International Expert Meeting on the management and disposal of recovered and returned stolen assets, including in support of sustainable development

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Central Office for Seizure and Confiscation in Belgium – A multidisciplinary approach in a one-office setting

Jean-Michel VERELST
Deputy King’s Prosecutor of Brussels
Director Central Office for Seizure and Confiscation (COSC)

jean-michel.verelst@just.fgov.be
1. The Belgian approach on AMO & ARO:

Three different missions under the same “roof”:

- Asset Management

- Asset Recovery

- Special prerogatives to ensure the recovery of criminal assets
2. Role and composition of Central office for Seizure & Confiscation

- Legal basis: Law of 26 March 2003 on the Creation of a Central Office for the Seizure and Confiscation of Assets

- Part of the Belgian Public Prosecutor’s Office

- No legal personality

- The COSC is directly reporting to the Minister of Justice

- Implementation of guidelines of criminal policy by the Board of Prosecutors general
2. Role and composition of Central office for Seizure & Confiscation

- Composition
  - Management: director and deputy director (public prosecutors)
  - Liaison magistrates (2) (public prosecutors)
  - Liaison officers (Federal Police) (2)
  - Liaison officers of the Ministry of Finance (4)
2. Role and composition of Central office for Seizure & Confiscation

• Mission

To assist public prosecutors and investigating judges + law enforcement officers in criminal investigations and legal proceedings in the field of:
- seizure of assets
- prosecution in view of the confiscation of assets
- execution of final confiscation orders/decisions
3. Asset Management
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An important date for management of seized goods: 26-3-2003

- establishment of the COSC
- new articles 28octies and 61sexies of the Criminal Procedure Code provide legal base for this management:

1) Alienation (selling of seized items)
2) return items to owner against payment of a sum of money
3) preserving items in good conditions
4) putting some the seized item at disposal of police services (Conditions!)
3. Asset Management

COSC is an Asset Management Office (AMO)
3. Asset Management

- E.g. sale of seized assets (real estate, cars, ICT-material, …) before a confiscation order is made (specific procedure):
  - if the costs of management/conservation are too high
  - (or) the value of asset can depreciate very quickly.
- Funds derived from the alienation replace the seized asset (legal subrogation)
3. Asset Management

Management of seized assets

- COSC receives all notifications by Judicial authorities and law enforcement officers of seizures and confiscation orders

- COSC is obliged to manage all cash money seized by law enforcement agencies and judicial authorities

- COSC may ensure the management of other valuable assets (shares, securities, gold, diamonds, jewellery etc...)
3. Asset Management

Transfer of seized items – during the investigative phase – to federal and local police services to be used by them.
3. Asset Management

Facilitation of the destruction of seized items –

Law 25 April 2014 (new article 28 novies criminal procedure code)
4. Asset Recovery

Attention!

COSC is not the « competent authority » aimed in the international treaties related to judicial cooperation.

In Belgium, the central authority for international cooperation in criminal matters is the Ministry of Justice
4. Asset Recovery

- National Asset Recovery Office

COSC : designated by the Belgium Government as his national Asset Recovery Office (ARO)

Council Decision 2007/845/JHA of 6 December 2007 concerning cooperation between ARO of the Member States in the field of tracing and identification of proceeds from, or other property related to crime
4. Asset Recovery

- COSC facilitates international judicial and police cooperation and maintain close working relations with foreign equivalent institutions (Asset Recovery Offices and Asset Management Offices)

  Example: drafting of MLA requests, freezing orders, confiscation orders, provide legal advice, follow up, etc…

  COSC is (in principle) not competent for the execution of a MLA request but can facilitate it
4. Asset Recovery

- Exchange information with other Asset Recovery Offices (and transfer it to competent authorities)

Subject to preliminary consent of the investigating judge or King’s prosecutor if exchange can have an impact on an ongoing judicial file/case (article 23, §2 COSC law)
4. Asset Recovery

- National points of contact

COSC = national point of contact for CARIN (Camden Asset Recovery Inter Agency Network), an informal international network of practitioners and experts in all aspects of tackling the proceeds of crime

COSC = national point of contact for asset recovery under the UNCAC Treaty (United Nations Convention against Corruption)
5. Special prerogatives

Asset recovery after a seizure

- The COSC provide all useful information to the officials of the Ministry of Finance in charge of the execution of a confiscation order.

- In case the seizure order has been lifted, the COSC will transfer the money to the State (tax office) in order to pay tax debts (legal compensation).
5. Special prerogatives

Asset recovery after a conviction: articles 15 and 15bis COSC-law

- Solvency inquiry to determine the feasibility of the execution of a confiscation order

- The COSC may request FIU, ministries and other government agencies to provide all necessary information on convicted persons

- Request of information on bank accounts held by a convicted person and freezing (for a period of 5 working days) of these accounts in order to secure a civil seizure procedure by the Ministry of Finance in charge of the execution of a confiscation order (value confiscation or confiscation of amount of money not seized before)
5. Special prerogatives

Asset recovery after a conviction: the ‘criminal execution investigation’ (law of 11 February 2014):

- Objective: detection, identification and seizure of assets belonging to the convicted person in order to collect fines, trial costs and confiscated goods as outlined in the verdict.

- Investigation done by PP (District Office) or the COSC.

- Intrusive measures

- Special investigative techniques
Questions?
COSC
Rue aux Laines, 66 bte 2
8th floor
1000 Brussels
BELGIUM

Tel: + 32 2 557.78.81
Fax: +32 2 557.78.80 OR +32 2 557.78.79
Email: ocsc@just.fgov.be