1. Regulation on mutual recognition of freezing and confiscation orders
2. Directive on the use of financial information
3. EPPO and EIO: what effect on white collar crimes investigations?
4. Proposal to amend the OLAF Regulation
Regulation 2018/1805 on the mutual recognition of freezing orders and confiscation orders
Regulation 2018/1805

Single instrument for mutual recognition and execution of freezing and confiscation orders

- Very limited recovery rate of criminal assets at EU level
- Improve cross-border cooperation in asset recovery by remedying the shortcomings of the previous legal framework
Previous legal framework

- Council Framework Decision 2003/577/JHA on the execution in the EU of orders freezing property and evidence
- Council Framework Decision 2006/783/JHA on the application of the principle of mutual recognition to confiscation orders

**SHORTCOMINGS:**

- Complicated procedures and unevenly implemented in MS
  - *Form of regulation for the first time in criminal law*
- Limited scope and obsolete with respect to Directive 2014/43/EU laying down minimum common rules on freezing and confiscation measures
  - *Broad scope of application*
1. **Freezing orders for the purpose of confiscation** adopted by:
   - A court, judge or public prosecutor
   - Another authority competent under national law with validation of a court, judge or public prosecutor

2. **Confiscation orders imposed by a court following proceedings in relation to a criminal offence** (not in civil and administrative proceedings)
   - Ordinary criminal confiscation
   - Extended confiscation
   - Third-party confiscation
   - Criminal non-conviction-based confiscation

**every type of freezing and confiscation order issued ‘within the framework of proceedings in criminal matters’** (Art. 1, 2 and Recital 13)

Broader than Directive 2014/43!
Main features of mutual recognition (1)

Structure similar to the European Arrest Warrant:

- **Standard certificate** transmitted directly to the executing authority of the MS where:
  - Reasonable grounds to believe that the person has property or income
  - The specific item of property is located

- **Duty to recognize and execute the order** in the same way as for a domestic order, **according to the law of the executing State**

- **Non verification of double criminality** for a list of 32 offences

- **Exhaustive list of grounds for refusal** (art. 8) and postponement of execution (art. 10)
Main features of mutual recognition (2)

- **Short deadlines for recognition and execution:**
  - **Freezing orders:** in cases of urgency, 48 hours for recognition and 48 hours for execution
  - **Confiscation orders:** 45 days for recognition and execution with same speed as for domestic orders

- **Priority to right to restitution or compensation of the victim:** where a decision of restitution or compensation has been taken in the issuing State
What about fundamental rights?

- **Ground for refusal of execution** (Art. 8(f) and 19(e)): if ‘in exceptional situations, there are substantial grounds to believe, on the basis of specific and objective evidence that the execution (…) would, in the particular circumstances of the case, entail a manifest breach of a relevant fundamental right as set out in the Charter’

- **Obligation of the executing authority to inform the affected person after execution** on the issuing authority, the reasons and the legal remedies available (Art. 32)

- **Legal remedies for affected persons** (Art. 33): before a court but left to national law:
  - Executing State: against the decision to recognise and execute
  - Issuing State: against the substantive reasons for the order (art. 8 Directive 2014/43)
Proposal for a Directive on facilitating the use of financial information for the prevention, detection, investigation or prosecution of certain criminal offences
Proposal for a Directive on the use of financial information

- Strengthening access and use of financial information by LEAs and FIUs for prevention, investigation and prosecution of serious crimes (including asset recovery)

- Art. 87(2) TFEU: complements AML preventive framework (4 and 5 AMLDs) with police cooperation measures
Issues to be tackled

1. Lack or delayed access by LEAs to centralised bank account registry
   - Established by 5 AMLD: allow identification of any person holding a bank account in the State
   - Only for AML purposes and not immediate direct access
   - Practice of blanket requests to banks

2. Lack of common rules on exchange of information between FIUs and LEAs – among FIUs
   - Different structures of FIUs is further obstacle: administrative, judicial or hybrid
   - LEA access to different type of information of FIU
   - Only for AML purposes
Measures: Access to bank account information

1. Access by LEAs to bank account information held in the national centralised bank accounts registry (Art. 4)

- direct and immediate
- for all serious crimes, not only AML

defined by MS, but including:

- Asset Recovery Offices
- tax and anti corruption authorities if criminal investigations competence
- NOT Europol national units: LEAs (and FIUs) shall be entitled to reply to requests from Europol
Measures: national cooperation between FIUs and LEAs

1. Requests for financial information by LEAs to FIUs (Art. 7)
   - FIUs are ‘required to cooperate and able to reply to requests’: less stringent than in the proposal (duty to reply) to safeguard autonomy of FIUs
   - Same exceptions as under 4AML but duty to give a reasoned refusal
   - Extended to all serious crimes
   - Any type of financial information already held by FIU

2. Requests for law enforcement information by FIUs to LEAs (Art. 8)
   - For AML purposes
   - LEAs are ‘required to reply in a timely manner’
Measures: international cooperation among FIUs and LEAs

1. Exchange of financial information between FIUs (Art. 9)
   - Only in exceptional and urgent cases
   - Only for terrorism and associated organised crime
   - No strict time limits as in the original proposal, only ‘promptly’
   - No possibility to refuse

2. Exchange of financial information between LEAs (Art. 10)
   - Financial information obtained from national FIU
   - Only for AML and TF
EPPO and EIO: What effects on white collar crime investigations?
European Public Prosecutor’s Office

- Independent EU body established by Regulation 2017/1939/EU
- Powers: investigating, prosecuting and bringing to judgment the perpetrators of, and accomplices in, the criminal offences affecting the financial interests of the EU
- Not exclusive, but shared competence with national authorities
EPPO’s competence

**Material competence**, art. 22:

- offences under PIF Directive 2017/1371
- Participation in criminal organisation for the purpose of committing PIF offences
- Any other criminal offence ‘inextricably linked’ to such offences

**Conditions for exercise its competence**, art 25:

- Damage of minimum 10,000 euro
- If less, only if it has repercussions at EU level or EU officials as suspects
Opening of investigations: at EU or national level?

- **Exercise of competence by EPPO**, art. 25: initiation of investigation or right to evocation
  - Duty to report to EPPO any criminal conduct
  - Duty to inform EPPO on initiation or existence of investigations at national level
  - Duty on national authorities to refrain from exercising their competence on the same facts

- **Conflicts of jurisdiction**: *Kompetenz-Kompetenz* on national authorities, not EPPO

- **Referral of the case to national authorities**, art. 34: if investigation reveals that offence is outside its competence or conditions to exercise it, or for less serious offences there is no need to prosecute at EU level
European Investigation Order

- **Directive 2014/41/EU**: unified regime for cross-border evidence gathering in criminal proceedings (also against legal entities)

- Mutual recognition: direct contact between judicial authorities, limited set of grounds for refusal, time-limits, no verification of double criminality for many white collar crimes

- *Forum regit actum*: measure executed according to modalities indicated by IS save for respect of fundamental principles of law of ES

- Specific investigative measures:
  - Bank and financial accounts information
  - Banking and financial operations
  - Real time monitoring of banking and financial operations
  - Interception of communications
  - Freezing orders for evidence purposes
Proposal to amend the OLAF Regulation
Proposal to amend the OLAF Regulation

- **Regulation no. 883/2013**: current legal framework on OLAF’s mandate, investigative powers and procedural safeguards

- **Objectives**:
  1. Adapt the functioning of OLAF to the establishment of the European Public Prosecutor
  2. Enhance the effectiveness of OLAF’s investigations
What role for OLAF after EPPO?

**Complementarity model**: close cooperation and information exchange with aim to avoid duplication of work (regulated also in Art. 101 EPPO Regulation)

1. **Duty to report to EPPO** and preliminary evaluation of allegations (also Art. 24 EPPO Reg)

2. **No parallel investigations**: duty not to open and to interrupt where EPPO is investigating, save for:
   1. **Investigative support at the request of EPPO** (art. 101(3) EPPO Reg): according to OLAF procedural safeguards, not EPPO
   2. **Complementary investigations on its own initiative**: aimed at administrative action in duly justified cases unless EPPO objects

3. **Exchange of information**: reciprocal access to case management systems and consultation mechanisms
Measures to enhance the effectiveness of OLAF’s investigations

1. VAT matters are included in OLAF’s mandate

2. Law applicable to on-the-spot checks and inspections: depends on the economic operator’s attitude toward the investigative measure
   - Submits to the check: only EU law
   - Resistance: assistance by national authorities is required thus national law is applicable

   (GC, T-48/16 Sigma Orionis, 3 May 2018)

3. Access to bank account information: FIUs duty to grant access upon OLAF’s request (as part of general duty of assistance by MS) in compliance with national law

4. Admissibility as evidence of OLAF reports: principle of assimilation to national administrative reports is replaced by principle of admissibility for administrative and judicial proceedings of non-criminal nature at national and EU level
Thank you for your attention!

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