

# Better applying European Criminal Law

## ERA Court staff training

*Freezing and Confiscation*  
*Regulation 2018/1805,*  
*FD 2003/577 and FD 2006/783*



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# Mutual recognition in criminal matters

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- Does not coincide with partial harmonisation
- Does not allocate jurisdiction
- Deals with human beings having their own rights (NB: EU lawyers!)

# Article 82, para. 1 – a closer look

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- Judicial cooperation based on mutual recognition
- Approximation
- Measures to:
  - A. ensure recognition
  - B. prevent/settle conflicts of jurisdiction
  - C. support training judiciary
  - D. facilitate cooperation

# Article 82, para. 2 TFEU

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- Minimum rules to facilitate mutual recognition:
  - A. mutual admissibility of evidence
  - B. rights of individuals in criminal procedure
  - C. rights of victims of crime
  - D. any other aspect

# Distinctions

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- Regulation 2018/1805 and FDs 2003/577 + 2006/783
- Freezing (provisional)
- Confiscation (final)
- Issuing v executing authority

# Freezing and Confiscation- Exercises

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- Find the following executing competent authorities and the languages to be used in the Certificate:

- I. The prosecutor in Bologna, Italy, would like to freeze a couple of Ferraris owned by a mafia organisation also active in Liège, Belgium.
- II. The Irish authorities receive a request for confiscation from Luxembourg concerning proceeds from money laundering that were invested in Cork.
- III. A Spanish prosecutor who successfully prosecuted a group of counterfeiters recently obtained information that millions of euros are kept in a Copenhagen bank.
- IV. In which cases will your answer be different after 19 December 2020?

# In absentia trials - > EAW, see <https://www.inabsentiaeaw.eu/>

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- FD 2009/299 amends FD 2202/584
- Common notion of *in absentia*
- Reduction of refusals subject to conditions:
  - Summoned in person + decided not to come
  - Mandated a lawyer
  - Served with decision + right to retrial
  - Will be informed + right to retrial

# Practical difficulties

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- Autonomous meaning Union law concepts: which concepts?  
Which meaning? Possible divergence with national law concepts?
- Difficulties with:
  - *In absentia* trial
  - Trial resulting in the decision (4(1)) (C-571/17 PPU)
  - Summons (4(1)(a)) (Dworzecki, C-108/16 PPU)
  - Defence by a mandated legal counsel (art. 4(1)(b))
  - Service of the judgment (art. 4(1)(c))
  - Right to a re-trial (art. 4(1)(d))



# The Issuing Judicial Authority

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- Autonomous notion
- 10 November 2016, Case C-452/16 PPU, Poltorak
- 9 October 2019, Case C-489/19 PPU, NJ
- 12 December 2019, Case C-627/19 PPU, Openbaar Ministerie v ZB