



Ministry of Security and Justice

Bottlenecks in the international cooperation in confiscation matters

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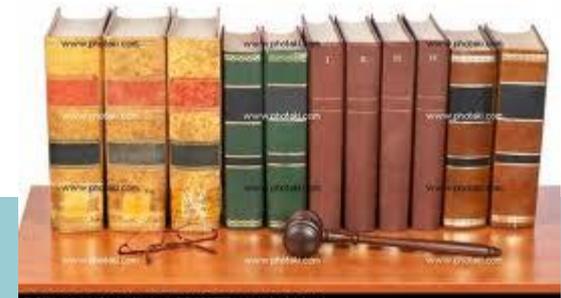
International Cooperation

legal and cultural barriers

A great diversity of National legislations

- Fundamental nature
- Differences in calculating profits
- Differences in important topics such as shifting the burden of proof
- ***The requirement, mandatory or not, of a link between the criminal fact and the seizure of assets***

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A serious problem in the co-operation with some countries is:

- a.** The execution of Dutch MLA requests regarding seizing of assets in the context of a confiscation proceeding

- b.** The enforcement of a final Dutch confiscation order by a foreign authority

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Why?

Mainly because of the difference between:
Object-based confiscation and
Value-based confiscation

New?

The Explanatory Report (Cets No. 141) states under point 15 that different States have different systems of confiscation.

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All States have a system of so-called **property (object) confiscation**, that is the confiscation of specific property, with respect to the instrumentalities used in the commission of offences. Some States also know object confiscation for the proceeds directly or indirectly derived from offences, or their substitutes. As a result of object confiscation, the ownership rights in the specific property concerned are transferred to the State.

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Another system of confiscation is widely used in the member States of the Council of Europe: **Value confiscation**, which consists of the requirement to pay a sum of money based on an assessment of the value of the proceeds directly derived from offences, or their substitutes. As a result of a value confiscation, the State can exert a financial claim against the person against whom the order is made. If the claim is not paid, it may be realized in any property (no matter whether legally or illegally acquired) belonging to that person. The order is thus executed in a similar way to fines or court orders in civil cases.

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The committee agreed to put the two systems of confiscation (value and object confiscation) on an equal footing and to make the text unambiguous on this point. Article 7 of the Convention of Strasbourg 1990 says that :

'Each Party shall adopt such legislative or other measures as may be necessary to enable it to comply, under the conditions provided for in this chapter, with requests:

- a. For confiscation of specific items of property representing proceeds or instrumentalities, as well as for confiscation of proceeds consisting in a requirement to pay a sum of money corresponding to the value of proceeds;
- b. For investigative assistance and provisional measures with a view to either form of confiscation referred to under a above.'

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The main system for deprivation in the Netherlands is the value based confiscation.

Results of 'value based' MLA requests:

1. Seizing and enforcement of confiscation order
2. Seizing and no enforcement of confiscation order
3. No seizing, no enforcement of confiscation order

-Ad 2: Result could be that all the existing seizures have to be lifted and that no new request for seizing can be made; No future co-operation?

-Ad 3: Maybe only co-operation in investigation phase?

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Alternative way of execution of a confiscation order

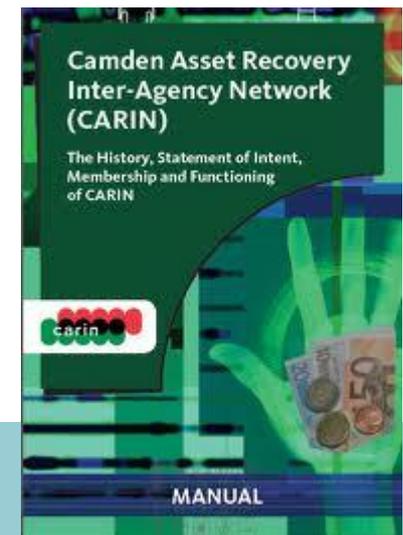
- **When the execution of a Dutch confiscation order – for example due to legal reasons in the foreign country - is not possible. Then you have to find an alternative way of execution or you have to lift the seizing abroad.**
 1. **An alternative could be to start a money laundering procedure.**
 2. **Another alternative is “the execution” of a confiscation order by means of a settlement between the national Prosecutor and the condemned person. This alternative is used regular when there are seized bank accounts abroad.**
 - **They agree that the seized assets abroad will be used for the execution of the Confiscation Order. The condemned person gives in writing an order to his bank to transfer the bank balance to the account of the foreign or the Dutch Government**
 - **The foreign authorities will be asked to assist by way of a request for legal assistance. First to lift the seizing and to make sure that immediate after that the money will be transferred to the authority is question. After that the confiscated money will accrue to the foreign/ Dutch Government or will be shared between them. That depends on what is agreed between the two countries.**



CARIN Recommendation 2007

“There is still a need for harmonization of legislation concerning proceeds of crime.

A criminal will use the weak spots in the legislations in the different countries to try to keep the proceeds of crime out of the hands of Justice”





Camden Assets Recovery Inter-Agency Network (since 2004)

CARIN is an informal network of contacts and a cooperative group in all aspects of tackling the proceeds of crime

64 countries/ jurisdictions and 9 international organisations are member of The 'European' organisation

In South Africa and Latin America sister organisations.

In Asia/ Oceania and West Africa sister organisations are set up

Europol, Egmont Group, Eurojust, International Criminal Court (ICC), International Monetary Fund (IMF), Interpol, OLAF, United Nations Office on Drugs and Crime (UNODC), World Bank





Aim is to increase the effectiveness of members efforts on a multi-agency basis, in depriving criminals of their illicit profits

9 Key Objectives

- 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



WORLD



More... Map Satellite Earth

North Pacific Ocean
South Pacific Ocean

Greenland

Canada

United States

México

Venezuela

Colombia

Perú

Bolivia

Chile

Argentina

Brasil

Brazil

South Atlantic Ocean

Mauritania

Mali

Niger

Chad

Sudan

Nigeria

Ethiopia

Kenya

Tanzania

Angola

Namibia

Botswana

South Africa

DR Congo

Algeria

Libya

Egypt

Saudi Arabia

North Atlantic Ocean

France

Germany

Italy

United Kingdom

Poland

Ukraine

Norge

Sweden

Suomi

Iceland

Sverige

Finland

Greenland

Kazakhstan

Rossija

Russia

Mongolia

China

대한민국

Japan

S Korea

Afghanistan

Pakistan

India

ประเทศไทย

Thailand

Indonesia

Papua New Guinea

Indian Ocean

Australia

New Zealand

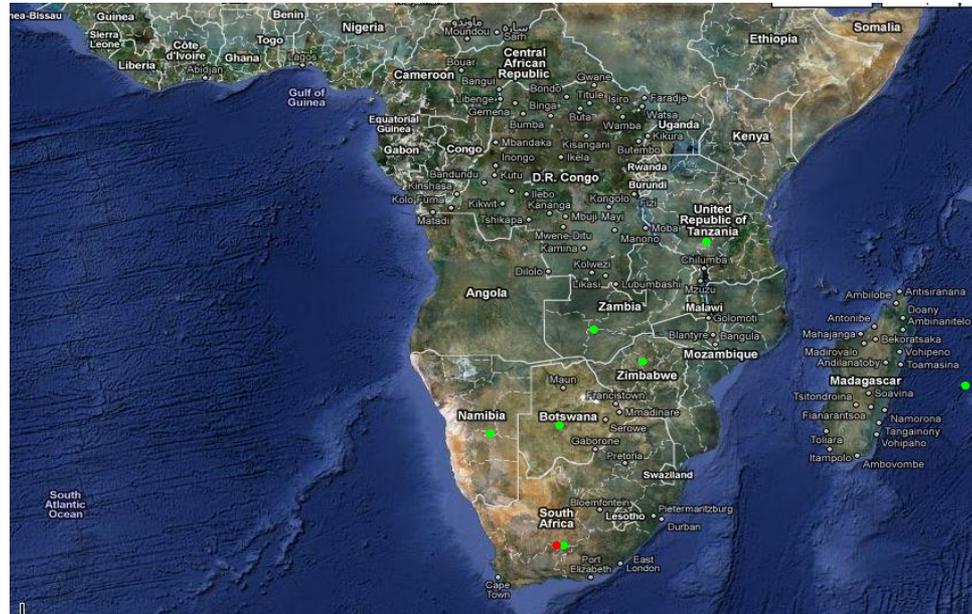
Southern Ocean

- CARIN
- ARINSA
- 13 RRAG



Asset Recovery Inter-Agency Network of Southern Africa

- Botswana
- Mauritius
- Namibia
- South Africa
- Tanzania
- Zambia
- Zimbabwe





Red de la Recuperación de Activos de GAFISUD

- Argentina 
- Bolivia 
- Brazil 
- Chile 
- Colombia 
- Costa Rica 
- Ecuador 
- México 
- Panamá 
- Paraguay 
- Peru 
- Uruguay 





How to resolve the existing bottlenecks in the practice of international confiscation of illicit profits?

Any ideas or suggestions?

Is there a role for the PC-OC?

