

## France Asset Recovery Action Plan Implementation Road Map 2013

Action Plan commitment	Progress so far	Timetable for next steps
<p><b>Seek to enhance responsiveness:</b> Take into account the importance of transition countries' requests for case assistance in recovering proceeds of corruption and organized crime and accordingly give them priority, where legally permissible, and encourage regional partner countries to do the same. Implementation: Immediate</p>	<p>Asset recovery was made and remains a top priority of the criminal law policy defined by the French Government and relayed by the local prosecutors.</p> <p>It is to be reminded that requests for legal assistance are in the first place sent to the French ministry of justice acting as central authority and then transmitted to the appropriate local court for the purpose of its execution.</p> <p>In order to ensure coordination and enhance responsiveness, a table listing the requests for assistance (as well as the date on which they were sent for execution) was sent to the Prosecutor General in Paris, calling his attention on the sensitiveness of the execution of the requests for assistance sent by transition countries, and their legitimate concerns about the recovery of stolen assets.</p>	
<p><b>Adopt and enforce international frameworks:</b> Ratify the U.N. Convention Against Corruption as soon as possible, and take steps to enhance their enforcement of laws against foreign bribery, in order to provide a universal legal framework for asset recovery cooperation.</p>	<p>France ratified the UNCAC in 2006 and is fully compliant with its obligations.</p> <p>The review of France with respect to its implementation of the UNCAC concluded very positively, highlighting the remarkable synergy resulting from tight cooperation between the authorities in charge of fighting against corruption.</p>	<p><u>Fully implemented</u></p> <p>A draft law is currently being discussed before the French Parliament, which provides for :</p> <ul style="list-style-type: none"> <li>- The possibility for anti-bribery associations / groups to claim for damages in criminal proceedings</li> <li>- The creation of a national financial prosecutor in charge of the most complex financial cases (in particular cases of bribery) with a dedicated team of specialists in order to ensure better coordination and more efficiency.</li> </ul>
<p><b>Promote transparency and effective cooperation.</b> <b>Each G8 member will:</b></p>		
<p><b>Publish a guide</b> that describes specific steps required for assistance and cooperation in matters related to tracing, freezing, confiscation, and return of proceeds of corruption, whether through formal mutual legal assistance (MLA) or other forms of cooperation and make the guide available in Arabic</p>	<p>The French guide is published on the StAR website and is available in Arabic, English and French language versions : <a href="http://star.worldbank.org/star/arabForum/country-guides-asset-recovery-0">http://star.worldbank.org/star/arabForum/country-guides-asset-recovery-0</a>.</p>	<p><u>Fully implemented</u></p>
<p><b>Designate or appoint the office/persons responsible for inquiries, guidance, or other investigative cooperation</b></p>	<p>The French Central Authority is the ministry of justice. In practice, a dedicated department of the ministry of Justice</p>	<p><u>Fully implemented</u></p>

<p>permitted by law, both for MLA and for other forms of cooperation not requiring MLA requests</p>	<p>deals with mutual legal assistance and extradition cases, named the <i>Bureau de l'entraide pénale internationale</i> (BEPI : Office for Mutual Legal Assistance in Criminal Matters). Details for the BEPI are indicated in the guide. The BEPI is as a general rule clearly identified by all foreign counterparts.</p>	
<p><b>Designate the appropriate points of contact to relevant networks</b>, including but not limited to the global asset recovery Focal Point network, UNCAC COSP, and CARIN, that may be useful for coordination</p>	<p><b>The PIAC, platform for identification of criminal asset</b>, is a law enforcement unit, created in 2005, dedicated to identification of criminal asset, and is empowered to conduct financial and patrimonial investigations under supervision of a judicial authority. It also centralizes all information relating to detection of illegal assets all over the French territory and abroad. It has been appointed as focal point in the different cooperation networks (in particular CARIN and the Focal Point network).</p> <p><b>The AGRASC, agency for management and recovery of seized and confiscated asset</b>, is an asset management office, created in order to improve criminal asset management and to provide the courts with legal and technical assistance. It can also be ordered to execute MLA requests, under the control of a judicial authority. The AGRASC is also a point of contact of CARIN.</p>	<p><u>Fully implemented</u></p>
<p><b><u>Facilitate cooperation leading to effective recovery.</u></b></p>		
<p><b><u>Each G8 member will act urgently on the following key measures:</u></b></p>		
<p><b>Ensure that there are mechanisms in place for enforcement of foreign orders of confiscation</b> unless inconsistent with fundamental principles of domestic law. This would include, wherever possible, considering measures as may be necessary to enforce non-conviction based confiscation orders (such as confiscation orders which do not require a criminal trial and conviction), at a minimum in the circumstances envisaged by UNCAC and FATF Recommendations. Such enforcement should be permitted even in the absence of a domestic system for non-conviction based confiscation or other equivalent avenue</p>	<p>During the last years, French domestic law has constantly widened the scope of seizure and confiscation, in particular by allowing <b>value-base confiscation</b> and even extended confiscation (i.e. for specific offences, allowing to seize assets irrespective of their link with the offences)</p> <p>Although fundamental principles of French domestic law do not allow the implementation of non-conviction based confiscation, <b>the Cour de Cassation has considered valid the execution in France of a foreign NCB confiscation</b> (13 November 2003 – CRISAFULLI case). In this specific case, confiscation of real estate had been ordered preventively by a court of Milan (Italy), the court considering that there were sufficient elements proving that the real estate had been</p>	<p><u>Although under domestic law, NCB confiscation is not allowed, France may accept to execute foreign NCB order, under certain conditions, according to a MLA request</u></p>

	<p>purchased with the proceeds of a crime. The French high court ruled that, although confiscation had not been ordered by a criminal court, the provisions of French law ruling confiscation could have been applied under similar circumstances. French case law therefore considers the legal consequences of a foreign confiscation order so as to determine whether it may be executed in France, even though it was decided by a civil court abroad. The only condition to be complied with is that there needs to be sufficient charges to establish that the confiscated assets are the proceeds of a crime and therefore to assimilate the confiscation order to a criminal court decision.</p>	
<p>Consider, to the extent consistent with fundamental principles of domestic law and judicial proceedings, <b>establishing systems that allow for recovery through non-conviction-based confiscation</b> or equivalent (at minimum in cases of death, flight, or absence) and adopting legislation that establishes a non-criminal standard for burden of proof or reverses the onus of proof through rebuttable presumptions</p>	<p>Reverse of the onus of proof is actually provided for by domestic legislation for any offence punished of at least 5 years imprisonment: in such case, any asset for which a licit origin cannot be proven by the offender is subject to confiscation.</p> <p>Reverse of the burden of proof is also provided in case of failure to justify income for a person usually in relation with offenders, which constitutes a criminal offence under French law.</p> <p>Reverse of the onus of proof is actually provided for by domestic legislation for any offence punished of at least 5 years imprisonment: in such case, any asset for which a licit origin cannot be proven by the offender is subject to confiscation. Reverse of the burden of proof is also provided in case of failure to justify income for a person usually in relation with offenders, which constitutes a criminal offence under French law.</p>	<p><u>Fully implemented</u> (subject to previous comments about NCB confiscation)</p>
<p><b>Ensure that domestic legal frameworks (i.e., legislation and/or regulations) allow for swift identification and tracing of assets</b>, including in response to international requests.</p>	<p>Identification of stolen asset can be obtained through numerous databases, managed by public authorities or under their supervision. Furthermore, court orders may be issued in order to obtain additional information from the individuals or entities concerned.</p> <p>The main databases usually used are the following :</p> <ul style="list-style-type: none"> <li>- FICOBA : national centralized bank register, for bank accounts information</li> <li>- National Asset Database (BNDP) which contains key information about assets held by persons known to the</li> </ul>	<p><u>Fully implemented</u></p>

	<p>tax administration through their various tax declarations</p> <ul style="list-style-type: none"> <li>- Land registry for all real estate properties</li> <li>- Commercial registry (“registre du commerce et des sociétés) for information relating to legal entities.</li> </ul>	
<b>Ensure that domestic legislation and/or regulations allow sufficient time frames for freezing assets</b> during the pendency of foreign investigations and proceedings	A judicial freezing order may remain valid until final confiscation by the court or until a judicial decision of release by the judicial authority having decided of the seizure.	<u>Fully implemented</u>
<b>Ensure that mutual legal assistance regarding asset recovery can be granted in the absence of a bilateral legal assistance agreement</b> , under appropriate circumstances. If necessary, and without prejudice to the preceding point, recognize UNCAC as a sufficient legal basis for mutual legal assistance (MLA) by States Parties	<p>In the absence of a bilateral agreement, French legislation provides that mutual legal assistance may be granted on the basis of reciprocity.</p> <p>UNCAC is considered a sufficient legal basis for mutual legal assistance.</p>	<u>Fully implemented</u>
<b>Ensure that MLA requests for freezing can be permitted on an <i>ex parte</i> basis</b> (i.e., no requirement to give the asset holder the opportunity to contest beforehand the provision of MLA)	French freezing orders can be made on an <i>ex parte</i> basis	<u>Fully implemented</u>
<b>Allow domestic officials, in accordance with its domestic laws, to alert a foreign jurisdiction to an ongoing investigation</b> in the disclosing jurisdiction and indicate that existing information could be of interest, a proactive form of assistance, and to do so on a peer-to-peer basis where permissible	Disclosure of information may be prevented by the French principle of secrecy of the investigations. However, French law and numerous international agreements provide for the possibility to lay information to a foreign country, for the purpose of prosecution as the case may be.	<u>Partly implemented</u>
<b>In case of a barrier to execution of a mutual legal assistance request, promptly communicate the nature of the difficulty to the requesting authorities</b> so that it may be corrected expeditiously	<p>Upon receipt of a request for mutual legal assistance, the BEPI (central authority) analyses the request in order to identify any issue likely to constitute an obstacle to its execution.</p> <p>Should such an issue be identified, it is brought to the attention of the foreign requesting authorities in order to discuss the most efficient way to proceed.</p> <p>A difficulty may also be identified by the French judicial authority in charge of executing the request. In such case, as a general rule, the judicial authority informs the BEPI and the BEPI liaises with the foreign authorities in order to discuss the issue with a view to overcome obstacles to the execution</p>	<u>Fully implemented</u>

	<p>of the request.</p> <p>Furthermore, the BEPI also provides informal assistance to the foreign central authorities, in order to prepare the foreign request for MLA and adapt it to French law specificities.</p>	
<b>Enhance case cooperation:</b>		
<p><b>During the post-transition period, work with local officials in requesting transition countries on the underlying investigations to develop leads for records and assets located abroad</b> as well as to facilitate international legal assistance. This would include, upon request, sending practitioners (whether from the G8 country governments themselves, relevant international organizations and initiatives or other appropriate sources) to the requesting country</p>		
<b>Measures Related to Technical Assistance and Capacity Building:</b>		
<p><b>Provide Specialized Training:</b> During the post-transition period, to the extent possible, provide funding and/or in-kind expertise to ensure that specialized training by international practitioners from relevant public authorities, whether from the G8 country governments themselves, relevant international organizations and initiatives (such as, inter alia, the World Bank/UN Office of Drugs and Crime Stolen Asset Recovery Initiative - StAR), or other appropriate sources is provided to requesting transition countries. The key topics would include: financial investigations, financial document analysis, asset confiscation and forfeiture, requesting international assistance, asset recovery and asset management tools, and other topics identified by the requesting countries</p>	<p>Two study sessions about asset recovery practices in Egypt and Tunisia were organised by France in November and December 2011.</p> <p>A study visit of Tunisian judicial authority was organised in September 2012 (capacity building and operational bilateral meetings on mutual legal assistance).</p> <p>A meeting with Tunisian officials took place in November 2012.</p> <p>A study visit of Egyptian judicial and administrative authorities was organised in October 2012 (capacity building on fighting against financial crime).</p>	<p>The 4<sup>th</sup> regional seminar for French-speaking jurists which will be held in Tunis in March 2014 is co-organised by France and the IHEJ (Institut des Hautes Etudes sur la Justice).</p>
<p><b>Support domestic coordination:</b> During the post-transition period, assist a requesting transition country in setting up locally an Asset Recovery Task Force (ARTF), as a domestic coordination measure for the transition country partner, comprised of representatives of relevant law enforcement agencies (police, customs, prosecutors, etc) and regulatory bodies (such as financial intelligence units, central banks etc.), among whose functions will be cooperation with</p>	<p>In addition to providing training at AFAR Special Sessions, a French liaison magistrate has been appointed and will take office in Tunisia in December 2013 in order to provide local assistance and to enhance coordination and improve cooperation.</p>	<p><u>Partly implemented</u></p> <p>A study visit to France of Egyptian judicial and administrative authorities is scheduled in November 2013.</p>

international practitioners		
<p><b>Promote legal and institutional reforms:</b> During the post-transition period, to the extent possible, assist a requesting transition country in drafting appropriate legislation and/or institutional reforms that will adhere to international standards, including, but not limited to, in pursuing criminal and/or non-conviction based forfeiture legislation; and to establish systems for disclosure of assets and interests by senior public officials and appropriate relations, consistent with international best practices; and other relevant legal frameworks. Urge relevant international organizations to assist in this regard</p>	<p>France supported an IRD (Institut de Recherche et de Développement) report on the reform of the Egyptian final Court of appeal in 2012.</p> <p>France has provided €0.5m between 2010-2013 to strengthen the capabilities of civil society and criminal justice in the fight against corruption in transition countries.</p> <p>France has supported Yemen by providing €0.7m for the drafting of its new constitution.</p>	<p>France would be ready to provide assistance in order to promote legal and institutional reforms to requesting transition countries.</p> <p>France will continue to support democratic transition processes in Yemen, especially regarding institution building respectful of international standards.</p>
<p><b>Strengthen frameworks to manage recovered funds:</b> During the post-transition period, to the extent possible, assist a requesting transition country with legislative drafting advice or other assistance in setting up locally a central fund, to receive assets confiscated at home or abroad and to ensure transparency in their administration.</p>	<p>France has not yet received requests in this area.</p>	
<p><b>Support the Arab Forum on Asset Recovery:</b> Support the establishment of and participate as appropriate in the Arab Forum on Asset Recovery, including through financial support, where possible, expertise, and attendance at the inaugural meeting at the appropriate level.</p>	<p>France initiated the Deauville partnership for the recovery of assets of transition countries.</p> <p>France has actively participated in the 1<sup>st</sup> Arab Forum and in the three special sessions.</p>	<p><u>Fully implemented</u></p>