

Explanatory Note – Confiscation and Seizure

Seizure and confiscation are among the measures that can be adopted in an EPPO investigation.

In particular, their goal is to recover the defrauded amount and therefore they play an essential role in the proceedings.

There is a long-standing tradition in the EU about governing seizure and confiscation, as they have always been seen as essential tools to fight crimes.

In the past, a series of framework decisions were adopted both to harmonise the different legal systems and to encourage the mutual recognition in order to facilitate cross border cases.

Today, there are two main legal instruments:

the directive 2014/41/EU

the regulation 2018/1805,

The directive is a harmonisation tool. Its scope is to harmonise the legislations of the different Member States.

Indeed, in the national legislations over the years different kinds of seizure were provided, so that in cross border cases the national authorities of a MS cannot always request the same kind of seizure available in their system to the authorities of another MS because the two legal figures do not match.

For this reason, the directive is trying to harmonise the legislations by providing different types of seizure and confiscation (direct, same value, extended, with no conviction).

Indirectly, such legislation will have an impact on the EPPO investigations.

As they are based on the application of national law, the more national law are harmonised, the easier is for two or more EDJs to request and execute seizure and confiscation in another MS.

The regulation 2018/1805, on its turn, is not a harmonisation tool, but a mutual recognition tool.

Its goal is to make sure that a legal order on seizure and confiscation coming from the judicial authorities of a MS will be recognised and executed in another MS, irrespective of the degree of harmonisation of the respective national legislations.

Obviously, the higher the level of harmonisation is, the easier the mutual recognition is, but, in principle, mutual recognition does not depend on harmonisation.

For obvious reasons (it is dated 2018) such regulation is not mentioned in the EPPO regulation (which is dated 2017).

However, it has also to be said that, considering the “new” mechanism of transfer of information and evidence in EPPO cross border cases under art. 31 of the regulation, that goes beyond the legal instruments based on mutual recognition, the regulation on confiscation as such should not be applicable in the EPPO cases.

On the other hand, the role of other EU bodies seems to be very important in the recovery stage.

OLAF in particular can assist the EPPO on this issue, but under art 103 of the regulation the EPPO will cooperate on recovery with all EU bodies that can assist in this field.