

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

<http://www.coe.int/tcj>

Strasbourg, 07 February/février 2018

PC-OC Mod (2017) 08Bil. rev.2

[PC-OC/PC-OC Mod/ 2017/Docs PC-OC Mod 2017/ PC-OC Mod (2017)08Bil.
rev.2]

EUROPEAN COMMITTEE ON CRIME PROBLEMS

COMITÉ EUROPÉEN POUR LES PROBLÈMES CRIMINELS

(CDPC)

COMMITTEE OF EXPERTS

ON THE OPERATION OF EUROPEAN CONVENTIONS

ON CO-OPERATION IN CRIMINAL MATTERS

COMITÉ D'EXPERTS

SUR LE FONCTIONNEMENT DES CONVENTIONS EUROPÉENNES SUR LA

COOPÉRATION DANS LE DOMAINE PÉNAL

(PC-OC)

Legislation, model agreement and practice in asset sharing

La législation, les modèles et la pratique en matière de partage des avoirs

Contents

Request / Demande.....	3
Summary / Résumé	4
Austria / Autriche	6
Belgium / Belgique.....	10
Croatia / Croatie	11
Czech Republic / République tchèque	12
Denmark / Danemark	14
Finland / Finlande	15
France	16
Germany / Allemagne.....	17
Greece / Grèce.....	20
Iceland / Islande	21
Republic of Moldova / République de Moldova	22
Netherlands / Pays-Bas.....	23
Montenegro / Monténégro	24
Romania/ Roumanie	26
Slovak Republic / République Slovaque.....	27
Slovenia / Slovénie	28
Switzerland / Suisse.....	30
Turkey / Turquie	39
United Kingdom / Royaume-Uni.....	40
Morocco / Maroc.....	44
G8 1999 Model Agreement on Asset Sharing.....	45
UN Model Agreement Asset Sharing	50
Appendix I – Belgium original version/ Belgique version originale	58
Appendix II – France original version / France version originale.....	59
Appendix III – Morocco original version / Maroc version originale.....	60

Request / Demande

Further to the discussion on asset sharing during the 72nd meeting of the PC-OC and the decision taken, I should be grateful if you would provide the following information if available:

- National legislation on asset sharing
- Model agreements developed by your country
- Information on your practice with asset sharing.

Suite à notre discussion sur le partage des avoirs lors de la 72^{me} réunion du PC-OC et la décision prise, je vous saurais gré de fournir l'information suivante dans la mesure où elle est disponible :

- *Votre législation nationale sur le partage des avoirs ;*
- *Des modèles d'accord développés par votre pays*
- *Information sur votre pratique en matière de partage des avoirs*

Summary / Résumé

Summary

Drawing from the information provided by 20 States regarding legislation, models and practices in asset sharing, the following preliminary conclusions can be drawn:

Legislation:

- The European Union legislation (*Council Framework Decision 2003/577/JHA of 22 July 2003 on the execution in the European Union of orders freezing property* and *Council Framework Decision 2006/783/JHA of 6 October 2006 on the application of the principle of mutual recognition to confiscation orders*) constitutes the principal legal framework used by the EU Members for agreement and practice in asset sharing.
- Mention is furthermore made of the United Nations Convention against Corruption (the Merida Convention).
- In some member States, distinct national laws have been adopted, setting specific provisions on the sharing of forfeited or confiscated property as a requesting and requested State.
- 5 countries (*Republic of Moldova, Morocco, Netherlands, Slovak Republic and Turkey*) have not enacted any law on asset sharing. In *Austria*, the Federal Law on Extradition and Mutual Assistance in Criminal Matters does in general not provide for the sharing of assets.

Model agreements:

- Belgium, Germany, Slovenia, Switzerland and the United Kingdom are countries which have model agreements on asset sharing, often based on the EU legislation.
- Draft agreements are under negotiation in Romania with several countries, following principles enacted in the CoE Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (1990).
- In some countries, such as the Czech Republic and France, no model agreement for asset sharing has been developed.

Practice:

- Practices in asset sharing among member States are mostly based on *ad hoc* agreements between the parties involved, according to a case to case analysis. Asset sharing mainly occurs between EU member States under the EU framework. France also refers to its practice based on the United Nations Convention against Corruption (the Merida Convention).

Obstacles mentioned:

- Difficulty to identify the competent authority for asset sharing in each State. In some States, this is the Ministry of Justice, in others the Ministry of Finance or specialised police units.
- Proceedings relating to asset sharing are rather time-consuming, especially when large sums are at stake. (Austria)
- Problems related to the question of costs in MLA, especially the definition of large and exceptional costs and modalities of reimbursement of that kind of cost. (Croatia)

Resumé

L'information fournie par 20 Etats concernant la législation, les modèles et la pratique sur le partage des avoirs permet de tirer les conclusions provisoires suivantes:

Législation :

- La législation de l'Union européenne (*Décision-cadre 2003/577/JAI du Conseil du 22 juillet 2003 relative à l'exécution dans l'Union européenne des décisions de gel de biens ou d'éléments de preuve et la Décision-cadre 2006/783/JAI du Conseil du 6 octobre 2006 relative à l'application du principe de reconnaissance mutuelle aux décisions de confiscation*) constitue le cadre légal principal utilisé par les Etats membres de l'Union européenne pour les accords et la pratique en matière de partage des avoirs.
- La Convention des Nations Unies contre la Corruption (Convention de Merida) est également mentionnée.
- Dans certains Etats membres, des lois nationales spécifiques ont été adoptées, contenant des dispositions sur le partage des avoirs confisqués en tant qu'Etat requérant et Etat requis.
- 5 Etats (le Maroc, Moldova, les Pays-Bas, la République Slovaque et la Turquie) n'ont pas adopté de loi concernant le partage des avoirs. En Autriche, la loi fédérale sur l'extradition et l'entraide judiciaire, ne prévoit pas le partage des avoirs de manière générale.

Modèles d'accord :

- L'Allemagne, la Belgique, le Royaume Uni, la Slovénie et la Suisse ont des modèles d'accords sur le partage des avoirs, souvent basés sur la législation de l'UE.
- Des projets d'accords sont négociés en Roumanie avec plusieurs pays, en suivant les principes contenus dans la Convention du CdE relative au blanchiment, au dépistage, à la saisie et à la confiscation des produits du crime (1990)
- Dans quelques pays, tel que la République Tchèque ou la France, aucun modèle n'a été développé.

Pratique :

- Les pratiques relatives au partage des avoirs sont pour la plupart basées sur des accords *ad hoc* entre les parties concernées selon une analyse au cas par cas. L'essentiel des pratiques en matière de partage des avoirs a lieu entre les pays membres de l'UE et dans le cadre juridique de l'UE. La France mentionne également sa pratique basée sur la Convention des Nations Unies contre la Corruption (Convention de Merida).

Obstacles mentionnés :

- Difficulté d'identifier l'autorité compétente pour le partage des avoirs dans chaque Etat. Dans certains pays il s'agit du Ministère de la Justice, dans d'autres le Ministère des Finances ou des unités spécialisés de la police.
- Les procédures relatives au partage des avoirs demandent beaucoup de temps, en particulier lorsqu'il s'agit de grosses sommes. (Autriche)
- Des problèmes liés aux frais de l'entraide judiciaire, en particulier la définition de coûts très importants et exceptionnels et les modalités de remboursement de ces coûts (Croatie).

Austria / Autriche

1. Austrian National Legislation on Asset Sharing:

With regard to the execution of foreign criminal decisions § 64 (7) of the *Federal Law of 4 December 1979 on Extradition and Mutual Assistance in Criminal Matters (Extradition and Mutual Assistance Act – ARHG)* provides that “[f]ines, forfeited property items and seized and confiscated objects shall accrue to the Federal State.” Hence, the Austrian national legislation does in general not provide for the sharing of assets.

However, according to § 1 ARHG, the general provisions of this statutory act shall be applicable only insofar as intergovernmental agreements do not stipulate otherwise. Such is the case in relation to other EU Member States and in relation to the USA: Notwithstanding § 64 (7) ARHG, the *Federal law on judicial cooperation in criminal matters with the Member States of the European Union (EU-JZG)* provides rules on asset sharing between Austria and other EU Member States. It transposes the provisions of the Council Framework Decisions 2005/212/JHA of 24 February 2005 on Confiscation of Crime-Related Proceeds, Instrumentalities and Property, OJ L 68, 15.3.2005, p. 49-51, and 2006/783/JHA of 6 October 2006 on the Application of the Principle of Mutual Recognition to Confiscation Orders, OJ L 328, p.59-78, into national law.

In addition, the bilateral *Agreement between the Government of the Republic of Austria and the Government of the United States of America concerning the sharing of confiscated proceeds of crimes*, which has entered into force on 15 March 2011, stipulates rules on asset sharing in relation to the USA.

The most relevant provisions of these two sources of law are summarized in the following.

a. Asset Sharing between Austria and other EU Member States

Federal law on judicial cooperation in criminal matters with the Member States of the European Union (EU-JZG)

[...]

§ 2 – Definitions

For the purposes of the present federal law the following terms shall have the following meaning:

[...]

11. “Pecuniary Order” confiscation (§ 19a StGB), forfeiture (§§20, 20b StGB), collection (§ 26 StGB) and any other sanction, preventive measure or legal consequence consisting of the deprivation of assets or objects which is ordered after conducting criminal proceedings in Austria or another State, with the exception of fines, monetary payments, compensation payments to victims and costs of proceedings;

[...]

§ 52 – Prerequisites

An order relating to property rights, issued with final and enforceable effect by a court of another Member State (§ 2 no. 11), shall be executed in accordance with the provisions of the present Part Three.

[...]

§ 52g – Proceeds from Execution

(1) Sums of money obtained by executing the order relating to property rights, which are not in excess of EUR 10,000 or the equivalent of that amount, shall accrue to the Federal State. If the sum of money obtained by executing the order relating to property rights is in excess of EUR 10,000, 50% of the amount shall be transferred to the deciding State.

(2) Objects that have been obtained by executing an order relating to property rights shall be sold in keeping with the provisions in § 377 of the Code of Criminal Procedure. Paragraph (1) shall apply to the arrangements concerning the proceeds. If such a procedure cannot be followed, and if the deciding State does not consent to the transfer of the objects, they shall accrue to the Federal State.

(3) Paragraphs (1) and (2) shall only be applied if no other agreements have been reached with the deciding State.

(4) Objects that are part of Austria's cultural heritage shall accrue to the Federal State in any event.

b. Asset Sharing between Austria and the United States of America

Agreement between the Government of the Republic of Austria and the Government of the United States of America concerning the sharing of confiscated proceeds of crimes

Article 1 – Definition of Terms

[...]

(b) "assets" shall mean money and property 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 property, which, in accordance with the ruling of the court of one of the Parties

i) represent proceeds from a crime or assets of an equivalent value, or

ii) represent the instrumentalities of a crime;

[...]

Article 3 – Circumstances Leading to the Sharing of Confiscated Assets

(1) A Party that has assets confiscated through cooperation provided by the other Party, may, upon request from the other Party, share these assets at its discretion in accordance

with this Agreement – without prejudice to Article 14, Paragraph 2 of the 2000 United Nations Convention against Transnational Organized Crime.

(2) A Party holding assets due to its execution of an order issued by the other Party may also share such assets in accordance with the principles stated in Paragraph 1.

Article 4 – Request for Sharing of Confiscated Assets

(1) A Party may request a share of assets confiscated under circumstances set forth in Article 3. Unless otherwise agreed between the Parties, such a request may be made no later than one year from the date of final judgment of all court proceedings concerning the confiscated assets.

(2) The request shall set forth the relevant circumstances of the cooperation, sufficient details to identify the case, the confiscated assets and the entities involved, as well as additional information as agreed upon by the Parties.

(3) On receipt of a request to share confiscated assets made under this Article, the Party holding the confiscated assets shall, without delay, consider the request and inform the requesting Party in writing of the outcome of that consideration.

Article 5 – Sharing of Confiscated Assets

(1) When one Party decides to share confiscated assets, it shall

(a) determine at its discretion the share of the confiscated assets that represents the extent of the cooperation afforded by the other Party, and

(b) transfer a sum equivalent to the share set forth in subparagraph (a) to the other Party in accordance with Article 6.

(2) When determining the sum to be transferred, the Party holding the confiscated assets may add interest or other increase in value accrued since the restraint and deduct the expenses required to obtain and maintain the order and the assets as well as to enforce the order.

(3) The Parties do not intend to share insignificant assets. Assets valued below EUR 10,000.00 or USD 10,000.00, whichever sum is higher on the day the order is issued, shall be considered insignificant. In exceptional cases, the Parties may agree on sharing assets below this value.

(4) Consideration of the rights of any identifiable victims of the crimes the confiscated assets resulted from shall have precedence over asset sharing between the Parties.

(5) The decision in accordance with Article 5, Paragraph 1, in Austria, shall be made by the Federal Ministry of Justice in agreement with the Federal Ministry for Finance. In the United States, such decision shall be made by the Department of Justice or the Department of the Treasury or by any other entity authorized by United States law.

(6) The decisions and determinations by the Parties under this Agreement cannot be

contested in judicial or other proceedings either in the Republic of Austria or the United States of America.

[...]

2) Model Agreements on Asset Sharing

So far, Austria has not developed a model agreement on asset sharing.

3) Information on our Practice with Asset Sharing

In general, the experience gathered so far shows that proceedings relating to asset sharing are rather time-consuming. The more valuable the assets are, the higher the number of legal remedies brought up by the parties is.

Assets should be shared according to the extent of cooperation afforded by either Party. In practice however it shows difficult to reach a common understanding on the importance of cooperation afforded by either Party.

Belgium / Belgique

(Translation : original text in French, appended)

Model agreement on the sharing of assets

I have the honor to present to you the request for the execution of a confiscation order on behalf of the Belgian State by the Attorney General of Antwerp.

The request is made on the basis of the Convention on laundering, tracing, seizure and confiscation of the proceeds of crime of the Council of Europe of 8 November 1990, chapter III - execution of confiscation.

The request concerns Mr Friedrich Händel, Johann Sebastian BACH, the company Music Ltd. and others, sentenced on 1 January 2017 by the judgment of the Antwerp Court of Appeal on money laundering. The judgment has become final since the judgment of the Court of Cassation of January 1, 2017 rejecting the grounds for cassation, except one concerning the confiscation of a single asset located in Belgium.

As regards the Grand Duchy of Luxembourg, the request concerns the following confiscated assets:

1. On behalf of Friedrich Händel and Johann Sebastian BACH: the amount found on Count 123456, Banque de Luxembourg, of Messe Holdings International s.a.
2. Charged by Friedrich Händel: the amount found on Count 012345 of Music Ltd. at the bank BNP Paribas Luxembourg.

The Belgian judicial authority and the central authority require that half of the proceeds of the execution of the confiscation in the country of the requested authority be allocated to the Belgian State.

The sharing of the sums recovered can be made by transfer to the bank account of the Central Organ (Belgian) for Seizure and Confiscation (OCSC).

Bank: ING
Account number: 310-1801895-12
IBAN: BE19310180189512
Swift / BIC: BBRUBEBB

To be mentioned on the transfer: see the reference of the request.

In accordance with Article 8 of the Law of 20 May 1997, the Belgian State may also share the proceeds of the execution of a confiscation requested by the Grand Duchy of Luxembourg.

Croatia / Croatie

Provisions of the national legislation with regard to assets confiscated in the criminal proceedings are contained in the most part in the Criminal Procedure Code of the Republic of Croatia. Since July this year, those provisions were contained in a separate act, but due to the need for unanimous practice, it was considered that this incorporation of the provisions in the Act that regulates whole criminal proceedings, is more practical. Part of the provisions regulating this matter is also contained in the Criminal Code of the Republic of Croatia.

Our national legislation also provides certain types of extended confiscation and non-conviction based confiscation.

Proceedings of seizure of property, as adhesion proceedings, is regulated by the provision of the Criminal Procedure Code, while particular issues concerning enforcement, disposal with confiscated property and the like, which are not directly related to the criminal proceedings, are further regulated by special regulations.

Furthermore Republic of Croatia is party of the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and the Convention is legal basis for proceedings in framework of mutual legal assistance in criminal matters.

In framework of judicial cooperation, with EU member States, this matter is regulated by two framework decisions (*Council Framework Decision 2003/577/JHA of 22 July 2003 on the execution in the European Union of orders freezing property* and *Council Framework Decision 2006/783/JHA of 6 October 2006 on the application of the principle of mutual recognition to confiscation orders*) that are implemented in Croatian legislation. Working party for the new proposal of the Regulation of the European Parliament and of the Council on the mutual recognition of freezing and confiscation orders is in the process and these framework decisions should be replaced by proposed Regulation in order to improve existing framework.

Most often problems that occurred in the framework of mutual legal assistance cases were question of costs, especially question of definition of large and exceptional costs and modalities of reimbursement of that kind of cost.

Czech Republic / République tchèque

National legislation on asset sharing

The Act no. 104/2013 Coll., on International Judicial Cooperation in Criminal Matters, sets out provisions on asset sharing as follows:

Chapter IV Recognition and Execution of Decision in Relation to Foreign States

Sub-chapter 1 Recognition and Execution of Foreign Decisions

Division 3 Execution of Recognized Foreign Decision

Section 135 Sharing of Forfeited or Confiscated Property

(1) If such procedure is permitted by an international treaty or if reciprocity is guaranteed, the Czech Republic may enter into an agreement with a foreign state on sharing property confiscated or forfeited on the basis of a recognized foreign decision. The competence for entering such an agreement will pertain to the Ministry of Finance; petition for entering such an agreement may be filed by the court that decided on recognition and execution of the foreign decision in the first instance or the Ministry. The court or the Ministry will provide the Ministry of Finance upon its request the necessary cooperation for the purposes of entering the agreement.

(2) The shared property will be transferred to the foreign state by organizational unit of the state competent to administer the property of the Czech Republic according to the Act on the Property of the Czech Republic and its Representation in Legal Relations.

Section 140 Sharing of Forfeited or Confiscated Property

(1) When sharing property that has been confiscated or forfeited in a foreign state upon a request of the Czech Republic, it will be proceeded according to Section 135 (1) sentence one and two; upon a petition for entering into an agreement on sharing property may be filed to the Ministry of finance by the court that imposed the sentence or protective measure, on the basis of which was the property forfeited or confiscated, or the Ministry. The court or the Ministry will provide the Ministry of finance with the necessary cooperation for the purposes of entering the agreement upon its request.

(2) The shared property will be taken over from the foreign state by the organizational unit of the state competent to administer the property of the Czech Republic according to the Act on the Property of the Czech Republic and its representation in Legal Relations.

Chapter VII
Recognition and Execution of Decisions Imposing Confiscation or Forfeiture of Assets, Items
or other Asset Values

Sub-chapter 2
Securing Execution of Decisions Imposing Confiscation or Forfeiture of Property, Items or
other Asset Values in other Member States

Section 295
Sharing Property Confiscated or Forfeited in another Member State

(1) The Czech Republic will share the property, which was confiscated or forfeited in another Member State on the basis of a decision of court of the Czech Republic, with this state in a way stipulated by the law of this other Member State, unless agreed otherwise.

(2) The competence for entering an agreement with another Member State on sharing which was confiscated or forfeited in this state on the basis of a decision of court of the Czech Republic, will pertain to the Ministry of Finance; petition for entering such agreement may be filed by the court that decided the case in the first instance. The court will provide the Ministry upon its request the necessary cooperation for the purposes of entering the agreement.

(3) As soon as the competent authority of another Member State notifies the court that its decision has been recognized and executed, the court will immediately communicate this matter of fact to the organizational unit of the state, competent to administer the property of the Czech Republic. This organizational unit will then take over the property shared with the other Member State.

Model agreements

Czech Republic has not developed any model agreements for asset sharing.

The reason thereto is the fact that only two cases of asset sharing were handled in the past – in 2013 with Switzerland when an amount of EUR 4500 was seized in the Czech Republic and in 2014 with France when an ad hoc agreement on sharing of 50% from the amount seized in the Czech Republic (approximately CZK 367 000) was entered into.

Information on practice

The Ministry of Justice of the Czech Republic does not dispose with any relevant information on practice to be described.

Denmark / Danemark

The Danish Director of Public Prosecutions can inform you of the following:

National legislation on asset sharing

The Danish Act on Execution of Certain Criminal Decisions in the European Union has provisions on asset sharing which are identical to article 16 on disposal of confiscated property in Council Framework Decision 2006/783/JHA of 6 October 2006 on the application of the principle of mutual recognition to confiscation orders.

Model agreements

To my knowledge, Denmark has not developed any model agreements for asset sharing.

In one particular case, a specific agreement was signed by Denmark and France, but otherwise proceeds to be shared with the issuing State have been transferred by routine according to the abovementioned Framework Decision.

Information on practice

As mentioned, Denmark has in one particular case entered into an agreement concerning asset sharing. In all other EU-cases, the proceeds have been disposed of according to the rules of the Framework Decision.

In cases outside the EU, it is decided on a case by case basis, how the proceeds should be divided, taking into account the costs in both countries.

Finland / Finlande

We have only one provision in our law on asset sharing (excluding EU asset sharing), namely the Act on International Cooperation in the Enforcement of Certain Penal Sanctions, Section 14.2:

“Where forfeiture ordered by a foreign court of law is enforced in Finland, the forfeited assets or object go to the state of Finland. Upon request of a foreign authority the Ministry of Justice may, however, decide that the assets or part thereof or object be rendered to the foreign state.”

So far we have done asset sharing with Switzerland, where we sent the forfeited assets in their totality, and Belgium, from where we received 50 % of the forfeited assets on the basis of ETS 141. We have no model agreements. Each agreement is tailored on an ad hoc basis.

France

(Translation : original text in French, appended)

- ***National legislation on asset sharing***

Article 713-40 of the Code of Criminal Procedure

The execution on the territory of the Republic of a confiscation order issued by a foreign jurisdiction entails the transfer to the French State of the confiscated assets, unless otherwise agreed upon with the requesting State.

The confiscated asset may be sold according to the provisions of the Code on the domain of the State.

The costs of executing the confiscation order are taken from the total amounts recovered.

The sum of the recovered money and the proceeds of the sale of the confiscated asset, after deduction of the expenses of the execution, will go to the French State when this amount is lower than 10 000 €. In other cases the amount will be shared, half to the French State and half to the requesting State.

If the foreign judgment provides for a confiscation of value, the decision authorising its execution renders the French State creditor of the obligation to pay the corresponding sum of money. In the absence of payment, the State shall collect its claim on any asset available for this purpose. The amount recovered, minus all expenses, shall be shared according to the rules provided for in this article.

- ***Model agreements***

We do not have models; the agreements are established on a case by case basis.

- ***Information on practice of sharing assets***

The fate of the assets confiscated in execution of a foreign decision is regulated by the applicable international multilateral or bilateral instruments and by the provisions of Article 713-40 of the Code of Criminal Procedure.

With regard to international instruments, it should be noted that some instruments provide for specific sharing or restitution procedures. This is particularly the case in the United Nations Convention against Corruption known as the Merida Convention, or those applicable between member states of the European Union.

With regard to the application of our national provisions, the drafting of an agreement is not necessary when the requesting authorities request 50% of the sums confiscated, as this is the break off point provided for by law. The Ministry of Justice and the Seized and Confiscated Asset Recovery Agency may negotiate a different split, in particular for the purpose of victim compensation.

Germany / Allemagne

1. National legislation on asset sharing in Germany:

§ 56 b IRG

Agreement on Disposal, Return and Distribution of Seized Assets

(1) The authority in charge of granting assistance may enter into an ad hoc agreement with the competent authority of the requesting State about the disposal, return or distribution of the assets resulting from the enforcement of an order for confiscation or deprivation if reciprocity is assured.

(2) Agreements relating to objects within the meaning of ss. 1 and 10 of the Gesetz zum Schutz deutschen Kulturgutes gegen Abwanderung require the consent of the Representative of the Bundesregierung for Cultural and Media Affairs. If the consent is refused, s. 16(3) 2nd sentence of the Gesetz zum Schutz deutschen Kulturgutes gegen Abwanderung* shall apply mutatis mutandis.

71 a IRG

Agreements as to Disposal, Return and Distribution of Seized Assets

If a foreign State is requested to enforce an order for confiscation or deprivation s. 56b (1) shall apply mutatis mutandis

88 f IRG

Distribution of Revenue

Half the revenue from the enforcement shall be assigned to the competent authority of the requesting Member State if without deduction of costs and compensation (s. 56a) its value exceeds EUR 10,000 and no agreement under s. 56b(1) has been reached. This shall not apply if the consent necessary under s. 56b(2) was refused.

2. Model agreements developed in Germany:

The following model agreement is frequently used in practice:

“

Agreement

between

the **Federal Office of Justice, 53094 Bonn, Federal Republic of Germany,**

and

the ...

on the distribution of seized assets

The German Federal Office of Justice and the ... take

into consideration

I.

that Regional Court A – Criminal Division – by judgment of ... , file no. ... which became legally binding on ..., has convicted B of unlawful drug trafficking in not insignificant amounts and imposed a custodial sentence of ... years and ... months;

that this judgment continues to order the forfeiture of equivalent value in the amount of ...;

that on the basis of this enforceable claim, Public Prosecution Office A issued a transfer order on ... with regard to account number ... at Company X in ..., and issued a transfer order on ... with regard to account number ... at Bank Y in ...;

that Public Prosecution Office C, by final order of ..., ordered that the assets frozen by the preliminary and interim order of ... in the amount of ... under account number ... at Company X and in the amount of ... under account number ... at Bank Y, both held in the name of B, be returned to Public Prosecution Office A, in response to its request for mutual legal assistance of ..., subject to a sharing agreement that has still to be concluded between ... and Germany;

that, once the final order of Public Prosecution Office C has become legally binding, based on the ... Act on the Sharing of Seized Assets [*Bundesgesetz über die Teilung eingezogener Vermögenswerte*] of ... or based on section 71a of the Act on International Cooperation in Criminal Matters [*Gesetz über die internationale Rechtshilfe in strafrechtlichen Angelegenheiten – IRG*] in the version promulgated on 27 June 1994 (Federal Law Gazette I p. 1537), last amended by Article 1 of the Act of 18 October 2010 (Federal Law Gazette I p. 1408), in conjunction with section 56b IRG, an agreement on the sharing of assets frozen in ... shall be concluded.

II.

Based on the above considerations, the following

agreement is reached:

1.

The German Federal Office of Justice and the ... agree that the total amounts held under account number ... at Company X in ... and under account number ... at Bank Y in ..., both held in the name of B, shall be distributed in equal shares.

2.

50% of the confiscated assets at Company X in ... (according to the asset statement as of ...: ...) and at Bank Y in ... (according to the asset statement as of ...: ...) shall be transferred to the following account:

Account holder: Landesjustizkasse ...

IBAN ...

SWIFT (BIC): ...

Payment reference: ...

Bank: ...

3.

For its part, the German Federal Office of Justice assures that it will answer a comparable ... request for the distribution of seized assets pursuant to section 56b(1) IRG, and will do so on the basis of

equal shares, unless there are exceptional circumstances in the specific case which make it necessary to base the distribution on some other proportion, this having to be decided by mutual agreement.

4.

This agreement shall enter into force on the date of its signature by the representatives of both parties.

Drafted in duplicate in the German language.

Place and date:

Place and date:

Bonn, _____

....., _____

For the Federal Office of Justice, Bonn, For ...
 Head of Directorate-General III
 (International Legal Assistance;
 Research; Promulgation)

 (...)

 (...)

”

3. Information on your practice with asset sharing in Germany

The practical experiences with Liechtenstein, Luxembourg, Switzerland and the Netherlands have been positive. Because no statistics are kept in Germany on the number of concluded sharing agreements, we are unfortunately unable to provide any relevant figures.

Greece / Grèce

* The internal legal order provides suitable forms of successful cooperation on asset sharing matters. Greece has ratified Convention ETS 141 (Law 2655/1998). In June 2017, by means of Law 4478/2017 Greece has also ratified a) Convention ETS 198 together with b) EU Council Framework Decision 2003/577/JHA of 22 July 2003 «*on the execution in the European Union of orders freezing property or evidence*», c) EU Council Framework Decision 2005/212/JHA of 24 February 2005 «*on Confiscation of Crime-Related Proceeds, Instrumentalities and Property*», d) EU Council Framework Decision 2006/783/JHA of 6 October 2006 «*on the application of the principle of mutual recognition to confiscation orders*» and e) 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*».

With the same Law 4478/2017 (art. 20-31) proper amendments/adaptations to the relevant internal legal framework have been introduced, thus providing suitable legal bases for successful international cooperation.

* More information regarding internal legal framework could found in the PC-OC website (<https://www.coe.int/en/web/transnational-criminal-justice-pcoc/seizure-and-confiscation-country-information>)

* There are not any model agreements or any remarkable national experience or practise thereupon so far.

Iceland / Islande

Article 69 g of the General Penal Code No. 19/1940 permits asset sharing. According to the article the Ministry of Justice may decide that that which is confiscated is to be divided between the Icelandic state and another state or states. When such a decision is taken, it shall be based on consideration including the expenses resulting from the case in the various states, whether loss or damage was suffered there due to the case and the provenance of the items of value confiscated. Division under this paragraph may not result in reductions of compensation payments to injured parties.

Iceland has not made any asset sharing agreements with another state or states so there is no practice to describe.

Republic of Moldova / République de Moldova

Further to the decision taken at the 72nd meeting of the PC-OC, and your e-mail from 07.06.2017, please be informed that the Republic of Moldova has no experience so far in respect to asset sharing.

The legislation on asset sharing is under elaboration.

Netherlands / Pays-Bas

- The Netherlands does not have national legislation on asset sharing. However, more information about the Dutch procedure can be gathered through the CARIN network.
- The Netherlands does not use model agreements as such. Agreements are made on a case by case basis and differ per case.
- Dutch authorities strive towards a fair division between concerned authorities in asset sharing, unless there are victim damages involved.

Montenegro / Monténégro

Action plan as regards search, seizure and confiscation of proceeds of crime and asset sharing

In October 2015, Montenegro adopted the Law on Seizure and Confiscation of Material Benefit Derived from Criminal Activity.

The Law on Seizure and Confiscation of Material Benefit Derived from Criminal Activity, as one of the key measures for the improvement of financial investigations, envisages establishment of a better functional link between the authorities that have the necessary information for carrying out financial investigations and Public Prosecutor's Office. The adoption of this Law has improved the legal basis for seizure and confiscation of material benefit derived from criminal activity, the procedure of confiscation and other issues of importance for the confiscation and management of material benefits, objects of criminal offense and cases temporarily seized in criminal and misdemeanor proceedings and property given in the name of warranty.

Material benefit derived from criminal activities means each increase or prevention of decrease of criminal assets, as well as revenues or other benefit acquired directly or indirectly from criminal activities, as well as the estate it has been converted into or merged with.

Property implies property rights of all types, irrespective of whether they relate to assets of tangible or intangible nature, movables or immovables, securities and other documents which serve to prove property rights.

The procedures of seizure and confiscation of material benefit derived from criminal activities may be conducted before, during and after the finalization of criminal procedure. The seizure and confiscation of material benefit derived from criminal activities shall be deemed to mean seizure of such material benefit (Provisional Measures to Secure Assets and seizure of movables) or confiscation of such material benefit. The procedure of seizure and confiscation of material benefit derived from criminal activities shall be conducted in accordance with this Law and with the Criminal Procedure Code.

Courts shall decide on the seizure and confiscation of material benefit derived from criminal activities. The tasks of tracing material benefit derived from criminal activities shall be performed by the state prosecutor's office and the administrative authority in charge of police affairs.

The tasks of management of seized and confiscated material benefit, instrumentalities of crime and items seized in criminal and misdemeanour proceedings, as well as of property pledged to the court as bail shall be performed by the administrative body in charge of state property management.

The State Prosecutor's Office and the administrative authority in charge of police affairs are obliged to act urgently.

INTERNATIONAL COOPERATION

International cooperation with a view to seizing, confiscating and managing material benefits shall be exercised in accordance with an international treaty. If there is no international treaty or if some matters are not governed by an international treaty, international cooperation shall be exercised in accordance with this Law, under the condition that reciprocity exists or if one can expect that the foreign country would act upon a mutual legal assistance request of the domestic judicial authority. The provisions of the act governing mutual legal assistance in criminal matters shall apply accordingly to international cooperation matters not governed by this Law. Division of confiscated material benefit with other countries may be governed by an international treaty.

International cooperation within the meaning of this Law shall include identification, tracking and tracing material benefit, imposing provisional measures to secure assets, seizing movable property, confiscating material benefit and managing the seized and confiscated material benefit. The organisational police unit competent for financial investigations shall act upon requests in accordance with the Council Decision 2007/845/JHA of 6 December 2007.

The request of the competent foreign authority for mutual cooperation shall be delivered to the competent body of Montenegro through the public administrative authority competent for judicial affairs. The request of the competent body of Montenegro shall be delivered to the competent foreign authority in the same manner.

After receiving the request of the competent foreign authority for mutual cooperation, the state prosecutor and the court shall check whether the terms and conditions referred to in Articles 79 and 81 of this Law have been fulfilled. If the request of the competent foreign authority for mutual cooperation does not contain all the prescribed elements, the foreign authority shall be asked to supplement the request and a time-limit shall be fixed for it to do so. If the competent foreign authority fails to act in accordance with paragraph 2 of this Article, the request of the foreign authority shall be rejected.

The provisional measure to secure assets imposed under a mutual cooperation request shall last until the completion of the procedure for confiscation of material benefit in the requesting country.

If the procedure referred to in paragraph 1 of this Article is not completed within two years as of the date of issuance of the ruling imposing a provisional measure to secure assets, the court shall abolish the provisional measure to secure assets *ex officio*.

Six months before the expiry of the time-limit referred to in paragraph 2 of this Article, the court shall inform the competent foreign authority of the consequences of expiry of time-limit.

Upon a substantiated request of the competent foreign authority, the court may decide to extend the duration of the provisional measure to secure assets for one more year at the longest.

Romania/ Roumanie

a) National legislation on asset sharing

From the perspective of the judicial cooperation, disposal of the confiscated assets can be done with or without a treaty basis. When there is no treaty in force between Romania and the state concerned, arts 140 (9) and 265 of Law 302/2004 on international judicial cooperation in criminal matters are always to be observed. If there is a treaty in force but the respective treaty do not provide for sharing of assets, the Romanian authorities competent on the matter can either follow the sharing scheme provided by the aforementioned articles or agree otherwise with the respective foreign authorities. If there is a treaty in force and the treaty stipulates the sharing of assets than the treaty provisions prevail and are to be applied in the concrete case.

Money obtained from the execution of a confiscation orders as follows:

- a) if the amount of money obtained from the execution of a confiscation order is below EUR 10,000 euro or the RON equivalent of that amount, the amount shall accrue to the State budget;
- b) in all other cases, 50% of the amount which has been obtained from the execution of a confiscation order shall be transferred to the issuing State.

For property other than money, confiscation shall be executed in one of the following methods:

- a) the confiscated property may be sold, in accordance with the legal provisions, and in this case, the proceeds of the sale shall be disposed of in accordance with the provisions of paragraph (1); or
- b) the confiscated property may be transferred to the issuing State. If the confiscation order covers a part of the value of the order, the property may only be transferred to the issuing State, if the competent authority of such State gives its consent in this respect;
- c) when it is not possible to apply the provisions of letters (a) or (b), the confiscated property may be disposed of in any other way, in accordance with the provisions of Romanian law.

Cultural objects forming part of the national cultural heritage subject to confiscation may not be sold or transferred.

b) Model agreements and practice in asset sharing

Negotiations with several countries are currently pending and, where applicable, draft agreements under negotiation are recalling the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, Done at Strasbourg in 1990, in particular Art. 15.

As recipient of shared assets, our experience is limited to sharing made under a bilateral treaty (state not member of the Council of Europe).

Slovak Republic / République Slovaque

In the Slovak Republic, situation is quite complicated. Our national legislation which will completely cover this area is pending in the legislation procedure.

At the moment, we do not have an Asset Management Office and also any practical experience with sharing assets so far. This should be arranged by the end of this year and also should be under the competence of financial police. Also, in the context of Slovak national law, this are is more likely to be subsumed under the administrative law and not criminal.

Slovenia / Slovénie

National legislation on asset sharing:

With regard to asset sharing, the Cooperation in Criminal Matters with the Member States of the European Union Act serves as a basis for country's policy in this context. The asset sharing depends upon the agreement with the requesting state. If there is no other agreement with the ordering and executing state then the following rules are applied:

- an amount of money obtained by confiscation, which does not exceed EUR 10,000, or the equivalent amount in another currency is considered in its entirety revenue of the budget of the Republic of Slovenia. An amount of money, which exceeds EUR 10,000, is distributed in such a manner as to allocate one half to the budget of the Republic of Slovenia and the other half to the ordering State;

- objects and property other than money are disposed of in one of the following ways, to be decided by a national court:

1) sold in accordance with the law of the Republic of Slovenia; in this case, the proceeds of the sale are disposed of in accordance with the preceding paragraph;

2) transferred to a competent authority of the ordering state; if the confiscation order covers an amount of money, the objects or property may only be transferred to the ordering state when that state has given consent;

3) disposed of in another way in accordance with the law of the Republic of Slovenia if apply the preceding items cannot be applied.

This regime is applicable only if not agreed otherwise with the ordering State.

With states which are not members of the European Union, the asset sharing is possible if so provided in ratified international documents, including the 1990 and 2005 Council of Europe Conventions and bilateral treaties.

Model agreements developed by your country:

1 bilateral treaty on mutual legal assistance expressly regulates asset sharing. The provision regarding search, seizure and confiscation of proceeds of crime states:

“Property confiscated by a requested State in accordance with the previous paragraph of this Article shall be disposed of by that state in accordance with its national legislation.

When acting on the request made by requesting State in accordance with paragraph 3 of this Article, requested State shall, to the extent permitted by its national legislation and if so requested by the requesting State, give priority consideration 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.”

Information on practice with asset sharing:

In practice the instrument of asset sharing is used mostly with EU countries on the basis of European legal instruments and the Cooperation in Criminal Matters with the Member States of the European

Union Act, which implements the European legal framework in this field. There are no finalised cases with third countries on asset sharing yet in place.

Switzerland / Suisse

Sharing (international and national)

To encourage international cooperation on criminal cases, and in particular where the confiscation of suspected criminal assets is concerned, international conventions recommend the sharing of assets confiscated in domestic criminal proceedings with those states which have provided support. Switzerland follows this practice. The legal basis for this in Switzerland is the Federal Act of 19 March 2004 on the Division of Forfeited Assets (DFAA; cf. annex 1: in French only). In principle, this Act permits all of the states that were involved in confiscating assets acquired by criminal means to share in the proceeds. This said the Swiss position is that assets may be shared internationally only if there are no injured parties. The Act governs the conclusion of sharing agreements on an international level between Switzerland and foreign states, as well as the sharing at the domestic level between the federal government and the cantons. The Federal Office of Justice (FOJ), Directorate of Mutual Legal Assistance, is responsible for putting these national and international sharing arrangements into practice.

The DFAA distinguishes between active and passive international sharing:

In the „**active**” international sharing, the Swiss authorities confiscate assets of criminal origin under Swiss law as part of their own criminal proceedings. They will then offer a share to the foreign state which have provided legal assistance to Switzerland in the case concerned.

Meanwhile „**passive**” international sharing refers to criminal proceedings conducted by a foreign state through its authority, which decides to confiscate the criminal assets, which have been seized in Switzerland, under its own system of law. Further to a satisfactory request for legal assistance, the Swiss authorities will send to the foreign authorities the necessary evidence, or will hand over the assets that have been confiscated in Switzerland pursuant to Article 74a of the Federal Act of 20 March 1981 on International Mutual Legal Assistance in Criminal Matters (IMAC). In return the foreign state may cede a share of the confiscated assets to Switzerland under the terms of a sharing agreement.

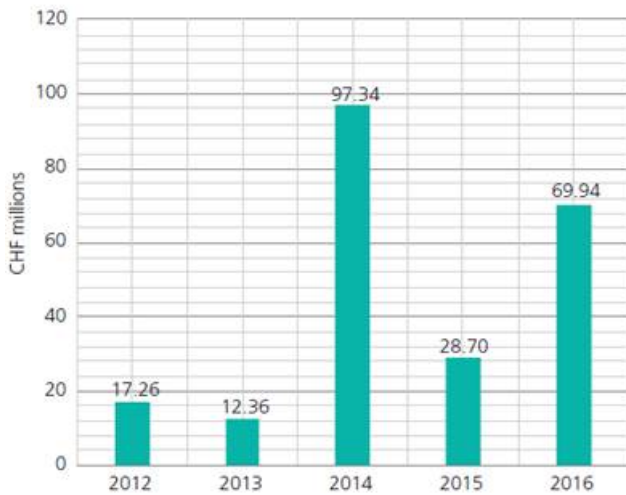
The international sharing process is initiated by federal or cantonal judicial authorities notifying the Federal Office of Justice as soon as they begin to consider sharing confiscated assets with a foreign state. The FOJ grants the authorities of the cantons concerned and the federal government a hearing, and then enters into negotiations with the foreign authorities to conclude a sharing agreement. Normally the draft of an agreement is made by the state in which the competent authority has produced the decision of the confiscation of the assets. As a further rule, Switzerland and the foreign state will receive equal shares of the assets, but however, different regulations are possible. If there are injured parties – which may also include a national government – it is the practice of Switzerland to hand over the assets in full to the state or injured parties in question. Where the assets are located in a foreign state, the Swiss government will request that the assets be paid in full to the injured parties. Enclosed you find 3 examples for sharing agreements between Switzerland and other countries (cf. annex 2 - 4).

In order to get an idea of the amounts involved and with which countries Switzerland has made such sharing agreements the following gives an overview:

Considerable variation has been observed in recent years.

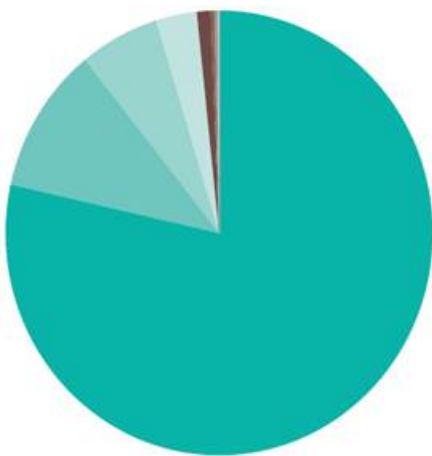
In 2016 Switzerland has received a total of around CHF 37 million from international sharing arrangements. The total amount that has been shared was around CHF 70 million.
 In 2015, Switzerland has received around CHF 5 million (of a total of around CHF 28 million).
 In 2014 Switzerland has received approx. CHF 32 million (of a total of around CHF 97 million).
 In 2013 the figure was around CHF 6 million (of a total of around CHF 12 million)
 In 2012 the amount was around CHF 8.5 million (of a total of around CHF 17 million; cf. chart below).

International sharing arrangements, 2012–2016
 cash in various currencies, equities and precious metals



In 2016, the Federal Office of Justice (FOJ), Directorate of Mutual Legal Assistance concluded a total of 16 active and passive sharing agreements with eight different foreign states. The sharing concerned Germany (four), the USA (three), followed by Italy, the Netherlands and Spain, with two each (cf. chart below). The highest sums were shared between Switzerland and the USA. From a total amount of around CHF 55 million, Switzerland received around CHF 26 million. This amount has then been shared in a national procedure between the federal authorities and the cantons.

International sharing arrangements by state
 assets expressed in CHF, rounded to the nearest 100



2016	Total	Active	Passive
United States of America	54 910 700	4 803 900	50 106 800
Monaco	7 478 700	7 478 700	0
Spain	4 219 100	0	4 219 100
Italy	2 158 900	0	2 158 900
Liechtenstein	720 000	720 000	0
Netherlands	202 100	0	202 100
Germany	177 100	15 800	161 300
United Kingdom	69 900	0	69 900
Number of states n=8	69 936 500	13 018 400	56 918 100

ANNEXE I

1

Loi fédérale**sur le partage des valeurs patrimoniales confisquées (LVPC)**

du 19 mars 2004 (Etat le 1er janvier 2007)

*L'Assemblée fédérale de la Confédération suisse,*vu les art. 54, al. 1, et 123, al. 1, de la Constitution¹,vu le message du Conseil fédéral du 24 octobre 20012,
*arrête:***Chapitre 1 Dispositions générales****Art. 1** Objet

La présente loi fixe les modalités du partage, entre les cantons, la Confédération et les Etats étrangers, des objets et valeurs patrimoniales confisquées et des créances compensatrices (valeurs patrimoniales confisquées).

Art. 2 Champ d'application

1 La présente loi s'applique au partage entre les cantons et la Confédération des valeurs patrimoniales dont la confiscation est prononcée en vertu du droit pénal fédéral, à l'exception de celles qui sont confisquées en vertu du code pénal militaire du 13 juin 1927³ et de la loi du 20 juin 2003 sur le transfert des biens culturels⁴.

2 Elle régit également, en cas d'entraide internationale en matière pénale, le partage, entre la Suisse et les Etats étrangers, des valeurs patrimoniales qui sont confisquées en vertu du droit suisse ou qui font l'objet d'une mesure de confiscation ou d'une mesure analogue en vertu du droit étranger.

Chapitre 2 Partage entre les cantons et la Confédération**Section 1 Détermination des parts****Art. 3** Montant minimum

Une procédure de partage selon les art. 4 à 10 est engagée si le montant brut des valeurs patrimoniales confisquées est supérieur ou égal à 100 000 francs.

RO **2004** 35031 RS **101**2 FF **2002** 4233 RS **321.0**4 RS **444.1****312.4**

Procédure pénale

2

312.4**Art. 4** Montant net

1 Les valeurs patrimoniales confisquées sont soumises au partage après déduction des frais suivants, s'il est à prévoir que ceux-ci ne seront pas remboursés:

- a. les débours, à savoir notamment les frais de traduction et d'interprétation, de comparution, d'expertise, d'exécution des commissions rogatoires et de surveillance téléphonique ainsi que les indemnités des défenseurs d'office et les autres dépenses résultant de l'administration des preuves;
- b. les frais de détention avant jugement;
- c. les deux tiers des frais prévisibles d'exécution des peines privatives de liberté prononcées sans sursis;
- d. les frais de gestion des valeurs patrimoniales confisquées;
- e. les frais de réalisation des valeurs patrimoniales confisquées et d'encaissement des créances compensatrices.

2 Sont également déduites les valeurs patrimoniales confisquées qui sont allouées aux lésés en vertu de l'art. 60, al. 1, let. b et c, du code pénal⁵.

Art. 5 Clé de répartition

1 Le montant net des valeurs patrimoniales confisquées est réparti à raison de:

- a. 5/10 à la collectivité qui a prononcé la confiscation;

b. 3/10 à la Confédération;

c. 2/10 aux cantons où se trouvent les valeurs patrimoniales confisquées, la répartition s'effectuant en proportion des valeurs confisquées sur leur territoire.

2 Si la Confédération et un canton ont mené la procédure pénale chacun pour une partie, la quote-part de 5/10 visée à l'al. 1, let. a, est répartie, à parts égales, entre eux.

3 Le canton où se trouvent les valeurs patrimoniales séquestrées en vue de l'exécution d'une créance compensatrice (art. 59, ch. 2, al. 3, du code pénal⁶) est assimilé au canton où se trouvent les valeurs patrimoniales confisquées dans la mesure où le produit de leur réalisation sert à couvrir la créance compensatrice. Les 2/10 de la créance compensatrice dont l'encaissement a été assuré en dehors des valeurs séquestrées sont répartis entre les autres collectivités en proportion des quotes-parts attribuées à chacune d'elles.

4 Les cantons concernés et la Confédération peuvent conclure entre eux, dans les limites de leurs parts, des accords dérogeant aux al. 1 à 3.

5 RS **311.0**. Actuellement: art. 73.

6 RS **311.0**. Actuellement: art. 71, al. 3.

Partage des valeurs patrimoniales confisquées. LF

3

312.4

Section 2 Procédure de partage, voies de recours et exécution

Art. 6 Procédure de partage

1 Les autorités cantonales ou fédérales communiquent, dans le délai de dix jours, les décisions définitives de confiscation à l'Office fédéral de la justice (office), à moins que le montant brut des valeurs patrimoniales confisquées ne soit manifestement inférieur à 100 000 francs (art. 3).

2 Dans le délai que leur impartit l'office, elles fournissent les indications nécessaires au partage, notamment la liste des frais et des allocations aux lésés (art. 4) et celle des collectivités dont il y a lieu de prévoir qu'elles participeront au partage (art. 5).

3 L'office leur donne les instructions pour la mise à sa disposition des valeurs patrimoniales confisquées.

4 Il impartit un délai aux autorités des cantons concernés et, dans les causes fédérales, au Ministère public de la Confédération ou à l'autorité administrative fédérale compétente pour présenter leurs observations.

5 Lorsque le montant brut des valeurs patrimoniales confisquées dépasse 10 millions de francs, l'office requiert l'avis de l'administration fédérale des finances.

6 Il rend une décision indiquant le montant revenant aux cantons concernés et à la Confédération.

7 La procédure est régie par la loi fédérale du 20 décembre 1968 sur la procédure administrative⁷.

Art. 7 Voies de recours

1 Les voies de droit sont régies par les dispositions générales de la procédure fédérale.

8

2 Les cantons concernés ont qualité pour recourir.

Art. 8 Exécution de la décision de partage

Une fois la décision de partage définitive, l'office procède au versement des montants aux cantons concernés et à la Confédération.

Section 3 Dispositions particulières

Art. 9 Modification du jugement de confiscation

Lorsque, postérieurement au partage, le jugement de confiscation est modifié et prévoit une restitution totale ou partielle des valeurs patrimoniales confisquées, le canton de jugement, ou la Confédération dans les causes jugées par les autorités fédé-

7 RS **172.021**

8 Nouvelle teneur selon le ch. 28 de l'annexe à la L du 17 juin 2005 sur le TAF, en vigueur depuis le 1er janv. 2007 (RO **2006** 2197 1069; FF **2001** 4000).

Procédure pénale

4

312.4

rales, peut exiger des collectivités bénéficiaires du partage la restitution des valeurs qu'elles ont reçues en fonction des quotes-parts attribuées à chacune d'elles.

Art. 10 Partage ultérieur des montants déduits

1 Les autorités cantonales ou fédérales mettent à la disposition de l'office le montant des frais ou des allocations aux lésés dont elles ont obtenu après-coup le remboursement (art. 4) ainsi que le montant économisé sur les frais d'exécution des peines

(art. 4, al. 1, let. c) dès que le montant récupéré ou économisé dépasse 10 000 francs.

2 L'office procède au partage de ces montants selon la décision rendue en application de l'art. 6, al. 6.

Chapitre 3 Partage entre Etats

Art. 11 Principes

1 La Confédération peut conclure des accords sur le partage des valeurs patrimoniales confisquées:

a. par les autorités suisses en application du droit suisse en coopération avec un Etat étranger;

b. par des autorités étrangères en application du droit étranger en coopération avec les autorités suisses.

2 Lorsque la Suisse confisque des valeurs patrimoniales dans une procédure pénale menée en coopération avec un Etat étranger, elle ne peut en règle générale les partager avec lui que si la réciprocité est garantie.

3 La présente loi ne confère aux Etats étrangers aucun droit d'exiger une part des valeurs patrimoniales confisquées.

Art. 12 Négociations

1 Les autorités cantonales ou fédérales informent l'office dès qu'un partage avec un Etat étranger entre en considération dans le cadre ou en vue d'une confiscation.

2 L'office mène avec les autorités étrangères des négociations en vue de conclure un accord de partage. Il consulte au préalable les autorités compétentes des cantons concernés ainsi que, dans les causes fédérales, le Ministère public de la Confédération ou l'autorité administrative fédérale compétente et informe la direction compétente du Département fédéral des affaires étrangères.

3 L'accord de partage fixe les modalités du partage et la clé de répartition. En règle générale, les valeurs sont partagées à parts égales entre la Suisse et l'Etat étranger. Il est toutefois possible de s'écarter de cette clé, voire de restituer l'ensemble des valeurs patrimoniales confisquées à l'Etat étranger, pour des motifs fondés, notamment en raison de la nature de l'infraction, du lieu où se trouvent les valeurs patrimoniales, de l'importance de la participation à l'enquête de l'Etat étranger, ainsi que

Partage des valeurs patrimoniales confisquées. LF

5

312.4

des usages entre la Suisse et l'Etat étranger, de la garantie de la réciprocité, du contexte international ou de l'importance des lésions des intérêts de l'Etat étranger.

Art. 13 Conclusion de l'accord de partage

1 L'office conclut l'accord de partage. Lorsque le montant brut des valeurs patrimoniales confisquées ou à confisquer dépasse 10 millions de francs, il requiert l'approbation du Département fédéral de justice et police, qui consulte au préalable le Département fédéral des finances.

2 Dans les cas qui revêtent une importance politique, l'office sollicite l'avis de la direction compétente du Département fédéral des affaires étrangères avant la conclusion de l'accord.

3 Lorsque les autorités suisses sont compétentes pour confisquer les valeurs patrimoniales, l'office doit obtenir au préalable l'accord des autorités cantonales ou fédérales concernées. En cas de différend, le Conseil fédéral tranche définitivement.

Art. 14 Exécution de l'accord de partage

1 Les valeurs patrimoniales faisant l'objet de l'accord de partage et se trouvant en Suisse sont remises à l'office, qui transfère à l'Etat étranger la part lui revenant. Il peut également demander aux autorités cantonales de transférer directement à l'Etat étranger la part lui revenant.

2 Lorsque les valeurs patrimoniales se trouvent à l'étranger, la part revenant à la Suisse en vertu de l'accord de partage est versée à l'office.

Art. 15 Répartition interne

1 Lorsque les valeurs patrimoniales ont été confisquées en Suisse par les autorités suisses, la part revenant à la Suisse en vertu de l'accord de partage est répartie en application de l'art. 5.

2 Si la confiscation a été prononcée par un Etat étranger, la quote-part de 5/10 visée à l'art. 5, al. 1, let. a, est répartie à parts égales entre tous les cantons qui ont été chargés d'investigations en exécution d'une demande d'entraide ou d'extradition ou qui ont transmis spontanément à l'autorité étrangère des moyens de preuve et la Confédération en cas de participation d'une autorité fédérale autre que l'office.

3 Si les valeurs patrimoniales se trouvent à l'étranger, la quote-part de 2/10 visée à l'art. 5, al. 1, let. c, est répartie entre les autres collectivités en proportion des quotesparts attribuées à chacune d'elles.

4 L'office décide de la répartition de la part revenant à la Suisse en vertu de l'accord de partage. Les art. 4 et 6 à 10 sont applicables par analogie.

Procédure pénale

6

312.4

Chapitre 4 Dispositions finales

Art. 16 Modification du droit en vigueur

La modification du droit en vigueur est réglée dans l'annexe.

Art. 17 Dispositions transitoires

1 Si la décision de confiscation est devenue définitive après l'entrée en vigueur de la présente loi, le partage sur le plan interne des valeurs patrimoniales confisquées est régi par la présente loi (chap. 2).

2 Si l'accord de partage des valeurs patrimoniales confisquées est signé après l'entrée en vigueur de la présente loi, le partage sur le plan international est régi par la présente loi (chap. 3), même si la décision de confiscation était déjà définitive au moment de son entrée en vigueur.

Art. 18 Référendum et entrée en vigueur

1 La présente loi est sujette au référendum.

2 Le Conseil fédéral fixe la date de l'entrée en vigueur.

Date de l'entrée en vigueur: 1er août 2004

9 ACF du 2 juin 2004 (RO **2004** 3508)

Partage des valeurs patrimoniales confisquées. LF

7

312.4

Annexe

(art. 16)

Modification du droit en vigueur

Les lois mentionnées ci-après sont modifiées comme suit:

...10

10 Les mod. peuvent être consultées au RO **2004** 3503.

Procédure pénale

8

312.4

ANNEXE II

1/2

Agreement

Between

the Government of the Swiss Confederation
represented by the Federal Office of Justice

and

the Government of Country
represented by X

(hereinafter referred to as “the Parties”)

regarding the sharing of confiscated proceeds of crime or property

I.

- considering that person have been convicted on date by the competent court in X for offence;
- considering that a confiscation order has been issued against person on date by the competent court, in X, including the property of X, in X;
- considering that the Government of the Swiss Confederation provided assistance to the Government of Country in providing evidence and restraining the property of X in X;
- considering that the Government of the Swiss Confederation provided further assistance to the Government of Country on date by action, in satisfaction of the above mentioned confiscation order;
- considering the Swiss Federal Act on the Division of Forfeited Assets of 19 March 2004

2/2

II.

The Government of the Swiss Confederation and the Government of Country have agreed as follows:

1.

The proportion of the confiscated proceeds of crime or property to be shared under this agreement has been determined and agreed upon by the Parties as fifty percent (50%).

2.

The Government of the Swiss Confederation shall transfer to the Government of Country fifty percent (50%) (approximately X) of the amounts contained in a bank account held in the Swiss Confederation (approximately X) resulting from the satisfaction of the above mentioned confiscation order, in accordance with paragraph 3 of this Agreement.

3.

The Parties have agreed that any sum transferred pursuant to paragraph 2 of this Agreement shall be paid by the Party where the proceeds of crime or property are located (Switzerland) to the Party receiving the payment (Country) using the following details:

Bank:

Bank account:

IBAN:

SWIFT / BIC:

Payment reference:

4.

Unless otherwise agreed, where a Party transfers confiscated proceeds of crime or property pursuant to paragraph 2 of this Agreement, the other Party shall use the proceeds of crime or property for any lawful purpose at its discretion.

5.

This Agreement shall enter into force upon signature by both Parties. In witness whereof, the undersigned, being duly authorised by their respective Governments, have signed this Agreement.

Done in two originals in Bern and Country, in English.

Date: 2017

Date: 2017

The Swiss Confederation

represented by

Country

represented by

Dr. Susanne Kuster xx

Vice Director xx

Federal Office of Justice

ANNEXE III

**AGREEMENT
BETWEEN THE GOVERNMENT OF X AND THE GOVERNMENT OF SWITZERLAND
REGARDING THE TRANSFER OF FORFEITED ASSETS**

The Government of X and the Government of Switzerland:

CONSIDERING that the Government of Switzerland provided assistance to X, in the matter of A by freezing the Swiss Accounts to allow the seizure and forfeiture of the funds at issue.

Have reached the following understanding:

1. The Government of X shall share with the Government of Switzerland 50 percent of the net forfeited proceeds forfeited with respect to these accounts approximately amount.
2. This Agreement is intended solely for the purpose of mutual assistance between the parties. It does not give rise to any right on the part of any private person, and is not intended to benefit third parties.
3. This Agreement shall enter into force upon signature.

FOR THE GOVERNMENT OF X:

FOR THE GOVERNMENT OF SWITZERLAND:

Signature Date

Signature Date

X
X

Dr. Susanne Kuster
Vice Director
Swiss Federal Office of Justice

Turkey / Turquie

We have no national legislation on asset sharing and there is no model agreement developed by Turkey.

United Kingdom / Royaume-Uni

Asset Sharing in the UK

Background

1. The UK is seeing an increasing number of international instruments that contain asset sharing provisions, although we do not need a formal treaty basis to allow us to share assets.
2. There are specific sharing provisions in international treaties such as the UN Convention against Transnational Organised Crime (UNTOC), and the UN Convention against Corruption (UNCAC). The various EU Conventions covering mutual legal assistance, and the Council Framework Decision on the mutual recognition of confiscation orders, also contain specific provisions. For certain types of criminal offences, or requests, the expectation is that all monies will be repatriated to the requesting state (for example, corruption cases under UNCAC).
3. The UK may also have specific bilateral treaties with various States. A full list of mutual legal assistance treaties can be found here:

<https://www.gov.uk/government/publications/international-mutual-legal-assistance-agreements>

4. The Home Office is responsible for the drafting and implementation of such agreements and we look to prioritise those that would most assist the UK's efforts against organised crime. Generally the terms of such treaties allow for the sharing of assets by agreement insofar as it is permissible under the law of the state who is being asked to share. There is no general specified proportion in any treaty which demand assets are shared.

Why do we share?

5. The UK will get involved in asset sharing agreements because they:
 - a. Enhance international law enforcement cooperation
 - b. Foster good relations
 - c. Encourage good working
 - d. Recognise resources and effort dedicated to the enforcement of confiscation orders
 - e. Are within the spirit of global cooperation in tackling international criminals.

So, how do we share?

6. In all cases, the sharing of confiscated assets is an administrative process based on an agreement between the Home Office and the UK Treasury. The usual proportion that is shared is 50% depending on the case. The UK may decide to negotiate different proportions if there are victims for example in the requesting country. The Home Office therefore takes the lead in negotiation and dealing with the overseas authority. If the request is made under the EU framework decision on confiscation, then any assets recovered over 10,000 EUROS are automatically shared on a 50/50% basis. Please note that the Home Office will only deal with cases in England, Wales and Northern Ireland. Scotland and Crown Dependencies such as Guernsey and Jersey, are responsible for their own arrangements.

7. There must first have been a confiscation or a civil recovery order made in the courts and realised assets resulting from that order enforced overseas. A request for sharing is made between the two governments concerned. We may not necessarily have to wait until the final order is realised before negotiations can start. Particularly in countries where we may not have shared before, early contact between the Home Office and our counterparts can be very productive.
8. Requests may also come through asset recovery advisers, liaison magistrates, or criminal justice advisers, as well as through formal judicial channels or through central authorities. In all cases however, it is the Home Office who will make the final agreement.
9. Once agreed, bank account details are exchange to enable the exchange of funds.
10. The UK does not necessarily require a formal agreement with the country concerned – we may agree to share on the basis of an exchange of letters. However, if an agreement is required, a suggested template is attached at Annex A.
11. Contact details:

Alison Moore, Head of Asset Recovery
SCOC – Economic and Cyber Crime Unit
Office for Security and Counter Terrorism
Home Office
6th Floor Peel Building
2 Marsham Street
London
SW1P 4DF
Email – Alison.Moore@homeoffice.x.gsi.gov.uk

Annex A – Sample text of asset sharing agreement**AGREEMENT**

1. This Agreement is between the Government of the United Kingdom and the Government of [insert country], represented by the Home Office and the [insert relevant department of signatory country] (hereinafter referred to as “the Parties”), regarding the sharing of confiscated proceeds of crime or property.
2. Considering that [insert defendant] has been convicted on [insert date] by [insert name of court] of offences of [insert offences and legislative base];
3. Considering that a confiscation order has been issued against [name of defendant] on [date] by [insert name of court] in the amount of [insert amount and currency]

Considering that [insert country] provided assistance to the Government of the United Kingdom in confiscating funds contained in bank accounts in [insert country];

Have agreed as follows:

4. The proportion of the confiscated proceeds of crime or property to be shared under this Agreement has been determined and agreed upon by the Parties as fifty percent (50%).
5. The Government of [insert country] shall transfer to the United Kingdom fifty percent (50%) (approximately [insert value and currency]) of the confiscated amounts mentioned in paragraph 3 (approximately [insert value and currency] in accordance with paragraph 6 of this Agreement.
6. The Parties have agreed that any sum transferred pursuant this Agreement shall be paid in a manner determined by the Party where the proceeds of crime or property are located ([insert country]) to the Party receiving the payment (United Kingdom) using the following details:

[insert bank details]
7. Unless otherwise agreed, where a Party transfers confiscated proceeds of crime or property pursuant to this Agreement, the other Party shall use the proceeds of crime or property for any lawful purpose at its discretion.

8. This Agreement shall enter into force upon signature by both Parties.

In witness thereof, the undersigned, being duly authorised by their respective Governments, have signed this Agreement.

For the Government of [insert country]:

[print name and role]

Date:

For the Government of the United Kingdom

[print name and role]

Date:

Morocco / Maroc

(Translation : original text in French, appended)

Following the request for information on the asset-sharing legislation in Morocco,

I should like to inform you that the Moroccan law does not contain provisions that govern this subject.

G8 1999 Model Agreement on Asset Sharing

MODEL AGREEMENT ON ASSET SHARING

AGREEMENT BETWEEN

THE GOVERNMENT OF []

AND

THE GOVERNMENT OF []¹

REGARDING THE SHARING OF FORFEITED

OR CONFISCATED ASSETS AND EQUIVALENT FUNDS²

The Governments of _____ and of _____, hereinafter referred to as «the Parties»,

Considering the commitment of the Parties to co-operate on the basis of [the Treaty on Mutual Legal Assistance in Criminal Matters, which was signed on _____ and entered into force on _____ as well as] the United Nations Convention against illicit Traffic in

¹ Full name of the relevant States.

² Some States impose a pecuniary order, rather than a confiscation or forfeiture order. Some may impose a fine in lieu of confiscation/forfeiture where the assets are dissipated or relocated to a locale where confiscation/ forfeiture is difficult or impossible. If a fine is imposed a mandatory term of incarceration could also be imposed to compel the offender to pay the fine. In any event sharing of the confiscated/forfeited assets or the fine is the goal of the agreement.

Narcotic Drugs and Psychotropic Substances opened for signature at Vienna from 20 December 1988, hereinafter referred to as «the 1988 Convention»;³

Desiring to improve the effectiveness of law enforcement in both countries in the investigation, prosecution and suppression of crime and in the tracing, freezing, seizure and forfeiture or confiscation of assets related to crime; and ⁴

Desiring also to create a framework for sharing the proceeds of disposition of such assets;⁵

Have agreed as follows:

1. For the purposes of this Agreement:

(a) «forfeiture or confiscation» shall mean any action under national law resulting in the final forfeiture or confiscation of assets of any description related to, or proceeding from, crime or a sum which amounts to the value of such assets;

(b) «co-operation» shall mean any assistance, including intelligence and operational assistance or legal and judicial assistance which has been given to one Party by the other Party and which has led to, or significantly facilitated, the forfeiture or confiscation of assets;

2. Asset sharing under this Agreement is not limited to forfeited or confiscated proceeds from drug trafficking offences as set out in Article 3 of the 1988 Convention.

³ This preamble captures the 1988 Convention's specific recognition of the sharing concept (see Article 5,

subparagraph (b) (ii)) and any possible mutual legal assistance in criminal matters. The parties could also elect to add references to Recommendations 38 & 39 of the FATF's Forty Recommendations. Reference can also be to the 2000 Palermo Convention on transnational organized crime when it enters into force.

⁴ This captures the essence of asset sharing. It recognizes co-operation as a general goal rather than a specific case driven activity.

⁵ This recognizes the need to have a framework general agreement, rather than a case specific agreement. A general agreement is preferred since specific cases can be addressed through the channels of communication set out in paragraph 5.

- 3(1). Where the Requesting Party has brought to the attention of the Requested Party its cooperation in an investigation or proceeding that led, or is expected to lead, to a confiscation, forfeiture or the payment of funds equivalent to a forfeiture⁶, the Requested Party shall, consistent with its domestic laws and in accordance with paragraph 5(1) below, share with the Requesting Party the net proceeds⁷ realized;

AND/OR

- 3(2). Where the Requesting Party makes a request for the enforcement of a confiscation order against property located in the jurisdiction of the Requested Party⁸, the Requested Party shall, consistent with its domestic laws and in accordance with paragraph 5(1) below, share with the Requesting Party the net proceeds realized.
4. The Requesting Party shall set out the circumstances which have led to the request for asset sharing and include details which enable the Requested Party to identify the assets, property owner(s), case reference and agency involved.
- 5(1). The Requested Party shall determine, at its discretion and in accordance with its domestic law⁹, the amount of the forfeited or confiscated assets to be shared on the basis of its assessment of the contribution of the Requesting Party, which has led to, or significantly facilitated, the forfeiture or confiscation of the assets. The Requested Party shall not be obliged to share where the value of the realized assets or the assistance rendered by the Requesting Party is de minimis.

⁶ This option would be relevant where both Parties can share assets very widely on the basis of cooperation in investigations irrespective of whether the Requesting Party is seeking the enforcement of a confiscation order.

⁷ The State where the targeted assets are located applies its domestic laws to determine the amount available for sharing. This means that it protects innocent third parties, deducts its own costs (if any) to manage the asset and determines the net proceeds. Therefore the specific asset (e.g. car, boat, plane, or real property), other than cash, is assumed to have been sold and the proceeds of sale accumulated with any forfeited currency in order to arrive at a «net proceeds» amount that is available for sharing.

⁸ This option would be relevant where asset sharing is only permissible on a narrow basis pursuant to a request for the enforcement of a confiscation order by one State to another.

⁹ The country that has the «net proceeds» is responsible for determining how much it intends to share with the other country that assisted in the case that led to the forfeiture/confiscation or fine in lieu of forfeiture. This agreement covers a share of accumulated currency, rather than specific assets.

- 5(2). The Requested Party may recover the costs relating to the forfeiture or confiscation proceedings, before determining the assets to be shared.
6. The Requested Party may place conditions in respect of the use of amounts paid where it deems this to be appropriate or make any payments conditional on the Requesting Party sharing them with another government organisation.¹⁰

OR

The Requested Party may not place any conditions in respect of the use of the amounts paid unless otherwise agreed to by the Requesting Party and if conditions are placed they shall be appropriate and acceptable to the Requesting Party.

7. Shares payable pursuant to Article 2 shall be paid in the currency of the Requested Party unless other arrangements are agreed to. In cases where [] is the Requesting Party, payments shall be made to the [] and sent to the []. In cases where [] is the Requesting Party, payments shall be made as designated by []¹¹.
8. The Parties shall designate a central authority to which requests to share assets under this Agreement shall be transmitted.

¹⁰ Sharing is conducted at the State to State level. The country that sends the shared money is presumed to have shared with any other relevant State. The recipient will normally determine, at its sole discretion, how it will use the shared money. However, it is for consideration whether the Requested Party may attach conditions with or without the consent of the Requesting Party and both options are included.

¹¹This Paragraph allows both States to specify how the sharing cheque is endorsed and where the cheque is to be sent.

9. The channels of communication for all matters concerning the implementation of this Agreement shall be, for [] the [] and, for [], the [].¹²

10. This Agreement shall enter into force upon signature.

11. Either Party may terminate this Agreement, at any time, by giving written notice to the other Party. Termination shall become effective six months after receipt of the notice.

Done at.....this day of..... One Thousand Nine Hundred and Ninety Nine/Two Thousand [and.....] [in the English and [] languages, each text being equally authentic.

For the Government of _____

For the Government of _____

¹² This paragraph provides for effective channels of communications.

UN Model Agreement Asset Sharing

ECOSOC resolution 2005/14

**Model bilateral agreement on the sharing of
confiscated proceeds of crime or property covered
by the United Nations Convention against
Transnational Organized Crime and the United
Nations Convention against Illicit Traffic in Narcotic
Drugs and Psychotropic Substances of 1988**

The Economic and Social Council,

Recalling its resolution 2004/24 of 21 July 2004,

Recalling also the United Nations Convention against Transnational Organized Crime¹ and the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988,²

Recalling further the meeting of the intergovernmental expert group to prepare a draft model bilateral agreement on disposal of confiscated proceeds of crime covered by the United Nations Convention against Transnational Organized Crime and the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988, held in Vienna from 26 to 28 January 2005³ with extrabudgetary resources provided for that purpose by the Government of the United States of America,

Convinced that a model bilateral agreement on sharing confiscated proceeds of crime or property could be a useful tool to facilitate greater international cooperation in that area, being one of the principal objectives of the United Nations Convention against Transnational Organized Crime and the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988,

Noting the importance of the reference in article 3 of the Model Bilateral Agreement on the Sharing of Confiscated Proceeds of Crime or Property to article 14, paragraph 2, of the United Nations Convention against Transnational Organized Crime, in which it is stated that States parties shall, to the extent permitted by domestic law, give priority consideration to returning the confiscated proceeds of crime or property to the requesting State party so that it can give compensation to the victims of the crime or return such proceeds of crime or property to their legitimate owners,

1. *Expresses its appreciation* to the intergovernmental

¹ General Assembly resolution 55/25, annex I.

² United Nations, *Treaty Series*, vol. 1582, No. 27627.

³ E/CN.15/2005/7.

expert group to prepare a draft model bilateral agreement on disposal of confiscated proceeds of crime covered by the United Nations Convention against Transnational Organized Crime²⁴ and the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988 for having prepared the draft model bilateral agreement on the sharing of confiscated proceeds of crime or property;

2. *Adopts* the Model Bilateral Agreement on the Sharing of Confiscated Proceeds of Crime or Property, annexed to the present resolution, as a useful model that could be of assistance to States interested in negotiating and concluding bilateral agreements to facilitate the sharing of proceeds of crime;

3. *Stresses* that the Model Bilateral Agreement will not prejudice the principles set forth in the United Nations Convention against Corruption⁴ or the development, at a later stage, of any appropriate mechanism to facilitate the implementation of that Convention;

4. *Invites* Member States, in concluding agreements with other States in the area of sharing proceeds of crime pursuant to article 14 of the United Nations Convention against Transnational Organized Crime and article 5 of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988 or in revising, where necessary or useful, existing bilateral agreements in that area, to take into account the Model Bilateral Agreement;

5. *Requests* the Secretary-General to bring to the attention of Member States the present resolution, together with the Model Bilateral Agreement;

6. *Encourages* Member States to inform the Secretary-General voluntarily of efforts undertaken in the area of sharing confiscated proceeds of crime or property, in particular the establishment of agreements in that area;

7. *Requests* the United Nations Office on Drugs and Crime to convey to the Commission on Crime Prevention and Criminal Justice information regarding efforts undertaken by Member States in the area of sharing confiscated proceeds of crime or property;

8. *Also requests* the United Nations Office on Drugs and Crime to provide to Member States, at their request, technical assistance and advice, within available extra-budgetary resources, not excluding the use of existing resources from the regular budget of the United Nations Office on Drugs and Crime,⁵ to give effect to the arrangements to be made pursuant to agreements to be negotiated on the basis of the Model Bilateral Agreement.

⁴ General Assembly resolution 58/4, annex.

⁵ This new language does not provide a basis for an increase in the regular budget or requests for supplemental increases.

36th plenary meeting
22 July 2005

Annex

Model Bilateral Agreement on the Sharing of Confiscated Proceeds of Crime or Property⁶

Agreement between the Government of

_____ and

the Government of _____

regarding the sharing of confiscated proceeds of crime or property

The Government of _____ and the Government of _____ (hereinafter referred to as "the Parties"),

Recalling the United Nations Convention against Transnational Organized Crime,⁷ in particular its article 12, paragraph 1, and articles 13 and 14,

Recalling also the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988⁸, in particular article 5, paragraphs 1, 4 and 5,

Recognizing that this Agreement should not prejudice the principles set forth in the United Nations Convention against Corruption⁹ or the development, at a later stage, of any appropriate mechanism to facilitate the implementation of that Convention,

Reaffirming that nothing in the provisions of this Agreement should prejudice in any way the provisions and the principles on international cooperation set forth in the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988 and the United Nations Convention against Transnational Organized Crime, and that this Agreement is intended to enhance the effectiveness of international cooperation envisioned in those Conventions,

Considering [reference to a treaty on mutual legal assistance if one exists between the Parties],

⁶ The present model agreement may be useful for the implementation of other relevant instruments developed in multilateral forums to which the parties to the agreement may also be parties, such as the International Convention for the Suppression of the Financing of Terrorism (General Assembly resolution 54/109, annex) and the 40 recommendations of the Financial Action Task Force against Money Laundering.

⁷ General Assembly resolution 55/25, annex I.

⁸ United Nations, *Treaty Series*, vol. 1582, No. 27627.

⁹ General Assembly resolution 58/4, annex.

Desiring to create an appropriate framework for sharing confiscated proceeds of crime or property,

Have agreed as follows:

Article 1

Definitions

For the purposes of this Agreement:

(a) The terms “proceeds of crime”, “confiscation” and “property” shall be understood as defined in article 2 of the United Nations Convention against Transnational Organized Crime and article 1 of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988;

(b) “Cooperation” shall mean any assistance described in articles 13, 16, 18-20, 26 and 27 of the United Nations Convention against Transnational Organized Crime or article 5, paragraph 4, and articles 6, 7, 9-11 and 17 of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988, as well as cooperation between entities foreseen in article 7 of the United Nations Convention against Transnational Organized Crime, which has been given by one Party and which has contributed to, or facilitated, confiscation of proceeds of crime or property.

Article 2

Scope of application

This Agreement is intended solely for the purposes of mutual assistance between the Parties.

Article 3

Circumstances in which confiscated proceeds of crime or property [may] [shall] be shared

Where a Party is in possession of confiscated proceeds of crime or property and has cooperated with, or received cooperation from, the other Party, it [may] [shall] share such proceeds of crime or property with the other Party, in accordance with this Agreement, without prejudice to the principles enumerated in article 14, paragraphs 1, 2 and 3 (a), of the United Nations Convention against Transnational Organized Crime and article 5, paragraph 5 (b) (i), of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988.¹⁰

Article 4

Requests for sharing confiscated proceeds of crime or property

¹⁰ It may be necessary to insert a specific provision in the agreement regarding the return of works of art or archaeological objects that have been purchased or exported illegally from their country of origin.

1. A request for sharing confiscated proceeds of crime or property shall be made within a time limit to be agreed between the Parties, shall set out the circumstances of the cooperation to which it relates and shall include sufficient details to identify the case, the confiscated proceeds of crime or property and the agency or agencies involved or such other information as may be agreed between the Parties.

Option 1

[2. On receipt of a request for sharing confiscated proceeds of crime or property made in accordance with the provisions of this article, the Party where confiscated proceeds of crime or property are located shall consider, in consultation with the other Party, whether to share such proceeds of crime or property, as set out in article 3 of this Agreement.]

Option 2

[2. On receipt of a request for sharing confiscated proceeds of crime or property made in accordance with the provisions of this article, the Party where confiscated proceeds of crime or property are located shall share with the other Party such proceeds of crime or property, as set out in article 3 of this Agreement.]

Article 5

Sharing of confiscated proceeds of crime or property

Option 1

[1. Where a Party proposes to share confiscated proceeds of crime or property with the other Party, it shall:

(a) Determine, at its discretion and in accordance with its domestic law and policies, the proportion of the confiscated proceeds of crime or property to be shared, which, in its view, corresponds to the extent of the cooperation afforded by the other Party; and

(b) Transfer a sum equivalent to that proportion set forth in subparagraph (a) above to the other Party in accordance with article 6 of this Agreement.

2. In determining the amount to transfer, the Party holding the confiscated proceeds of crime or property may include any interest and appreciation that has accrued on the confiscated proceeds of crime or property and may deduct reasonable expenses incurred in investigations, prosecution or judicial proceedings leading to the confiscation of the proceeds of crime or property.]

Option 2

[1. In sharing confiscated proceeds of crime or property in accordance with this Agreement:

(a) The proportion of the confiscated proceeds of crime or property to be shared shall be determined by the Parties on a *quantum meruit* basis or on any other reasonable basis agreed upon by the Parties;

(b) The Party holding the confiscated proceeds of crime or property shall transfer a sum equivalent to that proportion set forth in subparagraph (a) above to the other Party in accordance with article 6 of this Agreement.

2. In determining the amount to transfer, the Parties shall agree on any issues related to interest and appreciation that has accrued on the confiscated proceeds of crime or property and the deduction of reasonable expenses incurred in investigations, prosecution or judicial proceedings leading to the confiscation of the proceeds of crime or property.]

3. The Parties agree that it may not be appropriate to share where the value of the confiscated proceeds of crime or property is *de minimis*, subject to previous consultations between them.

Article 6

Payment of shared proceeds of crime or property

1. Unless the Parties agree otherwise, any sum transferred pursuant to article 5, paragraph 1 (b), of this Agreement shall be paid:

(a) In the currency of the Party where the proceeds of crime or property are located; and

(b) By means of an electronic transfer of funds or by cheque.

2. Payment of any such sum shall be made:

(a) In any case in which the Government of _____ is receiving payment, to [*identify the pertinent office or designated account as specified in the request*];

(b) In any case in which the Government of _____ is receiving payment, to [*identify the pertinent office or designated account as specified in the request*]; or

(c) To such other recipient or recipients as the Party receiving payment may from time to time specify by notification for the purposes of this article.

Article 7

Terms of transfer

1. In making the transfer, the Parties recognize that all right or title to and interest in the transferred proceeds of crime or property have already been adjudicated and that no further judicial proceedings are necessary to complete the confiscation. The Party transferring the proceeds of crime or property assumes no liability or responsibility for the proceeds of crime or property once they have been transferred and relinquishes all right or title to and

interest in the transferred proceeds of crime or property.¹¹

2. Unless otherwise agreed, where a Party transfers confiscated proceeds of crime or property pursuant to article 5, paragraph 1 (b), of this Agreement, the other Party shall use the proceeds of crime or property for any lawful purpose at its discretion.

Article 8

Channels of communication

All communications between the Parties pursuant to the provisions of this Agreement shall be conducted through [*the central authorities designated pursuant to article [...] of the treaty on mutual legal assistance referred to in the preamble to the agreement*] or by the following:

(a) For the Government of _____, by the Office of _____;

(b) For the Government of _____, by the Office of _____; or

(c) By such other nominees as the Parties, for their own part, may from time to time specify by notification for the purposes of this article.

Article 9

Territorial application

This Agreement shall apply [*if applicable, designate any territories to which the agreement should be extended for each Government*].

Article 10

Amendments

This Agreement may be amended when both Parties have agreed in writing to such amendment.

Article 11

Consultations

The Parties shall consult promptly, at the request of either Party, concerning the interpretation, application or implementation of this Agreement, either generally or in relation to a particular case.

Article 12

Entry into force

This Agreement shall enter into force upon signature by both

¹¹ Where the domestic law of a State requires it to sell confiscated proceeds of crime or property and only permits it to share funds, this provision may be unnecessary.

Parties or upon notification by the Parties that the necessary internal procedures have been completed.¹²

**Article 13
Termination of the Agreement**

Either Party may terminate this Agreement, at any time, by giving written notice to the other Party. Termination shall become effective [...] months after receipt of the notice. The provisions shall, however, continue to apply in relation to confiscated proceeds of crime or property to be shared under this Agreement. In witness whereof, the undersigned, being duly authorized by their respective Governments, have signed this Agreement.

Done in duplicate at [*location*], this _____ day of _____, _____.

For the Government of For the Government of

[*Signature*] _____ [*Signature*]

¹² This may be upon signature, ratification, publication in a legal gazette or by other means.

Appendix I – Belgium original version/ Belgique version originale

Modèle d'accord sur le partage des avoirs

J'ai l'honneur de vous transmettre la demande d'exécution d'une confiscation au bénéfice de l'Etat belge de la part du M. le Procureur du Roi d'Anvers.

La demande est faite sur base de la Convention relative au blanchiment, au dépistage, à la saisie et à la confiscation des produits du crime du Conseil de l'Europe du 8 novembre 1990, chapitre III - l'exécution des confiscations.

La demande concerne M. Friedrich Händel, Johann Sebastian BACH, la compagnie Music Ltd. et autres, condamnées le 01 janvier 2017 par l'arrêt de la cour d'appel d'Anvers du chef de blanchiment de fonds. L'arrêt est devenu définitif depuis l'arrêt de la Cour de cassation du 01 janvier 2017 rejetant les moyens en cassation, sauf un seul moyens concernant la confiscation d'un seul bien immobilier localisé en Belgique.

En ce qui concerne le Grand-duché de Luxembourg, la demande porte sur les biens confisqués:

1. A charge de Friedrich Händel et de Johann Sebastian BACH: le montant qui se trouve sur le compte n° 123456, Banque de Luxembourg, de Messe Holdings International s.a.
2. A charge de Friedrich Händel: le montant qui se trouve sur le compte n° 012345 de Music Ltd. auprès la banque BNP Paribas Luxembourg.

L'autorité judiciaire belge et l'autorité centrale requièrent que le produit de l'exécution de la confiscation dans le pays de l'autorité requise soit attribué, à concurrence de la moitié, à l'Etat Belge.

Le partage des sommes éventuellement récupérées peut être opéré par virement sur le compte bancaire de l'Organe Central (belge) pour la Saisie et la Confiscation (OCSC).

Banque: ING

Numéro de compte: 310-1801895-12

IBAN: BE19310180189512

Swift / BIC: BBRUBEBB

Mention sur le virement: voir la référence de la demande.

Conformément à l'article 8 de la loi du 20 mai 1997, l'Etat Belge peut également partager le produit de l'exécution d'une confiscation demandée par le Grand-duché de Luxembourg.

Appendix II – France original version / France version originale

- ***Votre législation nationale sur le partage des avoirs***

Article 713-40 du code de procédure pénale

L'exécution sur le territoire de la République d'une décision de confiscation émanant d'une juridiction étrangère entraîne transfert à l'Etat français de la propriété des biens confisqués, sauf s'il en est convenu autrement avec l'Etat requérant.

Les biens ainsi confisqués peuvent être vendus selon les dispositions du code du domaine de l'Etat.

Les frais d'exécution de la décision de confiscation sont imputés sur le total des montants recouverts.

Les sommes d'argent recouvrées et le produit de la vente des biens confisqués, déduction faite des frais d'exécution, sont dévolus à l'Etat français lorsque ce montant est inférieur à 10 000 € et dévolus pour moitié à l'Etat français et pour moitié à l'Etat requérant dans les autres cas.

Si la décision étrangère prévoit la confiscation en valeur, la décision autorisant son exécution rend l'Etat français créancier de l'obligation de payer la somme d'argent correspondante. A défaut de paiement, l'Etat fait recouvrer sa créance sur tout bien disponible à cette fin. Le montant recouvré, déduction faite de tous les frais, est partagé selon les règles prévues au présent article.

- ***Modèles d'accord développés par votre pays***

Nous ne disposons pas de modèles, les accords étant établis au cas par cas.

- ***Information sur votre pratique en matière de partage des avoirs***

Le sort des biens confisqués en exécution d'une décision étrangère est réglé par les instruments internationaux multilatéraux ou bilatéraux applicables et par les dispositions de l'article 713-40 du code de procédure pénale.

S'agissant des instruments internationaux, il doit être relevé que certains prévoient des modalités particulières de partage ou de restitution. C'est notamment le cas de la Convention des Nations Unies contre la corruption dite de Mérida, ou de ceux applicables entre Etats membres de l'Union européenne.

Pour ce qui concerne l'application de nos dispositions nationales, la rédaction d'un accord ne s'impose pas lorsque les autorités requérantes sollicitent 50% des sommes confisquées, soit la clé de répartition prévue par la loi. Le ministère de la justice et l'Agence de recouvrement des avoirs saisis et confisqués peuvent négocier un partage différent, notamment aux fins d'indemnisation de victimes.

Appendix III – Morocco original version / Maroc version originale

Suite à votre demande d'avoir des informations sur le régime de partage des avoirs dans la législation marocaine.

Je vous informe que la loi marocaine ne contient pas des dispositions qui régissent ce sujet.