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Tools and Best Practices for International Asset Recovery Cooperation Handbook

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Foreword

Effective international judicial cooperation is notoriously difficult to achieve. Language barriers, variations in national legislation and procedures combined with different cultural approaches present law enforcement officers, prosecutors, lawyers and judges with unusual challenges when engaging with their foreign partners. When international cooperation is required for the purpose of asset recovery, this challenge is often more difficult. Assets need to be located quickly, before they are moved. In order to achieve this, prosecutors and judges require a firm understanding of their own domestic legislation in terms of the technical and legal aspects of freezing, seizure and confiscation, together with a sound understanding of how this may differ in other jurisdictions.

In 2017, Advice on Individual Rights in Europe (the AIRE Centre) and the Regional Anti-corruption Initiative (RAI) joined hands to support Southeast Europe (SEE) region jurisdictions in improving their asset recovery capacities. At the beginning of 2018, following in depth analysis, extensive consultation, and numerous deliberations conducted by a group of experts from the SEE region and beyond, a study titled *Asset Recovery in the Western Balkans: A Comparative Analysis of Legislation and Practice* was published.

This publication concludes that available statistics indicate a low level of international cooperation in the field of asset recovery. The study suggests a lack of knowledge of the available asset recovery international cooperation tools and instruments is a contributing factor for this. Consequently, a key recommendation was to strengthen the capacity of law enforcement agencies, prosecution services and judicial bodies to apply international cooperation instruments in asset recovery cases, seeking the seizure and confiscation of assets located outside their own jurisdictions.

This Handbook has been produced in response to this recommendation. It complements ongoing capacity building activities in the SEE region and will be used at a number of training events specifically designed to support authorities engaged in international asset recovery. The Handbook is complemented by a Handbook on Effective Asset Recovery for SEE jurisdictions. Both publications have been developed simultaneously, with the same concept and overall objective in mind.

"The AIRE Centre and RAI wish to thank the UK Government for its commitment, substantive financial support and guidance; the Konrad Adenauer Foundation for joining us on the journey and supporting the participation of additional beneficiaries; and the Organisation for Security and Cooperation (OSCE) for supporting the initial undertaking that led to substantive action in the SEE region.

1. Introduction

This handbook aims to assist asset recovery practitioners to conduct effective international asset recovery by providing best practice guidance for international cooperation. It contains relevant international and European asset recovery legislation, standards and mechanisms for international cooperation, and will be a practical hands-on tool for investigators, prosecutors, judges and other institutions involved in asset tracing and identification, freezing and seizure, confiscation (including non-conviction based confiscation) and international asset disposal. It will also provide an overview of any existing bilateral and multilateral agreements for asset recovery cooperation in the South East Europe region. It includes both the pre-mutual legal assistance and the mutual legal assistance processes. It does not cover the cross-border management of assets.

Trainers may use the handbook as a support tool during national training sessions and can provide it to course participants. It will also be a resource that judicial training institutes and asset management agencies draw on during their operational work.

2. Asset Recovery Terminology

Practitioners use a variety of words and phrases when working in the field of asset recovery. Often these terms vary from jurisdiction to jurisdiction. This can result in problems understanding what exactly is needed during international requests to trace assets or enforce freezing, seizure and confiscation orders. It is deemed good practice by practitioners, when making an international request (either pre-Mutual Legal Assistance (MLA) or during Mutual Legal Assistance), to describe what is requested. This will allow requested states to look beyond the terminology to the substance of the request, thus avoiding any misunderstanding through the use of different words and phrases.

The following is a list of commonly used asset recovery words and phrases, together with a practitioner explanation of these terms and the definitions from the United Nations Convention Against Corruption (UNCAC) and Council of Europe (CoE) Warsaw Convention, where they exist.

2.1. Asset Recovery

This handbook uses the term 'asset recovery' to describe all phases of the process to deprive criminals of their illegally obtained wealth¹, including asset tracing and identification, freezing and seizure, confiscation and the return and disposal of assets.

2.2. Assets

Assets include property used to commit crime (instrumentalities) and the proceeds from crime. Proceeds are often described as the profit or material benefit from crime. Proceeds can be divided into direct proceeds from crime, also referred to as the object, and the indirect proceeds from crime. Using the example of an armed bank robbery, the instrumentalities would be the gun used to threaten the bank staff and the get-away car, the direct proceeds would be the cash taken from the bank and the indirect proceeds would be the real estate purchased using the cash.

The international and regional instruments describe assets in the following way:

"instrumentalities" means any property used or intended to be used, in any manner, wholly or in part, to commit a criminal offence or criminal offences (CoE Warsaw Convention A. 1(c))

¹ The 2005 United Nations Convention Against Corruption uses the term asset recovery to refer to the reparation of assets stolen through corruption only.

“property” shall mean assets of every kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments evidencing title to or interest in such assets (UNCAC A. 2(d); CoE Warsaw Convention A. 1(b))

“proceeds of crime” shall mean any property derived from or obtained, directly or indirectly, through the commission of an offence (UNCAC A. 2 (e))

"proceeds" means any economic advantage, derived from or obtained, directly or indirectly, from criminal offences. It may consist of any property as defined in this article. (CoE Warsaw Convention A. 1 (a))

2.3. Asset Tracing and Identification

The tracing and identification of assets involves the process of criminal and financial investigation to find or locate assets, either within the jurisdiction that is carrying out the criminal investigation, or in another jurisdiction which would involve an international request to trace assets. Asset identification aims at revealing the owner or controller of the asset.

2.4. Freezing, Seizure and Restraint

After tracing and identifying the asset, and once the case moves to the overt phase of the investigation, the asset should be subject to freezing, seizure or restraint, in order to prevent it from moving in the period prior to any final judgment, pending confiscation. If assets are not frozen or seized, the suspected perpetrator of the offence may move the asset in an attempt to conceal or dispose of it. Freezing and seizure is applied by way of an order from the court. When an asset is subject to a freezing order, it remains where it is, for example a bank account would be frozen. When an asset is subject to a seizure order it is taken into the possession of the state, for example a car could be seized. Freezing and Seizure is also described as “sequestration”.

The term restraint is used to describe temporarily prohibiting the transfer, conversion, disposition or movement of property owned by a particular person, also by way of an order from a court. In this case, the asset usually remains with the owner. A restraint order is placed on an individual not on an asset, although property will be described as being “restrained” or subject to a restraining order.

“Freezing” or “seizure” shall mean temporarily prohibiting the transfer, conversion, disposition or movement of property or temporarily assuming custody or control of property on the basis of an order issued by a court or other competent authority (UNAC A. 2 (f); CoE Warsaw Convention A. 1(g)).

2.5. Confiscation and Forfeiture

Confiscation is the process of permanently depriving the perpetrator of the proceeds, after the final judgment. Forfeiture is commonly used to describe the process of permanently depriving the perpetrator of the instrumentalities or any illegal assets such as drugs or firearms, either prior to or after the final judgment. However, the words confiscation and forfeiture are used interchangeably in some jurisdictions. The word forfeiture may be used instead of confiscation and *vice-versa*.

"confiscation", which includes forfeiture where applicable, shall mean the permanent deprivation of property by order of a court or other competent authority (UNCAC A. 2 (g))

"confiscation" means a penalty or a measure, ordered by a court following proceedings in relation to a criminal offence or criminal offences resulting in the final deprivation of property.

2.6. Non-Conviction Based Confiscation

Non-conviction based confiscation is the process of confiscating assets without convicting any particular person of a criminal offence in relation to those assets. It can take place in both criminal and civil proceedings. The following are four examples of non-conviction based confiscation:

a) Confiscation of criminal proceeds and instrumentalities during a criminal prosecution, in circumstances whereby the case is proven but a conviction is not possible due to either the death, absence or mental illness of the perpetrator, or for other reasons preventing a final conviction.

b) Extended confiscation:

Extended confiscation is where assets are also confiscated that are not subject of the offence for which the criminal is before the court. In this case, confiscation is 'extended' to assets that are not the instrumentalities, direct or indirect proceeds of the crime being prosecuted. Extended confiscation applies not only to the benefit of the particular offence for which a perpetrator is convicted but is extended to include the entire benefit received from criminal activity in general. Authorities are not required to establish a connection between suspected criminal assets and the specific criminal conduct for which the person is charged with. Confiscation can instead be based on circumstantial evidence or inference. An imbalance between a person's assets and their lawful sources of income and/or general evidence of engagement in profitable criminal conduct could be part of the justification to 'extend' the confiscation to other assets (e.g. a pattern of convictions, evidence in participation in a criminal organisation). As many of these terms are very much based on perception, countries often try to fit them around their own legislation or practices. Therefore, in

addition to the above, certain countries also class taxing the proceeds of crime as a form of extended confiscation.

c) Civil forfeiture:

Civil forfeiture is an *in rem* action requiring proof that the asset is an instrumentality of crime or criminal proceeds but does not require the establishment of an individual's guilt beyond reasonable doubt.

d) Unexplained wealth:

Unexplained wealth is where a person owns or enjoys a level of wealth that they could not have legally earned or that cannot be explained by any other means, such as inheritance, a lottery win or a gift.

2.7. Object Based Confiscation

Object based confiscation is the confiscation of the exact, actual property found to be the proceeds or instrumentalities of crime.

2.8. 'Value Based' or 'Value Substitution' Confiscation

Value based confiscation is where a convicted person is ordered to pay an amount of money equivalent to the value of their criminal benefit. The court or competent authority calculates the 'benefit' to the convicted offender for a particular offence. The confiscation order is made in the sum of that value. In this case the court does not concern itself with the actual instrumentalities (unless they are illegal assets such as a firearm or drugs) and proceeds but focuses on a sum of money equivalent to the criminal benefit. The confiscation order can be satisfied or 'paid' by the perpetrator using any means available to them, including legal assets.

Often, the actual instrumentalities or proceeds are no longer in the possession of the convicted perpetrator when the time comes to make order the confiscation order. Value substitution allows the determination of the value of proceeds and/or instrumentalities of crime and applies an equivalent value to be confiscated in 'substitution' for the actual instrumentalities or proceeds.

2.9. Realising assets

Assets are realised when they are converted from assets, goods or services into cash through a sale.

2.10. Asset disposal

Asset disposal is the process of selling or destroying an asset.

2.11. Asset Sharing Agreement

An asset sharing agreement is a document laying down the agreement between two or many states on the division of assets, in cases whereby assets relating to the investigating or prosecuting state are restrained and managed by another state. For example, states may decide to split the criminal proceeds 50/50 between two states involved.

3. International, Regional and European Legislation and Standards

Chapter three deals with the international, European and regional standards that either provide a basis for international asset recovery cooperation or promote effective frameworks for international asset recovery cooperation.

3.1. International Legislation and Standards

The following United Nations Conventions can be used as a basis for international asset recovery cooperation between jurisdictions that are signatories to the relevant Conventions. These Conventions provide international cooperation provisions for both the investigation process to trace and identify assets and also for freezing, seizure, confiscation and disposal of assets.

3.1.1. The 2000 United Nations Convention Against Transnational Organized Crime (UNTOC)

The UNTOC is the main UN Convention aimed at the fight against organised crime. It covers the offences of participation in an organised crime group, money laundering, corruption and obstructing justice and other serious crimes punishable by a maximum deprivation of liberty of at least four years or a more serious penalty. The offence must be transnational in nature and involve an organised criminal group, both aspects of which are defined in the legislation².

Article 13 on International cooperation for purposes of confiscation provides the legal basis for requests between jurisdictions for both financial investigation (to trace and identify assets) and the freezing, seizure and confiscation of proceeds of crime, property and instrumentalities.

Article 14 on disposal of confiscated proceeds of crime or property provides provisions relating to the arrangements between jurisdictions on the disposal and return of assets frozen or seized by one jurisdiction following a request from another jurisdiction. It encourages the conclusion of asset sharing agreements between states for the purpose of victim compensation and returning assets to legitimate owners.

Article 18 (3) g provides for mutual legal assistance to gather evidence relating to the existence of assets by way of identifying or tracing proceeds of crime, property, instrumentalities or other things for evidentiary purposes.

Article 19 on joint investigations provides for jurisdictions to conclude bilateral or multilateral agreements or arrangements whereby, in relation to matters that are the

² Further explanatory material can be found in the UNTOC Legislative Guide: https://www.unodc.org/pdf/crime/legislative_guides/Legislative%20guides_Full%20version.pdf

subject of investigations, prosecutions or judicial proceedings in one or more states, the competent authorities concerned may establish joint investigative bodies. This provides opportunities for the tracing and identification of assets for future confiscation.

3.1.2. The 2005 United Nations Convention Against Corruption

The UNCAC should be used as a legal basis for international asset recovery cooperation relating to offences of corruption, both in the public and private sectors³.

Chapter V of the Convention deals with the return of assets obtained through corruption. 'Asset Recovery' is described here as being "a fundamental principle of this Convention, and States Parties shall afford one another the widest measure of cooperation and assistance in this regard".

Articles 53, 54 and 55 set out requirements for the recognition of confiscation orders between states and the mechanisms through which those confiscation orders are implemented. Notably, article 54 (1) c makes reference to taking measures to allow for confiscation of assets without a criminal conviction in cases in which the offender cannot be prosecuted by reason of death, flight or absence or in other appropriate cases. Article 57 provides for the return and disposal of confiscated assets.

Article 59 states that jurisdictions should consider concluding bilateral or multilateral agreements or arrangements to enhance the effectiveness of international asset recovery cooperation relating to corruption offences.

3.1.3. The Financial Action Task Force 40 Recommendations (2012)

The Financial Action Task Force (FATF) is an inter-governmental policy-making body that aims to set standards and promote the effective implementation of legal, regulatory and operational measures for combatting money laundering, terrorist financing and related financial crimes. These standards also include asset recovery measures. The FATF Recommendations are a recognised international standard for combatting these criminal activities, providing relevant tools to combat the laundering of the proceeds of corruption. Whilst the Western Balkans jurisdictions are not themselves members of FATF, MONEYVAL is an associate member and carries out its country evaluations in the Western Balkans on the basis of the FATF standards.

Recommendation 38 provides guiding standards on international cooperation in the Mutual Legal Assistance phase of international asset recovery cooperation, in relation to freezing,

³ Further explanatory material can be found in the UNCAC Legislative Guide and Technical Guide: https://www.unodc.org/pdf/corruption/CoC_LegislativeGuide.pdf and https://www.unodc.org/documents/corruption/Technical_Guide_UNCAC.pdf

seizure, management, confiscation and asset sharing. States should ensure they have the authority to take “expeditious action” when responding to requests in relation to asset recovery. This includes responding to requests based on non-conviction based confiscation proceedings, where possible within the framework of their own domestic laws.

3.2. Regional Legislation

3.2.1. 1959 Council of Europe European Convention on Mutual Assistance in Criminal Matters (1959 MLA Convention)

The 1959 MLA Convention provides general conditions for mutual legal assistance between Council of Europe Member States. It is the most commonly used method of international cooperation and, for asset recovery, can be used as a basis for financial investigation to trace and identify assets, as well as for requests to freeze, seize and confiscate assets.

3.2.2. 2005 Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (ETS No. 198) (the “Warsaw Convention”)

The Warsaw Convention updates the 1990 Strasbourg Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (ETS 141) in relation to asset recovery. Chapter IV provides comprehensive provisions for all aspects of international asset recovery cooperation, including investigations to trace assets, access to financial data and account monitoring, a legal framework for both requesting states on the information required to make requests and to requested states for the information it should provide and on the provision of spontaneous information. The Warsaw Convention also provides provisions for the enforcement of freezing, seizure and confiscation orders, including orders based on non-conviction based confiscation procedures, asset management and the disposal of assets in international cases.

3.2.3. 1999 Criminal Law Convention on Corruption (ETS No. 173) (the “1999 Strasbourg Convention”)

The Council of Europe Convention on Corruption provides less detailed provisions on international asset recovery. However, Article 30 does, very usefully, provide measures for direct communication between competent authorities in the case of urgency, with MLA requests being sent in parallel via the central authorities. This could be vital when requesting the freezing and seizure of assets that may quickly dissipate.

3.3. European Union legislation

3.3.1 Council Framework Decision 2001/500/JHA on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds of crime.

This provides the offences for which confiscation should apply and introduces value-based confiscation.

3.3.2 Council Framework Decision 2003/577/JHA of 22 July 2003 on the execution in the European Union of orders freezing property or evidence.

Introduces the principle of mutual recognition of freezing and seizure orders.

3.3.3 Council Framework Decision 2005/212/JHA of 24 February 2005 on confiscation of crime-related proceeds, instrumentalities and property.

This provides for confiscation of assets transferred to a third party and extended confiscation.

3.3.4 Council Framework Decision 2006/783/JHA of 6 October 2006 on the application of the principle of mutual recognition to confiscation orders.

Introduces the principle of mutual recognition of confiscation orders.

3.3.5 EU Council Decision 2007/845/JHA concerning cooperation between Asset Recovery Offices of the Member States in the field of asset tracing and identification of proceeds from, or other property related to, crime (The “ARO Council Decision”)

Council Decision 2007/845/JHA obliges Member States to set up or designate national Asset Recovery Offices (“AROs”) as national central contact points which facilitate, through enhanced cooperation, the fastest possible EU-wide tracing of assets derived from crime. The Decision allows the AROs to exchange information and best practices, both upon request and spontaneously, regardless of their status (administrative, law enforcement or judicial authority). It requests AROs to exchange information under the conditions laid down in EU Council Framework Decision 2006/960/JHA (the “Swedish Initiative”) on simplifying the exchange of information and intelligence between law enforcement agencies of the EU in respect of the timeframes within which AROs must respond to requests to trace assets. It covers requests made both on the basis of criminal or, as far as possible under the national law of the Member State concerned, civil proceedings. It provides a legal framework for asset tracing and identification between AROs of the EU, irrespective of the Status of the ARO under national law and whether it has been established within a law enforcement, judicial or administrative structure.

3.3.6 Directive 2014/42/EU of the European Parliament and of the Council of 3 April 2014 on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union.

The 2014 directive serves to simplify the Council Framework Decisions 2001 and 2005. It therefore further develops value based confiscation and extended confiscation provisions. It also introduces the provision for criminal non conviction based confiscation, in cases where the accused has absconded and cannot be prosecuted due to illness.

3.3.7 The 2018 EU Regulation 2018/1805/EU (“2018 Regulation”)

The 2018 EU Regulation 2018/1805/EU was introduced to provide clarity to the EU Council Framework Decision 2003/577/JHA on the Mutual Recognition of Orders Freezing Property and Evidence and the 2006 EU Council Framework Decision 2006/783/JHA on the Mutual Recognition of Confiscation Orders. Like its two forerunners, the 2018 Regulation establishes a system of mutual recognition of freezing and confiscation orders between EU Member States, setting out when freezing and confiscation orders should be recognised and the situations in which EU Member States can refuse recognition. The aim is to encourage the authorities of the requested (executing) state to automatically recognise an order made in a court of the requesting (issuing) state, without the time-consuming process of seeking further orders in the requested state. A template for a freezing and confiscation ‘certificate’ is contained as an annex to the Regulation. Issuing states complete and translate the template which should be sent to the requested state, together with the original order, although the latter does not need to be translated. The regulation also includes provisions for the management and disposal of frozen and confiscated property, the restitution of property to victims and the compensation of victims. Obligations by Member States to affected persons and their available legal remedies are also considered. The Regulation does not apply to freezing and confiscation orders obtained in civil or administrative proceedings and therefore excludes civil non-conviction based confiscation. It applies to orders transmitted on or after 19 December 2020.

3.4 Sanctions and Listings

A number of international bodies and institutions issue lists of legal and natural persons or jurisdictions that are not conforming to the ‘standards’ they set out. These lists or sanctions are often the catalyst to investigations requiring international cooperation to recover assets. The United Nations Security Council issues sanctions in order to “restore peace and security”. The European Union maintains a list of legal and natural persons subject to international sanctions. These sanctions place an obligation on the financial sector, in many cases, to freeze the assets of those legal or natural persons listed. The actions of the financial sector may cause suspicious transaction reports to be filed to national financial intelligence units (FIUs), which in turn may instigate a money laundering investigation. The European Commission manages an EU consolidated list of persons, groups and entities subject to financial sanctions. The database is maintained and kept up-to-date by the EU Commission, where the consolidated lists of financial sanctions consisting of freezing of assets, are published in different formats⁴.

⁴ <https://data.europa.eu/euodp/en/data/dataset/consolidated-list-of-persons-groups-and-entities-subject-to-eu-financial-sanctions>

4. International and Regional Mechanisms for Asset Recovery

Successful international judicial cooperation, in general, is not easy to achieve. In the specific case of asset recovery, variations in domestic legislation, policy, institutions and procedures hamper the efficient exchange of information further. Assets suspected of being located in jurisdictions other than the prosecuting state are always in danger of being moved or hidden or transferred to a third party in an attempt to conceal the true owner. Effective international asset recovery cooperation therefore requires, in particular, swift action in order to successfully apply the previously listed international instruments.

It is certainly fair to say that, in the 1990s, asset recovery was still in its infancy and there was very little international co-operation to trace, identify, seize and confiscate criminal assets abroad. If at all, freezing and confiscation was requested in mutual legal assistance requests, usually at a rather late stage of the investigation when cases were already pending at court. Criminals therefore had plenty of time to hide and dispose of their assets and thus confiscation was seldom successful. As a result of this unsatisfactory situation, a number of 'formal' and 'informal' networks have been established to assist specifically with asset tracing, freezing, seizure and confiscation.

4.1. CARIN and other Asset Recovery Inter-Agency Networks (ARINs) What are ARINs?

Asset recovery inter-agency networks (ARINs) are 'informal' networks of contacts from law enforcement and judicial agencies (prosecutors, magistrates, judges, government lawyers) who are practitioners in all aspects of the asset recovery process. This includes asset tracing, freezing, seizure, management, confiscation and disposal. The contacts facilitate international asset recovery cooperation.

Camden Asset Recovery Interagency Network – CARIN

CARIN is an informal network of law enforcement and judicial practitioners, specialist in the field of asset tracing, freezing, seizure and confiscation. It is an interagency network. Each member state is represented by a law enforcement officer and a judicial expert (prosecutor, investigating judge, etc. depending on the legal system).

The aim of CARIN is to increase the effectiveness of its members' efforts, on a multi-agency basis, to deprive criminals of their illicit profits. It is primarily an operational network, existing to facilitate operational requests based on asset recovery cases.

CARIN contacts support the complete asset recovery process, from the starting point of the confiscation investigation which involves the tracing of assets, to freezing and seizure, management and finally confiscation, including any necessary asset sharing between

jurisdictions. Member States' CARIN representatives are called "national contact points". All of them are English-speaking as the working language of the network is English. CARIN contacts may be contacted directly by phone or email.

CARIN currently has 54 registered member jurisdictions, including 28 EU Member States and nine international organisations. It is also linked to the other seven regional asset recovery inter-agency networks (ARINs) across the globe. All RAI members jurisdictions are Members of CARIN and have CARIN contact points.

CARIN Key Objectives

In seeking to meet its aim CARIN's key objectives are to:

- establish a network of contact points;
- focus on the proceeds of all crimes, within the scope of international obligations;
- establish itself as a centre of expertise on all aspects of tackling the proceeds of crime;
- promote the exchange of information and good practice;
- undertake to make recommendations to bodies such as the European Commission and the Council of the European Union, relating to all aspects of tackling the proceeds of crime;
- act as an advisory group to other appropriate authorities;
- facilitate, where possible, training in all aspects of tackling the proceeds of crime;
- emphasise the importance of cooperation with the private sector in achieving its aim;
- and encourage members to establish national asset recovery offices.

The CARIN-style asset recovery network has proved a popular concept among jurisdictions from other regions. This has resulted in the establishment of seven other regional asset recovery inter-agency networks or ARINs since the establishment of CARIN in 2004. These networks are geographically located as follows:

- 1) **CARIN** is mainly, but not exclusively, covering Europe (The Camden Asset Recovery Inter-Agency Network). If a jurisdiction would like to be part of the ARIN group but there is no network established in its region, it would initially join CARIN.
- 2) **ARIN-AP** (Asset Recovery Inter-Agency Network Asia Pacific)
- 3) **ARIN-CARIB** (Asset Recovery Inter-Agency Network Caribbean)
- 4) **ARIN-EA** (Asset Recovery Inter-Agency Network Eastern Africa)
- 5) **ARIN-SA** (Asset Recovery Inter-Agency Network Southern Africa)
- 6) **ARIN-WA** (Asset Recovery Inter-Agency Network Western Africa)
- 7) **ARIN-WCA** (Asset Recovery Inter-Agency Network West and Central Asia)
- 8) **RRAG** (Red de Recuperación de Activos de GAFILAT – for Latin America)

Further information about the history, structure and functioning of CARIN and the other ARINs, together with a list of their member jurisdictions and how to contact the respective Secretariats, can be found at www.carin-network.org.

Who Can Use CARIN?

These networks are unique insofar as they are made up of contacts from both law enforcement and judicial agencies. CARIN assistance can be requested by law enforcement officers (police/customs/other law enforcement agency), a prosecutor, magistrate or judge, or an official from an Asset Recovery Office (ARO) or Asset Management Office (AMO).

Requests - CARIN jurisdiction to CARIN jurisdiction

Requests from practitioners in a CARIN member jurisdiction for information to another CARIN member jurisdiction must initially be made through the respective CARIN contact, *i.e.* from the requesting CARIN jurisdiction to the requested CARIN jurisdiction. After this initial contact, investigators and prosecutors may directly communicate with the relevant agency in the requested CARIN state if language permits.

Requests – CARIN jurisdiction to Non-CARIN Jurisdiction

Each ARIN is regionally autonomous in terms of how they structure themselves and organise their strategic work. However, for operational purposes they cooperate effectively via the Secretariats of each network. To make a request for information to a jurisdiction from another ARIN, for example from Romania (in CARIN) to Brazil (in RRAG), the investigator or prosecutor should send a request to the Romanian CARIN contact who in turn sends it to the CARIN Secretariat by email. The CARIN Secretariat will forward this email to the Secretariat of the other ARIN, which, in the case of this example is the RRAG Secretariat. The RRAG Secretariat will advise on whether it is possible to provide the information requested and which of the contacts in Brazil is best placed to provide it. The Secretariat will also address any language issues and will translate messages if needed (for example RRAG is a Spanish speaking Network while CARIN is an English speaking network). The RRAG Secretariat then forwards the email to the appropriate RRAG contact in Brazil. After this initial contact, the requesting practitioner may be able to continue communication with the requested practitioner directly, language permitting.

What Type of Requests can ARINs be Used For?

CARIN and other ARINs can be used to progress any aspect of the asset recovery process from the tracing and identification of assets to freezing and seizure, asset management, confiscation and the final disposal and sharing of assets.

It is important to note that not all ARINs have established their own secure platforms for the exchange of operational requests to trace assets or exchange requests to enforce freezing and confiscation orders. ARINs should be used to establish what kind of information is available in another jurisdiction and which formal and secure channel should be used to send and receive that information.

When to use CARIN

- When a suitable legal and secure channel is not clearly known to the requested state. For example, if a request is for asset tracing and the requested jurisdiction is outside of Europe and the scope of the EU ARO platform (see the section on 'AROs' below), it may not be clear which legal basis or channel to use to send the operational information contained in the request (Interpol, EGMONT FIU, formal MLA request etc). In order for the request to be answered fully and in good time, ARIN contacts should clarify this before sending their requests.
- If urgency is required to trace, freeze, seize or confiscate assets or if the freezing or confiscation needs to be carried out on a particular date.
- If the request is particularly complicated, either due to the volume of work involved or the technical aspects of the request.

4.2. AROs

What is a National Asset Recovery Office (ARO) in the Context of the EU?

Within the EU, a national ARO is an office mandated to trace and identify criminally derived assets that may subsequently become the subject of an order for freezing, seizure, restraint, forfeiture or confiscation.

The establishment of EU AROs in all 28 EU Member States (MS) has 'formalised' the informal law enforcement part of CARIN, creating a legal basis for asset tracing requests to be exchanged (see EU Council Decision 2007/845/JHA Concerning the cooperation between Asset Recovery Offices in the Member States in the field of tracing and identification of proceeds from, or other property related to crime). EU Council Decision 2007/845/JHA ("the ARO Decision") obliges EU Member States to set up or designate national Asset Recovery Offices ("AROs") as national central contact points which facilitate, through enhanced cooperation, the fastest possible EU-wide tracing of assets derived from crime. The Decision allows the AROs to exchange information and best practices, both upon request and spontaneously, regardless of their status (administrative, law enforcement or judicial authority).

By nature of the main task they perform, namely that of investigation, AROs are most commonly located in police structures within the Ministry of Interior. In jurisdictions whereby prosecution authorities take the lead in investigation, AROs are then mostly located within the public prosecution authority of the Ministry of Justice. In less common cases, a jurisdiction may have established an independent national central asset recovery office. Independent asset recovery offices are, by nature of the sensitivity of the case types they support (for example corruption within a public office), often set aside from other ministerial bodies in order to protect their independence. Some jurisdictions have adopted the national ARO approach in such a way as to have two AROs: a police ARO to support the investigative process and a prosecutorial ARO supporting freezing, seizure and confiscation, and in rare cases asset management. There are examples of national AROs located within Financial Intelligence Units (FIUs), where the FIU is non-administrative and either a police, prosecutorial or hybrid FIU.

Who Can Use EU Asset Recovery Offices?

Asset Recovery Office requests are made on an ARO to ARO bases, *i.e.* the ARO in the requesting state sends a request to the ARO in the requested state. However, both domestic law enforcement agencies and judicial authorities may instigate an ARO request, by sending their request to their own national ARO.

What type of requests are EU AROs used for?

EU AROs are used for financial investigation requests to gather information on the location of assets at the pre-MLA stage of an investigation. In some cases EU AROs are also mandated on a national level with obtaining and enforcing restraint and confiscation orders. In this case, AROs may be requested for support in drafting MLA requests by foreign judicial agencies.

In some cases it is possible to send a copy of the MLA request via the ARO channel, in parallel to the channel prescribed by the requesting or requested state (for example the Central Authority).

AROs are used for investigations based on both criminal proceedings and, as far as possible under the national law of the EU Member State, civil proceedings.

How to Use the EU ARO Information Exchange Platform

EU AROs have the option to use the secure information exchange platform administered by Europol called SIENA. Terminals giving direct access to the SIENA exchange platform have been installed in most EU AROs, allowing direct exchange of information between AROs for the purpose of sending and receiving asset tracing requests.

The main role of an ARO is therefore the facilitation of the tracing and identification of proceeds of crime. Asset management is not mentioned under this article and thus not an obligation under the ARO Council Decision. However, the ARO Decision sets minimum standards and Member States are free to extend the tasks of their ARO also to cover asset management activities.

Outside of the EU, the competent authorities of non-EU jurisdictions can make operational use of EU AROs by concluding an agreement with the European Police Office, Europol. Europol administers the electronic information exchange platform (SIENA) used by EU AROs.

Non-EU AROs and the Multi-Agency Approach

Establishing a national ARO is now recognised globally as good practice for enhancing, in particular, cross border asset recovery action. In addition to establishing AROs, jurisdictions across the world have demonstrated greater impact in identifying, freezing, seizing and confiscating criminal proceeds through the use of multi-disciplinary working. These AROs utilise personnel from other agencies, working together, bringing with them their own powers. In order to improve effectiveness and efficiency in targeting illicit proceeds nationally, a number of jurisdictions have developed structures allowing for multi-disciplinary working.

4.3. Europol

Europol is the European Union Agency for Law Enforcement Cooperation. While it exists to support the 28 EU Member States (MS) in their fight against terrorism, cybercrime and other serious and organised forms of crime, it also works with many non-EU partner states and international organisations. All Regional Anti-Corruption Initiative members have the legal possibility to operationally cooperate with Europol, either through their status as EU MS, or within the framework of the operational cooperation agreements they have concluded with Europol. These agreements allow investigators from RAI member jurisdictions the possibility to access EU Asset Recovery Offices, via their own Europol Liaison Officer, using the SIENA secure information exchange platform administered by Europol. In addition to individual requests to trace assets, Europol also provides a comprehensive analysis on the wealth of individuals involved in serious international crime investigations, through its Analysis Project (AP) 'Asset Recovery'. Europol also manages the Secretariat of the CARIN Network, placing it in a key central position, facilitating financial investigations for the purpose of tracing assets. It is at the centre of both the European ARIN contacts and the EU ARO network. Europol operates within its own legal framework Regulation (EU) 2016/794 of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Law Enforcement Cooperation (Europol). More information on Europol and its activities relating to asset recovery and CARIN can be found at <https://www.europol.europa.eu/about-europol>

4.4. Eurojust

While Europol is the EU's agency for law enforcement, Eurojust is the judicial cooperation agency for the European Union, existing to improve the coordination of investigations and prosecutions and the cooperation between the competent authorities in the Member States. The support available from Eurojust in the area of asset recovery is particularly useful for facilitating the execution of international mutual legal assistance requests to enforce freezing, seizure and confiscation orders, and to assist with the repatriation of assets to victims. Alongside its mandate to support EU MS, Eurojust has also concluded a number of operational agreements with third states. These provide the possibility for Eurojust support to and cooperation with Albania, Moldova, Montenegro and North Macedonia⁵. The Eurojust Regulation (2019 Regulation of the European Parliament and of the Council on the European Union Agency for Criminal Justice Cooperation) provides the legal framework for this cooperation. More information on Eurojust can be found at <http://www.eurojust.europa.eu/Pages/home.aspx>

4.5. The European Judicial Network

The European Judicial Network in criminal matters (EJN) is a network of national contact points for the facilitation of judicial cooperation in criminal matters. It operates within its own European legislation, the Council Decision 2008/976/JHA of 16 December 2008 on the European Judicial Network (hereinafter the "EJN Decision").

The main role of the EJN Contact Points is to facilitate judicial cooperation in criminal matters between EU Member States. They assist in establishing direct contacts between competent authorities and provide the legal and practical information necessary to prepare an effective request for judicial cooperation. The EJN Secretariat, located at Eurojust in The Hague, is responsible for the administration of the EJN. More information can be obtained at https://www.ejn-crimjust.europa.eu/ejn/EJN_Home.aspx

The EJN has developed a series of useful online papers and tools to assist in international cooperation, including asset recovery. For example, in the EJN and Eurojust 'Joint Paper' on *Assistance in International Cooperation in Criminal Matters for Practitioners (Joint Paper)*, the role of the EJN and Eurojust is described. The aim of the Joint Paper is to assist judicial practitioners to decide whether they should contact the EJN or Eurojust for assistance in international cooperation in criminal matters. The EJN Joint Paper has been translated into several languages, including the languages of Western Balkan region. The EJN also provide a number of useful tools for identifying the legal requirements of a local competent authority when requesting judicial cooperation, a mutual legal assistance template, a judicial library, contact points and provides concise and practical legal information regarding judicial

⁵ A cooperation agreement between Serbia and Eurojust is pending.

cooperation regarding coercive measures. Further information on the EJN and all available EJN resources tools can be found at https://www.ejn-crimjust.europa.eu/ejn/EJN_Home.aspx

4.6. EGMONT

The EGMONT Group is a global network of 159 Financial Intelligence Units (FIUs) that exchange financial information via the EGMONT secure web. The key focus for FIUs is anti-money laundering and terrorist financing. They are a particularly useful source of information relating to suspicious transaction reports and financial accounts such as bank accounts. FIUs use the EGMONT secure web to exchange information securely via an encrypted email system. EGMONT provides FIU to FIU information exchange, therefore in order to use this channel, investigators and prosecutors should contact their own domestic FIU. More information regarding EGMONT can be found at <https://egmontgroup.org/en/content/about>.

4.7. StAR

The Stolen Asset Recovery (StAR) Interpol Global Focal Point Network (GFPN) is a list of contacts points relating specifically to asset recovery in anti-corruption cases. These contacts may also be the ARIN or ARO contacts. The GFPN was established with the aim of assisting practitioners to overcome operational barriers associated with facilitating repatriation of the proceeds of corruption, by providing a secure information exchange platform for criminal asset recovery. Authorised law enforcement officers from each member country (INTERPOL member countries) are designated as “Focal Points” and are available to respond to immediate requests for asset recovery assistance from any other member country using an Interpol secure website, known as I-SECOM, for the exchange of information. The immediate strategic objective of this initiative is to respond to concerns of asset freezing, seizing, confiscating and recovering stolen assets. A continuing objective is to facilitate secure exchange of sensitive information among the Focal Points from anti-corruption and asset recovery agencies. More information on how to contact Interpol regarding this platform can be found at <https://www.interpol.int/Crimes/Corruption/Asset-recovery>.

4.8. Interpol

Interpol, the International Criminal Police Organization (ICPO), is a network of 194 member countries and exists to facilitate international police cooperation. It operates within its own Interpol Constitution and provides a secure information exchange platform, which can be used for requests to trace assets, during the investigation phase of asset recovery. The I/24 secure communication channel is particularly useful for exchanging operational information outside the European Union. This is an excellent option when CARIN and other ARIN contact points have established initial contacts with the ARIN contact from another jurisdiction and

the asset tracing requests enters a stage where operational information needs to be exchanged. CARIN/ARIN contact points can contact the National Central Bureau (NCB) of Interpol and ask for assistance to send case information to another CARIN/ARIN contact point via the NCB in the requested country, after initial contact has been established via the relevant ARIN network. This will provide for a legal and secure transmission of operational information. More information on Interpol can be found at <https://www.interpol.int>

4.9. Liaison Officers / Embassy Channels

Requests to trace assets and enforce orders for freezing, seizure and confiscation can also be sent via Liaison Officers or Embassies to guarantee their legal and secure transmission.

5. International Asset Tracing

Chapter four of the Handbook describes the most commonly used regional and international channels for international asset tracing. For the 9 RAI Balkan states, these are the EU ARO network (via Europol), the CARIN network, Interpol and the Stolen Asset Recovery (StAR) Interpol Global Focal Point Network (GFPN). Whatever channel is used, there are three important rules:

1. **Avoid fishing expeditions.** Only send a request to a country for asset tracing when you have reasons to believe that assets you are looking for may be located in the requested jurisdiction. For example, the suspect or their family members or associates may travel to the requested jurisdiction frequently, they may have a business or family in the country, or you may have other information or evidence indicating that assets belonging to or controlled by your suspect are located in the requested country.
2. **When you choose a communication channel, stick to it.** Do not send the same request via several channels, unless you have a reason. In this case properly explain that you have already used another channel. Duplication of work will frustrate the requested state and should to be avoided.
3. **Prepare the asset tracing request properly.** Follow the structures outlined in Annex A and B of the 'Swedish Initiative' (EU Council Framework Decision 2006/960/JHA (the "Swedish Initiative) on simplifying the exchange of information and intelligence between law enforcement agencies of the EU)(see Annex).

5.1. When to Make an International Asset Tracing Request

When making an international request to trace assets, which may later be subject to freezing, seizure and confiscation, firstly consider the stage of the criminal and financial investigation. Whether the case is at the pre-arrest, post arrest or post-conviction stage may have an impact on the need for an urgent or covert enquiry, and therefore the channel you may chose. If the case is in the post-conviction stage, the defendant is already aware that the authorities will be looking for their assets. In this case, speed may not be as important, as there is a good possibility that the asset owner will have already moved, concealed or realised their wealth. As a best practice rule, financial investigation to trace assets for subsequent confiscation should start as early as possible in the pre-arrest phase of the case, in parallel to the criminal investigation, by specialist skilled financial investigators. As soon as investigators and prosecutors become aware that assets which may later be considered for confiscation have been transferred to another jurisdiction, asset tracing enquiries should start.

5.2. Deciding which Channel to Use

The most effective channel to use for international asset tracing will depend on a number of factors. These factors are so variable that a financial investigator or prosecutor in a requesting jurisdiction could not realistically know all the options in all the jurisdictions they may engage with. These factors include:

- Are you collecting intelligence or evidence (informal pre-MLA request or formal MLA request)
- whether both requesting and requested states are EU Member States or not
- the legislation or policy in the requested state relating to possible access to databases without the need for coercive measures (maybe an MLA is required)
- the institutional framework of both the requesting and requested state (which agency or authority holds the information needed)
- the crime type under investigation (corruption, money laundering etc.).

These variations are the reason that networks such as CARIN were created. It may be the case that certain jurisdictions are more popular than others as a choice for criminals to invest their illegal wealth, for example when buying houses in jurisdictions with a warmer climate. In this case, enquires of a certain nature will be made to these jurisdictions more systematically and therefore the best channel to use will be clearer.

Eventually, to effect confiscation, the court in the requesting state will require evidence of the existence of assets to be provided by way of a Mutual Legal Assistance Treaty based request. However, it is good practice to identify informally that assets are located in another jurisdiction, using the available informal channels first, prior to making a formal MLA request. In fact, some jurisdictions will insist that the request has been dealt with by their ARO, before executing an MLA for asset tracing.

The following provide investigators with a general guide as to which networks and channels they should use for pre-MLA informal requests to trace assets. However, if investigators and prosecutors are not sure, the CARIN contact should be consulted as to which is the best option.

EU Member State to EU Member State

The ARO Channel

Asset tracing requests between EU Member States are best facilitated using the EU Asset recovery Offices channel. When preparing and answering an asset tracing request, either use the forms provided for in Annex A (answer from the requested state) or Annex B (enquiry from the requesting state) of the Swedish Initiative, or follow the structures outlined in Annex A and B of the Swedish Initiative to ensure that the request contains at least the

information contained in these forms (see Annex). For non EU Member States, forms A & B are also a useful guide to ensure that when making pre-MLA requests for asset tracing, for example using the Europol or Interpol channel, all the necessary information is contained in the request. The Europol information exchange platform SIENA electronically links EU AROs. Asset tracing requests can therefore be exchanged securely and swiftly.

5.3. Case Example A: Using the ARO Channel for an Asset Tracing Request

You are a financial investigator from an EU jurisdiction currently conducting an investigation into the activities of Max RUSU and his associate Vadim SANDU (both citizens of your country) for suspected drug trafficking and money laundering.

Following his arrest, a search of RUSU's home address was carried out. Documentation has been seized indicating that RUSU is a shareholder of the company Madame Blanc R.S.J, registered in France.

The investigation is at the post-arrest phase with both males on court bail awaiting trial.

You therefore have some indication that RUSU has invested his profits from drug trafficking in France.

The ARO Request

ANNEX B
INFORMATION EXCHANGE UNDER COUNCIL FRAMEWORK DECISION 2006/960/JHA
REQUEST FORM FOR
INFORMATION AND INTELLIGENCE TO BE USED BY THE REQUESTING MEMBER STATE

This form shall be used when requesting information and intelligence under Framework Decision 2006/960/JHA

I — Administrative information

Requesting authority (name, address, telephone, fax, e-mail, Member State):	Asset Recovery Office [Jurisdiction, Address, telephone number, fax, email of requesting EU state]			
Details of the handling agent (optional):	<i>If the request has been sent via another unit, enter the name here</i>			
To the following Member State:	France			
Date and time of this request:	01/06/2019 at 14:30			
Reference number of this request:	ABC1234/16			
Previous requests				
<input checked="" type="checkbox"/> This is the first request on this case				
<input type="checkbox"/> This request follows previous requests in the same case				
Previous request(s)			Answer(s)	
	Date	Reference number (in)the requesting Member State)	Date	Reference number (in the requested Member State)
1.				
2.				
3.				
4.				

If the request is sent to more than one authority in the requested Member State, please specify each of the channels used:		
<input type="checkbox"/> ENU/Europol Liaison Officer	<input type="checkbox"/> For information	<input type="checkbox"/> For execution
<input type="checkbox"/> Interpol NCB	<input type="checkbox"/> For information	<input type="checkbox"/> For execution
<input type="checkbox"/> Sirene	<input type="checkbox"/> For information	<input type="checkbox"/> For execution
<input type="checkbox"/> Liaison Officer	<input type="checkbox"/> For information	<input type="checkbox"/> For execution
<input type="checkbox"/> Other (please specify)	<input type="checkbox"/> For information	<input type="checkbox"/> For execution
If the same request is sent to other Member States, please specify the other Member States and the channel used (optional)		

II — Time limits

Reminder: time limits under Article 4 of Framework Decision 2006/960/JHA

A — The offence falls under Article 2(2) of Framework Decision 2002/584/JHA
and

the requested information or intelligence is held in a database directly accessible by a law enforcement authority

➔ The request is urgent ➔ Time limit: 8 hours with possibility to postpone

➔ The request is not urgent ➔ Time limit: 1 week

B — Other cases: ➔ Time limit: 14 days

Type of crime(s) or criminal activity(ies) being investigated

Description of the circumstances in which the offence(s) was (were) committed, including the time, place and degree of participation in the offence(s) by the person who is the subject of the request for information or intelligence:

Max RUSU and his associate Vadim SANDU have been the subject of a lengthy investigation by [name of agency or authority and country] relating to the importation and distribution of large quantities of cocaine into [your country] and the laundering of the proceeds from their criminal activity between January 2017 and May 2019. On 01/06/2019 both subjects were charged with drug trafficking and money laundering and are currently in custody awaiting trial on 01/09/2019.

A restraint order has been issued by the court in respect of both defendants, pending a confiscation investigation. In order to identify any assets, the Asset Recovery Office is currently conducting a financial investigation into the financial status of Max RUSU and his associate Vadim SANDU to ascertain the recoverable amount based on the defendant's general criminal conduct.

Nature of the offence(s)

A — Application of Article 4(1) or 4(3) of the Framework Decision 2006/960/JHA

- A. 1. The offence is punishable by a maximum term of imprisonment of at least three years in the requesting Member State

AND

A.2. The offence is one (or more) of the following:

- | | |
|--|--|
| <input type="checkbox"/> Participation in a criminal organisation | <input checked="" type="checkbox"/> Laundering of the proceeds of crime |
| <input type="checkbox"/> Terrorism | |
| <input type="checkbox"/> Counterfeiting of currency, including the euro | |
| <input type="checkbox"/> Trafficking in human beings | <input type="checkbox"/> Computer-related crime |
| <input type="checkbox"/> Sexual exploitation of children and child pornography | <input type="checkbox"/> Environmental crime, including illicit trafficking in endangered animal species and in endangered plant species and varieties |
| <input checked="" type="checkbox"/> Illicit trafficking in narcotic drugs and psychotropic substances | |
| <input type="checkbox"/> Illicit trafficking in weapons, munitions and explosives | |
| <input type="checkbox"/> Corruption | <input type="checkbox"/> Murder, grievous bodily injury |
| <input type="checkbox"/> Fraud, including that affecting the financial interests of the European Communities within the meaning of the Convention of 26 July 1995 on the protection of the a European Communities' financial interests | <input type="checkbox"/> Illicit trade in human organs and tissue |
| <input type="checkbox"/> Organised or armed robbery | <input type="checkbox"/> Kidnapping, illegal restraint and restraint and hostage-taking |
| <input type="checkbox"/> Illicit trafficking in cultural goods, including antiques and works of art | <input type="checkbox"/> Racism and xenophobia |
| <input type="checkbox"/> Swindling | <input type="checkbox"/> Illicit trafficking in nuclear or radioactive materials |
| <input type="checkbox"/> Racketeering and extortion | <input type="checkbox"/> Trafficking in stolen vehicles |
| <input type="checkbox"/> Counterfeiting and piracy of products | <input type="checkbox"/> Rape |
| <input type="checkbox"/> Forgery of administrative documents and trafficking therein | <input type="checkbox"/> Arson |
| <input type="checkbox"/> Forgery of means of payment | <input type="checkbox"/> Crime within the jurisdiction of the International Criminal Court |
| <input type="checkbox"/> Illicit trafficking in hormonal substances and other growth Promoters | <input type="checkbox"/> Unlawful seizure of aircraft/ships |
| | <input type="checkbox"/> Sabotage |

→ The offence therefore falls under Article 2(2) of Framework Decision 2002/584/JHA-> Article 4(1) (urgent cases) and 4(3) (non urgent cases) of Framework Decision 2006/960/JHA are therefore applicable as regards time limits for responding to this request

Or

- B — The offence(s) is(are) not covered under A. In this case, description of the offence(s):

Purpose for which the information or intelligence is requested

Intelligence purposes only at this stage, as part of a financial investigation into the assets owned by the defendants

Connection between the purpose for which the information or intelligence is requested and the person who is the subject of the information or intelligence

On conviction the persons will be subject to confiscation measures, therefore a financial profile of their assets is required

Identity(ies) (as far as known) of the person(s) being the main subject(s) of the criminal investigation or criminal intelligence operation underlying the request for information or intelligence

Max RUSU, dob 04/12/1965, nationality, national identity number, passport number, address

Vadim SANDU, dob, 18/12/1965, nationality, national identity number, passport number, address

Reasons for believing that the information or intelligence is in the requested Member State

Following his arrest a search of RUSU's home address was carried out. Documentation has been seized indicating that RUSU is a shareholder of the company Madame Blanc R.S.J, registered in France.

As it is suspected that both males are concerned in the laundering of proceeds from their drug activities, asset tracing is requested in France for both defendants.

Restrictions on the use of information contained in this request for purposes other than those for which it has been supplied or for preventing an immediate and serious threat to public security

- use granted
- use granted, but do not mention the information provider
- do not use without authorisation of the information provider
- do not use

Urgency IS requested

Urgency is NOT requested

Grounds for urgency (e.g.: suspects are being held in custody, the case has to go to court before a specific date):

Information or intelligence requested

Request for a search in all registers and databases for assets owned by both defendants. Information is requested on any assets, for example real estate, vehicles, financial accounts and companies.

In particular, it is requested that a check be made on the company Madame Blanc R.S.J, registered in France as intelligence indicates that RUSU is a shareholder of this company. Please provide details on the company Directors and Secretaries, commodities that the company trades in and the company's annual turnover.

EU Member State to a Non-EU Jurisdiction

EU AROs can make asset tracing requests via the Europol Liaison Officers of all non-EU RAI Balkan states. The EU Council Framework Decision 'Swedish initiative' does not apply to third States. However, as good practice, EU Member States, when preparing and answering an asset tracing request, can either use the forms provided for in Annex A (answer from the requested state) or Annex B (enquiry from the requesting state) of the Swedish Initiative, or follow the structures outlined in Annex A and B of the Swedish Initiative to ensure that the request contains at least the information outlined in these forms (see Annex). The Europol information exchange platform SIENA electronically links EU Member States and third states that have access to the system. Asset tracing requests can therefore be exchanged securely and swiftly. A number of Europol liaison officers from Balkan jurisdictions now have access to the SIENA system, providing a secure platform for the exchange of asset tracing requests.

Non- EU Jurisdiction to Non-EU Member State

When making enquiries outside the EU legal and institutional frameworks, the most commonly used secure channel for asset tracing is Interpol. However, before sending a request via the Interpol National Central Bureau, requesting jurisdictions are advised to make an initial enquiry using the CARIN / ARIN channels indicating that the request will be sent. Enquiries should be clearly marked for the attention of the requested CARIN / ARIN contact.

5.4. Case Example B: Using CARIN and other ARINs to Progress an Asset Tracing Request

You are a financial investigator conducting a financial investigation into the activities of Max RUSU and his associate Vadim SANDU (both citizens of your country) for suspected drug trafficking and money laundering.

During the criminal investigation a search of SANDU's home address has been carried out. A number of airline boarding passes for travel to Australia were seized during the search. All are marked with SANDU's name as the passenger. There were also a number of photographs of luxury Australian Villas with high value vehicles parked on the driveways.

The investigation is in the post-arrest phase with both males on court bail awaiting trial.

You therefore suspect that SANDU travels frequently to Australia and have some indication that he may have invested his profits from drug trafficking in this country.

Request by Email from the investigation team to their own CARIN contact:

Email From: [You]

To: [Your CARIN Contact]

Date: [xx/xx/xx]

Subject: CARIN Enquiry to Australia to Trace Assets - Reference Number xxxx

Dear [Your CARIN Contact]

My name is [xxxx] and I work at the [xxx] department of the [xxxx]. My contact details are [xxxx].

I am currently carrying out a financial investigation into two males suspected of drugs offences and money laundering. The investigation is in the post-arrest phase.

Following the receipt of documents found during a premises search, I have intelligence indicating that the assets of one of my suspects have been invested in Australia.

I therefore want to make an **asset-tracing request** to the authorities in Australia for their databases to be searched, in particular in respect of real estate, bank accounts and vehicles.

Please can you ask the Australian CARIN contact to advise on the most appropriate method of carrying out this request, and who it should be sent to?

Answer from the CARIN Contact in the requesting state to the investigation team:

Email From: [Your CARIN Contact]

To: [You]

Date: [xx/xx/xx]

Subject: RE: CARIN Enquiry to Australia to Trace Assets Reference Number xxxx

Dear [You]

See below the answer from [Australian CARIN Contact] regarding case ref: xxxx

Dear [Your CARIN Contact]

Our National Asset Forfeiture Office in Canberra deals with asset tracing enquiries from foreign jurisdictions.

Real Estate and Vehicles:

We do not require an official Mutual Legal Assistance request for asset tracing requests relating to real estate or vehicles. Send your request via Interpol NCB Australia, marked for the attention of Mr xxxx, (telephone number/ email address) Asset Tracing Team, National Asset forfeiture Office, Canberra.

You should expect an answer within one month. If the request is urgent, please mark it clearly as 'URGENT' and contact me directly as soon as you have sent it to Interpol NCB. I will ensure it is given priority.

Bank Accounts:

For information on the existence of banks accounts, please use the FIU channel. However, you are required to send a Mutual Legal Assistance request via our Central Authority for information on any financial transactions related to an account in Australia.

Kind Regards

[Australian CARIN Contact]

5.5. Case Example C: An Interpol Asset Tracing Request

Interpol Request

DATE and TIME of Request

22/11/2016 at 14:40

FROM

Requesting Authority [Name of your Agency]

Name: [Your Name]

Authority [Your agency]

Contact Details [Your Agency Address, your telephone, fax number & email]

Reference Number [Your Agency Reference Number for the Request]

TO

Requested Jurisdiction: Australia

Requested Authority: The National Asset forfeiture Office, Canberra

For the Attention of: Mr xxxx, (telephone number/ email address) Asset Tracing Team

Offence: Suspected Drug Trafficking and Money Laundering

Subjects:

1.

Name: Max RUSU

Alias: n/a

D.O.B. 04/12/1965

Nationality:

Last known Address: [Building Name and Number, Street Name, Town, City, Post Code, Country]

Previous Addresses:

Passport Number:

National Identity Number:

2.

Name: Vadim SANDU

Alias: n/a

D.O.B. 18/12/1965

Nationality:

Last known Address: [Building Name and Number, Street Name, Town, City, Post Code, Country]

Previous Addresses

Passport Number:

National Identity Number:

REQUEST: Request to trace any assets or property owned or controlled by subjects 1 & 2 for subsequent restraint and confiscation. If any assets are identified a MLA request will be submitted via the Central Authority to Australia in order to use the information for evidential purposes.

Max RUSU and his associate Vadim SANDU have been the subject of a lengthy investigation by [name of agency or authority and country] relating to the importation and distribution of large quantities of cocaine into [your country] and the laundering of the proceeds from their criminal activity between January 2017 and May 2019. On 01/06/2019 both subjects were charged with drug trafficking and money laundering and are currently in custody awaiting trial on 01/09/2019.

A restraint order has been issued by the court in respect of both defendants, pending a confiscation investigation. In order to identify any assets, the Asset Recovery Office is currently conducting a financial investigation into the financial status of Max RUSU and his associate Vadim SANDU to ascertain the recoverable amount based on the defendant's general criminal conduct.

During the criminal investigation a search of SANDU's home address was carried out. A number of airline boarding passes for travel to Sydney, Australia were seized during the search. All are marked with SANDU's name as the passenger. There were also a number of photographs of luxury Australian Villas with high value vehicles parked on the driveways (images attached).

As SANDU travels frequently to Australia, it is suspected that SANDU and/or RUSU may have invested their profits from drug trafficking and money laundering in your country.

A search of all available databases and registers is requested to identify if either subject owns assets in Australia, in particular in relation to property and vehicles.

Having already traced and identified assets using pre-mutual legal assistance (MLA) possibilities, for example, CARIN, AROs, or Interpol, mutual legal assistance treaty based requests should be used to formally obtain information on their location. MLA should also be used to obtain more detailed information on the location and amount of assets in cases requiring coercive measures such as premises searches and access to financial or other information, through production orders.

6. Joint Investigation Teams (JITs)

International Standards have recognised the value in forming joint investigation teams (JITs) for the purpose of cross border investigations. This is particularly useful where a crime or organised crime group affects multiple jurisdictions. Interpretive note 16 of FATF recommendation 40 on international cooperation suggests that law enforcement authorities should be able to form joint investigative teams to conduct cooperative investigations. Until recently, JITs were generally only formed to further criminal investigations. The financial aspect of an investigation was often forgotten or not included in the JIT arrangements. This is starting to change and Balkan jurisdictions would benefit from joining the trend by ensuring that financial investigation for the purpose of asset recovery is included within any JIT agreement.

This chapter provides information relating to Joint Investigation Teams for EU Member States and third states, in the context of provisions laid down in the EU Council Framework Decision of 13 June 2002 (2) on Joint Investigation Teams and the Council Resolution on a model agreement for setting up a Joint Investigation Team (JIT) (2017/C 18/01).

What is a JIT?

A joint investigation team (JIT) is an international team formed through mutual agreement by the competent authorities of at least two EU Member States, in order to investigate an international criminal case. A JIT can also include representatives from states outside the EU, referred to as third states.

The Member States involved in the establishment of a JIT decide on its composition, purpose and duration. JIT members from states other than the state in which the team conducts its operation are referred to as being "seconded" to the team. They may carry out tasks in accordance with the law of the Member State where the team is operating.

JITs do not replace or change national legislation and do not replace cooperation through letters of request. A JIT is however a strong and effective tool to enable smooth and easy cooperation when:

- A national criminal prosecution requires difficult and demanding investigation involving connections to other Member States.
- A number of Member States are conducting investigations into criminal offences in which the nature of the case requires these states to initiate coordinated and concerted actions in the Member States involved.

A JIT enables its members to:

- share information with each other directly without the need for numerous formal requests for mutual legal assistance
- request investigative measures between team members directly, dispensing with the need for requests for mutual legal assistance. This applies also to requests for coercive measures
- be present at house searches and interviews within all jurisdictions involved, helping to overcome language barriers.
- coordinate efforts on the spot, and informally exchange specialist knowledge
- build mutual trust between practitioners from different jurisdictions working together and deciding on investigative and prosecution strategies
- receive direct support and assistance from Europol and Eurojust
- secure potentially available funding.

The involvement of Third States in an EU JIT

Sometimes a JIT involves a third state (a country outside of the European Union). This is possible when there is an existing legal basis cooperation between the particular Member State or states and the third state. This legal basis for a JIT can take the form of:

- An international legal instrument
- A bilateral agreement
- A multilateral agreement
- National legislation.

Examples of a suitable legal basis for a JIT between an EU Member State and a third country include:

- The Second Additional Protocol to the Council of Europe Convention on Mutual Assistance in Criminal Matters of 20 April 1959 (Article 20)
- The UN Convention against Transnational Organized Crime, 15 November 2000 (Article 19);
- The Convention on mutual assistance and co-operation between customs administrations (Naples II Convention), 18 December 1997 (Article 24)
- The Police Cooperation Convention for Southeast Europe (PCC SEE) 5 May 2006 (Article 27).

When to use a JIT

There is no simple rule about when to set up a JIT or when to use the traditional methods of international cooperation between countries.⁶

Once a JIT agreement is in place, there is no requirement to continually send MLA requests between states for cooperation. The agreement provides an overall legal basis for a number of enquiries to be carried out, including financial enquiries if this is stipulated in the agreement. It provides a framework for jurisdictions to work on a specific criminal case for a specific purpose. JITs are therefore often the best option for more serious and complex investigations, which require fast and smooth coordination and the exchange of many files, documents and perhaps evidence over a longer period of time. It is not useful to use a JIT for a case which requires one or two investigative actions in one other country over the course of a few weeks.

The Structure of a JIT

Due to their transnational nature, JITs have particular features which differ from the features of national investigations and make it easier to carry on an international investigation. This is particularly the case in the exchange of information and data protection, in the handling and accessibility of evidence, in the way JITs are evaluated on completion, and in how they are funded.

JITs in Operation

During the operational phase of a JIT, information exchange between members from different jurisdictions takes place on the same basis as it would if all persons involved were from the same jurisdiction. Persons from different jurisdictions share with each other information, which originates from their own countries. Traditional requests for mutual legal assistance (MLA) do not need to be issued in order to receive information from a seconded member of the team.

The legal basis allowing seconded members to provide the JIT with information, which is available in their own jurisdiction, is laid out in Article 1(9) of the Framework Decision on JITs and Article 13(9) of the Mutual Legal Assistance (MLA) Convention: "A member of the joint investigation team may, in accordance with his or her national law and within the limits of his or her capacity, provide the team with information available in the Member State which has seconded him or her for the purpose of the criminal investigations conducted by the

⁶ The JIT legislation and JIT Manual compiled by Eurojust and Europol contain broad recommendations on when to establish a JIT.

team". National legislation still plays an important role in determining whether it is possible for a member of a JIT to provide the team with information originating from their own jurisdiction. A member of the team may only share information as long as this is possible according to the national legislation of their jurisdiction and within the boundaries set by their legislation.

A second condition mentioned in Article 1(9) of the Framework Decision on JITs and Article 13(9) of the MLA Convention is that the information from the home country can only be exchanged with other JIT members as long as it is available to the seconded members.

In general, law enforcement authorities in the EU have access nationally to information from different public and private sources, for the fulfilment of their tasks. Such access is specifically provided for by law or is incorporated in a general agreement between authorities. In some cases, access is only possible with a court order. During a JIT, this information, crucially important during asset tracing for confiscation, is more easily shared between jurisdictions.

Support Resources when Establishing a JIT

When considering the establishment of a JIT, help and information is available from various sources.

Investigators and prosecutors can contact their **JIT National Expert**, who will provide assistance through the knowledge and experience they have acquired in previous JITs. All Member States, which have ratified the MLA Convention of May 2000 have designated one or more National Experts for JITs. In addition, Europol, Eurojust, OLAF, the European Commission and the European Council have designated contact points competent for JITs-related matters. Since the main objective of designating National Experts on JITs is to facilitate the work of practitioners in the Member States, the experts are drawn from law enforcement, prosecution and/or judicial authorities. There is also a Network of National Experts on JITs (**JITs Network**). The Network, consisting of at least one expert per Member State, promotes the use of JITs by helping to facilitate the setting up of the teams, assisting in the sharing of experiences and best practice, and dealing with the operational, financial and legal aspects of a JIT. The experts can assist practitioners with establishing their JIT and communicate with each other to help facilitate this process. The **JIT Network Secretariat** at Eurojust manages and maintains a list of all the JITs national experts in each of the Member States. Upon request, the JITs Network Secretariat is able to provide you with the contact details of the JIT National Expert in your jurisdiction. Contact to the JIT Network Secretariat can be made through JITsNetworkSecretariat@eurojust.europa.eu

Europol and Eurojust can provide legal advice and expertise as well as facilities for meetings and interpretation for Member States. Both Eurojust and Europol may also provide



funding for operational meetings prior to the setting up of a JIT. They can offer expertise gained from previous JIT participation and assist in the drafting, amending and extending of the JIT agreement.

The JIT Agreement

The JIT Agreement is a legal document signed by all participating jurisdictions. In order to assist jurisdictions to conclude comprehensive and standard JIT agreements, a **JIT Model agreement** has been developed and can be found in below in the Annex. The **JIT Manual**, provides all the information jurisdictions need in relation to establishing and running a JIT. This is available on the Eurojust and Europol websites:

<https://www.europol.europa.eu/activities-services/joint-investigation-teams> and
<http://www.eurojust.europa.eu/Practitioners/JITs/Pages/JITs-sitemap.aspx>

The Model Agreement is a template providing a checklist of considerations when establishing a JIT. An Operational Action Plan (OAP) should also be established and a OAP checklist is available at Appendix IV to the Model Agreement. A model is also included in the Model Agreement for the association of third parties. The Model Agreement and its annexes are available in all EU languages.

7. Asset Tracing in Offshore Jurisdictions

7.1. What is an Offshore Jurisdiction?

The term “offshore” is often misinterpreted and misused with negative connotations as it is generally only associated with tax havens typically located in exotic places such as the British Virgin Islands, Cayman Islands and Seychelles. In fact, “offshore” business relates to activity that is typically undertaken outside of the home jurisdiction, which may mean a jurisdiction with its own sovereign territory or a country with its own legal structure and governing body. Therefore, theoretically an offshore company can exist in any country or jurisdiction in the world and does not have to be located in a tax haven. So, for example, an individual or company located in Spain or France may consider countries such as Luxembourg, Lichtenstein or Switzerland as being located in offshore jurisdictions.

Why Are Offshore Jurisdictions Used?

The financial services provided by financial organisations and companies in offshore jurisdictions are used legitimately to provide legal services to law abiding persons or companies who may wish to seek asset protection, take advantage of tax efficiency opportunities, have access to better banking infrastructure, to meet domestic legal requirements when purchasing property for example, or to seek financial privacy and safety.

Persons or organisations engaged in illicit or criminal activity have historically sought to exploit offshore jurisdictions and misuse corporate vehicles or structures for reasons such as tax evasion or tax fraud, the concealment of the proceeds of crime or corruption, trade-based money laundering or to hide wealth from public agencies, business associates or family members. The additional benefits of sometimes weak regulation, banking secrecy and laws protecting the identity of beneficial ownership have further encouraged and facilitated such activity.

Regulation

Offshore jurisdictions are regulated and businesses providing financial services such as banks, trustee companies, other IBCs and CSPs are subject of compliance with anti-money laundering law and regulations. When conducting research or an investigation relating to an offshore jurisdiction, open source research may be required to determine the nature of corporate structures, legislation and regulation and depending on the circumstances, the cooperation of the local Financial Intelligence Unit or ARIN representative should also be sought.

7.2. Trusts

The misuse of corporate vehicles by persons engaged in illicit or criminal activity takes many forms. A Trust is one example that is commonly used by such persons in order to conceal or disguise assets and wealth arising from such activity. There are of course many others, which can include Foundations, but it is most likely when investigating transnational crime and the flow of funds that a Trust or a number of Trusts may be discovered residing within complex corporate structures.

What is a Trust?

A Trust is a legal arrangement founded mainly under common law where certain persons (called trustees) hold property for the benefit of others (called beneficiaries). A Trust is usually established by a document setting out the rules for the Trust called a Trust Deed. This is signed by the persons putting assets into the Trust (known as the Settlor) and the trustees. This legal tool can hold title to assets and property, manage said assets in accordance with the trust deed, in order to provide a series of benefits and distributions to a person or group of persons designated the beneficiaries. Once assets are transferred to the trustees, the settlor(s) lose legal ownership of the transferred assets. The trustees then become the legal owners, with an obligation to act in the best interests of the beneficiaries and in line with the terms of the trust deed. Beneficiaries are the only people entitled to benefit from a trust's assets.

The trustee and/or the trust company charged with the management of the trust are bound by fiduciary duty to uphold the agreement. By signing the document, they agree to the rules and requirements set out by the trust deed. A trust is unlike a corporation or foundation. This type of trust is a written agreement for the trustee to provide for the beneficiaries and to protect assets from predators.

Because these offshore trusts are almost always found in tax haven or asset protection jurisdictions with a reputation for the safeguarding of assets and superb confidentiality, the offshore trust also benefits from these features. Assets managed within offshore trusts are, for the most part, free from the sometimes suffocating legal or tax burdens applicable in a settlor's home country or jurisdiction. If the trust is formed to arrange for the benefit of the one who formed the trust and/or spouses, children or other heirs of the settlor, for example, the offshore trust may provide a haven from intense inheritance scrutiny and taxation.

Based on their formation in asset protection oriented safe havens, offshore trusts offer unparalleled confidentiality, increased protection from the perils of civil litigation and liability, and even from such things as divorce or business dissolutions. They are also used by many for protection of assets in the event of home jurisdiction political or economic

turmoil It is extremely difficult, save in situations of accusations of a severe criminal offence, for an outside entity to pierce the confidentiality shield inherent to an offshore trust in most jurisdictions.

Offshore trusts are often formed in low-taxation or asset safe havens that have a proven reputation for the successful management and execution of trusts and trust funds. However, it is not absolutely necessary for a suitable location to be a tax haven or have lax regulations; many of the successful trust formation jurisdictions and countries simply offer renowned, experienced trust companies coupled with superb confidentiality and with substantial asset shields. One common denominator is that these jurisdictions base their trust regulations and statutes on the English common law: this because the very idea of trust formation is an old English idea dating back to the time of the Crusades. Other European jurisdictions that offer successful trust administration, such as Luxembourg, Malta, Switzerland, etc., have adapted their statutes and regulations to conform with the proper trust administration models set forth by those based on the English common law.

Depending on the nature of the assets that are placed in the trust, the trustee may incorporate companies in which to place the assets for reasons of limited liability, taxation or geographical purposes. Therefore, it is entirely feasible that there may be a significant number of companies (and their books and records) which could be located in many other jurisdictions under their control. It is therefore important to note that for the purposes of any investigation, the trustee will be a significant person to interview or to be required to produce all documents relating to the trust and the assets.

Persons engaged in illicit or criminal activity are able to use trusts to conceal or disguise their proceeds of crime or other illicit gains. The transfer of the ownership of their assets into a trust controlled by a trustee may suggest to an investigating body that the person has little or no recoverable assets. However, depending on the asset recovery legislation of an individual country, the assets may still be recoverable in criminal or civil proceedings against the person or persons based on the ability to demonstrate provenance. It will be for the relevant authorities to apply to the particular jurisdiction through judicial process for the freezing and / or recovery of the assets.

7.3. Types of Information Held by Businesses in Offshore Jurisdictions

Below is a list of information and documents that are commonly held by the organisations stated below and should be considered as valuable intelligence or evidence as part of any investigation in criminal proceedings where financial evidence is required and / or asset recovery is anticipated. Requests for the intelligence or evidence should be prescriptively described in all requests.

Trust Company (Where a trust structure is known to be in place)

- Copies of the Due Diligence documents for the Settlor and each of the known beneficiaries
- Copy of the Trust Deed and any amendments
- Copies of all Letters of Wishes
- Details of Protectors, past and present
- Copies of Share Certificates for companies administered/owned by the Trust
- Copy of Memorandum and Articles of Association for each of these companies.

In addition, for each of these companies:

- Details of all Directors
- Copies of all bank statements and bank mandates/open account forms
- Copies of all financial statements
- Copies of forms MT 103 for all inbound and outbound international payments
- Copies of all corporate minutes
- Copies of all file notes
- Copies of emails and correspondence for the Trust and all of the companies
- Copies of all documents, agreements or other contracts in relation to the Trust
- A schedule of fees paid in each year for the services provided by the Trustee.

Corporate Service Provider (In each jurisdiction where there is no Trust structure)

- Copies of the Due Diligence documents to include details of the ultimate beneficial owner(s)
- Copies of Share Certificate
- Copy of the Memorandum and Articles of Association.

In addition, for each company:

- Details of all Directors
- The full name and address of the Registered Agent
- Confirmation that the company is in “good standing” and that there are no fees/taxes outstanding
- Copies of all bank statements and bank mandates/opening account forms
- Copies of all financial statements
- Copies of forms MT 103 for all inbound and outbound international payments
- Copies of all corporate minutes
- Copies of all file notes
- Copies of emails and correspondence
- Copies of all documents, agreements or other contracts.

7.4. How Should International Cooperation Be Obtained

It is important to recognise that obtaining international cooperation and mutual legal assistance from an offshore jurisdiction remains the same as any other jurisdiction. Each request has to be treated on its own merits, taking into account the legislation, regulations, the relevant government agencies and the presence of asset recovery interagency network representation for advice and guidance or asset recovery matters.

7.5. Glossary of Terms Relating to Offshore Jurisdictions

Corporate Service Provider (CSP) – Is a company or organisation that provides financial services such as: business advisory services, company incorporation, registered agent facilities, finance and banking, accounting and tax services, investment services, offshore bundled services, Trustee services.

Foundation – A Private Offshore Foundation is very similar to an Offshore Trust in that it's set up by a Founder (like a Settlor in the case of an Offshore Trust) and managed day to day by a Councillor (like a Trustee in the case of an Offshore Trust) who manages the Offshore Foundation's property for the benefit of the beneficiaries of the Offshore Foundation. Founders consent to have the foundation established, regulated and vested with certain rights, interests and features by the governing statute of foundations of that territory

International Business Corporation or Company (IBC) – An IBC is an offshore company formed under the laws of some jurisdictions as a tax neutral company which is usually limited in terms of the activities it may conduct in, but not necessarily from, the jurisdiction in which it is incorporated. IBCs are offshore companies that are most commonly used for offshore banking to conduct international trade, investment activities, as a special purpose entity by professionals and for asset protection. Offshore companies can be involved in buying and selling goods and services, hold bank accounts and operate businesses. IBCs are also commonly used for the ownership of real property and land; for ownership of intellectual property, licensing and franchising; personal service by individuals working overseas and offshore e-business among other things. The term offshore company seems more commonly used than International Business Company (IBC). Although all IBCs are necessarily offshore companies, not all offshore companies are IBCs.

Offshore Bank Account – An offshore bank account is an account at a bank located outside the country of residence of the banking client. These bank accounts are known for having low tax liabilities, thus making them also commonly known as tax havens. Offshore bank accounts also tend to provide financial and legal benefits. These benefits may include less controlling tax regulation, little to no taxation, greater secrecy and easy access to funds.

Registered Agent – Most jurisdictions require that any business entity that is formed or doing business within their borders designate and maintain a "registered agent". This person may be known as the "resident agent" or "statutory agent", depending on the laws of the individual jurisdiction in which the business entity is registered. The purpose of a registered agent is to provide a legal address (not a P.O. Box) within that jurisdiction where there are persons available during normal business hours to facilitate legal service of process being served in the event of a legal action or lawsuit. Generally, the registered agent is also the person to whom the state government sends all official documents required each year for tax and legal purposes, such as tax notices and annual report forms. It is the registered agent's job to forward these suit documents and notices to the entity itself. Registered agents generally will also notify business entities if their state government filing status is in "good standing" or not. The reason that these notifications are a desired function of a registered agent is that it is difficult for a business entity to keep track of legislative changes and report due dates for multiple jurisdictions given the disparate laws of different jurisdictions. Penalties for not maintaining a registered agent generally will cause a jurisdiction to revoke a business's corporate or LLC legal status as well as in some cases, assess additional penalty fees on the entity.

Tax Haven – A tax haven is generally defined as a country or place with very low "effective" rates of taxation for foreigners. In some traditional definitions, a tax haven also offers financial secrecy.

Trust – An arrangement (founded mainly in common law) whereby a person (a trustee) holds property as its nominal owner for the good of one or more beneficiaries. Generally, offshore trusts are similar in nature and effect to their onshore counterparts; they involve a settlor transferring (or 'settling') assets (the 'trust property') on the trustees to manage for the benefit of a person, class or persons (the beneficiaries)

8. Freezing & Seizure

8.1. Sending international requests for freezing and seizure orders in criminal proceedings

Requests for assistance must be sufficiently detailed to enable the requested state and any court considering an application for freezing and seizure to be able to understand and process the request expeditiously.

Accordingly, the drafter in a requesting state should consider at an early stage precisely:

- the nature of the asset that the state wants to recover
- where the asset is that the state wants to recover
- how the requesting state can go about recovering the asset with the assistance of the foreign jurisdiction
- what assistance the requested state can offer
- any treaties, Conventions and directives that are relevant to the request.

Within the EU, where a request for assistance is based upon mutual recognition, presently the EU Council Framework Decision 2003/577/JHA on the Mutual Recognition of Orders Freezing Property and Evidence may be used. A template certificate for recognition is annexed to the Framework Decision. For freezing orders transmitted within the EU after 19th December 2020, the new Regulation (EU) 2018/1805 of the European Parliament and of the Council of 14 November 2018 on the Mutual Recognition of Freezing Orders and Confiscation Orders may be used. In the case of the new Regulation, a freezing certificate is provided (in Article 6) which may be sent directly to the executing authority or the central authority. The freezing order may also be sent, but only the certificate needs to be translated. The template certificates annexed to the Framework Decisions prompt the requesting state to provide all of the necessary information for the requested state to be able to execute the request.

In relation to other mutual legal assistance requests for freezing and seizure, treaties and Conventions generally provide that states must afford each other the widest possible measure of assistance in the identification and tracing of instrumentalities, proceeds and other property liable to confiscation. Invariably, in light of the speed with which liquid assets in particular can move around the world, some requests for international assistance have to be issued very quickly and with limited available detail. It is generally understood, however, that requests for assistance should, wherever possible:

- use the issuing authority's headed notepaper
- outline the domestic role of the authority making the request and confirm it has permission under domestic law to make the request
- give full contact details of the authority making the request
- supply one signed version of the request (also sealed if issued by a judge), and a translated version if required by the requested state
- set out the purpose for which the assistance is sought.

Requests should also identify clearly:

- the assistance requested (e.g. freezing and seizure)
- the domestic offences charged or under investigation, and potential sentences or penalties
- a copy of the domestic legislation criminalising the conduct
- a summary of the facts and the connection to the requested state
- any sensitive information that cannot be disclosed to a court or person
- full details of the person (including legal persons)
- the clear connection between the freezing or seizure requested and the offence under investigation or linked to proceedings
- any relevant domestic court hearing dates or reasons for urgency
- the title of the treaty or Convention relied upon by the requesting state to seek the assistance
- contact details for any enforcement agency or officers already familiar with the investigation in the requested state
- details of any domestic media attention or sensitivities about the investigation or proceedings
- where required by the requested state and relevant to the offence under consideration, assurance that a death penalty will not be carried out or will be commuted.

In particular for requests relating to required freezing and seizure orders, the following detail should also be included where possible:

- confirmation that there is dual criminality, where required in the requested state
- details of the ongoing investigation/proceedings and whether that is criminal or non-conviction based
- the material facts, including of any freezing/restraint in the requested state with sealed copies of those orders, and any defence or explanation offered by the suspect/defendant
- why there is reasonable cause to suspect that the suspect/defendant has benefitted by obtaining money or another asset from conduct

- why there are reasonable grounds to suspect that the property may be needed to satisfy an order in the requesting state that has been or may be made, and the connection to the requested state
- why the order is necessary: will the property be dissipated if no order is made?
- full details of the suspects or defendants and the property to be restrained
- brief details of all other known property held by the suspect/defendant outside the requested state, so that the requested state can ensure (where appropriate) that only sufficient assets are restrained to meet the amount of any confiscation order that may be made
- that the property in the requested state must be restrained because there are insufficient property/assets elsewhere
- whether or not the requesting state objects to the requested state permitting access to restrained funds for living and legal expenses.

ARIN contacts will be able to assist requesting states with other countries' basic requirements on the contents of a written request for assistance, if necessary in advance of sending any request for assistance.

8.2. Receiving international requests for freezing and seizure orders in criminal proceedings

Requested states should check the request upon receipt to ensure that it does not contravene common reasons leading to necessary refusal or delay in executing the request. Depending on local legislation in individual states, together with prohibitions in some Conventions and Treaties, these common reasons include:

- insufficient detail
- there is no dual criminality/equivalent offence
- it is contrary to the fundamental principles of the law of the requested state
- double jeopardy
- the request relates to a politically motivated investigation or proceedings
- the offence is one under military law or tax provisions
- the measure sought may prejudice the suspect/defendant's human rights.

If the request has been transmitted to the requested state for mutual recognition in accordance with instruments such as the EU Council Framework Decision 2003/577/JHA on the Mutual Recognition of Orders Freezing Property and Evidence, in principle the requested state can simply check that the boxes on the template certificate have been adequately completed.

In any event, the requested state should be prepared (if necessary) to revert to the requesting state for further information to support a proper application to a court in the

requested state for a freezing or seizure order. Although the requesting state can be expected to have provided in its request the detail set out in the “Sending international requests for freezing and seizure orders in criminal proceedings” section above, generally it is permissible for requested states to ask the requesting state for more details before pursuing applications for freezing and seizure.

The international legal frameworks envisage that requested states will take any available provisional measure to preserve for potential confiscation of any specific items of property representing proceeds or instrumentalities, as well as confiscation of proceeds consisting of a requirement to pay a sum of money corresponding to the value of proceeds.

States are also usually required to comply with requests for assistance from other states with the same urgency and priority that they would treat their own domestic applications for freezing and seizure of assets; see, for example, Article 15.4 of the Warsaw Convention.

Once the request for assistance has been executed, it is good practice that the requested state should speedily update the requesting state with the outcome of the application for freezing or seizure, sending a copy of any court orders as soon as possible and ensuring a clear line of communication between the states for providing further updates to each other during the course of the investigation and criminal proceedings.

9. Forfeiture and Confiscation

9.1. Sending international requests to confiscate in criminal proceedings

The basic principle remains the same for requests for assistance to confiscate or forfeit the proceeds of crime as to earlier freeze or seize them: requests must be sufficiently detailed to enable the requested state and any court considering an application for confiscation or forfeiture to be able to understand and process the request.

Requests to confiscate and forfeit may cover domestic orders made by a requesting state in criminal or civil proceedings.

It is not necessary for a state previously to have requested assistance in freezing or seizing assets in order to be able to send a request for assistance to confiscate or forfeit them.

Again, the drafter in a requesting state should consider, in order to be able to draft a cogent request for assistance:

- the nature of the asset that the state wants to recover
- where the asset is that the state wants to recover
- how the requesting state can go about recovering the asset with the assistance of the foreign jurisdiction
- what assistance the requested state can offer
- any treaties, Conventions and directives that are relevant to the request.

In relation to a request for assistance based upon mutual recognition of confiscation orders made in criminal proceedings, for example after 19th December 2020 under the new Regulation (EU) 2018/1805 of the European Parliament and of the Council of 14 November 2018 on the Mutual Recognition of Freezing Orders and Confiscation Orders, or presently using the EU Council Framework Decision 2006/783/JHA on the Mutual Recognition of Confiscation Orders, again a template certificate for recognition is annexed to both instruments to prompt the requesting state to provide all of the necessary information for the requested state to be able to execute the request. Note that mutual recognition does not apply to freezing orders and confiscation orders issued within the framework of proceedings in civil or administrative matters.

In general terms, the format requirements for making a request for assistance in confiscation or forfeiture are the same as for freezing and seizure, namely:

- use the issuing authority's headed notepaper
- outline the domestic role of the authority making the request and confirm it has permission under domestic law to make the request

- give full contact details of the authority making the request
- supply one signed version of the request (also sealed if issued by a judge), and a translated version if required by the requested state
- set out the purpose for which the assistance is sought.

Requests should also identify clearly:

- the assistance requested (e.g. confiscation or forfeiture)
- the domestic offences of which the defendant was convicted, and the sentences or penalties imposed
- whether the order which the requesting state seeks to be enforced was made in criminal or civil proceedings as classified domestically
- a copy of the domestic legislation criminalising the conduct
- a summary of the facts and the connection to the requested state
- any sensitive information that cannot be disclosed to a court or person
- full details of the relevant defendant (including legal persons)
- the clear connection between the confiscation or forfeiture requested and the offence of which the defendant has been convicted
- any relevant domestic court hearing dates or reasons for urgency
- the title of the treaty or Convention relied upon by the requesting state to seek the assistance
- contact details for any enforcement agency or officers already familiar with the case in the requested state
- details of any domestic media attention or sensitivities about the case
- where required by the requested state and relevant to the offence under consideration, assurance that a death penalty will not be carried out or will be commuted.

The request should also include:

- confirmation that there is dual criminality, where required in the requested state
- where appropriate, that the person is convicted and no appeal is outstanding in respect of the conviction
- where appropriate, that any order is in force and is final/not subject to appeal, together with a sealed copy of the order
- that all or a certain sum payable under the order remains unpaid
- that the order has the purpose of recovering property or its value
- that the order can be enforced outside the requesting state
- the material facts, including any prior freezing/restraint in the requested state with sealed copies of those orders, and any defence or explanation in the domestic proceedings offered by the relevant defendant
- why the order is necessary – is confiscation or forfeiture of the property actually required to meet the confiscation order?

- full details of the defendants and the property to be confiscated
- brief details of all other known property held by the defendant outside the requested state.

ARIN contacts can assist requesting states with other countries' basic requirements on the contents of a written request for assistance, if necessary in advance of sending any request for assistance.

9.2. Sending and receiving international requests for freezing, seizure and confiscation orders in non-conviction based confiscation proceedings

As described in 2.6 non-conviction based (NCB) confiscation is the process of confiscating assets without convicting any particular person of a criminal offence in relation to those assets. It can take place in both criminal and civil proceedings. Many jurisdictions across the globe are taking advantage of the benefits of non-conviction based confiscation by adopting civil forfeiture legislation. In the EU however, with the exception of a few (UK, Ireland, Bulgaria, Slovakia), jurisdictions have not yet enacted domestic civil forfeiture laws. In order to ensure that foreign confiscation orders are recognised and enforced in the widest range of circumstances, international standards require countries to have the authority to be able to respond to requests made on the basis of non-conviction based confiscation proceedings and related provisional measures, unless this is inconsistent with fundamental principles of their domestic law. Whereas it may be several years before jurisdictions in the EU have their own civil forfeiture laws, international standards state that jurisdictions should be able to enforce orders based on NCB confiscation proceedings, at a minimum, in circumstances when a perpetrator is unavailable by reason of death, flight, absence, or if the perpetrator is unknown.

That said, many states across the globe do have partial or complete domestic provisions for civil forfeiture, which may also be known as civil recovery type proceedings. Some countries may be willing to enforce orders for civil forfeiture, as long as the confiscation procedure can be likened to a case of criminal character, even in the absence of criminal proceedings.

As set out earlier in this Handbook, treaties and Conventions require state parties to respond to requests for assistance based on non-conviction based confiscation proceedings, where possible within the framework of their own domestic laws. Based again upon the principle that state parties should afford each other the widest possible assistance in recovering the proceeds of crime, whether their proceedings to do so are classed domestically as criminal or civil in nature, the state parties are invited generally to think laterally when evaluating a request for mutual legal assistance or international co-operation relating to non-conviction based confiscation. For example, the FATF Best Practice Paper on Confiscation encourages countries to look beyond terminology and labels to the substance of the proceedings with a view to substantively evaluating the request. It is important that

requests are not unreasonably refused due to confusion caused by the use of different terminology in different states. FATF recommends that a request should not be refused merely on the basis that the requesting country uses the term “civil forfeiture”.⁷

In principle, however, if either state makes domestic provision for recovery of proceeds of criminal conduct in proceedings which are classed as civil, the same general information should be sent to the requested state under cover of a letter of request as is set out above in the section “Sending international requests for freezing and seizure orders in criminal proceedings”.

Again, ARIN contacts will be able to assist requesting states with other countries’ basic requirements on the contents of a written request for assistance, if necessary, in advance of sending any request for assistance.

The phrase non-conviction based confiscation in itself, and certainly some concepts of NCB confiscation, have caused considerable confusion among asset recovery practitioners. In order to assist jurisdictions to enforce freezing, seizure and confiscation orders based on NCB confiscation proceedings, CARIN has developed a useful Practitioner Typologies Guide to NCB Confiscation, to clarify the various types of non-conviction based confiscation. This guide is contained within Annex V of the CARIN Manual. https://docs.wixstatic.com/ugd/d54f05_4ccdfc507cb44d3588354132a68af289.pdf . As it is often terminology that causes confusion when executing international requests, particularly in the asset recovery field, the FATF advice to look beyond the terminology in requests to the actual substance of the proceedings is particularly relevant and valuable.

9.3. Unexplained Wealth Orders

One type of non-conviction based confiscation, as explained in 2.6 d) is the ‘unexplained wealth’ provision. This provision aims to confiscate or forfeit assets in cases whereby a person owns or enjoys a level of wealth that they could not have legally earned or that cannot be explained by any other means, such as inheritance, a lottery win or a gift. This may take place either in criminal or civil proceedings, depending on the jurisdiction. This provision is particularly relevant to international cooperation as some states will take action against assets located in their own jurisdiction, at the request of the investigating / prosecuting state, using their own unexplained wealth provisions. One example of a state that has this possibility is the United Kingdom (UK).

⁷ Section VI, 19

9.4. Unexplained Wealth Orders in the UK

Since 12th November 2018, requests may be made by any country to the United Kingdom for mutual legal assistance in relation to Unexplained Wealth Orders (UWOs), even though UWOs of themselves may not be available as a domestic tool of asset recovery to the requesting state.⁸

UWOs are an investigative tool available domestically in the UK since 31st January 2018, and they require a person (with documents where specified) to:

- set out the nature and extent of their interest in the property in respect of which the order is made
- explain how they obtained the property (including, in particular, how any costs incurred in obtaining it were met)
- where the property is held by the trustees of a settlement, set out such details of the settlement as may be specified in the order
- set out such other information in connection with the property as may be so specified and over a certain time period.

The UWO must specify or describe the property in respect of which the order is sought, and specify the person whom the enforcement authority thinks holds the property (which may include a person outside the United Kingdom). This person may be a Politically Exposed Person, namely an individual who is (or has been) entrusted with prominent public functions by an international organisation or by a state other than the United Kingdom or another EEA State, a family member of that individual, known to be a close associate of that individual, or otherwise connected with that individual.

Failure without reasonable excuse to comply (or purport to comply) with the requirements imposed by the UWO within a period permitted by a court means that the property is presumed to be recoverable property (i.e. property obtained through unlawful conduct) in civil recovery proceedings.

In making a request for assistance to obtain a UWO to support an investigation or proceedings in the requesting state, the format of a request for assistance should again be:

- use the issuing authority's headed notepaper
- outline the domestic role of the authority making the request and confirm it has permission under domestic law to make the request

⁸ Proceeds of Crime Act 2002 (External Investigations and External Orders and Requests) (Amendment) Order 2018

- give full contact details of the authority making the request
- supply one signed version of the request (also sealed if issued by a judge), and a translated version if required by the requested state
- set out the purpose for which the assistance is sought.

The request should also include sufficient information and background detail to lead the UK court to conclude that:

- there is reasonable cause to believe that the person holds the property in respect of which the order is sought, and the value of the property is greater than £50,000
- there are reasonable grounds to suspect that the known sources of the person's lawfully obtained income would have been insufficient for the purposes of enabling the person to obtain the property
- that the person is a politically exposed person, or there are reasonable grounds for suspecting that the person is, or has been, involved in serious crime (whether in a part of the United Kingdom or elsewhere), or someone connected with that person is, or has been, so involved.

Although this is still a relatively novel area for mutual legal assistance requests in the UK, it is suggested that requests for a UWO should identify clearly:

- the assistance requested (i.e. a UWO)
- the domestic offences charged or under investigation, and potential sentences or penalties
- a copy of the domestic legislation criminalising the conduct
- a summary of the facts and the connection to the requested state
- any sensitive information that cannot be disclosed to a court or person
- full details of the person (including legal persons)
- the clear connection between the UWO requested and the offence under investigation or linked to proceedings
- any relevant domestic court hearing dates or reasons for urgency
- the title of the treaty or Convention relied upon by the requesting state to seek the assistance
- contact details for any enforcement agency or officers already familiar with the investigation in the requested state
- details of any domestic media attention or sensitivities about the investigation or proceedings.

10. Return and Disposal of Assets: Asset Sharing Agreements

International frameworks for mutual legal assistance in recovering the proceeds of crime generally envisage that a requesting state cannot insist on retaining the value of the recovered property when it is assisted by the requested state.

Nevertheless, Conventions and treaties can make provision for asset sharing agreements at the instigation of either of the party states to the request. For example, Article 25 of the Warsaw Convention provides that a requested state acting under the Convention may dispose of property (which it confiscates at the request of another state) in accordance with its domestic law and administrative procedures but must consider giving priority to returning the confiscated property to the requesting state so that it can give compensation to the victims of the crime or return such property to their legitimate owners. The same Article permits a requested state to have asset sharing agreements with a requesting state on a regular or case-by-case basis, in accordance with the requested state's domestic law or administrative procedures.

Similar provisions appear, for example, in Article 14 of UNTOC and Article 57 of UNCAC. Article 57.4 of UNCAC also provides that unless the party states agree otherwise, the requested state may deduct reasonable expenses incurred in investigations, prosecutions or judicial proceedings leading to the return or disposition of confiscated property under the Convention.

Within the EU, the new Regulation (EU) 2018/1805 of the European Parliament and of the Council of 14 November 2018 on the Mutual Recognition of Freezing Orders and Confiscation Orders provides comprehensive provisions covering the restitution of frozen property to the victim and the disposal of confiscated property or money obtained after selling such property; these will come into force for orders transmitted after 19th December 2020. The general 50/50 guide on sharing assets, taken forward from the EU Council Framework Decision on Mutual Recognition of Confiscation Orders of 2006, is also present in the new Regulation. It states that if the amount obtained from the execution of the confiscation order is equal to or less than EUR 10 000, the amount shall accrue to the executing state. If the amount obtained from the execution of the confiscation order is more than EUR 10 000, 50% of the amount shall be transferred by the executing State to the issuing state.

Requested states may therefore wish to consider upon receipt of a request for assistance, in conjunction with the requesting state as appropriate, whether it wishes to retain the value of any recovered proceeds in a particular case. Best practice guidance encourages states to consider what will happen to any assets involved in international cases at the earliest stage possible. Discussions regarding restitution to victims and asset sharing should result in agreement on the use of one of the available instruments: for example, the new Regulation

and the conclusion of an asset sharing agreement. Factors which regularly encourage states to conclude asset sharing agreements or to return in its entirety the value of a confiscated asset include the frequency of requests between the two states generally in relation to freezing, seizing, confiscating and forfeiting the proceeds of crime; or the nature of the criminal offence(s) from which the proceeds were derived. For example, in cases of corruption wreaked upon the poorest countries in the world, richer requested states will consider repatriating the value of the confiscated asset to the other country either directly or to support initiatives which will improve society in that country as a whole (such as educational or charitable projects). The UN Model Asset Sharing Agreement can be found at https://www.unodc.org/pdf/crime/ieg_crime_2005-01-26_draft_model_agr_01.pdf

11. Mutual Legal Assistance for Asset Recovery

The ability to seek international assistance temporarily to freeze and seize assets which have been transferred outside a nation's legal jurisdiction, in order to preserve them for any criminal confiscation orders or civil recovery orders that may be made, is a key weapon in combatting the unlawful movement of the proceeds of crime.

As set out above in relation to investigations, variations in domestic legislation, policy, institutions and procedures may hamper the efficient processing of international requests for freezing, seizure, confiscation and forfeiture of assets, but the provision of mutual legal assistance to other states has proved a vital tool.

Many states have a single office to process incoming requests for mutual legal assistance, and through which any such request must be directed in the first instance; other states indicate willingness to accept such requests through regional offices or particular authorities depending on the nature of the request. These requirements are published widely; for example, the Council of Europe provides a comprehensive guide to national procedures of Member States and their individual requirements to process requests.⁹ ARIN contacts will also provide information and assistance as to the appropriate office for directing a request for assistance.

Mutual Legal Assistance (MLA) enables cooperation between states to obtain assistance in the investigation or prosecution of criminal offences, and in the investigation, freezing and confiscation of the proceeds of crime either on a criminal (conviction) basis or a civil (non conviction) basis.

Requests are made by a formal international Letter of Request (ILOR or LOR). In civil law jurisdictions these are also referred to as *Commissions Rogatoires*. This assistance is generally requested by courts or prosecutors, and so can also be referred to as 'judicial cooperation'.

Where a party state to the EU Council Framework Decision 2003/577/JHA on the Mutual Recognition of Orders Freezing Property and Evidence or the EU Council Framework Decision 2006/783/JHA on the Mutual Recognition of Confiscation Orders seeks the speedy registration and execution of another state's freezing and confiscation orders, this is known as 'mutual recognition'. Instead of using ILORs or LORs, the party states complete a template certificate annexed to each of the requisite Framework Decisions.

⁹ <https://www.coe.int/en/web/transnational-criminal-justice-pcoc/MLA-country-information>

Receiving international requests for assistance

It is critical at the outset to analyse an incoming request to determine whether it seeks measures of assistance in either criminal or civil proceedings in order that the correct organisation can process the request and provide assistance.

Some states will not accept requests for assistance in civil proceedings for civil recovery (non-convicted based) orders. Nevertheless, Article 43 of UNCAC expresses the desire that, where appropriate and consistent with their domestic legal system, states parties shall consider assisting each other in investigations of and proceedings in civil and administrative matters relating to corruption. In addition, for example, Article 21 of the Council of Europe's Warsaw Convention mandates a requested state to take any necessary provisional measures, such as freezing or seizing, to assist another party state, which has instituted criminal proceedings or proceedings for the purpose of confiscation. These Conventions and others therefore generally intend that states shall offer each other the widest possible measures of assistance, such assistance intending to extend also to requests for assistance with non-conviction based recovery.

The earlier chapters give detailed guidance on matters to include in MLA requests for asset tracing, freezing and seizure, confiscation and forfeiture. Useful tools to assist in drafting MLA requests can be found at chapter 14.

Remember that the recovery of assets overseas often requires hard work and political will. To ensure success:

- ensure the language and spelling in any transmitted document has been best translated from the original language: some countries will reject a request merely for spelling mistakes
- maintain regular contact with international investigator colleagues and prosecuting authorities about the case
- update about the progress of the domestic investigation and linked court proceedings, quickly if necessary
- understand asset sharing agreements.

12. Overview of Existing Bi-lateral Asset Recovery Agreements in the Region

Albania

Albania has concluded a number of bilateral agreements and combined these into a Manual on International Legal Cooperation in Criminal Matters. It is not known whether any of these focuses specifically on asset recovery.

Bosnia and Herzegovina

Bosnia and Herzegovina has concluded agreements with several jurisdictions both within and outside the Balkan region. These agreements are more general in nature and not focused on details relating to asset tracing, freezing, seizure and confiscation. Bosnia Herzegovina has not concluded any bilateral agreements which relate specifically to asset recovery. Confiscation is regulated within general agreements on MLA.

Kosovo*

No bi-lateral agreements relating to asset recovery.

Montenegro

Montenegro has bilateral agreements on mutual legal assistance in criminal matters with Serbia, Croatia and North Macedonia. All three agreements are similar. The agreements do not contain extensive asset recovery provisions. Within Article 3, (Scope of legal assistance) they indicate that actions requested could include confiscation and temporary seizure of objects. These agreements are available in the local language only.

North Macedonia

North Macedonia has a number of bilateral agreements in force with jurisdictions including neighbouring Balkan states, signed and ratified since 1998. In addition, Memorandums of Understanding exist between the Prosecution Service of North Macedonia and the Prosecution Service of Albania, Bosnia and Herzegovina, Serbia, Croatia and Montenegro. These agreements and memorandums are of a general nature and are focused on the exchange of information, extradition and execution of criminal sanctions. None are specifically focused on the various aspects of asset recovery. All agreements and memorandums are in the local language only.

* This designation is without prejudice to positions on status, and is in line with UNSC 1244 and the ICJ Opinion on the Kosovo Declaration of Independence

Serbia

Serbia has a bilateral agreement with Montenegro. This provides a legal basis for cooperation with respect to evidence and instrumentalities of crime rather than proceeds of crime. This is therefore not sufficient for a comprehensive and effective cooperation in the area of asset confiscation.

13. Acronyms / Abbreviations

AMO	- Asset Management Office
AP	- Analysis Project (Europol)
ARIN	- Asset Recovery Inter-Agency Network
ARIN-AP	- Asset Recovery Inter-Agency Network Asia Pacific
ARIN-CARIB	- Asset Recovery Inter-Agency Network Caribbean
ARIN-EA	- Asset Recovery Inter-Agency Network Eastern Africa
ARIN-SA	- Asset Recovery Inter-Agency Network Southern Africa
ARIN-WA	- Asset Recovery Inter-Agency Network Western Africa
ARIN-WCA	- Asset Recovery Inter-Agency Network West and Central Asia
ARO	- Asset Recovery Office
CARIN	- Camden Asset Recovery Inter-Agency Network
CoE	- Council of Europe
CSP	- Corporate Service Provider
dob/D.O.B.	- Date of birth
EGMONT	- Egmont Group (of FIUs)
EJN	- European Judicial Network (EU)
ETS	- Council of Europe Treaty Series
EU	- European Union
EU MS	- EU Member State(s)
Eurojust	- European Union's Judicial Cooperation Unit
Europol	- European Union Agency for Law Enforcement Cooperation
FATF	- Financial Action Task Force on Money Laundering
FIU	- Financial Intelligence Unit
GAFI	- Groupe d'action financière (French name of the FATF)
GAFILAT	- FATF regional-style body for Latin America

GFPN	- Interpol Global Focal Point Network
I 24/7	- Global police communications system (Interpol)
IBC	- International Business Corporation or Company
ICPO	- International Criminal Police Organization (Interpol)
ILOR	- International Letter of Request
Interpol	- International Criminal Police Organization (ICPO)
I-SECOM	- secure web-based email system for the specialised anti-corruption community (Interpol)
JIT	- Joint Investigation Team
JHA	- Justice and Home Affairs (EU)
LLC	- Limited Liability Company
LOR	- Letter of Request
MLA	- Mutual Legal Assistance
MoneyVal	- Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (a CoE committee)
MS	- Member State(s) of the EU
MT103	- standardised SWIFT payment message used for international wire transfers
NCB	- National Central Bureau (Interpol)
OAP	- Operational Action Plan
OLAF	- Office Européen de Lutte Antifraude (European Anti-Fraud Office)
PCC SEE	- Police Cooperation Convention Southeast Europe
P.O. Box	- Post office box
RAI	- Regional Anti-Corruption Initiative

RRAG	- Red de Recuperación de Activos de GAFILAT (ARIN for Latin America)
SIENA	- Secure Information Exchange Network Application (Europol)
StAR	- Stolen Asset Recovery (Initiative)
SWIFT	- Society for Worldwide Interbank Financial Telecommunication
UK	- United Kingdom of Great Britain and Northern Ireland
UN	- United Nations
UNCAC	- United Nations Convention Against Corruption
UNODC	- United Nations Office on Drugs and Crime
UNTOC	- United Nations Convention Against Transnational Organised Crime (2000)
UWO	- Unexpected Wealth Order(s) in the UK

14. Useful Sources of Information

FATF Best practices on confiscation (recommendations 4 and 38) and a framework for ongoing work on asset recovery (2012)

This paper sets out international best practices to assist countries in their implementation of FATF Recommendations 4 and 38, and to address impediments to effective confiscation and asset recovery in the international context:

<http://www.fatf-gafi.org/publications/fatfrecommendations/documents/bestpracticesonconfiscationrecommendations4and38andaframeworkforongoingworkonassetrecovery.html>

FATF Concealment of Beneficial Ownership (2018)

While corporate vehicles, such as companies, foundations, partnerships, and other types of legal persons and arrangements are important for supporting commercial and entrepreneurial activity, they can also be misused to conceal the ownership and control of illicitly gained assets. The report uses over 100 case studies provided by 34 different jurisdictions of the FATF Global Network, the experiences of law enforcement and other experts, private sector input the private sector as well as open-source research and intelligence reports to identify the methods that criminals use to hide beneficial ownership. Vulnerabilities associated with beneficial ownership are analysed, with a particular focus on the involvement of professional intermediaries.

<http://www.fatf-gafi.org/publications/methodsandtrends/documents/concealment-beneficial-ownership.html>

StAR International Partnerships on Asset Recovery: Overview and Global Directory of Networks (2012)

This directory lists the asset recovery networks, along with information about their structure and operations, and contact details. <https://star.worldbank.org/publication/international-partnerships-asset-recovery>

Open Source Resources Dealing with Offshore Structures

The Puppet Masters (2011): how the corrupt use legal structures to hide stolen assets and what to do about it

This publication deals with the corporate and financial structures that form the building blocks of hidden money trails. In particular, it focuses on the ease with which corrupt actors hide their interests behind a corporate veil and the difficulties investigators face in trying to lift that veil.

<http://documents.worldbank.org/curated/en/784961468152973030/The-puppet-masters-how-the-corrupt-use-legal-structures-to-hide-stolen-assets-and-what-to-do-about-it>

Offshore Activities and Money laundering – Recent Findings & Challenges (2017)

This report is published by the EU and examines the EU response for creating transparency with regard to bank registers, beneficial ownership and tax accounts.

<https://publications.europa.eu/en/publication-detail/-/publication/e2af020a-1379-11e7-808e-01aa75ed71a1/language-en>

Open Source Resources for MLA drafting

UNODC MLA Writer Tool - <https://www.unodc.org/mla/>

The Mutual Legal Assistance Request Writer Tool (MLA Tool) was developed by UNODC to assist criminal justice practitioners in drafting expeditiously MLA requests, thereby enhancing cooperation between States and accelerating responses to such requests.

Council of Europe Tools - <https://www.coe.int/en/web/transnational-criminal-justice-pcoc/mutual-legal-assistance>

This site provides useful country information, treaties, Conventions, international standards and tools for the implementation of mutual legal assistance in criminal matters.

European Judicial Network Tools

https://www.ejn-crimjust.europa.eu/ejn/EJN_Home.aspx

This website provides a number of useful tools for identifying the legal requirements of a local competent authority when requesting judicial cooperation, a mutual legal assistance template, a judicial library, contact points and provides concise and practical legal information regarding judicial cooperation regarding coercive measures

UK Central Authority Tools - <https://www.gov.uk/guidance/mutual-legal-assistance-mla-requests>

This provides information for competent authorities abroad (and in the UK) about obtaining evidence within the UK (or abroad) to assist in criminal investigations or proceedings.

15. Annexes

ANNEX A

INFORMATION EXCHANGE UNDER COUNCIL FRAMEWORK DECISION 2006/1960/JHA
FORM TO BE USED BY THE
**REQUESTED MEMBER STATE IN CASE OF TRANSMISSION/DELAY/REFUSAL OF
INFORMATION**

This form shall be used to transmit the requested information and/or intelligence, to inform the requesting authority of the impossibility of meeting the normal deadline, of the necessity of submitting the request to a judicial authority for an authorisation, or of the refusal to transmit the information.

This form may be used more than once during the procedure (e.g. if the request has first to be submitted to a judicial authority and it later transpires that the execution of the request has to be refused).

Requested authority (name, address, telephone, fax, e-mail, Member State)	
Details of the handling agent (optional):	
Reference number of this answer	
Date and reference number of previous answer	
Answering to the following requesting authority	
Date and time of the request	
Reference number of the request	
Normal time limit under Article 4 Framework Decision 2006/960/JHA	
The offence falls under Article 2(2) of Framework Decision 2002/584/JHA and the requested information or intelligence is held in a database directly accessible by a law enforcement authority in the requested Member State	Urgency requested • <input type="checkbox"/> 8 hours
	Urgency not requested • <input type="checkbox"/> 1 week
Other cases	• <input type="checkbox"/> 14 days
Information transmitted under Framework Decision 2006/960/JHA: information and intelligence provided	
1. Use of transmitted information or intelligence <input type="checkbox"/> may be used solely for the purposes for which it has been supplied or for preventing an immediate and serious threat to public security; <input type="checkbox"/> is authorised also for other purposes, subject to the following conditions (optional):	
2. Reliability of the source <input type="checkbox"/> Reliable <input type="checkbox"/> Mostly reliable <input type="checkbox"/> Not reliable <input type="checkbox"/> Cannot be assessed	

3. Accuracy of the information or intelligence

- Certain
- Established by the source
- Hearsay - confirmed
- Hearsay - not confirmed

4. The result of the criminal investigation or criminal intelligence operation within which the exchange of information has taken place has to be reported to the transmitting authority

- No
- Yes

5. In case of spontaneous exchange, reasons for believing that the information or intelligence could assist in the detection, prevention or investigation of offences referred to in Article 2(2) of Framework Decision 2002/584/JHA:

DELAY - It is not possible to respond within the applicable time limit under Article 4 of Framework Decision 2006/960/JHA

The information or intelligence cannot be provided within the given time-limit for the following reasons:

It is likely to be given within:

- 1 day 2 days 3 days
-weeks
- 1 month

- The authorisation of a judicial authority has been requested.
The procedure leading up to the granting/refusal of the authorisation is expected to last ... weeks

REFUSAL - The information or intelligence

- could not be provided and requested at national level; or
- cannot be provided, for one or more of the following reasons:

A — Reason related to judicial control which prevents the transmission or requires the use of mutual legal assistance

- the competent judicial authority has not authorised the access and exchange of the information or intelligence
- the requested information or intelligence has previously been obtained by means of coercive measures and its provision is not permitted under the national law

<p><input type="checkbox"/> the information or intelligence is not held</p> <ul style="list-style-type: none"> • by law enforcement authorities; or • by public authorities or by private entities in a way which makes it available to law enforcement authorities without the taking of coercive measures
<p><input type="checkbox"/> B — The provision of the requested information or intelligence would harm essential national security interests or would jeopardise the success of a current investigation or a criminal intelligence operation or the safety of individuals or would clearly be disproportionate or irrelevant with regard to the purposes for which it has been requested.</p>
<p>If case A or B is used, provide, if deemed necessary, additional information or reasons for refusal (optional):</p>
<p><input type="checkbox"/> D — The requested authority decides to refuse execution because the request pertains, under the law of the requested Member State, to the following offence (nature of the offence and its legal qualification to be specified) which is punishable by one year or less of imprisonment</p>
<p><input type="checkbox"/> E — The requested information or intelligence is not available</p>
<p><input type="checkbox"/> F — The requested information or intelligence has been obtained from another Member State or from a third country and is subject to the rule of speciality and that Member State or third country has not given its consent to the transmission of the information or intelligence.</p>

ANNEX B

INFORMATION EXCHANGE UNDER COUNCIL FRAMEWORK DECISION 2006/960/JHA REQUEST FORM FOR INFORMATION AND INTELLIGENCE TO BE USED BY THE REQUESTING MEMBER STATE

This form shall be used when requesting information and intelligence under
Framework Decision 2006/960/JHA

I — Administrative information

Requesting authority (name, address, telephone, fax, e-mail, Member State):					
Details of the handling agent (optional):					
To the following Member State:					
Date and time of this request:					
Reference number of this request:					
Previous requests					
<input type="checkbox"/> This is the first request on this case					
<input type="checkbox"/> This request follows previous requests in the same case					
Previous request(s)			Answer(s)		
	Date	Reference number (in the requesting Member State)	Date	Reference number (in the requested Member State)	
1.					
2.					
3.					
4.					
If the request is sent to more than one authority in the requested Member State, please specify each of the channels used:					
<input type="checkbox"/>	ENU/Europol	<input type="checkbox"/>	For Liaison Officer information	<input type="checkbox"/>	For execution
<input type="checkbox"/>	Interpol NCB	<input type="checkbox"/>	For Information	<input type="checkbox"/>	For execution
<input type="checkbox"/>	Sirene	<input type="checkbox"/>	For Information	<input type="checkbox"/>	For execution
<input type="checkbox"/>	Liaison Officer	<input type="checkbox"/>	For Information	<input type="checkbox"/>	For execution
<input type="checkbox"/>	Other (please specify)	<input type="checkbox"/>	For Information	<input type="checkbox"/>	For execution

If the same request is sent to other Member States, please specify the other Member States and the channel used (optional)

II — Time limits

Reminder: time limits under Article 4 of Framework Decision 2006/960/JHA

C — The offence falls under Article 2(2) of Framework Decision 2002/584/JHA
and

the requested information or intelligence is held in a database directly accessible by a law enforcement authority

→ The request is urgent → Time limit: 8 hours with possibility to postpone

→ The request is not urgent → Time limit: 1 week

D — Other cases: time limit: 14 days

Reminder: time limits under Article 4 of Framework Decision 2006/960/JHA

C — The offence falls under Article 2(2) of Framework Decision 2002/584/JHA
and

the requested information or intelligence is held in a database directly accessible by a law enforcement authority

The request is urgent → Time limit: 8 hours with possibility to postpone

→ The request is not urgent → Time limit: 1 week

D — Other cases: → Time limit: 14 days

Nature of the offence(s)

A — Application of Article 4(1) or 4(3) of the Framework Decision 2006/960/JHA

- A. 1. The offence is punishable by a maximum term of imprisonment of at least three years in the requesting Member State

AND

A.2. The offence is one (or more) of the following:

- | | |
|--|--|
| <input type="checkbox"/> Participation in a criminal organisation | <input type="checkbox"/> Laundering of the proceeds of crime |
| <input type="checkbox"/> Terrorism | |
| <input type="checkbox"/> Counterfeiting of currency, including the euro | |
| <input type="checkbox"/> Trafficking in human beings | <input type="checkbox"/> Computer related crime |
| <input type="checkbox"/> Sexual exploitation of children and child pornography | <input type="checkbox"/> Environmental crime, including illicit trafficking in endangered animal species and in endangered plant species and varieties |
| <input type="checkbox"/> Illicit trafficking in narcotic drugs and psychotropic substances | <input type="checkbox"/> Facilitation of unauthorised entry and residence |
| <input type="checkbox"/> Illicit trafficking in weapons, munitions and explosives | |
| <input type="checkbox"/> Corruption | <input type="checkbox"/> Murder, grievous bodily injury |
| <input type="checkbox"/> Fraud, including that affecting the financial interests of the European Communities within the meaning of the Convention of 26 July 1995 on the protection of the a European Communities' financial interests | <input type="checkbox"/> Illicit trade in human organs and tissue |
| <input type="checkbox"/> Organised or armed robbery | <input type="checkbox"/> Kidnapping, illegal restraint and restraint and hostage-taking |
| <input type="checkbox"/> Illicit trafficking in cultural goods, including antiques and works of art | <input type="checkbox"/> Racism and xenophobia |
| <input type="checkbox"/> Swindling | <input type="checkbox"/> Illicit trafficking in nuclear or radioactive materials |
| <input type="checkbox"/> Racketeering and extortion | <input type="checkbox"/> Trafficking in stolen vehicles |
| <input type="checkbox"/> Counterfeiting and piracy of products | <input type="checkbox"/> Rape |
| <input type="checkbox"/> Forgery of administrative documents and trafficking therein | <input type="checkbox"/> Arson |
| <input type="checkbox"/> Forgery of means of payment | <input type="checkbox"/> Crime within the jurisdiction of the International Criminal Court |
| <input type="checkbox"/> Illicit trafficking in hormonal substances and other growth Promoters | <input type="checkbox"/> Unlawful seizure of aircraft/ships |
| | <input type="checkbox"/> Sabotage |

→ The offence therefore falls under Article 2(2) of Framework Decision 2002/584/JHA-> Article 4(1) (urgent cases) and 4(3) (non urgent cases) of Framework Decision 2006/960/JHA are therefore applicable as regards time limits for responding to this request

Or

- B — The offence(s) is(are) not covered under A. In this case, description of the offence(s):

Purpose for which the information or intelligence is requested

Connection between the purpose for which the information or intelligence is requested and the person who is the subject of the information or intelligence

Identity(ies) (as far as known) of the person(s) being the main subject(s) of the criminal investigation or criminal intelligence operation underlying the request for information or intelligence

Reasons for believing that the information or intelligence is in the requested Member State

Restrictions on the use of information contained in this request for purposes other than those for which it has been supplied or for preventing an immediate and serious threat to public security

- use granted
 use granted, but do not mention the information provider
 do not use without authorisation of the information provider
 do not use

MODEL AGREEMENT ON THE ESTABLISHMENT OF A JOINT INVESTIGATION TEAM

In accordance with:

[Please indicate here the applicable legal bases, which may be taken from – but not limited to — the instruments listed below:

- *Article 13 of the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union of 29 May 2000;*
- *Council Framework Decision of 13 June 2002 on joint investigation teams;*
- *Article 1 of the Agreement between the European Union and the Republic of Iceland and the Kingdom of Norway on the application of certain provisions of the Convention of 29 May 2000 on Mutual Assistance in Criminal Matters between the Member States of the European Union and the 2001 Protocol thereto of 29 December 2003;*
- *Article 5 of the Agreement on Mutual Legal Assistance between the European Union and the United States of America;*
- *Article 20 of the second additional protocol to the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959;*
- *Articl 9(1)(c) of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988);*
- *Article 19 of the United Nations Convention against Transnational Organized Crime (2000);*
- *Article 49 of the United Nations Convention against Corruption (2003);*
- *Article 27 of the Police Cooperation Convention for South East Europe (2006).]*

1. Parties to the Agreement

The following parties have concluded an agreement on the setting up of a joint investigation team, hereafter referred to as 'JIT':

1.[Insert name of the first competent agency/administration of a State as a Party to the agreement]

And

2. [Insert name of second competent agency/administration of a State as a party to the agreement]

The parties to this agreement may decide, by common consent, to invite other States' agencies or administrations to become parties to this agreement.

2. Purpose of the JIT

This agreement shall cover the setting up of a JIT for the following purpose:

[Please provide a description of the specific purpose of the JIT.

This description should include the circumstances of the crime(s) being investigated in the States involved (date, place and nature) and, if applicable, reference to the ongoing domestic procedures. References to case-related personal data are to be kept to a minimum.

This section should also briefly describe the objectives of the JIT (including e.g. collection of evidence, coordinated arrest of suspects, asset freezing ...). In this context, Parties should consider including the initiation and completion of a financial investigation as one of the JIT objectives.]

3. Period covered by this agreement

The parties agree that the JIT will operate for **[please indicate specific duration]**, starting from the entry into force of this agreement.

This agreement shall enter into force when the last party to the JIT has signed it. This period may be extended by mutual consent.

4. States in which the JIT will operate

The JIT will operate in the States of the parties to this agreement.

The team shall carry out its operations in accordance with the law of the States in which it operates at any particular time.

5. JIT Leader(s)

The leaders of the team shall be representatives of the competent authorities participating in criminal investigations from the States in which the team operates at any particular time, under whose leadership the members of the JIT shall carry out their tasks.

The parties have designated the following persons to act as leaders of the JIT:

Name	Position/Rank	Authority/Agency	State

Should any of the abovementioned persons be unable to carry out their duties, a replacement will be designated without delay. Written notification of such replacement shall be provided to all concerned parties and annexed to this agreement.

6. Members of the JIT

In addition to the persons referred to in point 5, a list of JIT members shall be provided by the parties in a dedicated annex to this agreement.

Should any of the JIT members be unable to carry out their duties, a replacement will be designated without delay by written notification sent by the competent leader of the JIT.

7. Participants in the JIT

Parties to the JIT agree to involve **[Insert here e.g., Eurojust, Europol, OLAF...]** as participants in the JIT. Specific arrangements related to the participation of **[Insert name]** are to be dealt with in the relevant appendix to this agreement.

8. Gathering of information and evidence

The JIT leaders may agree on specific procedures to be followed regarding the gathering of information and evidence by the JIT in the States in which it operates.

The parties entrust the JIT leaders with the task of giving advice on the obtaining of evidence.

9. Access to information and evidence

The JIT leaders shall specify the processes and procedures to be followed regarding the sharing between them of information and evidence obtained pursuant to the JIT in each Member State.

[In addition, parties may agree on a clause containing more specific rules on access, handling and use of information and evidence. Such clause may in particular be deemed appropriate when the JIT is based neither on the EU Convention nor on the Framework Decision (which already include specific provisions in this respect – see Article 13(10) of the Convention).]

10. Exchange of information and evidence obtained prior to the JIT

Information or evidence already available at the time of the entry into force of this agreement, and which pertains to the investigation described in this agreement, may be shared between the parties in the framework of this agreement.

11. Information and evidence obtained from States not participating in the JIT

Should a need arise for a mutual legal assistance request to be sent to a State that does not participate in the JIT, the requesting State shall consider seeking the agreement of the requested State to share with the other JIT party/parties the information or evidence obtained as a result of the execution of the request.

12. Specific arrangements related to seconded members

[When deemed appropriate, parties may, under this clause, agree on the specific conditions under which seconded members may:

- *carry out investigations – including in particular coercive measures — in the State of operation (if deemed appropriate, domestic legislations may be quoted here or, alternatively, annexed to this agreement)*
- *request measures to be carried out in the State of secondment*
- *share information collected by the team*
- *carry/use weapons*

13. Amendments to the agreement

This agreement may be amended by mutual consent of the parties. Unless otherwise stated in this agreement, amendments can be made in any written form agreed upon by the parties.

14. Consultation and coordination

The parties will ensure they consult with each other whenever needed for the coordination of the activities of the team, including, but not limited to:

- the review of the progress achieved and the performance of the team
- the timing and method of intervention by the investigators
- the best manner in which to undertake eventual legal proceedings, consideration of appropriate trial venue, and confiscation.

15. Communication with the media

If envisaged, timing and content of communication with the media shall be agreed upon by the parties and followed by the participants.

16. Evaluation

The parties may consider evaluating the performance of the JIT, the best practice used and lessons learned. A dedicated meeting may be arranged to carry out the evaluation.

[In this context, parties may refer to the specific JITs evaluation form developed by the EU Network of JITs experts. EU funding may be sought to support the evaluation meeting.]

17. Specific arrangements

[Please insert, if applicable. The following sub-chapters are intended to highlight possible areas that may be specifically described.]

17.1. Rules of disclosure

[Parties may wish to clarify here applicable national rules on communication to the defence and/or annex a copy or a summary of them.]

17.2. Management of assets/asset recovery arrangements

17.3. Liability

[Parties may wish to regulate this aspect, particularly when the JIT is based neither on the EU Convention nor on the Framework Decision (which already include specific provisions in this respect – see Articles 15 and 16 of the Convention).]

18. Organisational arrangements

[Please insert, if applicable. The following sub-chapters are intended to highlight possible areas that may be specifically described.]

18.1. Facilities (office accommodation, vehicles, other technical equipment)

18.2. Costs/expenditures/insurance

18.3. Financial support to JITs

[Under this clause, Parties may agree on specific arrangements concerning roles and responsibilities within the team concerning the submission of applications for EU funding.]

18.4. Language of communication

Done at [place of signature], [date]

[Signatures of all parties]

[OJ C 197, 12.7.2000, p. 3.](#)

[OJ L 162, 20.6.2002, p. 1.](#)

[OJ L 26, 29.1.2004, p. 3.](#)

[OJ L 181, 19.7.2003, p. 34.](#)

CET No 182.

United Nations, *Treaty Series*, vol. 1582, p. 95.

United Nations, *Treaty Series*, vol. 2225, p. 209 Doc. A/RES/55/25.

United Nations, *Treaty Series*, vol. 2349, p. 41; Doc. A/58/422.

Registration with the Secretariat of the United Nations: Albania, 3 June 2009, No 46240.

Parties should refer in this context to the Council Conclusions and Action Plan on the way forward with regard to financial investigation (Council document 10125/16 + COR1)

When needed, the JIT may include national asset recovery experts.

Examples of wordings can be found in Appendices 2 and 3.

Appendix I

TO THE MODEL AGREEMENT ON THE ESTABLISHMENT OF A JOINT INVESTIGATION TEAM

Participants in a JIT

Arrangement with Europol/Eurojust/the Commission (OLAF), bodies competent by virtue of provisions adopted within the framework of the Treaties, and other international bodies.

1. Participants in the JIT

The following persons will participate in the JIT:

Name	Position/Rank	Organisation

[Insert name of Member State] has decided that its national member of Eurojust will participate in the joint investigation team on behalf of Eurojust/as a competent national authority.

Should any of the above-mentioned persons be unable to carry out their duties, a replacement will be designated. Written notification of such replacement shall be provided to all concerned parties and annexed to this agreement.

2. Specific arrangements

The participation of the above-mentioned persons will be subject to the following conditions and only for the following purposes:

2.1. *First participant in the agreement*

- 2.1.1. Purpose of participation
- 2.1.2. Rights conferred (if any)
- 2.1.3. Provisions concerning costs
- 2.1.4. Purpose and scope of participation

2.2. *Second participant in the agreement (if applicable)*

- 2.2.1. ...

3. Conditions of participation for Europol staff

- 3.1. Europol staff participating in the joint investigation team shall assist all the members of the team and provide the full range of Europol's support services to the joint investigation as provided for and in accordance with the Europol Regulation. They shall not apply any coercive measure. However, participating Europol staff can, if instructed and under the guidance of the leader(s) of the team, be present during operational activities of the joint investigation team, in order to render on-the-spot advice and assistance to the members of the team who execute coercive measures, provided that no legal constraints exist at national level where the team operates.
- 3.2. Article 11(a) of the Protocol on the Privileges and Immunities of the European Union shall not apply to Europol staff during their participation in the JIT ⁽²⁾. During the operations of the JIT, Europol staff shall, with respect to offences committed against or by them, be subject to the national law of the Member State of operation applicable to persons with comparable functions.
- 3.3. Europol staff may liaise directly with members of the JIT and provide all members of the JIT with all necessary information in accordance with the Europol Regulation.

Appendix II

TO THE MODEL AGREEMENT ON THE ESTABLISHMENT OF A JOINT INVESTIGATION TEAM

Agreement to extend a joint investigation team

The parties have agreed to extend the joint investigation team (hereinafter 'JIT') set up by agreement of **[insert date]**, done at **[insert place of signature]**, a copy of which is attached hereto.

The parties consider that the JIT should be extended beyond the period for which it was set up **[insert date on which period ends]**, since its purpose as established in Article **[insert article on purpose of JIT here]** has not yet been achieved.

The circumstances requiring the JIT to be extended have been carefully examined by all parties. The extension of the JIT is considered essential to the achievement of the purpose for which the JIT was set up.

The JIT will therefore remain in operation for an additional period of **[please indicate specific duration]** from the entry into force of this agreement. The above period may be extended further by the parties by mutual consent.

Date/signature

Appendix III

TO THE MODEL AGREEMENT ON THE ESTABLISHMENT OF A JOINT INVESTIGATION TEAM

The parties have agreed to amend the written agreement setting up a joint investigation team (hereinafter 'JIT') of **[insert date]**, done at **[insert place]**, a copy of which is attached hereto.

The signatories have agreed that the following articles shall be amended as follows:

1. (Amendment ...)
2. (Amendment ...)

The circumstances requiring the JIT agreement to be amended have been carefully examined by all parties. The amendment(s) to the JIT agreement is/are deemed essential to achieve the purpose for which the JIT was set up.

Date/signature

RAI

Regional Anti-Corruption Initiative (RAI) is an intergovernmental organization with nine member countries: Albania, Bosnia and Herzegovina, Bulgaria, Croatia, Moldova, Montenegro, North Macedonia, Romania and Serbia. Poland, Georgia and Slovenia are countries with Observer status. RAI's Mission is to lead regional cooperation in anti-corruption efforts by providing a common platform for sharing of knowledge and exchange of best practices. Organisation's Secretariat is based in Sarajevo with projects throughout Southeast Europe primarily focusing on conflict of interest & asset disclosure, corruption proofing of legislation, corruption risk assessment, whistleblowing, building integrity of law enforcement and asset recovery.

The AIRE Centre

The AIRE Centre is a non-governmental organisation that promotes awareness of European law rights and provides support for victims of human rights violations. It has particular experience in litigation before the European Court of Human Rights in Strasbourg and has participated in over 150 cases. The AIRE Centre has been focusing on the countries of the Western Balkans, where it has been for over decade and a half conducting a series of long-term rule of law programmes in partnership with domestic institutions and courts. Our aim throughout these programmes has been to promote the national implementation of the European Convention on Human Rights, assist the process of European integration by strengthening the rule of law and the full recognition of human rights, and encourage regional cooperation amongst judges and legal professionals.



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