22 November 2013

English only

Conference of the States Parties to the United Nations Convention against Corruption
Fifth session
Panama, 25-29 November 2013

Declaration on the occasion of the fifth session of the Conference of the States Parties to the United Nations Convention against Corruption, Panama City, 25-29 November 2013

Conference paper submitted by Belgium

V.13-88010 (E)

Kingdom of Belgium

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I. General remarks

Belgium signed the United Nations Convention Against Corruption on 10 December 2003 and deposited an instrument of ratification on 25 September 2008.

Corruption is a **serious, organized form of crime** which, with the aim of concealing the criminal origin of funds, generates flows of money that are often moved to and from several different states. It is a transnational form of crime that therefore necessitates long, complex investigations.

Corruption jeopardises the economic, social and political development of States and must be combated as a priority, as firmly supported by the G8 and the G20.

In this context, the recovery of assets as referred to in chapter V of the Convention, if efficiently done, is a **necessary**, but not sufficient, **means** of combating corruption.

The confiscation of assets obtained through corruption and their effective return has a **deterrent effect** on corruption. Indeed, by cooperating in order to return illicit assets to the States from which they were stolen, the international community sends a strong signal that "crime no longer pays" and that high-ranking officials who have stolen assets, often over the course of many years, will no longer find a "safe haven" where they can deposit, with total impunity, these illicit funds.

Within the Open-Ended Intergovernmental Working Group on Asset Recovery, Belgium has addressed two communications to the United Nations in Vienna with a view to having these documents included in the working documents of the WGAR:

- "*La standardisation des procédures de recouvrement des avoirs criminels issus de la corruption des anciensdictateurs*" [The standardisation of procedures for the recovery of criminal assets obtained through corruption of former dictators] — communication dated 29.08.2102: CAC/cosp/WG.2/2012/CRP.3
- "*La standardisation des* good practices *— partage de l'expérience belge*" [The standardisation of good practice-sharing Belgian experience] — communication dated 30.08.2013: CAS/cosp/WG.2/2013/CRP.2

The political upheavals that have shaken North Africa and the Middle East since 2011 have shown that recovery of assets resulting from this new form of crime, known as "kleptocracy", is highly topical, necessitating **a proactive approach** to the phenomenon, **real political will** and an **enhancement of international cooperation** in order to ensure the effective return of the stolen funds.

Our delegation wishes to communicate its experience in the area to the Conference of the States Parties by sharing the initiatives it has taken, in particular in relation to the recovery of stolen assets of the former Tunisian president and to propose, in light of the good practices identified, an approach based on the **development of**

guidelines or a "road map" for the effective implementation of the Convention with the objective of giving operational effect to its provisions in order to complete the final process of returning the proceeds of corruption.

Our country's approach, shared by other States Parties and specifically SWITZERLAND, was outlined in point g of the conclusions and recommendations of the seventh meeting of the WGAR: "*The Conference may wish to recommend that a framework for good practices procedures (such a step-by-step guide) for asset recovery be developed, with a view to enhancing internationally coherent approaches to asset recovery cases and based on the lessons learned from past cases*".

The objective is not to impose a restrictive procedure on the Requesting State Party but rather to provide it with proven, effective secure tools and good practices, at each stage of the asset recovery process and in accordance with its clearly identified specific needs.

These guidelines firstly satisfy the demand of Requesting and Requested States Parties and the need to learn lessons from past situations. If, tomorrow, a new case of "kleptocracy" arises, it must be possible to avoid making the same mistakes, to avoid having to find solutions for the same problems and cease groping in the dark. Identifying good practices and efficient tools, and systematising them in a practical road map, avoids having to "reinvent the wheel" every time and, above all else, saves time.

However, in such asset tracing investigations, time is of the essence. Action needs to be taken quickly to identify, locate and freeze the stolen assets early in the investigation because as time passes, the criminals will have increasing access to the resources needed to further camouflage and conceal, and transfer ownership of the stolen assets. However, there is no equality of arms: a PEP (politically exposed person) who has stolen funds over many years, with the complicity of intermediaries specialising in fictitious financial structures and who has grown up in a corrupt environment, is one step ahead of the victim State. The victim State is forced to deal with a destabilized political situation which greatly complicates any tracing of the stolen assets and the gathering of evidence of corruption.

These guidelines also satisfy the need for enhanced international cooperation and coordination between the different actors involved. What is needed, for the proper conduct of these investigations and to find the hidden assets, is a clearly defined **strategy** that evolves according to the results of the investigations in the Requesting and Requested States Parties.

Finally, these guidelines satisfy the need to reduce the length of asset recovery investigations with a view to securing complete return of the assets as quickly as possible, without compromising proper procedure and the legality of any evidence collected.

II. The United Nations Convention Against Corruption: guiding framework

The international response to requests for the return of assets obtained through corruption must be guided by the provisions laid down in the United Nations Convention.

Two articles should be highlighted:

- Chapter V: Article 51: “The return of assets pursuant to this chapter is a fundamental principle of this Convention and the States Parties shall afford one another the **widest measure** of cooperation and assistance **in this regard**.”

- Chapter VI, article 62, 1: “States Parties shall take measures conducive to the **optimal implementation** of this Convention to the extent possible, through **international cooperation**, taking into account the negative effects of corruption on society in general, in particular on sustainable development.”

Concrete implementation of the Convention must be governed by three principles:

(i) The principle of ethics: concerns the right to **full** return subject to the costs of the investigation borne by the Requested State Party.

(ii) The principle of trust: concerns **continuous, frank and direct** communication **in a climate of trust** between the Requesting States Parties and the Requested States Parties.

(iii) The principle of responsibility: concerns respect by the signatory States Parties of the obligations they undertook by ratifying the Convention given effect through genuine political will to return the stolen assets to the States from which they were stolen.

III. A draft guide to asset recovery

If one recalls the events that led to the first revolutions of the Arab Spring, it can be seen that initiatives were taken by certain States or institutions (including the decrees of the Swiss Confederation freezing assets and the regulations of the European Union) but they were unconnected, uncoordinated and, especially, unsynchronised which no doubt partly explains the gulf between the amounts returned and the amounts, advanced by the Requesting States Parties, presumed to have been stolen. It should be remembered that Belgium was the second country to launch, on its own initiative, before any formal request for mutual legal assistance, an investigation into money-laundering with a view to seizing the alleged corrupt assets identified belonging to the clan of the former president.

The forums and workshops organized to support the Arab countries in transition enabled the main requirements encountered during the asset recovery process to be identified. We will mention a few of them here:

- A clear investigation **strategy**.

- Centralizing **exchanges** — formal or informal — **of information** at the different stages of the assets recovery process via secure, legal channels.

- **Coordination** of the role of the different actors or tools involved in the asset recovery investigations.

- An **acute need for legal** (drafting of MLAs) or technical **assistance** (sending of financial investigators specialising in such operating methods as: rigged public procurement contracts, or financial structures using overlapping shell companies).

A draft guide necessitates first identifying good practices at each stage of the asset recovery process and the different actors that can put them into effect.

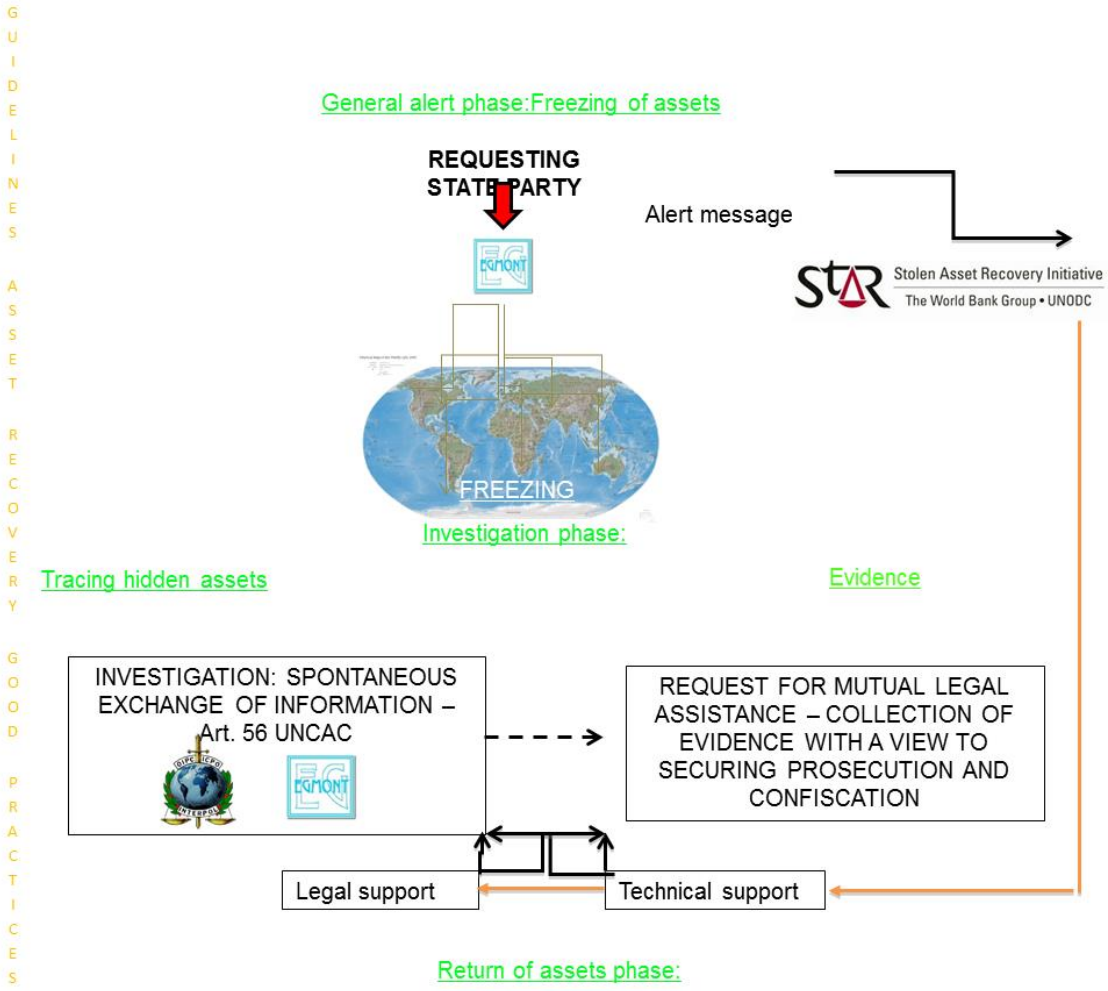
This approach then requires the establishment of a **reference framework** which enables practitioners, using concrete examples and based on past experiences, to jointly develop guidelines that can serve as a "road map" for States dealing with an asset recovery investigation. These guidelines must also be **adaptable** and flexible, insofar as it must be possible to update them and incorporate good practices that have emerged since the guidelines were first developed.

In this context, Belgium supports the reference framework proposed by SWITZERLAND as part of the LAUSANNE VIII forum on "*Best practices for Efficient Asset Recovery*".

Our delegation wishes to highlight a number of possibilities that we feel are relevant for the development of such an approach.

Firstly, we think it is necessary to distinguish between THREE phases in the asset recovery process. There are precise objectives and requirements for each of these phases with which it is useful to associate the best practices.

The following diagram illustrates what we are talking about:



A. The general alert phase or the "emergency phase": this phase corresponds to the initial stages of the asset recovery investigation. It is essential for:

- Alerting the international community in the most uniform and synchronized manner possible.
- Identifying and taking, BEFORE any formal request for mutual legal assistance, **immediate protective measures** to freeze assets and preserve evidence which will enable more sophisticated forms of concealment of alleged criminal stolen assets to be prevented. During this phase, which, to recall, is PROTECTIVE in nature and does not involve any transfer of property — which is important in terms of the standard of proof required ("prima facie" evidence is sufficient) — the objective is to freeze assets in the suspect PEPs' own names (bank accounts, moveable and immoveable property, etc.).
- The most detailed, accurate **mapping** of individuals concerned by the recovery investigation and whose assets have to be frozen, which enables difficulties associated with, for example, transliteration of names or procedural issues relating to the lifting of immunity, to be taken into account from the start of the investigation. At the start of the investigation, the mapping will only list a few individuals but subsequent evidence gathered by the investigation will enable the list to be expanded and for it to be communicated, at the appropriate time, to the Requested States Parties, which will be able to advance their investigations.

It is useful at this alert stage to **centralize** the relevant information required to freeze the assets, to **circulate** the requests or orders for the freezing of assets in a synchronized and centralized fashion internationally and to **coordinate** any initiatives that will have been put in place.

It would be worth adopting several initiatives and recognizing them as good practices:

- Circulation of the general freezing alert message via the Financial Intelligence Units (EGMONT Group). This enables the FIUs which have operational jurisdiction to directly freeze, without any request for mutual legal assistance from the Requesting State Party, the alleged corrupt assets located in its territory, solely on the basis of the circulated message.
- Use and activation of the "*Global Focal Point Initiative*" network and the "*24-hour initial action check-list for asset recovery investigations*".
- Immediate implementation of an operational taskforce to support the Requesting State Party which should include a representative of all actors involved in the asset recovery process in order to determine the requirements of the Requesting State Party (technical and legal assistance, sending of experts, etc.) and to decide on a joint investigative strategy.

B. The investigation phase to trace hidden assets obtained through "kleptocracy" and the gathering of evidence. This is the most critical phase: asset recovery investigations are long (need to carry out investigations in numerous countries in order to trace funds) and complex. It is essential for:

- Locating, by means of **specialized asset tracing investigations**, all the assets that were stolen and hidden over many years via sophisticated concealment mechanisms, e.g. shell companies, use of front companies, middlemen structures such as law firms, notaries, accounting professionals, and determine who is the real economic beneficiary behind such structures. It should be emphasized that this investigation phase can only achieve concrete results if there is quasi-real-time **spontaneous sharing of information** between all of the Requested States Parties alongside the MLA procedures.

  (e.g. Belgium discovers that the suspect PEP is the real economic beneficiary behind the shell company X and that the shell company is making significant transfers of illegal funds, or is purchasing luxury property assets, to countries B1 – B2 – B3. If countries B1 to B3 are not made aware of this information, which they did not perhaps discover themselves, they will never be able to conduct investigations into these criminal assets).

- Drafting **formal requests for mutual legal assistance** which will enable the Requesting State Party to seek, through this mechanism, the legal evidence necessary to secure valid prosecutions, thereby ensuring confiscation of the assets seized.

It is useful, at this stage of the investigation, to **share information** without prior request, alongside, but in support of, the MLA, via both formal and informal (EGMONT, INTERPOL, GLOBAL FOCAL POINT, CARINE, EUROJUST, etc.) information exchange mechanisms, with a view to **enhancing international cooperation** in a concrete manner and effectively **coordinating** the investigations. It is also necessary to provide to the Requesting State Party, according to its needs, **specific support** of a legal (assistance with drafting requests for mutual legal assistance) and technical nature (sending investigators specialized in a specific criminal area or magistrates who specialize in investigations of corruption).

It would be worth adopting several initiatives and recognizing them as good practices: spontaneous sharing of information via the Egmont Group, specific support via the StAR initiative, appointment of specialized liaison magistrates in the Requested States Parties in direct communication with the active recovery bodies of the Requesting State Party, use of the MLA Writer Tool developed by the UNODC and available via the TRACK portal, etc.

Our delegation wishes to emphasize the need, at the asset recovery investigation stage, to use a **secure, "police-to-police" spontaneous information exchange platform**. This suggestion is included in the recommendations of the 7th meeting of the WGAR: "*The Conference may wish to recommend the collection and systematization of good practices and tools in cooperation for asset recovery including the use and expansion of secure information-sharing tools with a view to enhancing early and spontaneous information exchange*."

It is also rooted in Article 56 of the Convention, which provides: "*Without prejudice to its domestic law, each State Party shall endeavour to take measures to permit it to*

forward, without prejudice to its own investigations, prosecutions or judicial proceedings, information on proceeds of offences established in accordance with this Convention to another State Party without prior request, when it considers that the disclosure of such information might assist the receiving State Party in initiating or carrying out investigations, prosecutions or judicial proceedings or might lead to a request by that State Party under this chapter of the Convention."

Why, and in what way, is a "secure, 'police-to-police' information exchange platform" essential for the success of asset recovery investigations and for the effective return of the corrupt assets to the state from which they were stolen?

1. **It circulates and shares** relevant information uncovered by the investigations in all Requested States Parties concerned by the "kleptocracy" investigation. We have already highlighted the difficulty with tracing and identifying assets hidden using transnational concealment mechanisms. If information is only shared between the Requesting State Party and each of the Requested States Parties, the benefit of sharing information uncovered by the investigations between the Requested States Parties themselves is lost (identifying the economic beneficiary behind a particular financial structure; transfers of capital to such and such a country; kickbacks linked to corruption in a particular rigged public procurement contract, etc.). Failure to share this information will, therefore, prevent requests being made to the States concerned and progress to be made in the investigation.

2. **It reduces the length of investigations**: experience from international cooperation shows that the traditional method of submitting requests for mutual legal assistance in order to obtain corroborating evidence, *while essential and unavoidable to ensure the legality of procedures and evidence*, is extremely onerous due to its format and does not satisfy the requirement for a rapid exchange of information necessary for the freezing or seizure of assets. Indeed, without a system for the **circulation** and sharing of information, the Requesting State Party will only be able to use the new information obtained when the request for mutual legal assistance is executed and will then have to submit new requests for mutual legal assistance to the requested countries concerned and so on. "Live" sharing of information enables the Requesting State Party and the Requested States Parties to be directly notified of all information uncovered within all the States via a single operational platform for the sharing of information.

An official, secure, legal channel for the spontaneous exchange of police information which satisfies the requirements of data protection and privacy should, therefore, also be seen as good practice, alongside requests for mutual legal assistance.

This initiative was proposed by Belgium in the Tunisian assets recovery case. An information sharing platform called "*Project on Platform for Operational Information Sharing in Asset Tracing investigation related to Tunisian ex-President*" was put in place, under the authority of the General Secretariat of INTERPOL, in Lyons.

The concept involves a secure, dedicated (relating to the current asset recovery investigation) and temporary (the duration of the investigation) database in which any information uncovered is transmitted by each Requested State Party via its

Global Focal Point appointed for this purpose, by the NCB (National Central Bureau). The manager ad hoc INTERPOL Platform is responsible for entering and processing information in the database, which will only be available for a limited amount of time (90 days). All information added to the database in this way will therefore be accessible to the ***Global Focal Point*** in the Requested States Parties and the Requesting State Party, which will enable the investigations to be progressed upon quickly and efficiently.

Two observations:

- This mechanism for sharing information between the "Approved Global Focal Points for Police" of the Requesting and Requested States Parties is independent of, but complementary to, the mutual legal assistance system. Indeed, such "police-to-police" information is official information that can, under judicial oversight, be used in legal proceedings. This is the **advantage** of the tool: the information shared can be legally **used in proceedings**, thereby providing information for the Requesting State Party's requests for mutual legal assistance and enabling evidence to be obtained to secure prosecutions and confiscations.
- The aim of this dedicated information sharing tool (SECOM — Secure Communications for Asset Recovery) is to be incorporated into the StAR-INTERPOL ***Global Focal Point on Asset Recovery*** initiative, which already includes more than 98 countries.

C. The phase involving the effective return of the assets to the State from which they were stolen. The Convention lays down the **principle of complete return** of the stolen assets to the State from which they were stolen (principle of ethics) subject to payment of any legal costs incurred (Art. 57.4 of the UNCAC). The assets must be returned within a reasonable period of time (principle of responsibility).

It is useful at this stage to **strengthen** the mechanisms for mutual recognition of confiscation orders, to **promote** the development of confiscations without criminal conviction and to **encourage** the conclusion of bilateral agreements for the return of assets (Art. 57.5 of the UNCAC).

IV. Conclusions

Belgium recommends and is calling for effective implementation of the United Nations Convention Against Corruption, and Chapter V in particular.

For the reasons outlined above, in addition to the initiatives and recommendations of other States Parties, Belgium is particularly supportive of the need to develop "guidelines: best practices for an efficient Asset Recovery" and is pleased with the initiative taken by Switzerland in this respect as part of the Lausanne process. It also recommends encouraging and promoting the need for spontaneous sharing of information via the establishment of a secure, legal "police-to-police" information sharing platform.