended. At the same time, the new provisions on restitution offer real opportunities to place victims at the centre of cross-border asset recovery, provided that procedures are clarified and consistently implemented. Eurojust's experience shows that early involvement, proactive coordination and close engagement with both issuing and executing authorities are decisive for turning legal provisions into tangible results. If these practices are embraced, the Regulation can deliver on its promise of swift, predictable and victim-focused recovery of criminal assets across the European Union.

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