



# Eurojust's Casework in Asset Recovery at a Glance



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## ***Eurojust's Casework in Asset Recovery at a Glance***

*Eurojust's Casework in Asset Recovery at a Glance* aims to assist competent judicial authorities in the EU Member States in effectively recovering criminal assets and in contributing to the fight against transnational crime.

*Eurojust's Casework in Asset Recovery at a Glance* is primarily based on the analysis of cases addressing asset recovery issues registered at Eurojust between 1 January 2014 and 31 March 2018, and is complemented by views expressed during dedicated discussions with some Eurojust National Desks.

*Eurojust's Casework in Asset Recovery at a Glance* tracks the four stages of the asset recovery process. It constitutes an overview of the main legal and practical issues encountered by Eurojust in its casework in the field of asset recovery, the support provided by Eurojust at any given stage of the asset recovery process, the main judicial cooperation instruments and tools used, and best practice identified.

*Eurojust's Casework in Asset Recovery at a Glance* constitutes an abbreviated version of the *Report on Eurojust Casework in Asset Recovery*.



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# 1. Asset Tracing

## 1.1. Legal and practical issues

Eurojust's casework in the reporting period identifies quite a number of **legal and practical issues** that have arisen in **asset tracing**, including the following<sup>1</sup>:

- **Actual identification of the assets** abroad and the **use of AROs**, including in relation to value-based court orders that raise **jurisdictional concerns**, as the competent authorities do not know to which MS to send the order.
- Difficulties in persuading the requested authorities to conduct such enquiries, and, in some cases, **insufficient awareness of the existence of AROs and their role**.
- Poor contacts via the **FIUs** of the MSs involved or networks of FIUs (*e.g.* the Egmont Group of Financial Intelligence Units<sup>2</sup>), although some networks proved helpful in establishing contacts.
- **The existence of a central bank register and public registers for companies and for property** in the countries involved would have accelerated execution of the LoR.
- **Simultaneous transmission of LoRs for banking and financial information through parallel channels** has occasionally hindered, rather than expedited, the initiation of the process of execution by creating internal confusion as to its reception.
- **Required channel for transmission of banking information, associated with the urgency of its receipt due to the risk of expiration of the statute of limitations**.
- **Delays stemming from deficiencies in the LoRs**, *e.g.* poor description of the facts or poor translation or absence of reference to a legal basis, have led to the **need to issue a new LoR**.
- **Notification of the owners of the bank accounts and the need to take into consideration their related procedural rights** before the identified information can be transmitted to the requesting State have also caused delays.
- **Financial investigations targeted to persons who are not suspects** sometimes posed difficulties, as in some national legal systems financial investigations do not apply to assets that have been passed on to third parties.

## 1.2. Eurojust support

With regard to the **support provided by Eurojust** at the stage of **asset tracing**<sup>3</sup>:

- Often assisted in **identifying the competent national authorities**, ensuring that requests for assistance and replies thereto were addressed to the competent recipient, and also contributing to the establishment or strengthening of **direct contacts between national authorities**;
- Often **facilitated the spontaneous exchange of relevant financial information between judicial authorities without the need for an LoR or EIO**;

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<sup>1</sup> Detailed information can be found at Section 1.1.1. of the Report on Eurojust's Casework in Asset Recovery.

<sup>2</sup> The Egmont Group of Financial Intelligence Units is an informal network of 156 financial intelligence units.

<sup>3</sup> Detailed information can be found at Section 1.1.2. of the Report on Eurojust's Casework in Asset Recovery.

- Often assisted in the **transmission of LoRs seeking financial and banking information** and in the **transmission of the actual financial and banking information as well as the exchange of additional information**, which was particularly important in urgent cases;
- Advised judicial authorities by **facilitating solutions to practical problems**;
- Assisted in **obtaining information on the state of play of the execution of LoRs**;
- **Eurojust National Members' direct or indirect access to national registers or databases** allowed for a **swift and secure exchange of financial or property information at the tracing phase**;
- **Eurojust contact points in third States** have also proved to be established channels of communication;
- Assisted in the **coordination of the execution of LoRs seeking financial and banking information** involving several countries by organising **coordination meetings**;
- Prepared **overviews of the links between the suspects under investigation, including links resulting from the financial investigations, and additional targets** that emerged as a result of the sharing of information;
- **Assisted in the setting up of JITs, including for the purpose of a financial investigation; and**
- **Raised awareness of the role of the AROs among practitioners;**

### 1.3. Best practice<sup>4</sup>

- In those countries in which **central bank registers** and **public registers for companies and property** exist, information on bank accounts, companies and property related to a suspect can be made available more swiftly, thus allowing for a quicker execution of requests for freezing;
- **Establishing a JIT solely for the purpose of conducting a financial investigation;**
- **Thorough investigation by the requested State into the money trail.** This process is time-consuming, but results in the requesting authorities ultimately receiving the full paper trail without the need to send the requested State additional LoRs;
- Some MSs have started to **hire specialised accountants to work on the financial investigations** in the framework of criminal investigations. Their **role is to assist the prosecutors**. The importance of 'going after the money' is becoming increasingly apparent, leading to the need to involve and appropriately remunerate the experts that have the necessary skills to properly assist and inform the prosecutors leading the investigations, who in turn become better equipped to take well-informed decisions;
- **Close cooperation (e.g. exchange of information) between specialised forensic accountants** of the involved countries in which parallel financial investigations are ongoing;
- Having units or departments within the competent authorities **specialised in asset recovery cases**;

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<sup>4</sup> Detailed information can be found at Section 3. of the Report on Eurojust's Casework in Asset Recovery.

- **Multi-disciplinary approach and interaction among different stakeholders**, *e.g.* FIUs, the Egmont Group, AROs, police and customs officials working alongside prosecutors in cross-border asset recovery cases, supported by **Eurojust** when needed;
- Consideration and discussion among the involved countries of future freezing and confiscation possibilities, taking into account the national, EU or international legal framework, as early as **the stage of cooperation in terms of asset tracing**, and involving **Eurojust**, if appropriate;
- **Presence of the requesting (for an LoR) or issuing State (for an EIO) in the requested/executing State can prove useful in assessing the relevance of the search results**, as further assets other than bank accounts, *e.g.* investment funds or insurance policies, may exist that had not been foreseen when the LoR/EIO was issued; and
- **Provide specialised training for prosecutors** in the field of asset recovery.

## 2. Asset Freezing

### 2.1. Legal and practical issues

Eurojust's casework in the reporting period identifies a large number of **legal and practical issues** that have arisen in **asset freezing**, including the following<sup>5</sup>:

- In some cases, these issues were linked to the **requirements for issuing a freezing order or an LoR seeking freezing measures and with consideration for their execution**, *e.g.* as a result of differences in the national implementation of FD 2003 on freezing orders.
- In other cases, issues linked to **differences in national legislation regarding possibilities for freezing assets** required discussion, *e.g.* freezing of commercial activities or preventive measures linked to the concept of unexplained wealth.
- In other cases, issues arising from the **identification of the competent national authority** required consideration when, *e.g.*, the assets were situated in different locations in the executing/requested State.
- In other cases, the **choice of legal instrument** was discussed *e.g.* in relation to ensuring that assets were frozen pending an appeal of the confiscation order.
- In some cases, the matter of the **transmission of LoRs concerning the seizure of money to more than one requested State at the same time** needed to be addressed.
- In other cases, issues related to the **restitution of assets to victims or compensation of victims** were also encountered, *e.g.* arising from the fact that such restitution and compensation are not possible under FD 2003 on freezing orders, which led, *e.g.*, to the need to seek alternative civil routes.
- Issues linked to **freezing measures in parallel investigations** also arose in some cases, *e.g.* in connection with differences in national legal parameters for the issuance of freezing orders and the need to coordinate the transmission of financial information.

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<sup>5</sup> Detailed information can be found at Section 1.2.1. of the Report on Eurojust's Casework in Asset Recovery.

- Issues arising from the **communication of the execution of an LoR seeking a freezing measure** sometimes caused delays.
- Issues related to **asset management** needed to be addressed in some cases, *e.g.* in relation to costs, the value of assets, the possibility of early sale, the manner in which the assessment of the value was conducted, or the absence of judicial administrators of companies subject to a freezing order.
- Matters stemming from **challenges and legal remedies** were also addressed in some cases related, *e.g.*, to alleged breaches of Article 6 ECHR or to the choice of legal instrument by the requesting authorities and related impact on available legal remedies.
- In some cases, issues linked to **grounds for refusing the execution of a freezing order or an LoR seeking the freezing of assets** also arose, *e.g.* discrepancies between the Article 9 certificate and the freezing order or insufficient information to allow the freezing.

## 2.2. Eurojust support

With regard to the **support provided by Eurojust** at the stage of **asset freezing**<sup>6</sup>:

- Eurojust often provided support in the **issuing stage** of a freezing order or LoR seeking freezing measures, *e.g.* when Eurojust provided **advice and clarification regarding the practical, legal and formal requirements** in relation to the freezing of assets, **advice on the choice of legal instrument**, and served as a **channel for transmission of freezing orders and LoRs, and related information and documentation**.
- Eurojust also provided support in the **execution stage** of a freezing order or LoR seeking freezing measures. This support was varied and its extent depended, *inter alia*, on the number of countries involved, the complexity of the case, the need to support **cooperation** as well as **coordination of the execution of freezing measures** and other measures when, *e.g.*, parallel investigations are being carried out in the countries involved.
- Eurojust also assisted, *e.g.*, in the speedy **clarification of the legal requirements** for the extension of the duration of the freezing order, or the legal requirements and consequences of maintaining the validity of a given seizure.
- In other instances, Eurojust supported the **coordination of the execution of the freezing order in complex cases**. This support often required holding **coordination meetings at Eurojust** to prepare a coordinated action day in the involved countries and the setting up of a **coordination centre organised and supported by Eurojust**.
- Eurojust provided **support in coordination in cases of parallel investigations** in which freezing measures were involved, *e.g.* Eurojust facilitated the execution of reciprocal LoRs and freezing orders, advised on possible conflicts between a domestic freezing order and the requested freezing measure, and on possible *ne bis in idem* issues.

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<sup>6</sup> Detailed information can be found at Section 1.2.2. of the Report on Eurojust's Casework in Asset Recovery.



### 2.3. Best practice<sup>7</sup>

- Discussion of asset recovery precautionary measures in the framework of a **JIT**;
- Organisation of a **coordination centre at Eurojust** to coordinate a common action day relating mainly to the **simultaneous freezing of bank accounts in different countries**;
- **Multi-disciplinary approach and interaction among different stakeholders**, *e.g.* FIUs, AROs, police and customs officials working alongside prosecutors in cross-border asset recovery cases, supported by **Eurojust** when needed;
- **Inclusion**, within the initial request for freezing, **of a request for early sale of frozen assets** (when they are perishable, lose value with the passage of time or involve high management costs) in advance of confiscation;
- **Early sale** of certain types of frozen assets can speed up the confiscation process, provided such sale is legal in the involved countries;
- The **management of frozen and confiscated assets** is a crucial stage of the asset recovery process. In this regard, Centralised Asset Management Offices, specialised offices or equivalent mechanisms are very important;
- **Early consideration of administration of funds** pending a final decision;
- **Executing freezing orders in one MS at the same time as arrests and searches** are carried out in another can also help to prevent assets being dissipated;
- **Legal possibility** of executing a freezing order in a VAT fraud case when the defrauded budget is that of the issuing Member State;
- **Receiving feedback at regular intervals** from the issuing authority **to avoid exposing the executing country to possible proceedings**;
- The **posting of liaison magistrates/prosecutors specialised in asset recovery** from MSs to other countries dealing merely or primarily with cases in which such issues arise; and
- **Specialised training for prosecutors** in the field of asset recovery.

## 3. Judicial cooperation instruments and tools in asset tracing and freezing

Eurojust's casework in **asset tracing** in the reporting period shows that several judicial cooperation instruments and tools were used. The choice of legal instrument or tool in a given case depends on a number of factors, such as the countries involved, whether these were MSs or third States, the crime type, other measures sought, the implementation of existing EU or international legal instruments and their scope of application. In some cases, Eurojust assisted in the choice of legal instrument or tool; in others, the case was referred to Eurojust for assistance after the LoR was sent to the requested State.

In Eurojust cases for which financial and/or banking information (only or together with other measures) was requested in the reporting period, the legal instrument that was used more frequently was the 2001 Protocol to the **2000 Mutual Legal Assistance Convention**,

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<sup>7</sup> Detailed information can be found at Section 3. of the Report on Eurojust's Casework in Asset Recovery.

followed by the **1959 Mutual Legal Assistance Convention** (at times including its additional protocols) and the **1990 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the proceeds of crime**, followed by the **1990 Convention Implementing the Schengen Agreement of 1985** and **bilateral agreements** between the involved countries, followed by the **United Nations Convention against Corruption (UNCAC)** and the **United Nations Convention against Transnational Organized Crime (UNTOC)** and the **principle of reciprocity**.

In the majority of cases, the LoRs make reference to several of the above referred legal bases. The use of the **Directive on the European Investigation Order** was discussed and used in several cases. In some cases, the LoR contained reference to the requesting State being a member of a **JIT** set up between four MSs, and contained a request for any banking information provided by the requested State to be shared with the other JIT members.

In the vast majority of the cases for which financial and/or banking information was requested, the **freezing of assets** (and in some cases, other measures as well) **was also requested**. Eurojust casework shows that the practice is very diverse. While in some cases, the LoR alone included all such measures, in others the LoR included the financial and/or banking information and the freezing measures, **but was also accompanied by the freezing order** and the **Article 9 certificate**, either from the moment the LoR was issued or as a result of a request by the requesting/executing State that these two additional documents also be transmitted.

In the reporting period, Eurojust casework in **asset freezing** shows that the judicial cooperation instruments and tools used were also varied. Here, too, the choice of legal instrument or tool in a given case will depend on a number of factors, such as whether other measures were sought, the countries involved and whether these were MSs or third States, the crime type, the implementation of existing EU or international legal instruments and their scope of application. Similarly, in some cases, Eurojust assisted in the choice of legal instrument or tool, while in others the case was referred to Eurojust for assistance after the LoR or the freezing order accompanied by the Article 9 certificate had been sent to the executing State.

In **most of the cases** for which the freezing of assets was sought, **LoRs were used**, and the majority of cases also sought other measures. The legal bases for these LoRs are those referred to above (asset tracing). In some of these cases for which, beyond the freezing of assets, the LoRs also seek other measures, the Article 9 certificate constituted an annex to the LoR, and the national freezing order did not accompany the certificate. In other cases, however, the only measure required was the freezing of assets, and an LoR was nevertheless issued, accompanied by the Article 9 certificate and the freezing order. This situation could be explained by reasons such as: *i*) the requested State has not implemented FD 2003 on freezing orders while the issuing State has implemented it; *ii*) requirements under the national law of the issuing State implementing FD 2003 on freezing orders that the Article 9 certificate be accompanied by the national freezing order as well as a corresponding LoR; or *iii*) lack of awareness on the part of the issuing State that has implemented FD 2003 on freezing orders that the certificate accompanied by the freezing order (if its national legislation does not provide otherwise) suffices.

In fewer than half of the **asset freezing** cases, the freezing of assets was **the only measure sought** and **FD 2003 on freezing orders was the only legal instrument used**. In these cases, as previously referred to under subsection 1.2.1(A), the differences in national implementation of this legal instrument are evident. Some MSs' national legislation requires that the receipt of the Article 9 certificate be accompanied by the national freezing order as well as by a corresponding LoR. Some MSs require receiving the original of the certificate (*i.e.*, in the language of issuing State) and others require receiving the original of both the national freezing order and the Article 9 certificate. In some MSs, reference in the Article 9 certificate to the freezing of the entire bank account balance suffices on the basis that the amount of the seizure is limited by the damage of the crime as stated in the reasoning of the accompanying freezing order, while in other MSs, this reference does not suffice and, instead, the maximum amount to be frozen must be specified in the Article 9 certificate itself. In some MSs, an official original letter from the issuing authorities containing the missing or the accurate information is required, while in other MSs, a less formal transmission of information, or a new rectified Article 9 certificate, is required.

## 4. Asset Confiscation

### 4.1. Legal and practical issues

Eurojust's casework in the reporting period identifies a large number of **legal and practical issues** that have arisen in **asset confiscation**, including<sup>8</sup>:

- In some cases, these issues were related to the **requirements for issuing a confiscation order or an LoR seeking confiscation measures, or to the consideration of their execution**.
- In other cases, *e.g.*, these issues led to several requests for additional documentation or information, or confirmation that the confiscation order had been based on a final and enforceable decision.
- In other cases, *e.g.*, the issues were linked to the matter of ownership of the property by a third party.
- In other cases, issues arose in relation to **interested parties and legal remedies**, *e.g.*, with the obligation to inform an interested party and to the legal remedies available in the executing State.
- **Cost-related issues** also emerged in some cases, such as when the requested State required the translation of both the first instance and the high court decisions in the requesting State before considering execution of the confiscation measure.
- Other issues have included **delays on the part of the executing authorities in officially confirming that the confiscation measures had been executed** when under the law of the issuing MS such formal confirmation constituted a requirement.
- In other cases, delays resulted from **continued misunderstandings between requesting and requested authorities in relation to the requested measure and their related impact on the competent authority to execute**.

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<sup>8</sup> Detailed information can be found at Section 2.1.1. of the Report on Eurojust's Casework in Asset Recovery.

- Consideration of the issue of **whether the place of prosecution would have an impact on the asset-related enforcement measures, such as confiscation**, also arose in one case.

## 4.2. Eurojust support

With regard to the **support provided by Eurojust** at the stage of **asset confiscation**<sup>9</sup>:

- The need for Eurojust's **support** at the **asset confiscation** stage often emerged at the issuing stage of the confiscation order or LoR seeking confiscation measures.
- In this regard, Eurojust provided **advice and clarification in relation to the practical, legal and formal requirements** in relation to the confiscation of assets.
- In some cases, **Eurojust assisted in filling in the Article 4 certificate or drafting the LoR seeking confiscation** to ensure that the **requirements for considering the execution of a confiscation order or LoR** in the executing/requested State were met.
- Eurojust often also assisted in the **identification of the competent authority in the executing/requested State and in the transmission of the confiscation order and Article 4 certificate or LoR** to the competent authorities in the executing/requested State.
- Eurojust's support proved particularly important in very urgent cases or in cases in which other channels had proved insufficient.
- In some cases, **Eurojust facilitated the translation of the executing State's relevant provisions of the legislation on judicial cooperation in criminal matters**.
- In some cases, **Eurojust was the sole channel of communication between the involved countries**.
- In other cases, **Eurojust's Liaison Prosecutors acted as single points of contact with the involved third States**.
- In some cases, **Eurojust contact points in third States** provided information on the **legal requirements** regarding the execution of a foreign confiscation order and referred cases to Eurojust.
- In other cases, **Eurojust provided advice on the choice of legal instrument and on the necessary documentation, including the legal requirements concerning the translation of the confiscation order**.
- Beyond the initial preparatory stage of the drafting of the confiscation order or LoR, **Eurojust further assisted towards its recognition and/or execution**.
- **Eurojust often also facilitated the exchange of information on the state of play of the recognition of the confiscation order or execution of the LoR, and the exchange of relevant documentation**.
- In other cases, **Eurojust also served as mediator in relation to the issue of translation costs, and assisted in clarifying the legal and practical possibilities in the countries involved** with a view to reaching a position that was both possible and agreeable to them.

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<sup>9</sup> Detailed information can be found at Section 2.1.2. of the Report on Eurojust's Casework in Asset Recovery.

- In other cases, **Eurojust facilitated the transmission of information on time limits, under the law of the executing State, for appealing the court decision, recognising and ordering the execution of the confiscation order.**

### 4.3. Best practice<sup>10</sup>

- **Multi-disciplinary approach and interaction among different stakeholders**, *e.g.* FIUs, AROs, police and customs authorities working alongside prosecutors in cross-border asset recovery cases, supported by **Eurojust** when needed;
- The **management of frozen and confiscated assets** is a crucial stage of the asset recovery process. In this regard, Centralised Asset Management Offices, specialised offices or equivalent mechanisms are very important;
- Consent of suspects (in jurisdictions in which the possibility of plea bargaining is foreseen) can speed up the confiscation process;
- **Receiving feedback at regular intervals** from the requesting authority **to avoid exposing the requested country to possible proceedings;**
- **Posting of liaison magistrates/prosecutors specialised in asset recovery** from MSs to other countries dealing merely or primarily with cases in which such issues arise; and
- **Providing specialised training for prosecutors** in the field of asset recovery.

## 5. Asset Disposal

### 5.1. Legal and practical issues

Eurojust's casework in the reporting period identifies quite a number of **legal and practical issues** that have arisen in the field of **asset disposal**, including the following<sup>11</sup>:

- In some cases, these issues were linked to the **sale of the confiscated assets**, *e.g.* when the convicted person challenged the manner in which the executing authority chose to assess the estimated value of the property.
- Issues linked to **asset sharing** also arose in other cases.
- These touched upon, *e.g.*, **the requested State's (a third State) regime on asset sharing and the temporal scope of the application of the changes in the legislation of the executing State**, the issue of the **formalisation of the asset-sharing agreement**, and **delays in reaching the actual asset-sharing agreement.**
- In some cases, issues linked to the **restitution of confiscated assets to the victims** also emerged. For example, in a case involving several MSs and several third States, with a number of parallel ongoing investigations, one of the main issues was the possible **legal bases for the confiscation and possible transfer of assets to the third State in question**, and the issue of '**victims of crime**'.

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<sup>10</sup> Detailed information can be found at Section 3. of the Report on Eurojust's Casework in Asset Recovery.

<sup>11</sup> Detailed information can be found at Section 2.2.1. of the Report on Eurojust's Casework in Asset Recovery.

## 5.2. Eurojust support

With regard to the **support provided by Eurojust** at the stage of **asset confiscation**<sup>12</sup>:

- The **support** provided by **Eurojust** at the **asset disposal stage** depended on the issue at stake. With regard to support in relation to the **sale of the assets**, Eurojust provided, *e.g.*, **advice on the legal possibilities available in the executing State for assessing the value of the confiscated assets**.
- In one case, Eurojust also facilitated the **clarification of the legal requirements** of the requested State to allow the return of the assets, the **exchange of information**, and the **transmission** of a supplementary LoR.
- In **support of the process leading to the sharing agreement**, Eurojust provided **advice on the legal basis, procedural steps and appropriate channel of communication for potential asset-sharing agreements** between the involved countries.
- In other cases, Eurojust provided **advice to the requested authority on how to draft the required formal communication to the competent requesting authority to initiate the asset-sharing agreement**, and **liaised with the authority in the requested State competent to deal with the recovery of assets**.
- In another case in which the matter of **restitution of the confiscated assets to the victims in a third State** was discussed, Eurojust organised **several coordination meetings**, which served as a **platform for exchange of information, enhancing trust and mutual understanding, and resulting in more effective bilateral contacts outside Eurojust**, notably in relation to which authorities in the countries involved were competent to deal with the disposal of assets.

## 5.3. Best practice<sup>13</sup>

- **Multi-disciplinary approach and interaction among different stakeholders**, *e.g.* FIUs, AROs, police and customs working alongside prosecutors in cross-border asset recovery cases, supported by **Eurojust**, if needed.
- **Importance of judicial authorities discussing the sharing and return of confiscated assets**, as soon as assets located abroad need to be frozen, in view of their eventual confiscation.
- If appropriate, **Eurojust's assistance in clarifying the legal requirements in MSs for the disposal, sharing and repatriation of assets**.
- If appropriate, **Eurojust's assistance in facilitating the process leading to the conclusion of agreements on sharing and return of assets between** the competent national authorities.
- The posting of **liaison magistrates/prosecutors specialised in asset recovery** from MSs to other countries dealing merely or primarily with cases in which such assets arise.
- **Specialised training for prosecutors** in the field of asset recovery.

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<sup>12</sup> Detailed information can be found at Section 2.2.2. of the Report on Eurojust's Casework in Asset Recovery.

<sup>13</sup> Detailed information can be found at Section 3. of the Report on Eurojust's Casework in Asset Recovery.



## 6. Judicial cooperation instruments and tools in asset confiscation

Eurojust's casework in the area of **asset confiscation** in the reporting period shows that **FD 2006 on confiscation orders**<sup>14</sup> was used in all analysed cases in which all the countries involved were MSs, except for one case that may be explained by the fact that the requesting State had implemented FD 2006 on confiscation orders, but the requested State had not. In this case, an LoR was issued. With regard to confiscation orders sought in or by third States, LoRs were issued by the MS concerned and the legal bases used were the **1959 Mutual Legal Assistance Convention**, the **1990 Council of Europe Convention on laundering, search, seizure and confiscation of the proceeds of crime** and the **1990 Convention Implementing the Schengen Agreement of 1985**.

The casework showed **differences in the interpretation and application of FD 2006 on confiscation orders**. In some cases, only the Article 4 certificate was translated, accompanied by the confiscation order, and at other times by the appeal court judgement confirming such order, in the language of the issuing State alone. In other cases, both the Article 4 certificate and the confiscation order were transmitted, both in the language of the issuing State and also translated into the language of the executing State.

## 7. Conclusions

1. **Eurojust** is a privileged forum for the facilitation of dialogue, taking into account the legal traditions, legal systems and diversity of languages across the European Union, and for finding an acceptable solution for the countries involved.
2. National competent authorities seek the assistance of Eurojust with a view to simplifying and speeding up, to the maximum extent possible, the **cross-border execution of asset recovery measures**, which can range from the stage of the financial investigation to the disposal of confiscated assets.

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<sup>14</sup> During the preparation of the report, the Court of Justice of the European Union passed a judgment on the application of this legal instrument in Case [C-97/18](#).

The questions referred to to Court were:

1. Can Article 12(1) of Framework Decision 2006/783/JHA be interpreted as meaning that, when a confiscation order transferred by an issuing State is executed in the Netherlands, a term of imprisonment pending payment as referred to in Article 577c of the Netherlands Code of Criminal Procedure may be applied, having regard to, *inter alia*, the decision of the Hoge Raad of 20 December 2011 to the effect that a term of imprisonment pending payment must be deemed to be a penalty within the meaning of Article 7(1) of the ECHR?

2. Does it make any difference to the possibility of applying a term of imprisonment pending payment whether the law of the issuing State also makes a provision for the possibility of applying a term of imprisonment pending payment?

The Court ruled that:

1. Article 12(1) and (4) of Council Framework Decision 2006/783/JHA of 6 October 2006 on the application of the principle of mutual recognition to confiscation orders must be interpreted as not precluding the application of the legislation of an executing State, such as that at issue in the main proceedings, which, for the purpose of enforcing a confiscation order adopted in an issuing State, authorises, where necessary, a term of imprisonment to be imposed.

2. The fact that the legislation of the issuing State also authorises possible recourse to a term of imprisonment has no bearing on the application of such a measure in the executing State.

3. Eurojust's casework in the field of asset recovery in the reporting period shows that Eurojust continues to play an important role in **improving cooperation in criminal matters between Member States** (Article 3(1)(b) of the Eurojust Council Decision), particularly by: i) facilitating the recognition and execution of freezing and confiscation orders and the execution of requests for judicial cooperation; ii) assisting in the drafting of freezing and confiscation orders or LoRs, the identification of competent authorities in the executing or requested Member States, information exchange, and translation of relevant information; iii) enabling the coordination of investigations and helping investigating and prosecuting authorities to act simultaneously in the execution of freezing orders; iv) clarifying the legal requirements of both issuing and executing authorities, and solving practical problems arising from the diverse legal and procedural requirements in different legal systems; v) assisting Member States in reaching agreements for the disposal of confiscated property and asset sharing; and vi) identifying best practice to manage assets from the outset of an investigation.
4. The presence of the **Liaison Prosecutors at Eurojust** and their involvement in cases has been considered very useful, as they can accelerate and facilitate judicial cooperation between competent authorities of the Member States and third States involved.
5. Despite the number of legal instruments enacted in the field of asset recovery, judicial cooperation **continues to be hampered by major differences between national legal systems and a lack of harmonised rules**. Member States still face obstacles in the execution of LoRs, in the identification and freezing of the proceeds of crime and in the recognition of MSs' confiscation orders. **Eurojust** continued to identify practical ways to maximise judicial cooperation in this area and to overcome obstacles arising from different freezing and confiscation regimes.
6. Some Eurojust cases concern only one or two stages of the asset recovery process (e.g. asset tracing and asset freezing, or the confiscation of the assets and their disposal). Other Eurojust cases, however, concern the **entire asset recovery process**.
7. While asset recovery matters are at times the only issue of the case in relation to which the assistance of Eurojust is sought, on many other occasions, such matters are only one of the many aspects of the same case with which Eurojust is requested to assist, e.g. EAWs, searches, surveillance, interviews of suspects or witnesses, possible ne bis in idem issues and jurisdictional issues, and the setting up of a JIT.
8. Much of the judicial cooperation in the field of asset freezing is still done on the basis of instruments other than FD 2003 on freezing orders. Some Eurojust cases show that the purpose of the freezing is **compensation or restitution of assets to the victims**. In some cases, **the concept of mutual recognition may not be well understood by some practitioners**.
9. When the **EIO** became operable in most Member States towards the end of the reporting period, a few Eurojust cases showed the use of the EIO for seeking information on bank and other financial accounts or information on banking and other financial operations, either to seek this evidence for the first time, or to supplement a previous LoR.





10. Cross-border criminal and asset (financial) investigations may occur in parallel in various countries, and national authorities need to take into consideration, also in parallel, other legal issues that, as a result, may arise and are intertwined, such as ne bis in idem, transfer of criminal proceedings, and the speciality rule. Effective cooperation is as important as effective coordination, as demonstrated by Eurojust's casework.

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