

➤ **Best practices and guidelines to communicate to another Member State certain information concerning the proceeds of offences as established conform to the UNCAC – the spontaneous exchange of information**

Law of 18 March 2014 concerning the management of police information.

Law of 15 May 2014 concerning the Act on international mutual legal assistance in criminal matters.

Law of 5 August 1992 concerning Police Functions.

Royal Decree of 30 October 2015 concerning the communication of personal data and information by Belgian police services to Interpol Member States and to Interpol.

**A - International exchange of police information (information exchange via police channels)**

A 2016 circular letter by the College of Public Prosecutors sets forth the rules of international police cooperation in judicial processes.

This circular letter deals exclusively with the transmission of police information for judicial purposes to foreign police services, to international organisations for judicial and police cooperation, and to international law enforcement agencies.

**Within the European Union and Schengen-associated countries.**

Within this context, the police services are able to provide in an **autonomous and independent manner** all data that are directly available and accessible. Hence, prior authorisation from a legal authority is not required.

Examples of data directly available or accessible : information registered with the General Data Bank ( GDB) ; the databanks that provide basic information (FEEDIS and ISLP) and data banks containing special data of the Integrated Police; the data banks can directly be consulted by the police in the same way they can consult the Motor Vehicle Registration Branch; the Central Firearms Registry; the Registry of Detentions; the National Registry, and to obtain information pertaining to driving licences.

Nevertheless, prior legal authorisation is required when the data can only be obtained within the context of a Belgian procedure through a magistrate's authorisation.

In fact, the police services may not forward the data if their communication:

- may compromise essential interests of the Belgian State with respect to matters of national security
- may obstruct the smooth process of the investigation
- may compromise the security of individuals or the source of the information.
- if they are disproportionate and meaningless to achieve the final outcome for which they were requested.

The forwarded data cannot be submitted in evidence except in cases where the competent Belgian judiciary authority has authorised such usage.

Consequently, the information obtained by the foreign police services may be useful in providing direction to the investigation or to exclude a certain lead, but it cannot be admitted in evidence. In order to nonetheless use such information as evidence at a later stage, legal authorisation is required (enforcement of a traditional MLA; explicit authorisation from a magistrate via the police communication channel)

There do exist, however, international instruments which BE has adopted that provide for a wider exchange of information and police data.

### **Spontaneous information exchange:**

The competent Belgian police services can, **without having been requested to do so**, likewise communicate to a foreign police service such factual data as they believe may be helpful in tracking or preventing offences as described in article 5&2 of the law of 19 December 2003 concerning the European Arrest Warrant or be useful in an investigation of them.

Hence, the Belgian police services can, within the constraints of the national legislative provisions obtaining, forward on their own initiative data and information for the 32 categories of offences for which the principle of double criminality is not required within the context of the enforcement of the EAW.

## **Outside of the EU and Schengen-associated countries (article 44/11/13 LFP)**

Within this context, only the data that are included in a limited list may be sent by the police services in an **autonomous and independent manner**.

These data can only be used to assist in orienting the investigation and to exclude certain leads, but they cannot be considered as evidence. To still use them in evidence at a later stage, a judicial authorisation is required. This can be obtained by a request for traditional mutual legal assistance, to which the competent magistrate may also explicitly add a formal statement when sending his authorisation via the police communication channel, specifying that he is authorising the use of these data for submission in evidence.

The competent judicial authorities may, with regard to specific investigations, at any and all times impose restrictive conditions.

Information that still needs to be obtained by procedural acts and requires the active participation of the judiciary (Public Prosecution Service or examining judge) does not fall within the autonomous and independent distribution of police data.

In cases of cross-border information exchange to be used in judicial processes, the police will invariably take recourse to codes of practice corresponding to the communications channel used and in this regard specify, conform to Belgian regulations, whether or not the communicated information may be considered as evidence.

With regard to all data other than those included on the limited list, the **prior consent** of the concerned magistrate is required before their being transmitted abroad.

The consulted magistrate shall, or shall not, authorise the Belgian police services to provide the information, either in its entirety or partially and/or subject to certain conditions.

## **Choice of the channel for international police information exchange:**

The decision as to what channel is to be used depends on factors related to the transmission speed and the technical means and geographic considerations as well as on the possibilities of specific thematic applications.

The following general method needs to be adhered to:

- Within a cross-border region, the operational contact point or the Police and Customs Cooperation Centre;
- With the European Union MS: the Europol channel.
- With non-EU Member States: Interpol – a Royal Decree has been adopted in order to manage information communications by the Belgian Police Services at Interpol, to its members and its Information System, through the national contact point. Communications will be conducted via secure channels and with guarantee of their traceability. Cf. the Royal Decree of 30 October 2015 concerning the conditions that apply in the case of personal data and information sent from the Belgian police services to Interpol Member States and to Interpol (*Belgian Official Journal of 20 November 2015*)
- In certain well-defined instances: the liaison officers.

### **B- Information exchange throughout the OCSC Office of the Civil Service Commissioners (Central Body of Seizure and Confiscation)**

A mission that is assuming ever greater importance within the OCSC is to exchange information with its foreign counterparts.

To this end, the OCSC has been designated by the Belgian government to act as the sole National Office (Asset Recovery Office”) as referred to in Decision EU 2007/845/JAI of 6 December 2007.

It maintains ongoing collaboration with similar institutions (Asset Recovery Offices and Asset Management Offices) and serves as the contact point with CARIN (informal international inter-agency network of expert practitioners dealing with criminal asset recovery).

On the European level, the relationships are more structured through the use of SIENA (secure messaging that enables States to communicate with each other and/or with Europol).

All sorts of criminal information can be exchanged within Siena, whether it pertains to a judicial procedure or to information.

These two systems are used by the OCSC to reply to foreign inquiries or to forward queries when asked by the Belgian judiciary authorities. The most frequent instance is the case when the request aims at establishing whether or not a targeted subject possesses seizable goods located abroad, which enables the dispatch of an international request (country outside of the EU) or, case pertaining, a freeze or confiscation certificate (the majority of EU states).

### **C- Charges for the purpose of prosecution**

The charge laid for the purpose of prosecution is a form of mutual judicial assistance whereby a State on whose territory an offence has been committed, or whose judiciary authorities are aware that an offence has been committed abroad, communicates to another Member State all of the available information and/or procedural documents it has gathered about this offence and its presumed offenders with the aim of launching prosecution proceedings in the latter country in question.

The forwarding of accusations to a foreign authority for the purpose of prosecution is possible outside the existence of a treaty and is independent from a possible extradition procedure at a later stage.

➤ **The plea agreements and sundry other established procedures + the legal framework that governs the recourse to such agreements and other mechanisms to address matters of international corruption**

Since the laws of 14 April 2011 and 11 July 2011, the possibility (as provided for in article 216bis of the Code of Criminal Procedure) to have recourse to a plea agreement has been broadened.

Hence, the Public Prosecutor's Office will be able to propose a plea agreement when it judges that the offence does not appear punishable by a prison term of over two years or a heavier penalty. In actual terms, this condition means that a plea agreement has now become possible for all offences and crimes the penalty of which does not exceed 15 to 20 years of imprisonment, given that such offences, in case of decriminalisation, are punishable by at least one year of imprisonment.

The crimes punishable by life imprisonment or by 20 to 30 years imprisonment and that, even when decriminalised, remain punishable by a minimum of three years imprisonment, cannot be considered for a plea agreement.

A plea agreement is likewise expressly excluded for crimes that have caused severe injury to a person's physical health and well-being.

When a plea agreement has been arrived at, further criminal proceedings are discontinued on the payment of a sum of money.

It is to be noted that this arrangement is only possible **if the damage inflicted upon another person has been totally remedied in advance** (article 216bis §4 of the Code of Criminal Procedure).

The Constitutional Court has partially censored this measure in a decision of 2 June 2016.

Reparatory legislation is currently being examined by the government. In this new text, the role of the court that will rule on the merits of the case has been expanded.

For what concerns the criminal dossiers on serious facts for which court proceedings have been launched, a plea agreement will only be possible if a judge rules such an agreement to be proportional to the seriousness of the facts, which was not the case previously. The judge shall rule prior to

the payment of the agreed settlement and after the indemnity has been paid to the victims, which shall include the evaded taxes and dues.

- **Belgian frameworks and legal procedures concerning asset recovery as well as the distinction drawn amongst the various forms of pecuniary penalties.**

## **I. The pecuniary penalties in Belgium**

**The fine :** is a penalty consisting of the payment of a sum of money to the State.

The criminal court determines the size of this sum of money according to the threshold limits established by the law. This sum will further be multiplied by additional decimals (currently 8).

The fine is imposed as a main or ancillary penalty, depending on the severity of the offence.

**The confiscation :** is a penalty consisting of the removal of the confiscated goods from the offender's assets.

The confiscation is an ancillary penalty, obligatory or optional depending on the case.

The confiscation order applies:

- to items that constitute the object of the offence
- to items resulting from the offence
- to the gains derived from the offence
- to the gains that have been substituted for the offence

The confiscation is allocated either to the State or to civil parties.

**The legal costs:** the accused who has been found guilty of the charges brought against him must pay the procedural costs. It is left to the sole discretion of the trial judge to determine the amount of the legal costs.

These comprise the costs incurred by any criminal procedure, notably the expert's fees and expenses, telephone charges, costs related to attachment, summons, locksmith services, etc. ...

## **II Belgian procedures regarding the recovery of pecuniary penalties.**

The Public Prosecutor's Office is charged with the enforcement of criminal convictions (art. 165 and 197 of the C.I.C.). However, it delegates this task to the FPS – Finances for what concerns the pecuniary penalties.

*The measures taken for the recovery of pecuniary penalties shall be conducted in the name of the Public Prosecutor's Office by the competent official at the Federal Public Service - Finances, following the directions of the Director of the Central Body of Seizure and Confiscation (art. 197 bis of the C.I.C.).*

This official is authorised to proceed to the enforced recovery of pecuniary penalties (including all civil attachments).

The official of the FPS – Finances informs the Public Prosecutor's Office of the effective execution, either total or partial, or non-execution of the pecuniary penalty.

In case of a total or partial non-execution, the Public Prosecutor's Office may initiate a criminal investigation procedure (art. 464 of the C.I.C.) and subsequently proceed, via the police services, to any seizure that serves the recovery of the pecuniary penalties.

When the conviction pertains to goods located abroad, the Public Prosecutor's Office may proceed to take all steps necessary to ensure the execution of such foreign attachments (traditional international mutual legal assistance, confiscation certificate ...). It may likewise seek assistance from the OCSC or invite the latter to carry out those actions in its name (art. 197 bis §3 of the C.I.C.).