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RINSE Online Training Program on Freezing and Confiscation Orders in the European Union. Regulation (EU) 2018/1805 on the mutual recognition of freezing orders and confiscation orders and Directive (EU) 2024/1260 on asset recovery and confiscation.

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The RINSE Project - Context

Depriving criminals of the proceeds of crime is one of the primary goals of EU policy in combating serious crime. However, the EU's legal framework in this area remains fragmented, as does cooperation between the relevant authorities of different Member States. Asset recovery is not a straightforward task but rather a multifaceted process involving various stakeholders that play different roles. Effective collaboration among these actors is therefore essential.

The current legal framework relies on Regulation (EU) 2018/1805, which establishes the principle of mutual recognition for freezing and confiscation orders issued by judicial authorities of EU Member States. This principle, rooted in Article 82(1) TFEU, is one of the “cornerstones” of the EU's area of freedom, security, and justice. In addition to mutual recognition, the EU legislator has pursued harmonization through Directive 2014/42/EU, which has been recently replaced by Directive (EU) 2024/1260 on asset recovery. These instruments aim to set minimum standards for harmonizing different types of freezing and confiscation measures while providing mechanisms to enforce them.

Despite these efforts, challenges persist. Years after their adoption, these systems remain underutilised. Key issues include communication gaps between authorities, inconsistent understanding of legal terminology, uncertainties regarding the scope of application, and ambiguity about which forms of confiscation fall under mutual recognition.



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The RINSE Project - The project's rationale

The RINSE project aims to strengthen the asset recovery system by enhancing the knowledge, competencies, and skills of judicial and non-judicial professionals, as well as other key stakeholders involved in the multi phase asset recovery process. Through a comparative analysis across four countries—Belgium, France, Greece, and Italy—the project seeks to identify training needs, address weak points, and highlight best practices in the national implementation of EU regulations and directives. This analysis has informed the design and delivery of tailored training programs for professionals engaged in asset recovery.



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The RINSE Project - Result impact

- increased knowledge and understanding of the two legislative texts and their interconnections among judicial and non judicial professionals
- greater understanding of national legislation in terms of the technical, legal and practical aspects of the multi-phase asset recovery process
- enhanced understanding of the social reuse of confiscated assets through recommendations and best practices sharing
- progressive mutual recognition of standards, requirements and practices, allowing for a swifter cooperation in the fight against cross-border criminal cases
- creation of broad community of practice at EU level in the field
- public officials enabled to better manage and use the confiscated assets according to the broad civil and social values
- long term benefits for the communities affected by criminal organizations due to strengthened capacity and cooperation of the institutional actors



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The RINSE Project - Online training path

The RINSE Project training program brought together legal and non-legal professionals, and asset recovery experts from across the EU Member States to deepen their knowledge of freezing and confiscation orders, mutual recognition and asset recovery process. The event aimed to enhance understanding of EU legislative frameworks, promote cooperation, and highlight the social value of confiscated assets.

It began with an exploration of the historical evolution of judicial cooperation and mutual recognition, followed by insights into Regulation (EU) 2018/1805 and its practical implications. Experts then addressed challenges in implementing the mutual recognition procedure, offering case studies and best practices on topics such as cross-border investigations, technical obstacles, and the refusal or postponement of orders.

The program also underscored the importance of the social reuse of confiscated assets, discussing its transformative impact on communities and strategies to address corruption. A look at the new Directive (EU) 2024/1260 and judicial cooperation tools rounded out the event, reinforcing the need for a unified and collaborative approach to asset recovery across the EU.



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The RINSE Project - Online training path

Overview of EU Framework and Mutual Recognition, Chloé Brière set the stage with a historical perspective on judicial cooperation in criminal matters and the principle of mutual recognition in the EU, followed by Lorenzo Salazar, who provided clarity on how Regulation (EU) 2018/1805 has shaped mutual recognition instruments, emphasizing recent changes and their implications.

Practical Application and Challenges, Isabelle Croene and Dirk Merckx shared insights into the mutual recognition process, including transmission of certificates, recognition, execution and non execution, and best practices. Alexandros Tsagkalidis addressed specific issues like terms, postponements, and refusals of confiscation orders, with a focus on standard certificates.

Cross-Border Asset Investigations, Walter Quiryren shared practical approaches and case studies, emphasising the importance of cooperation and best practices.

Special Topics in Confiscation and Asset Recovery, a roundtable discussion led by prosecutors and magistrates from the 4 involved EU Member States, who exchanged experiences on national practices for confiscation. Their insights highlighted the diversity of approaches across Europe while identifying opportunities for greater harmonization. Then Michele Mosca highlighted the social and economic impact of the reuse of confiscated assets, underlining its benefits for communities.

Legislative Updates and Future Challenges, Michael Spath introduced the new Directive (EU) 2024/1260, emphasizing its significance for asset recovery and confiscation, Charlotte Palmieri then provided an anti-corruption perspective, highlighting challenges related to the reuse and return of assets, a critical aspect of ensuring the sustainability of recovery efforts.

Judicial Cooperation Tools, Elena Magdalena Bozieru presented tools available through the European Judicial Network, enhancing participants' knowledge of judicial cooperation mechanisms.



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Introduction to the historical European framework

Prof. Chloé Brière

*Research and Information Sharing on
freezing and confiscation orders in the EU*



INTRODUCTION

- The freezing and confiscation of criminal assets are mechanisms increasingly mobilised to combat crime more effectively and designed to stop criminals from accessing property obtained by breaking the law.
- The purpose of my presentation is to provide a historical overview of the instruments that preceded the adoption of Directive 2014/42/EU and Regulation (EU) 2018/1805.

Focus on two types of instruments that will be discussed in turn:

1. Instruments elaborated outside the EU's legal order (international agreements or agreements elaborated within the Council of Europe)
2. Instruments elaborated within the EU's legal order (the « predecessors » of the Directive and the Regulation).

INTEREST IN ADDRESSING THESE INSTRUMENTS

- The international dimension of the fight against crime, and the mobility of criminal assets, mean that freezing and confiscation measures may very often present an international dimension.
- These instruments may be mobilised in parallel to the EU's instruments, for instance, to trace (as much as possible) all the criminal assets used or generated by an offence, even those "sent abroad".
- Many of them precede the adoption of the EU's instruments and thus constitute building blocks upon which the EU legislator could rely, notably to adopt the first generation of EU instruments and adapt the measures envisaged to the specificities of the EU's legal order.

CONVENTIONS ELABORATED WITHIN THE UNITED NATIONS

SEVERAL UN CONVENTIONS CONTAIN PROVISIONS ON CONFISCATION

- **United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988) (EU a party since 1990) – Article 5 on confiscation**
- **International Convention for the Suppression of the Financing of Terrorism, also known as the New York Convention (1999) – creation of a new criminal offence & possibility to confiscate terrorist assets**
- **United Nations Convention against Transnational Organised Crime, also known as UNTOC or the Palermo Convention (2000) (EU a party since 2004)**
- **United Nations Convention against Corruption, also known as UNCAC, or the Merida Convention (2003)**

CONVENTIONS ELABORATED WITHIN THE COUNCIL OF EUROPE

Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (STCE n° 141 - 1990), known as the Strasbourg Convention

- An obligation to take confiscation measures for all categories of offences (and not just drugs)

Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (STCE n° 198 - 2005)

- Initially envisaged as an Additional Protocol to the previous instrument, but facing the ambition of the text, the negotiators opted for a separate instrument
- Text signed but not ratified by the EU
- Obligation to the States parties to adopt measures providing for the confiscation of criminal and terrorist assets and facilitating international cooperation + adoption of a list of offences for which confiscation must apply.

TWO TRENDS IDENTIFIED

At the international level, a preference for sectorial instruments targeting a specific crime (except for the UNTOC) and relatively weak provisions

- Invitation to develop confiscation measures at the national level and cooperate with partners
- Review Mechanisms are put in place, but they consist of peer review by other State Parties

At the European level, a more limited “production” but the latest instrument adopted in 2005 presents a clear added-value

- Seeks to synthesise the developments at the international level, while breaking from a sectorial approach

ADVANTAGES AND LIMITS

- ➔ **A certain proximity regarding the definitions used, and one of their differences lies in the authority that can order a confiscation (CoE only a tribunal, UN ok for administrative actors)**
- ➔ **They all pursue the same objectives of defining a common set of rules allowing the confiscation in kind, or where appropriate in value, of instruments and proceeds of crime, broadly conceived, and thus facilitating international cooperation between competent national authorities**
- ➔ **However, these instruments contain traditional international cooperation mechanisms, which are strongly marked by principles of national sovereignty and national territoriality. They may in some cases function slowly and clumsily.**

FIRST GENERATION INSTRUMENT



The first instrument adopted at the EU level was a **Joint Action 98/699/JAI** on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds from crime



References to the CoE Convention: Obligation for each Member State to ensure that no reservations are made or upheld with two key articles of the 1990 CoE Convention



It contained invitations to facilitate direct contacts between operational actors to ensure that formal requests are only made when necessary and contain all required information



It provided for the elaboration of user-friendly guides in which each Member State had to share information on :

where to obtain assistance;
the assistance it is prepared to provide and the restrictions thereto;
the information a country requesting assistance must supply.

SECOND GENERATION INSTRUMENTS

The early 2000s were a very dynamic period for the adoption of new instruments at the EU level, with the Member States being very keen on ensuring that the freezing and confiscation of assets of crime is effective, even when the procedure presents a cross-border dimension

No less than three instruments were adopted between 2001 and 2005, and they concern two main fields

- Approximation of national legislation
- Rules accelerating the cooperation between the Member States

APPROXIMATION OF LEGISLATIONS


- The second instrument adopted at the EU level was a [Council Framework Decision 2001/500/JHA of 26 June 2001](#) on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds of crime
- Not a revolution – the text continues to refer to the CoE Convention and restates the obligation for each Member State to ensure that no reservations are made or upheld with two key articles of the 1990 CoE Convention

Novelties?

- Indications regarding the minimum maximum level of penalties for the offences covered by the 1990 CoE Convention
- Processing of requests for mutual assistance with the same priority as is given to such measures in domestic proceedings

- A few years later, the EU legislator adopted a third instrument (still under the legal regime defined by the Amsterdam Treaty): [Council Framework Decision 2005/212/JHA of 24 February 2005](#) on Confiscation of Crime-Related Proceeds, Instrumentalities and Property
- A new instrument proposed by Denmark, whose main motivation was disclosed in its [Explanatory Note](#) and repeated in the Preamble of the FD:

“The existing instruments in this **area have not to a sufficient extent achieved effective cross-border cooperation** with regard to confiscation as there are still a number of Member States which are unable to confiscate the proceeds from all offences punishable by deprivation of liberty for more than one year” (Preamble para. 9)

 In their view, necessary to have a **horizontal instrument** to determine unambiguously which obligations are already incumbent upon Member States as regards confiscation.

Council Framework Decision 2005/212/JHA of 24 February 2005 (cont'ed), an instrument that provides for the approximation of the Member States' rules on confiscation through:

- Common definitions of key concepts (proceeds, property, instrumentalities, confiscation and legal person)
- Common thresholds for confiscation measures (from criminal offences punishable by deprivation of liberty for more than one year) and extended confiscation measures (when committed within the framework of a criminal organisation when the offence is covered by EU instruments, including THB, child pornography, illicit drug trafficking, counterfeiting the euro, or terrorism)
- Introduction of legal remedies to preserve the rights of interested parties, and safeguards (no impact on the protection of fundamental rights)

ACCELERATION OF COOPERATION

A second strand of instruments this time setting up specific mechanisms/tools destined to accelerate cooperation
The first instrument adopted is the [Council Framework Decision 2003/577/JHA of 22 July 2003](#) on the execution in the European Union of orders freezing property or evidence

- It establishes rules for the recognition and execution by an EU country of a freezing order issued by the judicial authority of another EU country in a criminal proceeding. It also covers the freezing of evidence.
- Many serFreezing order = a temporary order from a judicial authority to prevent criminals from hiding, selling or using property, documents or data in criminal activity
- ious offences do not require a check for double criminality - i.e. that the offence be a crime in both the EU country issuing the order (issuing country) and the one executing it (executing country). The offence must, however, be punishable in the issuing country by a jail sentence of a maximum period of at least three years. The offences include participation in a criminal organisation, terrorism, corruption and fraud, trafficking in human beings, racism and rape.
- The executing state may refuse to recognise or execute the order if certain grounds are met

2. Instruments elaborated within the EU's legal order



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The second instrument adopted is the [Council Framework Decision 2006/783/JHA of 6 October 2006](#) on the application of the principle of mutual recognition to confiscation orders

Application of the principle of mutual recognition, which allows a judicial authority in one European Union (EU) country to send an order to freeze or confiscate property directly to the judicial authority in another EU country where it will be recognised and carried out without any further formality.

- The difference with the freezing order is that the confiscation order is a permanent measure to take illegally obtained property away from criminals or their accomplices.
- The same scope of application (offences punishable in the issuing country by a jail sentence of a maximum period of at least three years; and they include participation in a criminal organisation, terrorism, corruption and fraud, trafficking in human beings, racism and rape).
- Only explicitly listed grounds for refusal may prevent the execution of the measure, but its execution can be postponed (also on limited grounds)
- N.B. It only covers confiscation orders issued in the context of criminal proceedings, and thus confiscation orders issued following civil or tax proceedings are not necessarily recognised in all Member States.

Another relevant instrument is the Council Decision 2007/845/JHA which provides for the establishment of Asset Recovery Offices in all Member States.

2. Instruments elaborated within the EU's legal order



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Summary
of the instruments
adopted in
the 2000s

Approximation
of legislation

Council Framework Decision 2001/500/JHA
of 26 June 2001

Council Framework Decision 2005/212/JHA
of 24 February 2005

Acceleration
of cooperation

Council Framework Decision 2003/577/JHA
of 22 July 2003 (Freezing order)

Council Framework Decision 2006/783/JHA
of 6 October 2006 (Confiscation order)

THIRD GENERATION INSTRUMENTS

Despite the numerous instruments, persistent dissatisfaction among the EU institutions and Member States, and calls for reforms expressed in various policy documents

- **European Council, Stockholm Programme (December 2009)**
- **Council, Conclusions on Confiscation and Asset Recovery (June 2010)**
- **Commission, Communication "The EU Internal Security Strategy in Action: Five steps towards a more secure Europe" (November 2010)**
- **European Parliament, Resolution of 25 October 2011 on organised crime in the European Union**

In parallel, a Treaty reform (Treaty of Lisbon) that allows the adoption of new instruments with extended competences conferred to the EU in criminal matters

In the 2010s, a new wave of proposals, negotiations and legislative developments in the same fields.

Approximation of legislation - Directive 2014/42/EU

- In March 2012, the Commission presented a proposal for a Directive on the freezing and confiscation of proceeds of crime in the EU (Legal basis Articles 82(2) and 83(1) TFEU)
- The same objective of making it easier for Member States' authorities to confiscate and recover the profits that criminals make from cross-border serious and organised crime → minimum rules to improve the domestic possibilities to freeze and confiscate assets.
- Attention the Directive aims at replacing Joint Action 98/699/JHA and, in part, Framework Decisions 2001/500/JHA and 2005/212/JHA

Acceleration of cooperation – Regulation (EU) 2018/1805

- In December 2016, the Commission presented a Proposal for a Regulation on the mutual recognition of freezing and confiscation orders (Legal basis: Article 82(1) TFEU)
- An update of the two previous instruments to take into account that Member States have developed new forms of freezing and confiscation of criminal assets.

FOURTH GENERATION INSTRUMENT

Adoption of a new Directive in 2024 - [Directive \(EU\) 2024/1260 of 24 April 2024 on asset recovery and confiscation](#)

- Focus on laying down minimum rules on tracing and identification, freezing, confiscation and management of property within the framework of proceedings in criminal matters
- It does not replace previous instruments but complements them; and it covers property being defined as “legal documents or instruments, including in electronic or digital form, evidencing title or interest in property subject to freezing and confiscation including, for example, financial instruments, trusts, or documents that can give rise to creditor claims and are normally found in the possession of the person affected by the relevant procedures.”
- It also aims at facilitating the implementation of Union restrictive measures where necessary to prevent, detect or investigate criminal offences related to the violation of such measures

General introduction to EU instruments and their applicability on mutual recognition. Focus on mutual recognition of freezing and confiscation orders

Lorenzo Salazar

OUTLOOK

1. **Once upon a time: the Council of Europe...**
2. **Evolution in time of a complex legislative panorama**
3. **Mutual recognition vs. approximation**
4. **Changes occurred after the entry into force of Regulation (EU)2018/18**
5. **The new directive (EU)2024/1260**
6. **Final considerations**

ONCE UPON A TIME, THE COUNCIL OF EUROPE

- **The Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (ETS No. 141, the 1990 Convention)**
- **The 2005 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (the Warsaw Convention) (CETS No. 198, the Warsaw Convention)**
- **Ongoing: new committee responsible for the drafting of an additional protocol to CETS 198. In line with the discussions held within the Conference of the Parties to CETS 198 and during its [Joint Session with the PC-OC](#), this work is proposed to start in 2024 and be completed by the end of 2025.**

A TRICKY EU PATCHWORK

1. **Joint Action 98/699/JHA, on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds from crime**
2. **Framework Decisions 2001/500/JHA on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds of crime**
3. **Framework Decision 2003/577/JHA on the execution in the EU of orders freezing property or evidence**
4. **Framework Decision 2005/212/JHA, on Confiscation of Crime-Related Proceeds, Instrumentalities and Property**
5. **Framework Decision 2006/783/JHA on the application of the principle of mutual recognition to confiscation orders**
6. **Decision 2007/845/JHA concerning cooperation between Asset Recovery Offices of the Member States in the field of tracing and identification of proceeds from, or other property related to, crime**
7. **Directive 2014/42/EU on the freezing and confiscation of instrumentalities and proceeds of crime in the EU**
8. **Regulation (EU) 2018/1805 of 14 November 2018 on the mutual recognition of freezing orders and confiscation orders**
Regulation (EU) 2018/1805 of 14 November 2018 on the mutual recognition of freezing orders and confiscation orders
9. **Directive (EU) 2024/1260 of 24 April 2024 on asset recovery and confiscation**



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MADE IN ITALY...



APPROXIMATION VS. MUTUAL RECOGNITION

- **Joint Action 98/699/JHA, on money laundering etc.**
- **Framework Decisions 2001/500/JHA on money laundering etc.**
- **Framework Decision 2005/212/JHA, on Confiscation of Crime-Related Proceeds, Instrumentalities and Property**
- **Decision 2007/845/JHA concerning cooperation between Asset Recovery Offices of the Member States in the field of tracing and identification of proceeds from, or other property related to, crime**
- **Directive 2014/42/EU on the freezing and confiscation of instrumentalities and proceeds of crime in the EU**
- **Directive (EU) 2024/1260 of 24 April 2024 on asset recovery and confiscation**
- **Framework Decision 2003/577/JHA on the execution in the EU of orders freezing property or evidence**
- **Framework Decision 2006/783/JHA on the application of the principle of mutual recognition to confiscation orders**
- **Regulation (EU) 2018/1805 of 14 November 2018 on the mutual recognition of freezing orders and confiscation orders**
- **Regulation (EU) 2018/1805 of 14 November 2018 on the mutual recognition of freezing orders and confiscation orders**



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TOWARDS A SIMPLIFIED FRAMEWORK...

Replacement of previous instruments (with regard to the Member States bound by the new instruments)

TOWARDS A SIMPLIFIED FRAMEWORK...

Regulation (EU) 2018/1805 of 14 November 2018 on the mutual recognition of freezing orders and confiscation orders replaced:

- ~~○ Framework Decision 2003/577/JHA on the execution in the European Union of orders freezing property or evidence~~
- ~~○ Framework Decision 2006/783/JHA on the application of the principle of mutual recognition to confiscation orders~~

Directive (EU) 2024/1260 of 24 April 2024 on asset recovery and confiscation replaced:

- ~~○ Joint Action 98/699/JHA, on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds from crime~~
- ~~○ Framework Decisions 2001/500/JHA on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds of crime~~
- ~~○ Framework Decision 2005/212/JHA, on Confiscation of Crime-Related Proceeds, Instrumentalities and Property~~
- ~~○ Decision 2007/845/JHA concerning cooperation between Asset Recovery Offices of the Member States in the field of tracing and identification of proceeds from, or other property related to, crime~~
- ~~○ Directive 2014/42/EU on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union~~

APPROXIMATION VS. MUTUAL RECOGNITION

- **Directive (EU) 2024/1260 of 24 April 2024 on asset recovery and confiscation**
- **Regulation (EU) 2018/1805 of 14 November 2018 on the mutual recognition of freezing orders and confiscation orders**



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REGULATION (EU) 2018/1805 ON MUTUAL RECOGNITION OF FREEZING ORDERS AND CONFISCATION ORDERS

REGULATION (EU) 2018/1805 ON MUTUAL RECOGNITION OF FREEZING ORDERS AND CONFISCATION ORDERS

Subject matter (art. 1)

The Regulation lays down the rules under which a Member State recognises and executes in its territory freezing and confiscation orders issued by another Member State [within the framework of proceedings in criminal matters.](#)

DEFINITIONS (PREAMBLE P.13)

“Proceedings in criminal matters is an autonomous concept of Union law interpreted by the Court of Justice of the European Union, notwithstanding the case law of the European Court of Human Rights. The term therefore covers all types of freezing orders and confiscation orders issued following proceedings in relation to a criminal offence, not only orders covered by Directive 2014/42/EU. **It also covers other types of order issued without a final conviction.**

While such orders might not exist in the legal system of a Member State, the Member State concerned should be able to recognise and execute such an order issued by another Member State.”

**QUESTION: APPLICABILITY OF THE REGULATION
TO THE “MISURE DI PREVENZIONE PATRIMONIALE” ...?**

KEY FEATURES

- **A single regulation** – covering both freezing orders and confiscation orders – that is directly applicable in the EU.
- **List of 32 Criminal offences without verification of double criminality**
- **A limited number of reasons for non-recognition and non-execution**
- **Standard certificates and procedures to allow for quicker and more efficient freezing and confiscation actions.**
- **A deadline of 45 days for the recognition of a confiscation order and, in urgent cases, a deadline of 48 hours for the recognition and 48 hours for the execution of freezing orders. Limits can be postponed under strict conditions.**
- **Provisions to ensure that victims' rights to compensation and restitution are respected in cross-border cases.**



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DIRECTIVE (EU) 2024/1260 OF 24 APRIL 2024 ON ASSET RECOVERY AND CONFISCATION

SUBJECT MATTER

- The Directive establishes minimum rules on the tracing and identification, freezing, confiscation and management of property within the framework of proceedings in criminal matters.
- The Directive applies without prejudice to freezing and confiscation measures within the framework of proceedings in civil or administrative matters.

STRUCTURE

- | | |
|---------------------------------------|---|
| I. General provisions | I. Safeguards |
| II. Tracing and identification | II. Asset recovery strategic framework |
| III. Freezing and confiscation | III. Cooperation |
| IV. Management | |

I - DEFINITIONS

- The Directive establishes minimum rules on the tracing and identification, freezing, confiscation and management of property within the framework of proceedings in criminal matters.
- “confiscation” means a final deprivation of property ordered by a court in relation to a criminal offence

II - TRACING AND IDENTIFICATION

- **Asset-tracing investigation**
(Property referred to in paragraph 1 shall also include property which is, or might become, the object of a freezing or confiscation order in accordance with Article 10(2) of Directive (EU) 2024/1226.)
- **Asset recovery offices**
- **Access to information**
- **Exchange of information among AROs**

III - FREEZING AND CONFISCATION (1)

- **Freezing**
- **Confiscation**
- **Value confiscation**
- **Confiscation form a third party**
- **Extended confiscation (roperty belonging to a person convicted of a criminal offence where the offence committed is liable to give rise, directly or indirectly, to economic benefit, and where a national court is satisfied that the property is derived from criminal conduct)**
- **Non-conviction-based confiscation (where criminal proceedings have been initiated but could not be continuedConfiscation of unexplained wealth linked to criminal conduct (property is derived from criminal conduct committed within the framework of a criminal organisation)**
- **Compensation of victims**

III - FREEZING AND CONFISCATION (2)

- Further use of the confiscated property (Member States are encouraged to take the necessary measures to allow the possibility of using confiscated property, where appropriate, for public interest or social purposes.)
- MS may use the instrumentalities, proceeds or property confiscated in relation to the offences referred to in Directive (EU) 2024/1226 to contribute to mechanisms to support third countries affected by situations in response to which Union restrictive measures have been adopted, in particular in cases of war of aggression.

**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**

Flash!

DIRECTIVE (EU) 2024/1226

- **Council Decision (EU) 2022/2332 of 28 November 2022 on identifying the violation of Union restrictive measures as an area of crime that meets the criteria specified in Article 83(1) of the Treaty on the Functioning of the European Union**
- **Article 1: The violation of Union restrictive measures shall be an area of crime within the meaning of Article 83(1), second subparagraph, TFEU.**
- **Directive 2024/1226 establishes minimum rules concerning the definition of criminal offences and penalties for the violation of Union restrictive measures.**
- **Member States shall ensure that, where it is intentional and in violation of a prohibition or an obligation that constitutes a Union restrictive measure or that is set out in a national provision implementing a Union restrictive measure, where national implementation is required, the following conduct constitutes a criminal offence: ...**

“The following conduct constitutes a criminal offence...”

- making funds or economic resources available directly or indirectly to, or for the benefit of, a designated person, entity or body in violation of a prohibition that constitutes a Union restrictive measure;
- failing to freeze funds or economic resources belonging to or owned, held or controlled by a designated person, entity or body in violation of an obligation that constitutes a Union restrictive measure;
- circumventing a Union restrictive measure...
- Etc...

DIRECTIVE (EU) 2024/1226 (follows...)

- **Penalties & Sanctions for natural and legal persons**
- **Aggravating (and mitigating) circumstances**
- **Investigative tools (including special investigative tools, such as those used in combatting organised crime)**
- **Reporting of violations of Union restrictive measures and protection of persons who report such violations (Whistleblowing)**
- **Implementation > 20 May 2025**



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BACK TO DIRECTIVE (EU) 2024/1260

IV - MANAGEMENT

- **Asset management and planning**
- **Interlocutory sales**
- **Asset management offices**

ASSET MANAGEMENT AND PLANNING

- Obligation to ensure efficient management
- Prevent property from being acquired by persons convicted in the criminal proceedings in which the property was frozen
- Interlocutory sales (circumstances under which a property that is the object of a freezing order can be transferred or sold before a final confiscation order)
- Obligation to set up or designate asset management offices

V - SAFEGUARDS

- **Obligation to inform affected persons**
- **Legal remedies (right to an effective remedy and to a fair trial in order to uphold their rights)**

VI - ASSET RECOVERY STRATEGIC FRAMEWORK

- **Obligation to inform affected persons**
- **National strategy on asset recovery**
- **Resources**
- **Efficient management of frozen and confiscated property
(Register of frozen and confiscated property)**
- **Statistics**

VII - COOPERATION

- **Cooperation network on asset recovery and confiscation (CARIN)**
- **Cooperation with Union bodies and agencies (EPPO)**
- **Cooperation with third countries**
- **National Contact points**



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IMPLEMENTATION OF DIRECTIVE 2024/1260

By 23 November 2026



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FINAL CONSIDERATION

FINAL CONSIDERATION

- **A tricky patchwork...**
- **...but on the way of a simplification**
- **A lot of Italy in it (also depending on the moment...)**
- **But Italy also received a lot in return...**
- **Interesting to note the growing connections with the sanctions regime**
- **Lack of political drive: art. 68 TFEU**

Executing confiscation orders practical experiences and legal issues

Dr Dirk Merckx

*First deputy King's prosecutor
King's Prosecution Office, Brussels*

- **Increase in the use of the freezing and confiscation orders**
- **Old certificates still being used**
- **Distinction between freezing and confiscation orders particularly regarding restitution**
- **Principle is “recognition without formalities” but in practice much more complicated**

- **Systems are not always comparable**
- **“Proceedings in criminal matters” (recital 13; art. 1,1) is autonomous concept of EU law and very broad**
- **But it does not cover all procedures**

CONFISCATION ORDERS TAKE SUBSTANTIAL AMOUNT OF TIME

- **analysis**
- **comparison of legal systems**
- **decision to recognize**
- **contacting interested parties**
 - Belgian law stipulates by mail but even with registered mail no proof of receipt abroad sending legal assistance requests for notification in all cases not feasible when to consider the recognition decision as enforceable?
- **executing the freezing if not yet in place**
- **contacts with central office for seizure and confiscation regarding transfer, management and disposal of assets**
- **practical issues regarding transfer of non-monetary assets**

New system of recognition by the Public prosecutor's office but with legal remedies increases the workload and can actually lead to longer procedures

COMPENSATION TO VICTIM, MONEY OBTAINED SHALL BE DISPOSED OF BY THE PPO:

- Up to 10.000 €: executing State
- More than 10.000 €: 50 % - 50 %

Exception: Minister of justice can make an agreement with requesting State

Not clear how the asset sharing is going to be implemented relationship between PPO and ministerial competence is not clear law provides that certificates must be sent to the PPO how will the Minister be informed and when can he take the decision?

After or before the PP's decision to recognize? does the ministerial decision includes the recognition? If it does not, what if PP refuses to recognize?

How will the negotiations proceed, with whom and when?

PPs have no experience or training to (help) elaborate such agreements in complex cases with lots of legal and financial issues

Theory and practice in the transmission, recognition and execution of freezing and confiscation orders for the competent authorities (mutual recognition procedure): presentation of practical cases studies and best practices

Isabelle Croene

*Deputy public prosecutor
for Social Fraud of Ghent*



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OUTGOING CONFISCATION CERTIFICATES

Which judicial authority in Belgium is responsible for the enforcement of confiscations?

- Public Prosecutor's Office (14)
- Public Prosecutor's Office for Social Fraud (9)
- General Prosecutor's Office (5)
- General Prosecutor's Office for Social Fraud (5)
- Federal Prosecutor's Office (1)

= **34** judicial authorities (in a small country) are competent to send freezing and confiscation certificates

Best practice: experience of the General Prosecutor's Office of Ghent with outgoing confiscation certificates

Asset team established in 2018

- 1 public prosecutor
- 1 secretary (criminologist)

Handles everything related to the enforcement of financial penalties and confiscations

Execution of criminal convictions from Court of Appeal of Ghent

Cases since 2018

134 certificates sent to other European judicial authorities:

- 55 certificates for financial penalties
- **79 confiscation certificates** (money/other assets)

Know-how developed

Which countries?

- **Portugal:** 1 confiscation
- **Bulgaria:** 1 confiscation
- **U.K. (pre-Brexit):** 1 confiscation (3 financial penalties)
- **Italy:** 2 confiscations
- **Germany:** 2 confiscations (1 financial penalty)
- **Romania:** 3 confiscations
- **France:** 4 confiscations (1 financial penalty)
- **Spain:** 6 confiscations
- **The Netherlands:** 59 confiscations (51 financial penalties)

Of the 79 confiscation certificates:

- **11 sent after a freezing certificate** (with mention of the full amount of the confiscation, not just the amount seized by the freezing certificate)
- **3 not recognized** : due to death (1) or the person no longer residing in the country concerned (2)

Experience with outgoing confiscation certificates to **France**

- 4 confiscation certificates sent:
 - 3 x recognition, without knowledge of the result of the execution
 - 1 x sent on 28/11/2018, first response only on 18/03/2024 (no recovery options after a thorough asset investigation)

We need to communicate more!

Experience with outgoing confiscation certificates to **Italy**

- 2 confiscation certificates sent:
 - 1 x recognition, without knowledge of the result of the execution
 - 1 x no response (but informed of recognition by the convicted person's lawyer)

We need to communicate more!

No experience with outgoing confiscation certificates to **Greece**



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Experience with outgoing confiscation certificates to **the Netherlands**

59 confiscation certificates sent

Very good cooperation with the Netherlands: smooth communication regarding recognition, asset sharing, payment plans, no translation, etc

Procedure for confiscation certificates

If no prior freezing certificate has been issued, the following justification is sufficient:

“The convicted person has Dutch nationality and resides at * in the Netherlands.”***

We don't consult ARO/CARIN before sending the confiscation certificate



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Procedure for confiscation certificates

Confiscation certificates are usually sent by **email**

Further communication is also mostly via email

Procedure for confiscation certificates

Translation of the certificate

- Highlight your own text in **bold** and only have the bold text translated
- Use the translation of the certificate for execution of imprisonment for the confiscation certificate

Procedure for confiscation certificates

Amount in the confiscation certificate:

- Clearly state the remaining **balance**
- Deduct any payments, bails or seizures from the amount of the confiscation
- X

Example: Judgement: *“confiscation of €100.000 and the price of the sale of the car has to be deducted of €100.000”*, send the confiscation certificate only after the sale of the car when the proceed of the sale is known

Procedure for confiscation certificates

AFTER recognition of the confiscation certificate by another Member State:

Belgian prosecutors have to notify the Belgian Federal Public Service for Finance of the recognition

- For financial penalties: set the fine in Belgium to zero
- For confiscations: inform the Federal Public Service for Finance of the execution in another European country, citing Articles 16 (execution in both countries) and 30 (asset sharing) of Regulation 2018/1805



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**Enforcement of confiscations is just as important as prosecution!
Better to enforce more and prosecute less!**

The terms, the postponement, the refusal, the impossibility of carrying out of confiscation orders. The standard certificate

Dr. Alexandros Tsagkalidis
Criminal Defence Lawyer

REGULATION 2018/1805 ON THE MUTUAL RECOGNITION OF FREEZING ORDERS AND CONFISCATION ORDERS

*The terms, the postponement, the refusal, the impossibility
of carrying out of confiscation orders. The standard certificate*

I. BASIC TERMS AND SCOPE OF THE REGULATION

Freezing order: A decision issued or validated by an issuing authority in order to prevent the destruction, transformation, removal, transfer or disposal of property with a view to the confiscation thereof [art. 2(1)]

Confiscation order: A final penalty or measure, imposed by a court following proceedings in relation to a criminal offence, resulting in the final deprivation of property of a natural or legal person [art. 2(2)].

Property means property of any description, whether corporeal or incorporeal, movable or immovable, and legal documents or instruments evidencing title or interest in such property, which the issuing authority considers to be: (a) the proceeds of a criminal offence, or its equivalent, whether the full amount of the value or only part of the value of such proceeds; (b) the instrumentalities of a criminal offence, or the value of such instrumentalities; (c) subject to confiscation through the application in the issuing State of any of the powers of confiscation provided for in Directive 2014/42/EU; or (d) subject to confiscation under any other provisions relating to powers of confiscation, including confiscation without a final conviction, under the law of the issuing State, following proceedings in relation to a criminal offence [art. 2(3)].

Scope: The orders must be issued “within the framework of proceedings in criminal matters” (art.1 par.1).

Proceedings in criminal matters: An *autonomous concept* of Union law interpreted by the Court of Justice of the European Union, notwithstanding the case law of the European Court of Human Rights. The term covers all types of freezing orders and confiscation orders issued following proceedings in relation to a criminal offence, not only orders covered by Directive 2014/42/EU. It also covers other types of order issued without a final conviction. Proceedings in criminal matters could also encompass criminal investigations by the police and other law enforcement authorities. Freezing orders and confiscation orders that are issued within the framework of proceedings in civil or administrative matters should be excluded from the scope of this Regulation (Preamble par. 13).

Issuing State: The member state in which a freezing order or confiscation order is issued.

Executing State: The member state to which a freezing order or confiscation order is transmitted for the purpose of recognition and execution.

Issuing Authority:

- in respect of a freezing order: (i) a judge, court, or public prosecutor competent in the case concerned or (ii) another competent authority which is designated as such by the issuing State and which is competent in criminal matters to order the freezing of property or to execute a freezing order in accordance with national law. In addition, before it is transmitted to the executing authority, the freezing order shall be validated by a judge, court or public prosecutor in the issuing State after examining its conformity with the conditions for issuing such an order under this Regulation. Where the order has been validated by a judge, court or public prosecutor, that other competent authority may also be regarded as an issuing authority for the purposes of transmitting the order.
- in respect of a confiscation order, an authority which is designated as such by the issuing State and which is competent in criminal matters to execute a confiscation order issued by a court in accordance with national law;

Executing Authority: An authority that is competent to recognise a freezing order or confiscation order and to ensure its execution in accordance with this Regulation and the procedures applicable under national law for the freezing and confiscation of property; where such procedures require that a court register the order and authorise its execution, the executing authority includes the authority that is competent to request such registration and authorization.

Affected Person: The natural or legal person against whom a freezing order or confiscation order is issued, or the natural or legal person that owns the property that is covered by that order, as well as any third parties whose rights in relation to that property are directly prejudiced by that order under the law of the executing State.

II. THE RULES OF RECOGNITION AND EXECUTION

- All freezing and confiscation orders issued by one member state within the “framework of proceedings in criminal matters” are, in principle, enforceable in another member state via Regulation 2018/1805.
- This means that a member state is obliged to **recognise, without further formalities**, the freezing and confiscation orders issued by another member state and transmitted to it and execute those orders within its territory (Preamble par. 12).
- Member states shall treat such orders **as if they were domestic orders** (art. 7 par. 1/art. 18 par. 1) and execute them with the **same speed and priority** as for similar domestic cases (Preamble par. 29, art. 9 par. 1/art. 20 par. 3).
- The obligation to recognize and execute transmitted orders exists **even if such orders do not exist** in the legal system of the executing state (Preamble par. 13).
- **Time limits** for the recognition and execution process: For confiscation orders, the time limit is 45 days (art. 20 par. 1). For freezing orders, the time limit is 48 hours to issue a decision on their recognition and execution, and an additional 48 hours to execute them (art. 9 par. 3).
- **Law governing execution:** The execution of the freezing or confiscation order shall be governed by the law of the executing member state and its authorities shall be solely competent to decide on the procedures for its execution and to determine all the measures relating thereto (art. 23 par. 1). Where appropriate, the issuing and executing authority should be able to invite Eurojust or the EJM to provide assistance, within their remit, concerning issues relating to the execution of freezing orders and confiscation orders (Preamble par. 43).

III. TRANSMISSION OF THE ORDER

- Both freezing and confiscation orders are transmitted by means of a freezing (art. 4) or confiscation (art. 14) certificate. Where necessary, due to the structure of its internal legal system, each Member State may designate one or more central authorities to be responsible for the administrative transmission and reception of freezing certificates and confiscation certificates and for assisting its competent authorities (art. 24 par. 2)
- The certificates can be found in annexes 1 and 2 of the Regulation.
- **Purpose:** Ensures uniformity and clarity in the transmission of freezing and confiscation orders.
- As opposed to the previous legal regime under FD 2003/577 and FD 2006/783, the Regulation establishes a simplified procedure whereby Member States are required to **transmit only the certificate**, not the freezing or confiscation decision. However, member states may declare that they require from issuing authorities to transmit the freezing or confiscation order as well (art. 4 par. 2/art. 14 par. 2). In such case, only the certificate is required to be translated into the language of the executing state.
- The Regulation does not provide for a specific process for the transmission of the certificates. They can be transmitted by any means capable of producing a written record under conditions that allow the executing authority to establish the authenticity of the freezing certificate (art. 4 par. 1/art. 14 par. 1).

IV. CONTENTS OF THE CERTIFICATE

- Provides all the information that is necessary for the executing authority to proceed with the recognition and execution of the transmitted order.
- In particular, the certificate must provide:
 - I. details of the issuing authority of the order which is transmitted,
 - II. details of the affected persons,
 - III. information to the property, which is about to be frozen or confiscated, such as its nature (corporeal or incorporeal, movable or immovable, money etc.) and its location,
 - IV. grounds for issuing the order (summary of facts, including a description of the criminal offence, whether the offence is included in the list of offences for which dual criminality is not examined, etc.),
 - V. information about other member states, where the certificate has been transmitted,
 - VI. whether a decision to reconstitute property to, or compensate, the victim exists in the issuing state.

V. POSTPONEMENT OF THE EXECUTION OF FREEZING AND CONFISCATION ORDERS (ART. 10/ART. 21)

Freezing orders (article 10)

1. Ongoing Criminal Investigation

- Execution might damage an ongoing investigation.
- Postponed until a reasonable time determined by the executing authority.

2. Existing Freezing Order

- Property already subject to another freezing order.
- Postponed until the existing order is withdrawn.

3. Other Proceedings in Executing State

- Property subject to an existing order from other proceedings, with priority under national law.
- Postponed until that order is withdrawn.

Confiscation Orders (Article 21)

1. Ongoing Criminal Investigation

- Execution might damage an ongoing investigation.
- Postponed until a reasonable time determined by the executing authority.

2. Risk of Excessive Confiscation

- Potential over-execution due to simultaneous enforcement in multiple states.
- Postponed to avoid exceeding the amount specified.

3. Existing Confiscation Proceedings

- Property subject to ongoing confiscation proceedings in the executing state.
- Postponed until those proceedings are resolved.

4. Legal Remedies Invoked

- A legal remedy under Article 33 has been invoked.
- Postponed until the resolution of the legal remedy.

- In both instances the executing authority shall, immediately and by any means capable of producing a written record, report to the issuing authority on the postponement of the execution of the order, specifying the grounds for the postponement and, where possible, the expected duration of the postponement.
- As soon as the grounds for postponement have ceased to exist, the executing authority shall immediately take the measures necessary for the execution of the order and inform the issuing authority thereof by any means capable of producing a written record.
- In case of a postponement of a confiscation order the Regulation stipulates that the competent authority of the executing State shall take all the measures it would take in a similar domestic case to prevent the property from no longer being available for the purpose of the execution of the confiscation order (e.g. issue a freezing order).

VI. REFUSAL OF RECOGNITION AND EXECUTION

Freezing orders (article 10)

1. Ongoing Criminal Investigation

- Execution might damage an ongoing investigation.
- Postponed until a reasonable time determined by the executing authority.

2. Existing Freezing Order

- Property already subject to another freezing order.
- Postponed until the existing order is withdrawn.

3. Other Proceedings in Executing State

- Property subject to an existing order from other proceedings, with priority under national law.
- Postponed until that order is withdrawn.

COMMON GROUNDS FOR NON-RECOGNITION AND NON-EXECUTION

- **Ne bis in idem (art. 8 par. 1a/ art. 19 par. 1a):** The execution of the order would be contrary to the ne bis in idem principle. This presupposes that the confiscation for which recognition and execution are sought is considered a criminal sanction according to the Engel criteria. If the transmitted order is a freezing order, which cannot, by itself, constitute a criminal sanction, this ground may be invoked by examining whether the confiscation for which the freezing order was issued is indeed a criminal sanction.
- **Privilege or immunity (art. 8 par. 1b/ art. 19 par. 1b):** Property is protected by specific privileges or media freedoms. For example, the property for which freezing or confiscation is sought belong to a foreign state (immunity from execution) or belong to a diplomatic or consular personnel (diplomatic or consular immunity). This ground can also be invoked when recognition or execution would prevent the executing State from applying its constitutional rules relating to freedom of the press or freedom of expression in other media (Preamble par. 33).
- **Certificate Issues (art. 8 par. 1c/ art. 19 par. 1c):** The transmitted certificate is incomplete or manifestly incorrect.

- **Territoriality reservation (art. 8 par. 1d/ art. 19 par. 1d):** The freezing or confiscation order relates to an offense committed wholly or partly outside the territory of the issuing state and wholly or partly within the territory of the executing state. Furthermore, the conduct for which recognition and execution are sought is not considered a criminal offense according to the law of the executing state. This ground also applies to offenses that fall under the list in Article 3, paragraph 1, for which dual criminality is not examined. **Reasoning:** Citizens of a state must comply with and adjust their behavior to the criminal laws that apply within that state and are not obliged to follow the criminal laws of a foreign state.
- **No dual criminality (art. 8 par. 1e/ art. 19 par. 1f):** The conduct in connection with which the freezing order was issued does not constitute a criminal offence under the law of the executing State and is not in the list of categories of offences of art. 3 par. 1. However, there is an exception for taxes and duties. Execution cannot be refused on the ground that the executing state does not for the same type of rules as regards taxes and duties or the same type of customs and exchange regulations as the law of the issuing State.

- Violation of fundamental rights (art. 8 par. 1f/ art. 19 par. 1h): In exceptional situations, there are substantial grounds to believe, on the basis of specific and objective evidence, that the execution of the freezing order would, in the particular circumstances of the case, entail a manifest breach of a relevant fundamental right as set out in the Charter, in particular the right to an effective remedy, the right to a fair trial or the right of defence.
- The wording of this ground of refusal resembles the *Aranyosi and Căldăraru* judgement of the CJEU (C-404/15, C-659/15), which introduced exceptions to the mutual recognition principle in EAW cases.
- List of rights is not restrictive.
- The fundamental rights that should be relevant in this respect are, in particular, the right to an effective remedy, the right to a fair trial and the right of defence. The right to property should, in principle, not be relevant because freezing and confiscation of assets necessarily imply an interference with a person's right to property and because the necessary safeguards in that respect are already provided for in Union law, including in this Regulation (Preamble par. 34).
- From the indicative mention of the right to an effective remedy, the right to a fair trial, and the right of defense, we can infer that the purpose of this ground for refusal is mainly to block the recognition and execution of orders issued in non-criminal proceedings for which there is no harmonization regarding procedural safeguards. This is supported by Preamble paragraph 18, which states that “the essential safeguards for criminal proceedings set out in the Charter should apply to proceedings in criminal matters that are not criminal proceedings but are covered by this Regulation”.

- **Exceptional circumstances:** This ground should be invoked in extreme situations to avoid hampering the principle of mutual recognition. In other words, it applies only when the execution of a freezing or confiscation order would lead to an unjust outcome, e.g. breach of a fundamental right.
- **Manifest breach:** Less severe than flagrant breach/breach of the essence of the fundamental right. Manifest refers to the obviousness of the violation, not its seriousness. This means that the breach must be immediately perceivable and therefore it cannot be remedied in the issuing state. (Note: manifest breach is a term used in mutual recognition in civil and commercial matters i.e. Regulation 1215/2012, see Diageo Brands (C-681/13) and Meroni (C-559/14))

SPECIFIC GROUNDS FOR CONFISCATION ORDERS

- **Rights of affected persons (art. 19 par. 1e):** Execution is impossible due to rights of affected persons under executing state law (e.g. bona fide third parties who are owners of the property for which confiscation is sought – see art. 6 par. 2 of Directive 2014/42).
- **Absence at trial with final conviction (art. 19 par. 1g):** Person did not appear at trial leading to confiscation order linked to a final conviction, unless specific conditions met:
 - Proper summons: Person was properly summoned and informed.
 - Representation by a lawyer: Person had a lawyer present at the trial.
 - Informed of right to retrial or appeal: Person chose not to act despite being informed.

VII. IMPOSSIBILITY TO EXECUTE A FREEZING OR CONFISCATION ORDER

- Execution of an order cannot be carried out when the property has already been confiscated, has disappeared, has been destroyed or cannot be found at the location indicated by the issuing authority, or because the location of the property has not been indicated in a sufficiently precise manner despite consultations between the executing authority and the issuing authority (art. 13 par.3/art. 22 par. 3).
- In such circumstances, the executing authority should no longer be obliged to execute the order. However, if the executing authority subsequently obtains information that allows it to locate the property, it should be able to execute the order without a new certificate having to be transmitted in accordance with this Regulation (Preamble par. 40).
- Where the law of the executing State renders the execution of a freezing order or confiscation order legally impossible, the executing authority should contact the issuing authority in order to discuss the situation and to find a solution. Such a solution could consist in the issuing authority withdrawing the order concerned (Preamble par. 41).

- **Consultation requirement:** Before notifying the issuing authority in accordance about the impossibility to execute a freezing or confiscation, the executing authority, where appropriate, shall consult with the issuing authority (art. 13 par. 2/art. 22 par.2).
- **Notification requirement:** The executing authority must notify the issuing authority when it considers that it is impossible to execute an order (art. 13 par. 1/art. 22 par. 1).
- **New information:** If new information allows location of the property, orders may be executed without new certificates, provided that, prior to executing the order, the executing authority has verified with the issuing authority that the order is still valid (art. 13 par. 4/art. 22 par. 4).
- **Equivalent Value:** Non-execution is permissible if no property of equivalent value exists (art. 13 par. 5/art. 22 par. 5).

ASSET INVESTIGATIONS ABROAD: presentation of practical case studies and best practices

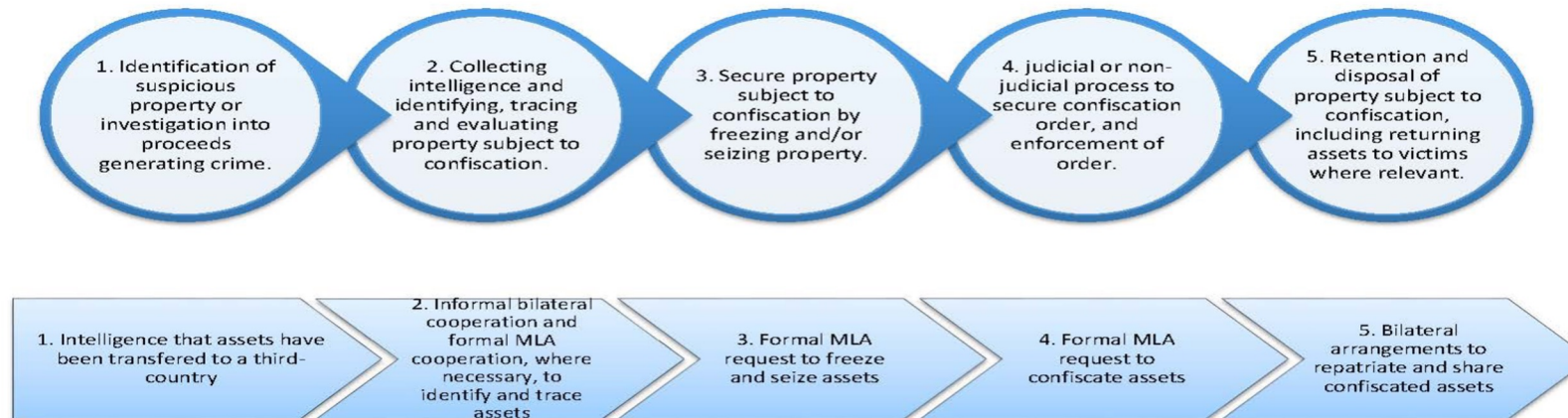
Walter Quiryrenen

Public prosecutor – acting director C.O.S.C.

1. ASSET TRACING: WHAT AND WHY

- **Asset tracing** is the investigative process by which competent authorities identify, locate and examine instrumentalities, proceeds or property that might be derived by criminal activity (national **AND** international – cfr. definition in Art. 3 (4) EU directive 2024/1260)
- Organized crime groups : profit-driven versus low levels of seizure/confiscation worldwide
- The speed of moving, spreading and hiding illicit assets across different countries worldwide in order to avoid detection

2. ASSET TRACING: WHEN: THE ASSET RECOVERY CYCLE



Parallel MLA process in cross-border cases

3. ASSET TRACING: SOURCES

UNCAC art. 31, 52, 55

Council of Europe Warsaw Convention art. 4, 7, 15-20

Council of Europe Strasbourg Convention art. 3, 8

Directive 2014/42/EU art. 9

Council Decision 2007/845/JHA

FATF recommendations 4, 30, 38 (tracing) and 24, 25, 29, 31 (access to information to enable effective tracing)

New Directive 2024/1260 EU on asset recovery and confiscation

4. ASSET TRACING: HOW: ASSET RECOVERY NETWORKS



5. ASSET RECOVERY NETWORKS: THE ARO-PLATFORM AND THE CARIN-NETWORK

1. **Task:** to facilitate the search and identification of assets obtained illegally as part of the search for the proceeds of crime.
2. **Purpose:** exchange of police information between national agencies (spontaneous/on request/best practices) with the aim of freezing/confiscation of the identified property assets by the judicial authorities – in order to **prepare** a formal Mutual Legal Assistance request.
3. Requests by means of a standard form (Annex B) (in English)
4. Via the ARO-platform (SIENA/EUROPOL) or via CARIN-network (mail).

5. ASSET RECOVERY NETWORKS: THE ARO-PLATFORM AND THE CARIN-NETWORK

PURPOSE → “asset tracing”:

- Ownership of real estate on the name of the suspect
- Ownership of vehicles + vessels + airplanes
- Involvement of the suspect as owner/director/manager of companies
- Bank details (identification + balance) (cf. Directive EU 2019-1153) (not all countries).

Condition for the request :

A **clear** indication that the requested information is available in the country being surveyed – ex: bank document during search



NO PHISHING EXPEDITION!
Indications of availability info in specific country

SIENA =
**Secure Information Exchange
Network Application**

- **EUROPOL IT application for operational information exchange between EU Members States, Europol and ‘Third Parties’.**
- **27 EU member states and 34 ‘Third Parties’.**



CARIN =
Camden Asset Recovery Inter-Agency Network

= Informal network of magistrates and investigating officers working as experts in the field of tracing, seizing and confiscation of criminal assets

61 countries, 12 international organisations, 7 regional networks – more than 174 jurisdictions worldwide.

“point-to-point” contact – secretariat EUROPOL (The Hague)

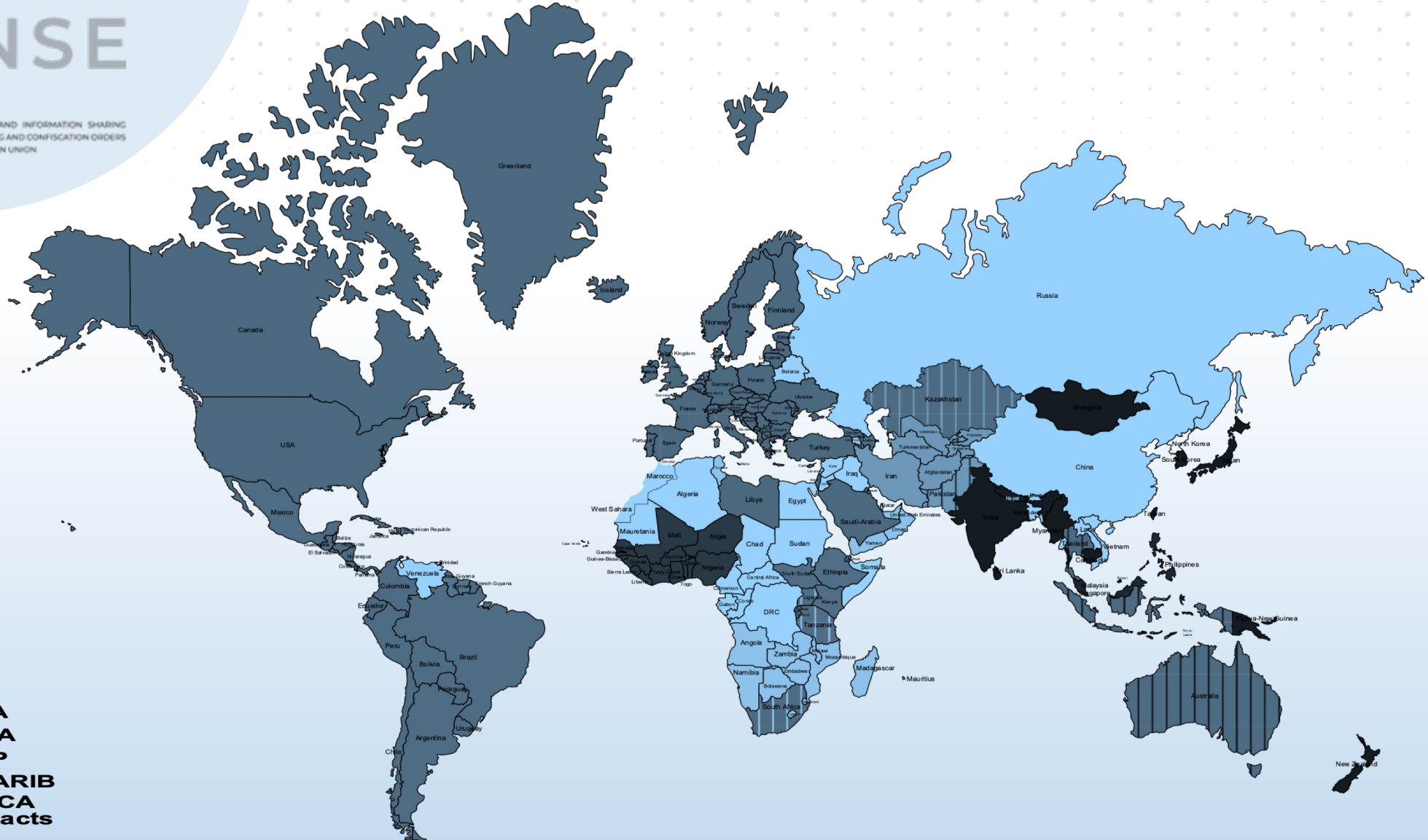




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- CARIN**
- RRAG**
- ARINSA**
- ARIN-EA**
- ARIN-WA**
- ARIN-AP**
- ARIN-CARIB**
- ARIN-WCA**
- AR-contacts**



ANNEX B

**INFORMATION EXCHANGE UNDER COUNCIL FRAMEWORK DECISION
2006/960/JHA REQUEST FORM FOR INFORMATION AND INTELLIGENCE TO
BE USED BY THE REQUESTING MEMBER STATE**

This form shall be used when requesting information and intelligence under Framework
Decision 2006/960/JHA

I – Administrative information



Requesting authority (name, address, telephone, fax, email, Member State)	Central Office for Seizure and Confiscation - COSC BELGIUM - Rue Aux Laines 66, boîte 2, 1000 BRUXELLES Tf: 00 32 2 55 77 886 Fax: 00 32 2 55 77 880 e-mail: COIV-OCSC-AROCARIN@just.fgov.be BELGIUM
Details of the handling agent (optional):	LO police COSC BELGIUM
To the following Member State:	
Date and time of this request:	
Reference number of this request:	

Previous requests			
<input checked="" type="checkbox"/> This is the first request on this case			
<input type="checkbox"/> this request follows previous requests in the same case			
Previous request(s)		Answer(s)	
Date	Reference number (in the requesting Member State)	Date	Reference number (in the requested Member State)

<input type="checkbox"/> Arson	<input type="checkbox"/> Trafficking in stolen vehicles
<input type="checkbox"/> Crimes within the jurisdiction of the International Criminal Court	<input type="checkbox"/> Unlawful seizure of aircraft / ships
	<input type="checkbox"/> Sabotage
<p>The offence therefore falls under Article 2(2) of Framework Decision 2002/584/JHA – Article 4(1) (urgent cases) and 4(3) (non urgent cases) of Framework Decision 2008/960/JHA are therefore applicable as regards time limits for responding to this request</p> <p>Or</p> <p><input type="checkbox"/> B – The offence(s) is (are) not covered under A. In this case, description of the offence(s):</p> <p>_____</p>	
<p>Purpose for which the information or intelligence is requested</p> <p>_____</p>	
<p>Connection between the purpose for which the information or intelligence is requested and the person who is the subject of the information or intelligence</p> <p>_____</p>	
<p>Identity(ies) (as far as known) of the person(s) being the main subject(s) of the criminal investigation or criminal intelligence operation underlying the request for information or intelligence</p> <p>_____</p>	
<p>Reasons for believing that the information or intelligence is in the requested Member State</p> <p>_____</p>	
<p>Restrictions on the use of information contained in this request for purposes other than those for which it has been supplied or preventing an immediate and serious threat to public security</p> <p><input type="checkbox"/> use granted</p> <p><input type="checkbox"/> use granted, but do not mention the information provider</p> <p><input checked="" type="checkbox"/> do not use without authorisation of the information provider</p> <p><input type="checkbox"/> do not use</p>	

6. ASSET TRACING: WHO: THE BELGIAN EXAMPLE: COSC AS THE BELGIAN ARO

- Currently → 3 members of the integrated police are seconded to the C.O.S.C (art. 36 COSC law);
- For a duration of 5 years (extendable);
- Profile "investigator" - 1 Dutch + 2 French-speaking

6. ASSET TRACING: WHO: THE ROLE OF THE LO POLICE AT THE COSC

Support → Helpdesk for police regarding questions/practical problems with seizures/confiscations/mandatory or optional management, help the COSC staff in its daily job (junction between police and justice), providing training in Police/Magistrate's schools, statistics,...

- **International cooperation** → quality control, execution, handling and follow-up of incoming/outgoing ARO requests (via SIENA) + via CARIN network, international meetings (SG CARIN), request survey Central Bank Register from Europol (Directive EU 2019/1153)...

7. A FEW ASSET TRACING STATISTICS

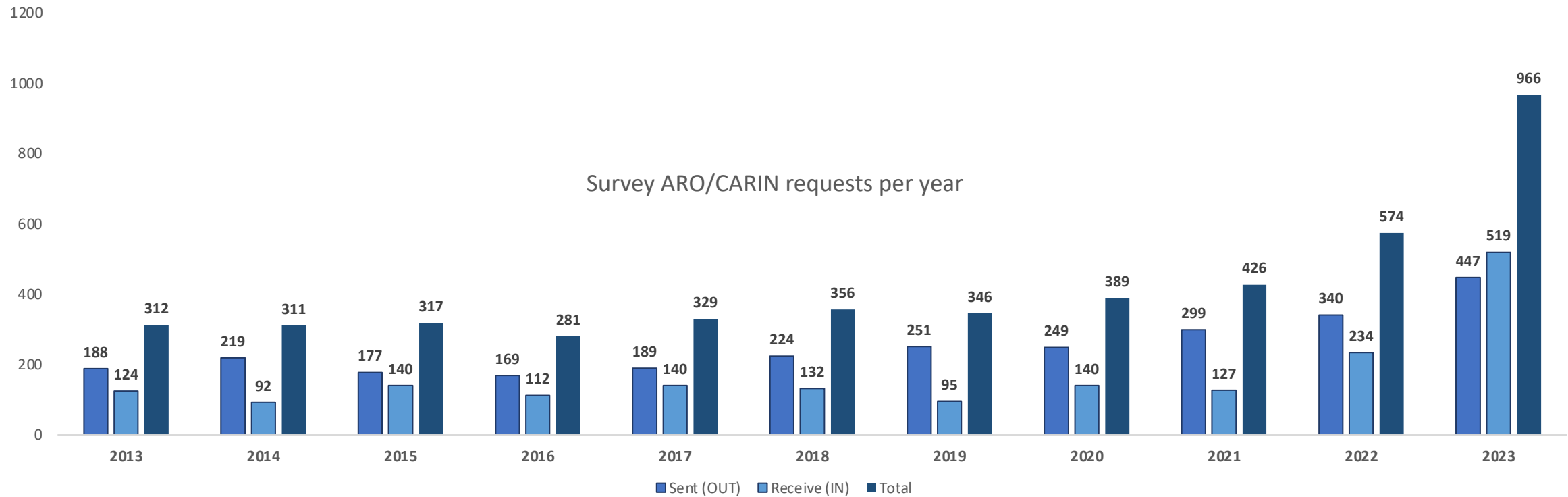
For Belgium in 2023 :

- Incoming requests (IN): 519
- Outgoing requests (OUT): 447

In 2024 → 23/09/2024:

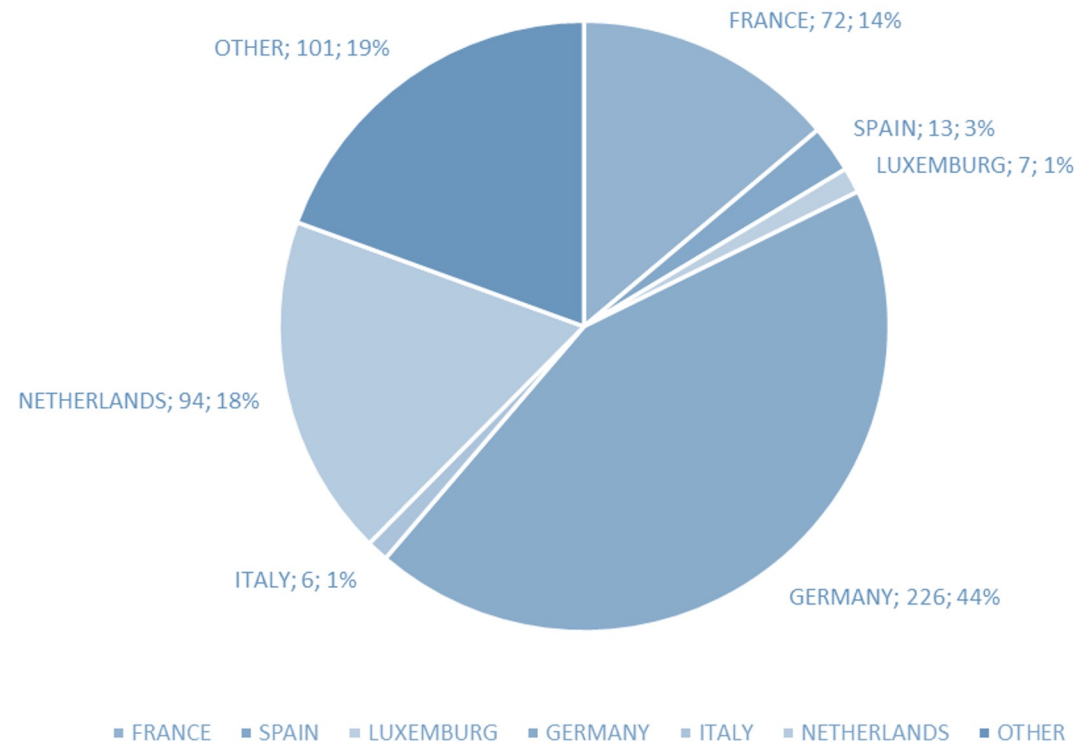
- - Requests IN & OUT: 374 & 489

Survey ARO/CARIN requests per year



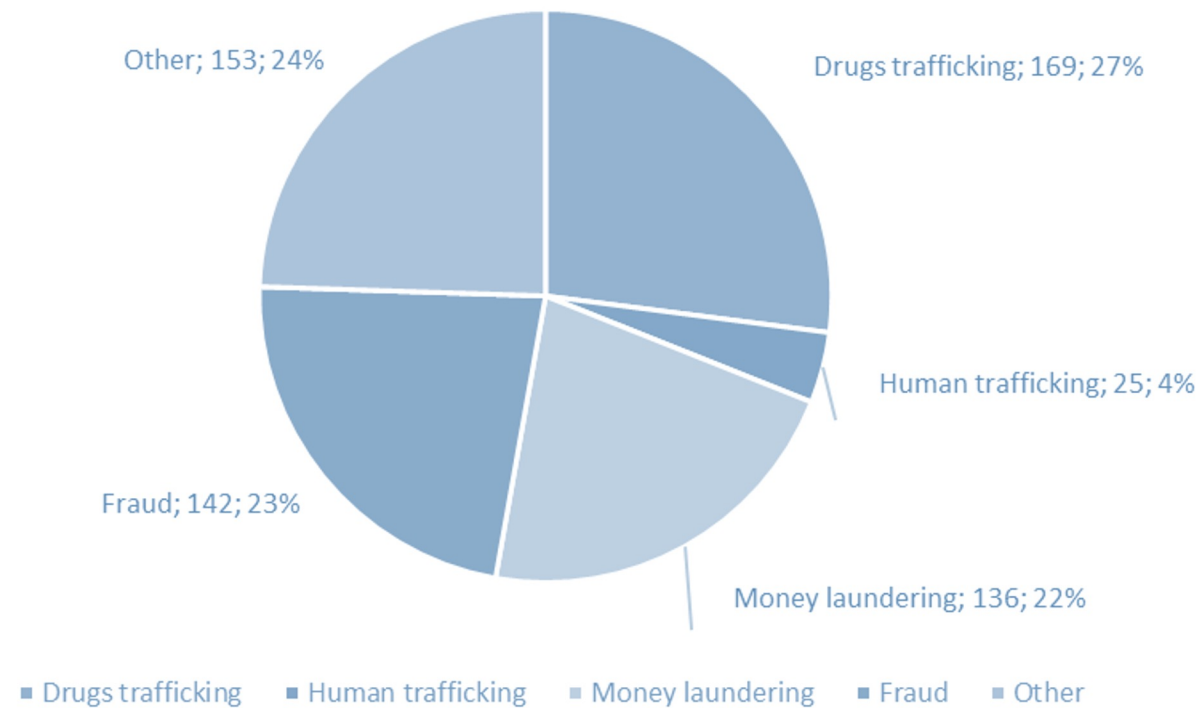
2003

Requests Receive (IN): Number of requests by jurisdiction



2003

Requests Receive (IN): Type of criminal offense



8. ASSET TRACING: 10 BEST PRACTICES / KEY FACTORS FOR SUCCESS

The importance to swiftly trace assets as early as possible in each investigation

- Simultaneously with the investigation of the criminal offense (proactive parallel financial investigation) : importance of regular communication and information sharing
- Assets with criminal origin (property based confiscation) + lawful assets (value based confiscation)
- Part of an investigative plan
- Conducted by properly trained and skilled financial investigators

8. ASSET TRACING: 10 BEST PRACTICES / KEY FACTORS FOR SUCCESS

- Identification of (legal or private) persons and assets
- analysis of the assets and financial flows
- Creation of a financial profile of the suspect, including relevant relationships
- Direct and easy access to information
- Worldwide (international co-operation) (role of the ARO-platform/CARIN - network)

9. CONCRETE CASE – ARO OUT SENT ON 22/03/2023

CASE

Public Prosecutor's Office Halle-Vilvoorde / Federal Police Halle-Vilvoorde

OFFENCES

Criminal organisation – money laundering – fraud – forgery/use of false documents - ...

FACTS

V.E. is stopped and checked at Brussels Airport
He took a flight from Bangkok to Brussels via Dubai
72.250,00 € discovered in his luggage

VERSION OF THE FACTS

According to V.E.: money from his savings
Investigation of his mobile phone: money received from a business partner in Bangkok

The investigation reveals:

- transfers of funds from the V.E.'s Belgian company → to business partner accounts in Thailand/Hong Kong based on false invoices and then,
- transfers from business partners at the request of V.E. → to personal accounts (e.g. family) in Belgium and abroad (Switzerland, Spain, Lithuania and Hong Kong)
- purchases made by partners in Thailand and Hong Kong via these foreign accounts (jewelry, real estate, vehicles, etc.)

RESULTS

In 10 years : 3.000.000,00 € withdrawn from V.E.'s Belgian company.

Link with Spain: localized assets (1 house, 2 bank accounts; 1 credit card, 1 vehicle, ...)

ANSWERS VIA ARO/CARIN

SWITZERLAND

They asked us to send a MLA-request ...

LITHUANIA

Identification of bank accounts

SPAIN

Bank accounts + real estate in Alicante (850.000,00€) → seizures made by Spanish Authorities

THAILAND

17 banking transactions of the V.E.'s Belgian company between 29/04/2022 and 26/07/2023 for an amount of 1.543.460,26€

Main types of confiscation in Belgium

An RAES

*Liaison Magistrate, Public prosecutor,
Belgian Central Office for Seizure and Confiscation (COSC)*

INTRODUCTION

- **Legislation:**
 - Articles 42 – 43 - 43bis - 43ter – 43quater Penal Code
 - For specific offences: Penal Code + specific legislation
- **Competent authority: criminal courts (exception: investigative courts)**
- **Criminal sanction (to be distinguished from confiscation as a security measure) for natural persons and legal persons → can be conviction in absentia**
- **Mandatory - optional confiscation**
 - Has to be requested in writing by the public prosecutor → judge may reduce the amount of valuation of instrument / proceeds of crime, in order not to subject convicted person to an unreasonably severe punishment



CONFISCATION OF INSTRUMENTALITIES AND PROCEEDS OF CRIME (OBJECT CONFISCATION)

- **Object or instrument of the offence (mandatory confiscation):**
 - 1) Ex object: forged check, forged deed used to defraud
 - 2) Ex instrument: burglar equipment, car used in a hold-up
 - **Product of the offence (mandatory confiscation):**

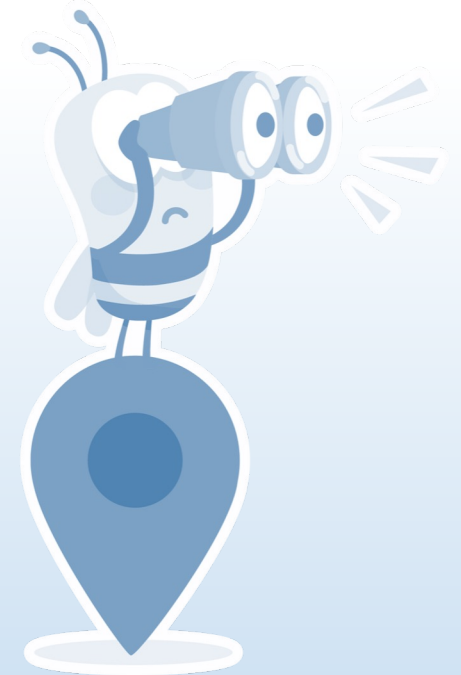
Ex: Counterfeit money, counterfeit goods, produced drugs
 - **Proceeds obtained by the offender:**
 - 1) Primary benefits: ex: proceeds from drug crimes
 - 2) Substitute benefits: ex: art purchased with drug money
 - 3) Income from benefits: ex: interest or dividend income from shares bought with the proceeds from drug crimes
- ➡ Transfer of ownership

VALUE CONFISCATION OF EQUIVALENT ASSETS

- benefits cannot be found in assets of offender → judge can impose a confiscation by equivalent
- = condemnation to payment of sum of money, executable on assets of convicted person → executed by Ministry of Finance + in Belgium public prosecutor can conduct a post-conviction criminal execution investigation
- Frequently applied in Belgium (ex: drug crimes)

EXTENDED CONFISCATION

- To effectively tackle organised criminal activities, confiscation is possible not only of property associated with a specific crime, but also of additional property which the court determines constitutes the proceeds of other crimes → offender cannot prove licit origin of benefits
- For offences listed in article 5.2 of EU Directive 2014/42
- Time period during which the property could be deemed to have originated from criminal conduct: five years before the person is charged till date of the sentence
- Not really applied in Belgium



CONFISCATION ASSETS CRIMINAL ORGANISATION

- Assets at the disposal of a criminal organisation must be confiscated, without prejudice to the rights of bona fide third parties (mandatory confiscation)
- Sometimes imposed by judges

NON-CONVICTION-BASED CONFISCATION

- Confiscation without a final criminal conviction (EU Directive 2024/1260 on asset recovery and confiscation of 24 April 2024: in case of illness, absconding or death of defendant, expiration of statute of limitations)
- At this moment cannot be imposed in Belgium
- However, Belgium must recognize and execute non-conviction-based confiscation orders received by other EU Member States (EU Regulation 2018/1805 on the mutual recognition of freezing and confiscation orders – Modified Belgian Law 5 August 2006)

CONFISCATION OF UNEXPLAINED WEALTH

- Confiscation of unexplained wealth linked to criminal conduct (EU Directive 2024/1260 on asset recovery and confiscation of 24 April 2024)
- Non-existent in Belgium

RIGHTS OF CIVIL PARTY AND AFFECTED PERSONS DURING CRIMINAL COURT PROCEDURE

- **Civil party:**
 - In Belgium, a victim can file a civil claim during the criminal proceedings before the criminal court (civil party)
 - Criminal court can decide to return or attribute confiscated assets to the civil party
- **Third party:**
 - A third party may intervene at any stage of the proceedings, including for the first time on appeal, in order to assert rights to property that may be subject to confiscation and to demonstrate lawful possession of such property



RIGHTS OF AFFECTED PERSONS AFTER CONFISCATION

- Right to appeal of convicted person against confiscation order
- Third party can claim a right to a confiscated property (procedure of Royal Decree of 9 August 1991)



“The main types of confiscation present in the legal system of Greece and the related regulatory coverage”

Panagiotis Maniatis

Public Prosecutor

PPO at the Court of First Instance of Athens

INTERNAL LEGAL FRAMEWORK

- **Greek Criminal Code (GrCC)**
 - Art. 68 (confiscation as a supplementary punishment)
 - Art. 76 (confiscation as a measure of security)
- **Greek Code of Criminal Procedure (GrCCP)**
 - Art. 311 par. 3 and 373 par. 5 GCCP
- **Law 4557/2018 (on money laundering)**
 - Art. 40

TYPES OF CONFISCATION

- Conviction-based confiscation (art. 68 par. 1 GrCC and 40 par. 1 of Law 4557/2018)
- Value-based confiscation (art. 68 par. 3 GrCC, 40 par. 2 of Law 4557/2018)
- Third party confiscation (art. 68 par. 5 GrCC, 40 par. 1 of Law 4557/2018)
- Non-conviction-based confiscation (art. 311 par. 3 and 373 par. 5 GrCCP, 40 par. 3 of Law 4557/2018)
- Pecuniary penalty (art. 68 par. 4 GrCC, 40 par. 2 of Law 4557/2018)
- Confiscation as a security measure (art. 76 GrCC)
- Extended confiscation/
Compensation in favor of the State
(art. 41 of Law 4557/2018)

1) CONVICTION-BASED CONFISCATION (ART. 68 PAR. 1 GRCC AND 40 PAR. 1 OF LAW 4557/2018)

The most classic and well-known form of confiscation, **which is most frequently used in practice.**

IMPOSED:

- **by courts following a conviction of the defendant and**
- **as a supplementary punishment depriving the defendant from the property of the confiscated assets**

- **WHEN?**
- **following the conviction of a person for a criminal offence,**
- **for property/assets, which**
 1. derive from an offence committed intentionally, as well as their value or any assets acquired directly or indirectly through them, or
 2. were used/intended to be used, in any manner, as a whole or in part, to commit such an offence,
 3. provided they belong to the perpetrator/participants

OBJECTS/ASSETS MIXED WITH LEGITIMATE PROPERTY (ART. 68 PAR. 1,2 GRCC).

- In case the abovementioned objects or assets were mixed with other property obtained in a legitimate manner, such mixed property is subject to confiscation up to the value of the unlawfully obtained objects or assets
 - * (Proportionality test/limits)
 - ... the court may decide not to confiscate such property/assets, provided that it deems confiscation would be disproportionate, on the basis that it would cause excessive and irreparable damage on the defendant or on his/her families. Instead, in such cases, court may
 - impose a pecuniary penalty or
 - limit the extent of the confiscated property

PROCEEDS ACQUIRED INDIRECTLY

- ... also to be confiscated providing it has been ascertained they have been acquired indirectly further to an offence committed intentionally
- How far can we go?
- Art. 2 (1) Directive 2014/42/EU:
= “proceeds” means any economic advantage derived directly or indirectly from a criminal offence; it may consist of any form of property and includes any subsequent reinvestment or transformation of direct proceeds and any valuable benefits;

2) VALUE-BASED CONFISCATION (ARTS. 68 PAR. 3 GRCC, 40 PAR. 2 OF LAW 4557/2018)

- ... in appliance as soon as objects or assets to be confiscated further to a conviction
 - **no longer exist** OR
 - **have not been traced (yet)** OR
 - **are impossible to be confiscated**

- = **The court would render a judgment imposing confiscation to assets of equal economic value owning to the defendant having been convicted**
 - **The court would also determine the value of the assets to be confiscated (calculation made at the time the judgment is pronounced)**

3) THIRD PARTY CONFISCATION (ART. 68 PAR. 5 GRCC, 40 PAR. 1 OF LAW 4557/2018)

Confiscation imposed to assets belonging to a third party/person.

WHEN?

- Criminal conviction of a person
- Confiscation to be imposed to assets belonging to a third person/party, as soon as
 - a) that third party, at the time of their acquisition, was aware of their criminal background (they have been acquired further to commission of a **felony/misdemeanour committed with intent**) and
 - b) that third party was aware that the purpose of their transfer was to escape confiscation.**

* AUXILIARY NATURE OF THIS TYPE OF CONFISCATION:

- Third party confiscation shall be imposed when the court
 - cannot confiscate the amount, the defendant received for the transfer of the asset and
 - value confiscation cannot be imposed against the defendant's other assets.

“KNOWLEDGE OF THIRD PERSONS”

- **Criteria to assess the “knowledge”:**
 - the transfer was made free of charge OR
 - for an amount significantly lower than the market value OR
 - lower than the amount that it would be expected for similar transactions OR
 - any other similar assumptions/indications

- * **Third party’s knowledge must be specifically mentioned in the court’s decision**
 - When it comes to legal entities, the court examines the knowledge of the person having the powers to represent or control the entity

4) NON-CONVICTION-BASED CONFISCATION (ART. 311 PAR. 3 AND 373 PAR. 5 GRCCP, 40 PAR. 3 OF LAW 4557/2018)

- Imposed when prosecution has been made, but cannot lead to a trial and issuing of an indictment
 - in case the offence is time-barred,
 - defendant has deceased
 - prosecution declared inadmissible for a number of legal/typical reasons (f.i. *ne bis idem, immunity, amnesty*)

= Judicial council/ the court (article 315 par. 5 GCCP) may impose the confiscation of the assets seized, providing that those assets have been acquired further to/by means of the offence previously prosecuted

= OR, as soon as the judicial council/court establishes that the items seized belong to the injured party of the offence committed, may impose their return to their true legitimate owners.

- Same provision under art. 40 par. 3 of Law 4557/2018 (against money laundering)

5) PECUNIARY PENALTY (ART. 68 PAR. 4 GRCC, 40 PAR. 2 OF LAW 4557/2018)

○ In case none of the previous forms of confiscation can be imposed, as

- assets cannot be traced OR
- assets seized are not sufficient OR
- assets seized belong (totally or partially) to a third non reliable person

= Court shall impose a pecuniary penalty to the defendant; its value cannot exceed the economic value of the assets to be confiscated at first place

6) CONFISCATION AS A MEASURE OF SECURITY (ART. 76 GRCC)

- Objects

- which are the product of an offence (felony or misdemeanour committed intentionally) OR
- have been used/were intended to be used for the commission of such an offence
- even if the perpetrator is not convicted

= The Court could impose their confiscation if established they represent a danger to public order due to their nature

- Such confiscation order shall also be executed against the convicted person's heirs, if the judgment became irrevocable during the time the defendant was still alive
- This type of confiscation is, also, explicitly mentioned in article 213 par. 1 GrCC (confiscation of the objects and instrumentalities of crimes committed in relation to counterfeiting banknotes/coins and circulation of such counterfeited items)

7) EXTENDED CONFISCATION/ COMPENSATION IN FAVOR OF THE STATE (ART. 41 OF LAW 4557/2018)

- Extended confiscation/compensation in favor of the State is a special sort of confiscation in the form of **compensation in civil proceedings**

WHEN?

- **Defendant irrevocably convicted to imprisonment of at least three (3) years for a number of offences (bribery offences, drug related crimes, human trafficking, fraud, forgery, theft, embezzlement etc.)**
 - **Established there is property acquired by the same person further to commission of other offences from the same list, even if he/she was not persecuted for those offences**
- Even if this property has been transferred to a third party, the convicted person is liable to compensation equal to the value of the property at the time of hearing of the civil complaint.

NOVELTIES IN INTERNAL LEGISLATION

- Modernization of internal legislation since 2017 and modification of art. 68 and 76 GrCC
- 5 main novelties introduced in art. 68 GrCC:
 1. Assets indirectly acquired through criminal activities could be subjected to confiscation
 2. Confiscation possible even if proceeds of crime mixed with assets from legal sources
 3. Value-based confiscation
 4. Pecuniary penalty instead of confiscation when the latter is impossible
 5. Confiscation in the detriment of third persons

The main types of confiscation present in the legal system of the Member States and the related regulatory coverage

Daniela Cardamone

Magistrate, District Court of Milan, Italy

“TRADITIONAL” CONFISCATION

(Article 240 of the Italian criminal code)

In the event of conviction, the judge may order the confiscation of instrumentalities used or intended to be used to commit a criminal offence and properties that are direct proceed of such criminal offence.

In this type of confiscation, there is a direct correlation with the criminal offence for which a conviction has been issued.

It does not apply if the property belongs to a third person not involved in the offence.

Property that has been sold to third parties in good faith cannot be confiscated.

Therefore, this type of confiscation is not applicable to property in which the profits of the crime were invested (e.g. a flat purchased with the stolen money) nor to utilities derived from the use of the proceed of a criminal offence (e.g. bank interest obtained from the deposit of the stolen sum or the rent obtained from the rental of the flat purchased with the stolen money cannot be confiscated).

Article 4 paragraph 1 Directive 2014 42 /EU

“Member States shall take the necessary measures to enable the confiscation, either in whole or in part, of **instrumentalities and proceeds or property** the value of which corresponds to such instrumentalities or proceeds, subject to a final conviction for a criminal offence, which may also result from proceedings in absentia.

Article 12 paragraph 1 Directive 2024 1260 /EU

“Member States shall take the necessary measures to enable the confiscation, either wholly or in part, of instrumentalities and proceeds stemming from a criminal offence subject to a final conviction, which may also result from proceedings in absentia.

CONFISCATION OF PROPERTY OF EQUIVALENT VALUE

(article 322 ter of the Italian Criminal code)

- This type of confiscation applies in case of conviction.
- It shall be applied to proceeds of the criminal offense or to his price (e.g. the bribe), unless it belongs to a third person not involved in the criminal offence (bona fide third party).
- Where it is not possible, confiscation shall be applied to property of the person affected for a value corresponding to that price or proceeds.

Confiscation of property of equivalent value allows the confiscation of the profit or proceeds of a criminal offence even when it is no longer traceable because it has been destroyed, dispersed or transferred, thus enabling the confiscation of assets of equivalent value.

This is a type of confiscation in which the link between the property and a specific criminal offence is less evident than in traditional confiscation it is aimed at preventing the person affected from securing the benefits obtained through his/her criminal conduct.

Article 12 paragraph 2 Directive 2024 1260 /EU

“Member States shall take the necessary measures to enable the confiscation of property **the value of which corresponds to instrumentalities or proceeds stemming from a criminal offence** subject to a final conviction, which may also result from proceedings in absentia Such confiscation may be subsidiary or alternative to confiscation pursuant to paragraph 1.

ENLARGED CONFISCATION OR CONFISCATION OF DISPROPORTIONATE PROPERTY

(article 240 bis Italian criminal code)

This type of confiscation concerns unexplained wealth whose value is disproportionate to the licit income of the affected person.

The link between the profit and a specific criminal offence is less pronounced than in traditional confiscation, and its aim is to prevent the affected person from securing the benefits obtained through his/her criminal conduct even when the assets have been **transferred to a third party** or reinvested or reused.

It can be applied in the case of conviction for serious criminal offences such as organised crime, bribery, extortion, production or trade in pornographic material, money laundering, self laundering, terrorism and drug trafficking.

Conviction for such serious criminal offences give raise to a presumption of unlawful accumulation of assets.

This presumption can be overcome by the person concerned through specific and verified allegations, from which the licit source of property can be deduced.

There is no reversal of the burden of proof (which is always borne by the Public Prosecutor) but a **burden of alleging** circumstances such as, for example, a licit and remunerated activity, on the basis of which disproportion between property and licit income can be excluded.

Article 5 Directive 2014 42 /EU

Extended confiscation

“Member States shall adopt the necessary measures to enable the confiscation, either in whole or in part, of property belonging to a person convicted of a criminal offence which is liable to give rise, **directly or indirectly** to economic benefit, where a court, on the basis of the circumstances of the case, including the specific facts and available evidence, such as that the value of the property is **disproportionate** to the lawful income of the convicted person, is satisfied that the property in question is derived from criminal conduct.

Differently from the Italian enlarged confiscation it does not include the confiscation of third parties’ property.

This possibility is covered by the recent directive which, nevertheless, requires the affected person to be connected to people linked to a criminal organisation.

Article 16 Directive 2024 1260 /EU

“Confiscation of unexplained wealth linked to criminal conduct”

1. Member States shall take the necessary measures to enable, where, in accordance with national law, the confiscation measures of Articles 12 to 15 may not be applied, the confiscation of property identified in the context of an investigation **in relation to a criminal offence**, provided that a national court is satisfied that the identified property is derived from criminal conduct committed within the framework of a criminal organisation and that conduct is liable to give rise, directly or indirectly, to substantial economic benefit When determining whether the property referred to in paragraph 1 should be confiscated, account shall be taken of all the circumstances of the case, including the available evidence and specific facts, which may include.
 - A) that the value of the property is **substantially disproportionate** to the lawful income of the affected person;
 - B) that there is no plausible licit source of the property;
 - C) **that the affected person is connected to people linked to a criminal organisation**
3. **Paragraph 1 shall not prejudice the rights of bona fide third parties.**

PREVENTIVE CONFISCATION

(article 24 legislative decree 159/2011)

Non conviction based confiscation, expansion of the object, symptomatic nature of application's conditions, simplification of the burden of proof on the prosecution.

Obstacles to mutual recognition:

- protection of fundamental rights, especially in relation to the presumption of innocence and the protection of property rights, also enshrined in international conventions.
- differences between national legislations on the admissibility and limits of confiscation without conviction, as well as on the procedures for their application.

‘Traditional’ types of confiscation, based on the conviction of the perpetrator of the crime from which the illicit proceeds derive, are not adapted to modern forms of economic and organised crime

There is the need to dissociate asset recovery from detection of a criminal offence, through types of confiscation which are characterised by **more flexible links with the detection of the criminal offence** itself.

- because the assets to be recovered often do not derive directly from the criminal offence in relation to which the confiscation was ordered (extended confiscation)
- because such assets formally belong to a person other than the convicted person (third party confiscation)
- because the unlawful accumulation of assets does not presuppose any conviction (confiscation without conviction)

FINANCIAL PREVENTIVE MEASURES

Preventive seizure: the District Court for preventive measures, by a reasoned decision, orders the **seizure** of assets of which the affected person appears to be, directly or indirectly, the owner, when their **value is disproportionate** to the declared income or where, on the base of **sufficient circumstantial evidence** there is reason to believe that they are the result of illegal activities or constitute their reuse (article 20 Anti Mafia Code).

Preventive confiscation: the District Court for preventive measures orders the confiscation of the property owned by or in the disposal of the affected person (even thorough an intermediary), when the person **cannot justify** the licit source of such property and when its value is **disproportionate** to the affected person's income (article 24 Anti Mafia Code).

The purpose of prevention confiscation is the elimination from the licit market of illicit assets and resources, which in themselves are dangerous because they pollute the market and the economic system, annihilating competition, and which can be seized and confiscated irrespective of the criminal liability of the affected person (i.e. without first obtaining a criminal conviction) and irrespective from the existence of a direct link between a criminal offence and the property.

While in **extended confiscation** and in **confiscation of disproportionate property** the link between confiscation and criminal offence is attenuated, this link is radically broken in preventive confiscation, which is applied irrespective not only of conviction, but also of the initiation of criminal proceedings.

The most evident manifestations of dangerousness derive from the criminal acts recognised by convictions, but dangerousness may also exist in case of acquittals, given the autonomy of prevention proceedings from criminal proceedings.

Persons affected by preventive confiscation : ‘socially dangerous persons’

1. **Qualified dangerousness:** persons suspected of serious criminal offences (established by law Article 4 of Legislative Decree 159 2011 not only mafia related criminal offences).
2. **Generic dangerousness:** Preventive confiscation can be applied to persons that, because of their conduct and standard of living, must be considered, on the basis of factual elements (mere clues not being sufficient), that they habitually live, even in part, with proceeds of criminal activities (Article 4 legislative decree and Article 1 letter b Legislative Decree 159 2011 also called Anti Mafia code).

Preventive confiscation can be applied:

- regardless of the social dangerousness of the affected person at the time of the request for the application of preventive confiscation itself.
- Indeed, even if the personal dangerousness ends, the property's **genetic defect** remains and imposes removal from the economic circuit of the asset illicitly acquired by a socially dangerous subject.
- even in the event of the death of the affected person in that case, proceedings are continued against the heirs (**principle of disjoint application**).

The character of dangerousness is inherent in the property (the “ due to its unlawful acquisition, and it pertains to it “ on a permanent basis. The fact that financial preventive measures can be released from the requirement of the current dangerousness of the individual reflects the phenomenal reality, having regard to the ontological naturalistic difference between personal and material reality while, in fact, the very essence of a “ is dynamism, which is nothing but the expression of the evolution of the human being, the idea of “ expresses its structural immobility that, beyond possible erosion related to age and to atmospheric agents, maintains its objective consistency.

The social dangerousness of the person is transmitted to the property acquired and results in a particular ‘ or ‘ of the property and assets, which affects their legal status.

This is evident in the event of the death of the socially dangerous owner, or in case of formal transfer on fictitious nominees and in case of assets that have been inherited by heirs. All changes in the ownership of assets and re use in even licit activities do not change their true nature. In such cases, because the asset has become objectively dangerous it should be removed from the legal system of asset’s circulation.

In fact, in the presence of properties and assets that are **permanently marked by their illicit origin** the only solution is their definitive acquisition to the State through confiscation, which is the only instrument capable of changing, permanently, their nature and the legal regime by making them a State owned property.

Procedure

The set of means of evidence that can be used at the stage of preliminary investigations for the proposal of application of a preventive measure is quite wide and includes:

Criminal records, pre trial detention orders, sentences and seizure previously issued, information acquired by public security organs, findings of previous criminal proceedings, findings of previous criminal proceedings, bank information, registrations of conversations and communications, authorized in other criminal proceedings.

The prevention measures are adopted on the basis of **circumstantial evidence**.

The assessment of dangerousness must be based on circumstantial elements that not necessarily have the characters of gravity, accuracy and consistency required to establish the criminal liability beyond any reasonable doubt.

Procedural guarantees

The procedure for the application of preventive measures takes place before a court composed of criminal judges and in the frame of an adversarial criminal procedure, with the burden of proof borne by the public prosecutor, in a hearing that, at the request of the person concerned, may be held in public.

Compared to the civil non conviction based confiscations typical of Anglo Saxon legal systems, the Italian prevention measures' system has the important advantage of making use of the investigative instruments of criminal proceedings and of a probative standard that is certainly more protective than the civil one in fact, a rigorous demonstration of the illicit derivation of the property or of the disproportion between the property and the licit income is required.

The procedure is characterised by the procedural guarantees of the adversarial system. Necessary participation of defence lawyer, the admission of evidence, questioning of the affected person, possibility of hearing witnesses and expert's opinions, specific rules to protect *bona fide* third parties.

The affected person may appeal against seizure and confiscation orders.

In the appellate proceedings the same defensive guarantees of first instance proceedings apply.

The Court of appeal may review the merits of the first instance judges' decision.

The decision of the Court of appeal is taken not only based on findings contained in the documents filed with the decision of first instance, but also based on new facts and evidence.

The decision of the Court of Appeal can be appealed by the public prosecutor and the person concerned before the Court of Cassation on points of law.

Directive 2014 42 /EU of the European Parliament and of the Council, in Article 4 provides for the possibility of confiscation without conviction in only two cases

- ***illness*** or ***absconding*** of the suspected or accused person
- **it is required, however, that *criminal proceedings have been initiated* regarding a criminal offence which is liable to give rise, directly or indirectly, to economic benefit, and *such proceedings could have led to a criminal conviction if the suspected or accused person had been able to stand trial.***

The Directive, therefore, expresses a clear rejection of the Italian model of preventive confiscation.

It must be pointed out, however, that the Directive (Article 4 paragraph 2 and point No 15 does not exclude the possibility that a Member State may introduce forms of confiscation without conviction also in other situations, excluding, however, in relation to these the obligation of mutual recognition

Point 22 This Directive lays down minimum rules It does not prevent Member States from providing more extensive powers in their national law, including, for example, in relation to their rules on evidence

Directive 2024/1260/EU of the European Parliament and of the Council provides for the case of the **death of the accused** in addition to illness and absconding of the accused person, but does not contain any significant progress on confiscation without conviction.

Article 15:

1. *Member States shall take the necessary measures to enable, under the conditions set out in paragraph 2 of this Article, the confiscation of instrumentalities, proceeds or property as referred to in Article 12 or proceeds or property transferred to third parties as referred to in Article 13 where criminal proceedings have been initiated but could not be continued because of one or more of the following circumstances*

A) *illness of the suspected or accused person*

B) *absconding of the suspected or accused person*

C) ***death of the suspected or accused person***

D) ***The limitation period*** for the relevant offence prescribed by national law is below 15 years and has ***expired*** after the initiation of criminal proceedings [...]

2. ***Confiscation without a prior conviction*** under this Article shall be limited to cases where, in the absence of the circumstances set out in paragraph 1 ***it would have been possible for the relevant criminal proceedings to lead to a criminal conviction*** for, at least, offences liable to give rise, directly or indirectly, to substantial economic benefit, and where the national court is satisfied that the instrumentalities, proceeds or property to be confiscated are derived from, or ***directly or indirectly linked to, the criminal offence in question.***

The directive still requires a **close connection to a criminal proceeding** that could have led to a conviction and a **direct or indirect link to a criminal offence.**

Regulation EU/2018/1805 of the European Parliament and of the Council on the mutual recognition of freezing and confiscation orders is intended to enhance the principle of mutual recognition.

The principle of mutual recognition is the foundation of judicial cooperation in criminal matters now enshrined in primary law of the Union by Article 82 of the Treaty on the Functioning of the European Union (and presupposes differences between national rules.

The rules of the Regulation enjoy uniform and immediate application, without the need for transposition.

The **EU/ 2018 1805** Regulation:

Firstly, it clarifies that the obligation to recognise a confiscation order is not affected by the absence in the law of the executing State of confiscation powers similar to those under which the confiscation order was made in another Member State.

Point no 13:

“This Regulation should apply to all freezing orders and to all confiscation orders issued within the framework of proceedings in criminal matters not only orders covered by Directive 2014 42 /EU It also covers other types of order issued without a final conviction

While such orders might not exist in the legal system of a Member State, the Member State concerned should be able to recognise and execute such an order issued by another Member State

Article 2:

Definition of “property”

*Article 2 of the Regulation considers subject to confiscation the property that, in the opinion of the issuing authority, is subject to confiscation not only “through the application in the issuing State of any of the powers of confiscation provided for in Directive 2014 42 /EU” (subparagraph C), But **also under any other provisions relating to powers of confiscation, including confiscation without a final conviction** under the law of the issuing State, following proceedings in relation to a criminal offence” (subparagraph D).*

Therefore, the law of the executing State is not relevant

Secondly the scope of application of the **EU/ 2018 1805 Regulation** is broader than that of the 2014 and 2024 Directives:

- **as regards the types of confiscation covered** by the recognition obligation, which include confiscation without conviction beyond the cases covered by the Directives (in article 4 para 2 Directive 2014 article 2 Directive 2024).
- **as regards the criminal offences** in relation to which the confiscation order is adopted whereas the Directives apply only to the serious offences indicated, the Regulation does not impose any application delimitation linked to the type of offence.

If the criminal offence on which the confiscation is based, in addition to being punishable in the issuing State by a custodial sentence of not less than a maximum of three years, falls within one of the 32 macro categories of criminal offences covered therein, the execution of the confiscation order

is not subject to verification of the dual criminality requirement.

Article 3 **EU/ 2018 1805 Regulation** Criminal offences:

*“Freezing orders or confiscation orders shall be executed **without verification of the double criminality** of the acts giving rise to such orders, where those acts are punishable in the issuing State by a custodial sentence of a maximum of at least three years and constitute one or more of the following criminal offences under the law of the issuing State.*

Thirdly, the EU/ 2018 1805 Regulation specifies that the mutual recognition obligation exists only when the confiscation is adopted within the framework of proceedings in criminal matters ” (art. 1)

The **EU/ 2018 1805 Regulation** in point **n. 13** affirms that the *«Proceedings in criminal matters’ is an autonomous concept of Union law interpreted by the Court of Justice of the European Union, notwithstanding the case law of the European Court of Human Rights»*

“[...] ***notwithstanding the case law of ECHR***” could mean: notwithstanding the conventional compatibility of many types of confiscation without conviction in the European legal systems including the Italian preventive confiscation has been affirmed by the Strasbourg Court on the assumption that they are not criminal but civil”.

In fact, should we apply the Regulation to criminal proceedings according to the case law of the ECHR, the ‘non criminal’ nature of these types of confiscation would exclude the obligation of mutual recognition. Indeed, Article 82 1 of the Treaty on the Functioning of the European Union (is the legal basis for the mutual recognition of judicial measures in the framework of cooperation ‘in criminal matters’ matters’ (and not in civil matters).

Social and economic impact on the community of the social reuse of confiscated assets

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SCENARIO

- Europol (2021) highlighted the growing threat of organised crime and criminal infiltration.
- Significant (illegal) profits generated by organised crime, amounting to at least €139 billion, often laundered through an underground parallel financial system.
- The availability of criminal proceeds poses a significant threat to the integrity of the economy and society, eroding the rule of law and fundamental rights
- This concern is at the heart of the Commission (14 April 2021) and underlined in the EU Strategy for the Fight against Organised Crime 2021-2025

CONCERNS

- To effectively counter serious threats from organised crime, it is essential that competent authorities have greater operational capacity and the means to identify, seize, confiscate and manage illicit goods.
- Depriving criminals of their illicit profits is essential to disrupting their operations and preventing their infiltration into legal economies.
- The capital goods, proceeds or assets should be frozen to prevent their disappearance, and should then be confiscated following the issuance of a confiscation order in the framework of criminal proceedings.

THE CURRENT UNION LEGAL FRAMEWORK ON TRACING, FREEZING, CONFISCATION AND MANAGEMENT

- *Directive 2014/42/EU of the European Parliament and of the Council,*
- *Council Decision 2007/845/JHA*
- *Council Framework Decision 2005/212/JHA.*
- *There was a unanimous opinion that it is necessary to update the legislation in order to facilitate and ensure effective commitment to asset recovery and confiscation throughout the Union*
- *Directive 2024/1260 Recovery and confiscation of assets*

THE RELEVANCE OF SOCIAL REUSE OF CONFISCATED ASSETS

- “The social reuse of confiscated assets sends a clear message to society at large on the importance of values such as justice and legality, reaffirms the prevalence of the rule of law in communities most directly affected by organised crime and strengthens the resilience of those communities against criminal infiltration into their social and economic fabric, as observed in Member States that have already adopted such social reuse measures”.

- Member States are therefore encouraged to take the necessary measures to allow confiscated property to be used for public interest or social purposes, so that it is possible to maintain confiscated property as State property for the purposes of justice, law enforcement or public service or for social or economic purposes, or to transfer such confiscated property to the authorities of the municipality or region where it is located so that those authorities can use it for such purposes, including its assignment to organisations carrying out activities of social interest.

MILESTONES

- 9 December 2021
- The European Commission adopted a new action plan on the social economy.
- Its goals are:
 - creating the right framework conditions for the social economy to thrive opening up opportunities (including access to finance) and support for capacity building enhancing recognition of the social economy and its potential
 - The action plan is projected to extend until 2030, with a midterm review slated for 2025.

MILESTONES ... continues

- 27 November 2023
- The Council formally endorsed the recommendation.

- 13 June 2023
- Commission recommends concrete measures to support the social economy, which prioritises people, social and environmental causes over profit.

... BUT WHAT IS THE SOCIAL ECONOMY?

- The pursuit of profit by capitalist companies can generate a situation in which the reduction of costs can encourage illegality and create a situation of Homo homini lupus
- Is it possible to structure businesses that pursue an objective of general interest?
- What are the finalities?
- What does mean product of general interest?
- (VIDEOS) <https://www.youtube.com/watch?v=GDSqf2Kjxi8>

SOME DATA ON SOCIAL ECONOMY

- 2.8 million social economy entities in Europe
- around 13.6 million people employed and tackling key challenges in our societies
- They encompass a range of sectors including social and care services, housing, recreation, and affordable energy. This diverse landscape includes cooperatives, mutuals, non-profit associations, foundations, and social enterprises.
- The proposal aims to create favourable conditions for social economy organisations to thrive and grow, and raise awareness of their potential, particularly in creating quality jobs, supporting innovation and social inclusion.

PROMOTING SOCIAL ECONOMY

- The facilitation of the creation of high-quality jobs, stimulate local economic growth, and enhance social and territorial cohesion. For instance, the Commission proposes measures to:
- **Design labour market policies** that support employees in social enterprises (e.g., through training), promote social entrepreneurship, and ensure fair working conditions through social dialogue and collective bargaining.
- **Acknowledge the role of the social economy for social inclusion**, e.g. in providing accessible and high-quality social and care services and housing, particularly for disadvantaged groups.

PROMOTING SOCIAL ECONOMY

- **Improve access to public and private funding, including to EU funds.**
- **Enable access to market opportunities and public procurement.**
- **Make use of the opportunities provided by State aid rules to support the social economy, including provisions for start-up aid, reintegration of disadvantaged workers, and support for local infrastructure.**

PROMOTING SOCIAL ECONOMY

- **Ensure that taxation systems support the social economy**, through the simplification of administrative procedures and the consideration of appropriately designed tax incentives.
- **Raise awareness of the social economy and its contributions**, notably through research and data.

Goal

- Services of general interest
- **Video: <https://www.youtube.com/watch?v=fRcXHiuljig&t=2s>**



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ONE-STOP SHOP FOR SOCIAL ECONOMY SUPPORT

The Commission is also launching, a one-stop-shop website that provides social economy entities with information on EU funding, training opportunities, events, country-specific information, and where to go for additional resources, as a tool for capacity-building.

The Commission introduced the social economy gateway, a centralized website serving as a one-stop shop for social economy entities. It offers access to information on EU funding, training opportunities, events, country-specific details, and additional resources, serving as a capacity-building tool.

27 NOVEMBER 2023

The European Council formally backed the European Commission's proposal for establishing framework conditions for the social economy. This endorsement plays a pivotal role in enabling all member states to customize their national policies and laws, aligning them more closely with the unique needs of the social economy. It signifies a coordinated effort at the European level, reaffirming the commitment to nurturing the social economy and a united resolve to further its agenda within the European Union.

The Council adopted a recommendation on promoting enabling frameworks for the social economy, to support its role in promoting social inclusion and access to the job market.

MEASURES TO FOSTER SOCIAL ECONOMY

The recommendation aims to boost the role of the social economy in supporting social inclusion and integration into the labour market of disadvantaged groups, by recommending that member states take measures to:

- facilitate access to funding, to markets and to public procurement for social economy entities
- make best use of state aid rules and develop a favourable taxation environment
- increase the visibility and recognition of the social economy

MAIN CHANGES INTRODUCED BY THE COUNCIL

Compared to the Commission's initial proposal, the Council's recommendation recognizes a much broader field of action for the social economy which also concerns the issues in fair digital and green transitions.

NEXT STEPS

Member states will have two years to adopt or update their national strategies for the social economy. They will then monitor and evaluate the steps taken to achieve the objectives of the recommendation, and report to the Commission on their progress within four years of its adoption.

CONCLUSIONS 1

What do we observe regarding the evolution of the social economy in Europe?

A gradual recognition of its role in providing answers to the solution of problems of general interest.

No longer a marginal sector but the full recognition of a productive role capable of reducing social and territorial gaps.

Also recognize the ability of the social economy and the organizations that are part of it to fight organized crime and highly dangerous criminal groups through the social reuse of confiscated assets.

CONCLUSIONS 2

The reuse of confiscated assets represents an important tool for combating organized crime.

These assets can trigger healthy development, because they are able to support an economic alternative to the situation in which the mafias feed on social production and wealth.

CONCLUSIONS 2

The new economy potentially generated by their reuse can act on the choices of criminals, favouring prosocial behaviour and spreading the idea that government action against crime is strong and effective, that the gangs are not invincible.

Assets confiscated from organized crime are strategic resources that must be restored to the community from which they have been stolen; they constitute an opportunity for development and can be used in projects of **social economy**.

Videos:

<https://www.youtube.com/watch?v=qtRxlfAK7zs>

<https://www.youtube.com/watch?v=7ylnGiCeMzk&t=2s>



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Directive 2024/1260 on asset recovery and confiscation

Michael Spath

Organised Crime and Drugs Unit, DG HOME



GENERAL INFORMATION

- Directive **entered into force** on 22 May 2024
- **Transposition** time for Member States – 30 months
- Covers **the whole asset recovery process** (replaced three prior instruments)



Trace



Freeze



Manage



Confiscate



Dispose

EXTENDED SCOPE (ART. 2)

Directive 2014/42/EU

- Crimes listed in Article 83 TFEU (Eurocrimes)
- **Other crimes harmonised at EU level**



New Directive

- **Violation of EU restrictive measures**
- **Crimes harmonised at EU level** expressly mentioned (e.g., environmental crimes, migrant smuggling)
- **Other crimes carried out** within a criminal organisation (threshold of 4 years)
- **For tracing:** crimes with a max. penalty of at least 1 year

FINANCIAL INVESTIGATIONS, ASSET RECOVERY OFFICES AND THEIR POWERS

- **Financial investigations** mandatory in high-revenue organised crime cases (Article 4(2))
- **Post-conviction tracing** (Article 17)
- **Mandatory set-up and powers of asset recovery offices (AROs)** (Article 5(1))
 - **Tracing and identification** of instrumentalities, proceeds or property (Article 5(2)), including support of other competent authorities
 - **Urgent freezing powers** in cross-border cases for up to 7 days (Article 11(3))

TRACING POWERS FOR ASSET RECOVERY OFFICES IN SPECIAL CASES

- **Tracing in case of Union restrictive measures**
 - No pro-active tracing powers
 - Upon request by national competent authority
 - To detect sanction violation
- **Tracing for victim claims**
 - At least in cross-border cases
 - Decision on claim issued in criminal proceedings

ACCESS TO AND EXCHANGE OF INFORMATION FOR AROS

- **Asset recovery offices' access to databases (Article 6)**
 - **Direct:** Real estate, population, vehicle, aircraft, and watercraft, company and business registries
 - **Direct or indirect:** Fiscal data, social security, law enforcement, mortgages, customs, etc.
- **Exchange of information between asset recovery offices (Article 9)**
 - **Form** of request and **refusal grounds**
 - For use of **evidence** (with possibility to refuse)
 - **Deadlines:** urgent requests 8 hs., non-urgent requests 7 days (Article 10)

CONFISCATION MEASURES

- **Standard confiscation, value confiscation, third-party confiscation** (Art. 12-13)
- **Extended confiscation** applicable to a wider set of crimes (Art. 14)
- **Non-conviction based confiscation** broadened to cases of death, expiration of statutory limitations (Art. 15)
- ***Unexplained wealth confiscation*** (without conviction) (Art. 16)

MANAGEMENT OF ASSETS

- **Asset management offices** (Art. 22)
- **Asset management planning** (Art. 20)
 - Either before or shortly after freezing
- **Interlocutory sales** – selling property to preserve the value (Art. 21)
 - If goods are perishable, depreciating fast, too difficult to manage
- **Tool for efficient asset management** providing swift access to information for AROs and AMOs

VICTIMS' RIGHTS, DISPOSAL, AND SAFEGUARDS

- **Victims claims** have to be **taken into account** during confiscation (Art. 18)
 - Rules with flexibility for Member States
- No binding rules on **social reuse** (Art. 19)
 - Adequate **safeguards** for affected persons (Art. 24)

STRATEGIC APPROACH TO ASSET RECOVERY AND COOPERATION

- **National strategies**
 - Setting out responsibilities and cooperation between all authorities involved in asset recovery (Art. 25)
- **Cooperation with EU bodies and agencies** (EPPO, Eurojust, Europol) and with **third countries** (Art. 5(3), 30-31)
- **Cooperation network on asset recovery and confiscation**

Reuse and Return: Challenges of the use of confiscated assets from an anti-corruption perspective

Charlotte Palmieri

Legal advocacy officer

Transparency International France

TRANSPARENCY INTERNATIONAL FRANCE

Advocacy

Litigation

Expertise

Awareness-
raising



- Promoting public integrity
- Fighting illicit financial flows
- Regulation of private sector

ASSET RETURN: INTERNATIONAL LEGAL FRAMEWORK

International legal framework (documentation : UNCAC Coalition)

- Asset restitution through international cooperation (Article 57 of UNCAC)
- Direct asset restitution – civil action of the foreign state (Article 53 of UNCAC)

European legal framework

- European Directive of 24 April 2024 on the recovery and confiscation of assets (transposition deadline, November 2026)
- ✓ Most of countries **still rely on international cooperation (article 57 of UNCAC)** to engage in asset restitution. Very few countries, both of origin and destination, have a specific formal legal framework detailing the implementation of **the principles of transparency and accountability in restitution procedures.**

HOW FRENCH CSO'S FOUGHT FOR RESPONSIBLE ASSET RESTITUTION





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FRENCH NEW LEGAL FRAMEWORK FOR RESPONSIBLE ASSET RESTITUTION



Asset return is mandatory even in the **absence of a formal request from origin country** (goes beyond what UNCAC Article 57 provides)

Final conviction in France and consignment of post-confiscation funds to distinguish it from French official development assistance

The confiscated assets of illicit origin must be returned **as close as possible to the population of the origin country** with the aim of financing 'co-operation and development initiatives'

GFAR principles are enshrined in French legal framework : **transparency, accountability and inclusiveness** during the entire asset restitution procedure

Asset restitution modalities are **enshrined into hard law** which provides predictability and consistency

French Justice initiates criminal AR proceedings

On its own initiative or following CSO's legal complaint

Origin country can request civil party status before French jurisdictions (≠ MLA) according to UNCAC Art. 53.b

French Justice confiscates stolen assets

Origin country can claim compensation damages that can be recovered on confiscated assets (following articles 706-164 of the Code of Criminal Procedure).

France must return confiscated assets following the legal regime set up by Article 2.XI of the Law of August 4th, 2021

Following origin country's MLA request
UNCAC Art. 57

French Justice confiscates stolen assets

Origin country = non-EU country. Asset sharing is not mandatory and requires an agreement (Article 713-40 of the Code of Criminal Procedure)."

Origin country = EU country. Asset sharing is mandatory (50%-50%) (Article 713-32 of the Code of Criminal Procedure)"



This handbook aims to provide public authorities, practitioners and civil society organizations with good practices & recommendations drawn from previous asset restitution experiences.



[English version](#)



[French version](#)

Level 3: The asset restitution process is transparent, accountable, and inclusive.

Level 2: The asset restitution process is not sufficiently transparent, accountable and inclusive.

Level 1: The asset restitution process is not transparent, accountable or inclusive.

TI-France developed several indicators to measure the degree of transparency, accountability, and inclusiveness at each stage of a restitution process.

These indicators aim to provide guidance to public-decision makers and practitioners intervening in the repatriation of illicitly acquired assets.

ACCOUNTABILITY

The degree of accountability of an asset restitution process can be measured by the following three parameters:

- **Planning and formalising the asset recovery process:** What are the actors in the asset restitution process accountable for?
- **Distribution of roles:** Who is accountable? To whom can CSOs and the general public specifically turn for any request relating to the asset restitution process?
- **Liabilities and remedies:** Is it possible to report potential failures or irregularities? Are remedies and corrective measures offered in the event of a failure or irregularity? What are they and who do they concern?

INCLUSIVENESS

The degree of inclusiveness of an asset restitution process can be measured by the following three parameters:

- **Ability to act:** What means does civil society have to participate effectively in the asset recovery process? Are these means (human, financial) sufficient in order for civil society to take action?
- **Conditions for participation:** To what extent is civil society included in the asset restitution process? Is it simply consulted, or is it really involved? From which stage of the asset restitution process?
- **Selection criteria:** According to which criteria are civil society representatives

TRANSPARENCY

The degree of transparency of an asset restitution process can be measured by the following three parameters:

- **Conditions of access to information:** Does the public have access to full information on the asset restitution process? What are the terms of access? Is the information easy to read and understand?
- **Level of detail of publicly available information:** What categories of information are publicly available? How specific are they?
- **Timing and frequency of publication:** When is the information available to the public?



SOCIAL REUSE OF CONFISCATED ASSETS: FRENCH LAW

Confiscated real estate can now be repurposed for social use in public interest programs. Thanks to the law of April 8, 2021, associations, foundations, or solidarity-based land organizations can be assigned confiscated properties.

In 2022, a villa was handed over to an organization fighting domestic violence; a confiscated building will be converted into social housing; and a property has been repurposed to accommodate Ukrainian refugees.

To facilitate the social repurposing of these assets as early as possible, several mechanisms also exist in France, such as the sale of seized assets before judgment.



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EUROPEAN JUDICIAL NETWORK (EJN) Instruments of judicial cooperation: How does the EJN support judicial cooperation in the EU?

Magdalena Bozieru

*Counsellor for European Affairs Division for International Judicial Cooperation
in Criminal Matters Ministry of Justice of Romania
EJN contact point for Romania*



- 1. The role of the European Judicial Network**
- 2. EJM website**
- 3. Relations EJM and Eurojust**
- 4. EJM outside the EU**



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1. The role of the European Judicial Network

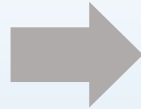
EJN in brief

What?



Pioneer network of judicial authorities fighting serious crime

When?



Established in 1998 (Joint Action 1998 replaced by the EJN Decision 2008)

Who?



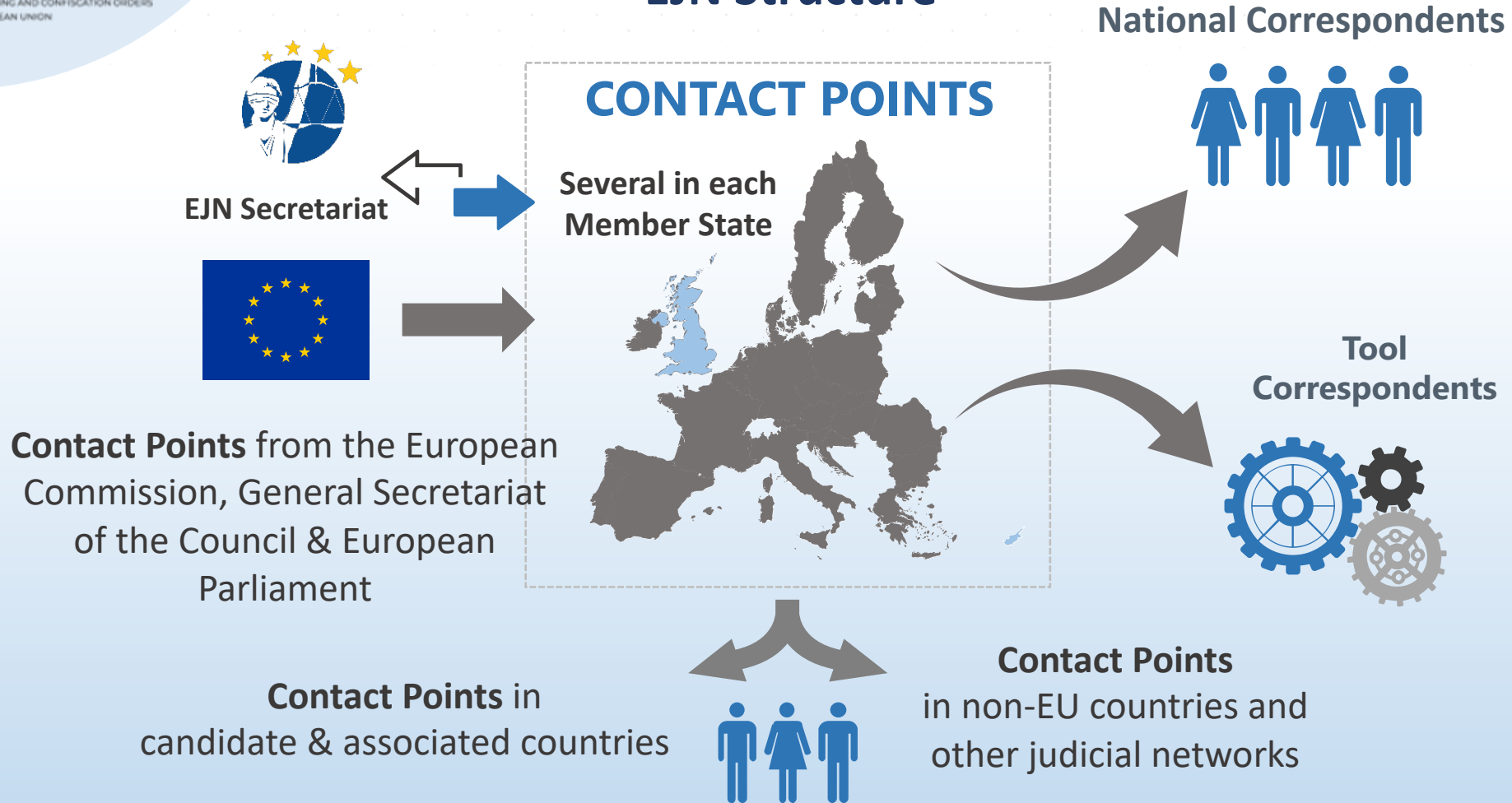
Contact points appointed by each Member State as 'active intermediaries' to facilitate judicial cooperation in criminal matters: prosecutors, judges, central authority officials

Where?



All Member States of the European Union; candidate and associated countries; partners in non-EU countries

EJN Structure



Main functions of EJM CPs

- 01.** | As active intermediaries, **facilitating judicial cooperation** between Member States in actions to combat serious crime
- 02.** | **Providing the necessary legal and practical information** to enable judicial authorities to prepare an effective request for judicial cooperation or to improve judicial cooperation in general
- 03.** | **Promoting and being involved in the organisation of training sessions** on judicial cooperation for the benefit of the competent authorities. In cooperation with the European Judicial Training Network, where appropriate

To do list

- to promote the resources of EJN to help
- regular update of its website
- to consider including on its website specific information on national legislation and procedural implications in the Member States relating to judgments in absentia.
- provide guidance on the functional relationship and complementarity between Article 4(6) of Framework Decision 2002/584/JHA and Framework Decision 2008/909/JHA (pending ECJ case C- 305/22 CJ).

EJN meetings – 5 per year

01.

EJN Plenary meetings

- 2 in the Member State holding the Presidency of the Council of the EU
- 1 in the Hague, Netherlands

02.

Other EJN meetings

- 1 National Correspondents meeting
- 1 Tool Correspondents meeting

Purpose of the EJM meetings

- 01.** To get to know each other and **exchange experience**, particularly concerning the operation of the Network
- 02.** Forum for **discussion of practical and legal problems** encountered in the context of judicial cooperation

How the CPs work in practice



Operate from their **offices in the Member States**



Provide **know-how and assistance** in issuing and executing requests for judicial cooperation, dissemination of information (e.g. Handbooks, FRA database on prison conditions, Commission Notice - Guidelines on Extradition to Third States);



Facilitate **direct contacts**

EJN case-work Statistics



7000-8000

cases per year



2000

about the European
Arrest Warrant



5000

about Mutual Legal
Assistance/European
Investigation Order (EIO)

As of 2017 **EJN web-based online reporting tool** for EJN Contact Points
EJN case-work statistics / EJN biennial report

EJN Activity Report 2021-2022

Some figures:

- total number of cases **12 564**
- EAWs **1653**
- EIOs **2960**
- Freezing and confiscation orders **411**

Contact Points and cooperation on cases

2021 – Peer evaluation of the EJM

- **Replies were received in over 93% of the cases**
- **More than 10.000 cases/year solved with the contribution of EJM contact points**



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2. EJM Website



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www.ejn-crimjust.europa.eu

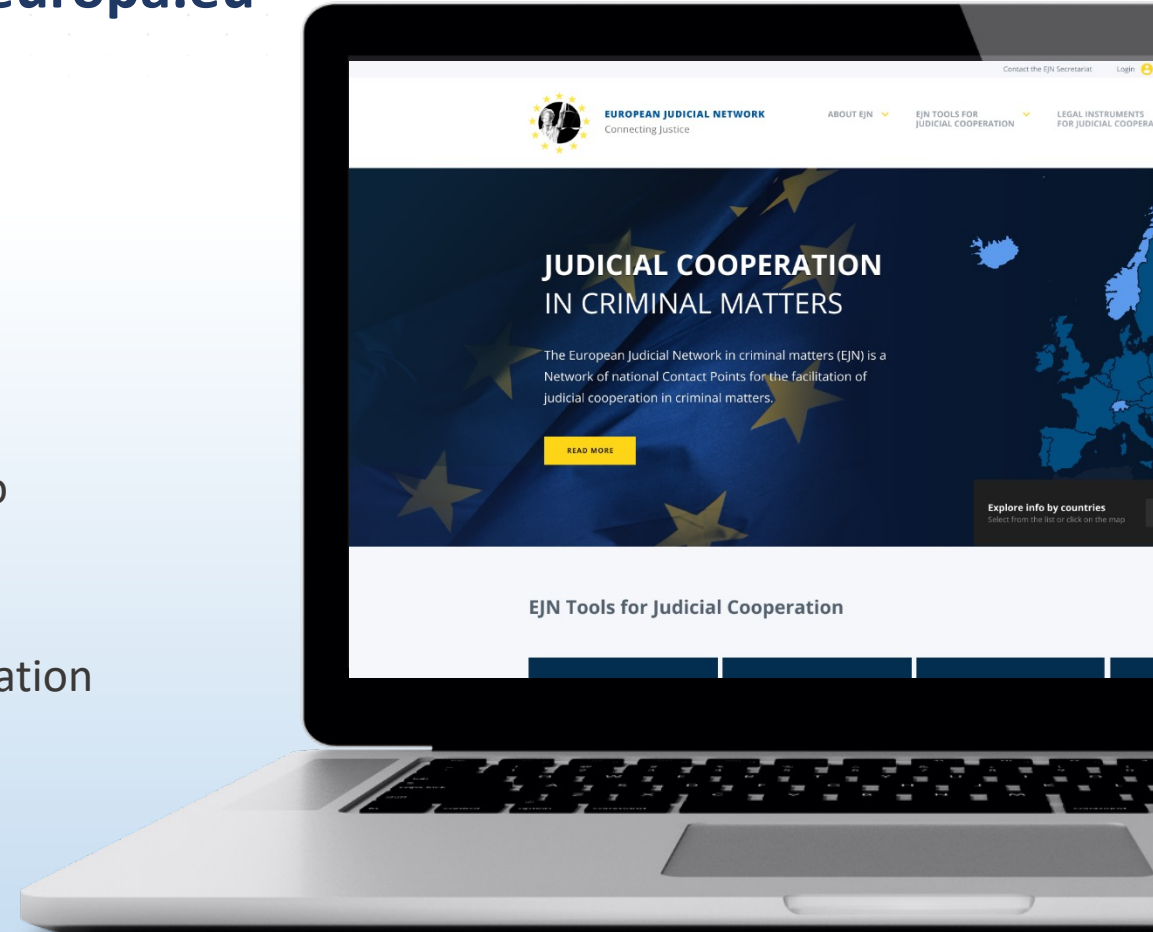
Created in 2000

Home base for the **EJN Contact Points**

Information on **judicial cooperation in criminal matters** to all judicial authorities

Practical e-tools for judicial authorities for judicial cooperation

Managed by the **EJN Secretariat** and the **EJN Tool correspondents**





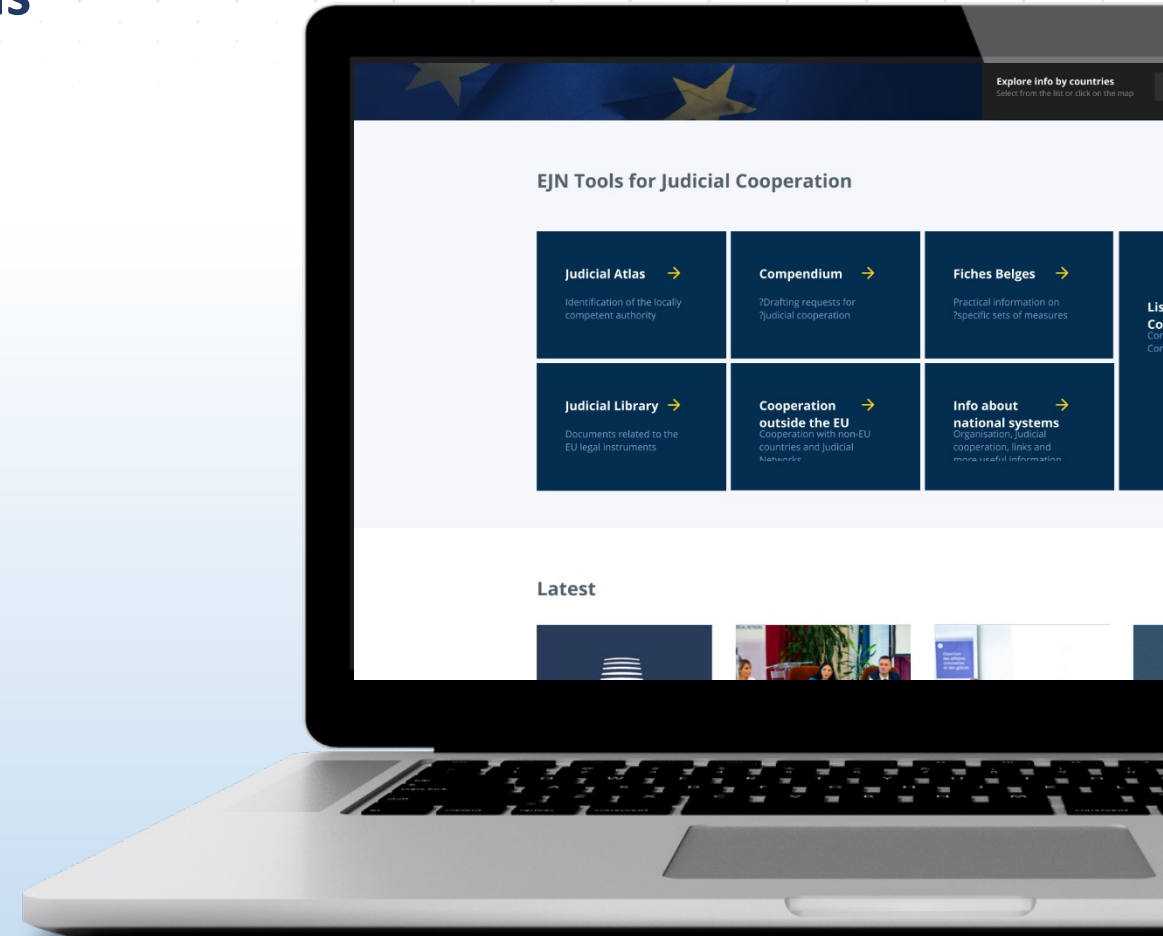
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EJN e-Tools

e-tools

Accessible from the **home page** of the EJN website

For **practitioners** dealing with judicial cooperation
in criminal law cases



Fiches Belges

- 01.** | The first EJM e-Tool ! **Fiches Belges**
- 02.** | Contain basic information on **national legislation and procedures** for judicial cooperation in criminal matters within the EU
- 03.** | Linked to the **Atlas and the Compendium**

Contact Points

- 01.** | Contact details of the EJM Contact Points
- 02.** | Password protected area
- 03.** | Can use **different filters** to find Contact Points

Judicial Atlas

- 01.** Assists in finding the **competent authority** for executing requests for judicial cooperation (MLA/EIO, EAW etc.)
- 02.** Provides **contact details** of the competent receiving/executing authority
- 03.** Facilitates **direct contact** between judicial authorities

Judicial Atlas



This tool is used for drafting and sending requests and decisions for judicial cooperation

MLA model request

Forms and certificates of:

- EAW;
- Freezing order;
- Confiscation order;
- Financial penalties;
- Custodial sentences (transfer of prisoners);
- Probation measures;
- Supervision measures;
- ECRIS;
- European Protection Order (EPO)
- European Investigation Order (EIO).

Judicial Library

- 01.** Contains **EU and national legislation and case law** on judicial cooperation in criminal matters
- 02.** ... as well as **notifications, forms, reports, handbooks** and other practical information per legal instrument
- 03.** Status of implementation in the **Member States of EU** legal instruments



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3. Relations EJM and Eurojust



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EUROJUST

Relations EJN and Eurojust

Privileged relations based on consultation and complementarity

- Art. 85 TFEU; Art. 10 EJN Decision; Art. 48 Eurojust Regulation

Same general objective; complementary means

EJN and Eurojust shall inform each other of cases which one deems the other to be in a better position to deal with

- Assessment of allocation of cases to Eurojust and to the EJM – Joint report by Eurojust and the EJM 5 November 2019

https://www.ejm-crimjust.europa.eu/ejnuupload/DynamicPages/2019-11_Joint-Eurojust-EJM-report.pdf

- Criteria:
 - Complexity of the case/need for coordination in executing multi-jurisdictional measures;
 - Urgency
 - Existence of parallel investigations in several MS;
 - Nature of the offence/practical issues (e.g. conflicts of jurisdiction, joint investigation teams, multiple EAWs, need for extensive planning at national and procedural level);



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4. EJM outside the EU

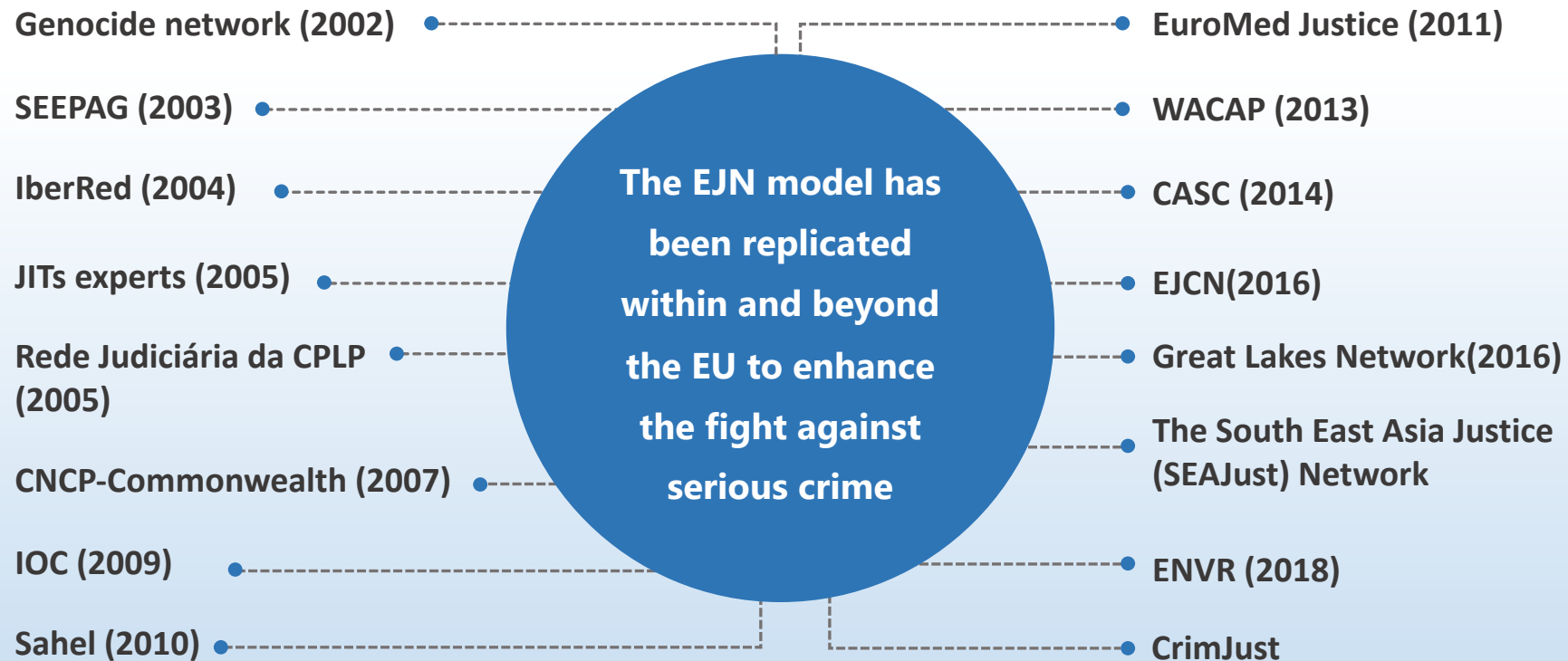
EJN cooperation outside the EU

The EJN has developed cooperation with non-EU countries and other judicial networks around the world

Special section in the EJN website, with

- information on non-EU countries and networks
- contact details of contact points in non-EU countries and members of the networks

EJN cooperation outside the EU



EJN contact points in third countries



** This designation is without prejudice to the positions on status, and is in line with UNSCR 1244 and the ICJ Opinion on the Kosovo Declaration of Independence*



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