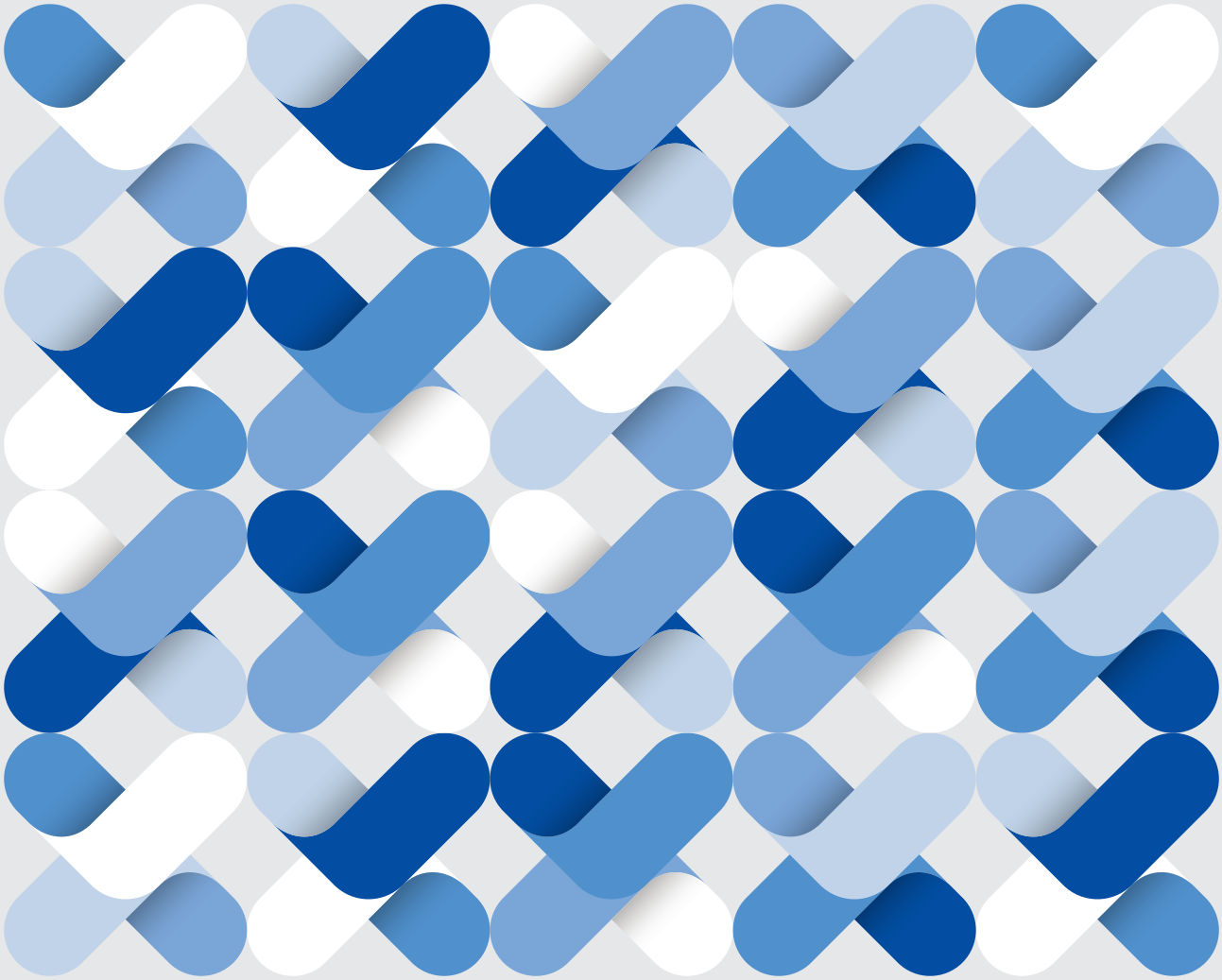
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MUTUAL LEGAL ASSISTANCE GUIDE

AUSTRIA



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Overview

This guide provides practical guidance on the preparation and execution of Mutual Legal Assistance (MLA) requests to Austria in criminal matters. It is intended to help practitioners from non-European Union (EU) countries identify relevant information and adapt it to the specific needs of each request.

It is not a standardized template.

Important Note on Early Coordination and Informal Contact

Before submitting a formal MLA request, it is considered good practice for the Requesting State to engage in early coordination. Preliminary contact can help identify the appropriate competent authorities, clarify jurisdictional links, refine investigative leads, and ensure that the scope of the request is targeted and proportionate before formal transmission.

Early coordination may take place through central authorities, cooperation networks – such as the Camden Asset Recovery Inter-Agency Network (CARIN) – and technical-support organizations, depending on the nature of the case and the assistance sought.

Type of Contact	Purpose	Examples
Central Authorities	Clarify procedural requirements, applicable legal bases, competent authorities, and formal MLA expectations	Austria's Federal Ministry of Justice (Bundesministerium für Justiz)
Cooperation Networks	Verify information, refine leads, trace or identify assets, and facilitate informal contact	CARIN, Egmont Group of Financial Intelligence Units (FIUs), INTERPOL
Technical and Advisory Organizations	Provide expertise, training, and practical assistance in structuring or refining MLA requests, and to facilitate cross-border practitioner dialogue.	UNICRI, International Centre for Asset Recovery (ICAR), Stolen Asset Recovery Initiative (StAR)

Kindly note that these channels do not replace formal MLA procedures. They support early clarification and preparation and may improve the quality and effectiveness of the requests.

The sections below outline the legal basis, formal requirements, and practical steps relevant to MLA requests to Austria, providing guidance on how such requests are prepared, transmitted, and executed in practice.

I. Legal Basis for MLA Requests to Austria

In Austria, MLA requests may be submitted under the following frameworks:

- **Multilateral Conventions:** such as the United Nations Convention against Corruption (UNCAC) Article 46, or the United Nations Convention against Transnational Organized Crime (UNTOC) Article 18.[1]

Note: UNCAC applies to the prevention, investigation, and prosecution of corruption offences, including bribery, embezzlement, abuse of functions, illicit enrichment, and related asset recovery measures.

UNTOC applies to serious transnational offences involving an organized criminal group, including money laundering, and other forms of organized crime.

- **Bilateral MLA Treaties:** where such treaties exist between Austria and the Requesting State.[2]

- **Domestic Law:** In the absence of a treaty, requests may be based on Austria's Federal Law on Extradition and Mutual Assistance in Criminal Matters (Auslieferungs- und Rechtshilfegesetz (ARHG)). This is the primary Austrian statute governing MLA.[3]

- **Reciprocity:** If no bilateral or multilateral treaty exists, Austria may still accept MLA requests on the basis of reciprocity, provided the request explicitly refers to this principle and confirms the Requesting State's willingness to offer mutual cooperation in return.[4]

Draft example (legal basis section of the MLA request):

- If both States are Parties to the UNCAC or UNTOC

This request is made pursuant to Article 46 of the United Nations Convention against Corruption (UNCAC), to which both Austria and [Requesting State] are parties, and in accordance with the Auslieferungs- und Rechtshilfegesetz (ARHG).

OR

This request is made pursuant to Article 18 of the United Nations Convention against Transnational Organized Crime (UNTOC), to which both Austria and [Requesting State] are parties, and in accordance with the Auslieferungs- und Rechtshilfegesetz (ARHG).

- If a bilateral or multilateral treaty exists:

This request is made in accordance with [relevant article] within [relevant bilateral/ multilateral treaty].

- If no bilateral or multilateral treaty exists:

In the absence of a bilateral or multilateral treaty, this request is made on the basis of reciprocity, pursuant to the Auslieferungs- und Rechtshilfegesetz (ARHG). We confirm our assurance of mutual cooperation.

Note: For requests involving asset freezing, confiscation, or return, the Requesting State should also cite Article 55 UNCAC in addition to Article 46, as it specifically governs cooperation for confiscation and asset recovery.

II. Formal Requirements for Submitting an MLA Request to Austria

An MLA request to Austria must comply with specific formal requirements in order to be accepted and efficiently processed. Key elements are outlined below:

Criminal Nature and Admissibility of Confiscation Orders:

Austria acts on MLA requests when they relate to a criminal matter. Where coercive measures are requested, the underlying conduct must constitute a criminal offence under both the law of the Requesting State and Austrian law, consistent with the principle of dual criminality.[5]

Confiscation in Austria is primarily conviction-based and treated as a criminal penalty. In principle, enforcement presupposes a final conviction. However, Austrian authorities may, in limited circumstances, recognize and enforce foreign confiscation orders issued without a conviction where the measure corresponds to a confiscation or property-deprivation measure available under Austrian criminal law, provided that:[6]

- the type of confiscation corresponds to a measure that could also be imposed under Austrian law;
- the order was made by a competent court or authority in the Requesting State;
- the order is clearly connected to criminal conduct; and
- the request complies with the principles of dual criminality and fundamental rights safeguards.

Note: Where domestic law permits confiscation or property-deprivation measures under Austrian criminal law, such measures are initiated and decided exclusively within the Requested State's own criminal proceedings and cannot be directly requested through an MLA request. Requesting States may instead seek the recognition and enforcement of an existing foreign confiscation order or request provisional measures. The initiation of any domestic confiscation proceedings remains at the discretion of the competent authorities of the Requested State.[7]

Central Authority:

MLA requests are generally addressed to Austria's Federal Ministry of Justice (Bundesministerium für Justiz), which acts as the central authority for incoming MLA requests.[8]

Transmission Channels:

When made under a treaty, the transmission method specified must be followed. Most instruments, including UNCAC and UNTOC, establish central authorities as the primary channel for the transmission of MLA requests. Austria has designated the Federal Ministry of Justice as its central authority for MLA requests, unless the applicable treaty provides otherwise.9 Where no treaty exists, requests must be transmitted via diplomatic channels, typically through embassies or foreign ministries.[10]

Official Language:

Requests must be submitted in German or be accompanied by an official German translation. This requirement applies both to the request itself and to the key supporting documents. Requests filed in another language without translation may result in delays.[11]

However, in urgent or exceptional situations, preliminary communication with the Federal Ministry of Justice may take place in English, provided that the formal request and supporting documents in German follow as soon as possible.[12]

Note: The Requesting State should always verify the applicable language requirements under the relevant treaty or domestic provisions before transmission to avoid delays.

Official Form:

There is no prescribed template or standardized form under Austrian law. Requests should be submitted in writing by the competent authority, dated and signed, and should clearly identify the requesting authority. For authenticity, attaching the official seal of the issuing authority is recommended. At least one original signed copy should be provided if multiple copies are submitted. Where the request is made pursuant to an applicable treaty, Austria generally does not require legalization or notarization of the request, but clarity, completeness, and proper structure of the submission are essential for efficient processing.[13] However, in cases based solely on reciprocity, additional authentication requirements may apply.[14]

III. Key Content Requirements

The MLA request must include the following:

Description of the Case

A clear summary of the facts, including dates, locations, the offences, and the individuals or entities connected to Austria. This allows Austrian authorities to assess dual criminality and establish a sufficient link to Austrian for the execution of the requested measures (for example where assets, evidence, or persons are located in Austria). If applicable, the description should also indicate the connection of the facts to the criminal origin of the assets.[15]

Legal Provisions

The request should clearly set out the offences under investigation, including their legal definition, statutory provisions, and applicable penalties under the Requesting State's law. Austrian authorities assess the requirement of dual criminality primarily on the basis of the underlying conduct rather than the foreign legal definition, particularly where coercive measures are requested.[16]

For this reason, before submitting the request, it is advisable for the Requesting State to consider whether the described conduct could constitute an offence under Austrian law. Where the foreign offence does not have a direct equivalent, the underlying conduct should be presented in clear and neutral factual terms, enabling Austrian authorities to identify the closest corresponding offence under the Austrian Criminal Code (Strafgesetzbuch (StGB)) and to determine whether the requested measures can be executed in accordance with the Code of Criminal Procedure (Strafprozessordnung (StPO)).[17]

Note: Where appropriate, the Requesting State may informally engage with the Austrian central authority to anticipate and address potential dual-criminality issues before submitting the request.

Purpose and Object of the Request

The Requesting State should clearly indicate what measures are being sought from Austria, such as:[18]

- Identification of assets (bank accounts, real estate, companies in which a defendant may be a beneficial owner)
- Freezing or seizure of assets
- Gathering of evidence (bank records, property deeds, corporate documents)
- Conducting searches or seizures of evidence
- Enforcement of a foreign confiscation order
- Taking of witness statements
- Return of assets post-confiscation

Note: While a single MLA request to Austria can include multiple investigative or provisional measures (e.g. asset tracing, provisional freezing, evidence collection), confiscation and asset return generally require a second request once a final order is obtained. Early consultation with Austrian authorities is strongly recommended in such cases.

Supporting Documentation (with certified or officially translated versions where possible)

An MLA request to Austria should be accompanied by supporting documentation to ensure it can be executed effectively. Attachments may include:[19]

- **A certified copy of any freezing or confiscation order** issued by a competent authority of the Requesting State. For provisional measures, the Requesting State may include the domestic order if available or indicate that one can be issued.

- **The original, a certified copy, or a photocopy of any order relating to an investigative measure** governed by the Austrian Code of Criminal Procedure (StPO). Pursuant to Article 56(2) ARHG, where the order was not issued by a court, the Requesting State should also provide a statement confirming that the legal conditions required for the measure are fulfilled under the law in force in the Requesting State.
- **Evidence linking the assets to the offence**, such as banking records, company registration extracts, or financial statements. While not strictly mandatory, such documentation strengthens the request and facilitates Austria's judicial review, and can be bolstered by visual graphics showing such links.
- **Copies of the relevant legal provisions from the Requesting State**, such as the penal code or relevant laws, preferably with an official German translation.
- **Witness statements or investigator affidavits** summarizing the facts, especially those showing the origin of the assets or their connection to criminal conduct.

Note: Notwithstanding the above, it is generally not good practice to send an entire case file to a Requested State, as this can serve to inundate authorities with too much information. Supporting documentation should therefore be limited to materials that are necessary and relevant to the specific assistance sought.

Early Measures and Urgency

Austria may adopt provisional measures, such as freezing, seizure, or preservation of evidence, when there is credible information linking assets to criminal conduct. Such measures require judicial authorization under the StPO and the ARHG. Requests should therefore provide clear factual grounds and explain the urgency to justify early measures.[20]

International cooperation networks such as INTERPOL[21] and CARIN,[22] can support preliminary discussion and information exchange. Austrian authorities also cooperate internationally through the Austrian Financial Intelligence Unit (A-FIU), which is a member of the Egmont Group of Financial Intelligence Units.[23] While these mechanisms do not replace formal MLA procedures, they can support preliminary asset tracing and help prepare targeted MLA requests.

Austria may spontaneously share information about assets or criminal proceeds under UNCAC Article 56 and, in organized crime cases, under UNTOC Article 18(4).[24]

An advance copy of the MLA request may be shared informally with the Federal Ministry of Justice to allow preliminary review and coordination before the official transmission.

Note: This step has no formal legal effect, but it can help clarify procedural mechanisms and facilitate prompt execution once the original request is received.

IV. Execution of the MLA Request in Austria

MLA requests received in Austria are generally administered as follows:

Reception and Preliminary Review

The Federal Ministry of Justice receives incoming MLA requests and conducts a preliminary review to ensure they comply with formal requirements.[25]

If a request is incomplete or unclear, the Ministry will typically contact the Requesting State to request clarification or additional documents.[26] Once a request is deemed complete and admissible, the Federal Ministry of Justice transmits it to the competent Austrian authority, usually the public prosecutor's office or the competent Regional Court where judicial action is required, in accordance with the StPO.[27]

Note: In Austria, coercive measures under MLA require authorization by the Regional Court (Landesgericht) having territorial jurisdiction over the place where the measure is to be carried out.

Judicial Procedure and Legal Assessment

Requests for MLA are executed in Austria under ARHG and, for procedural aspects, under the StPO.[28]

- The public prosecutor's office may handle investigative steps and preliminary inquiries and submits a request to the competent Regional Court where coercive measures are sought.
- A judge of the competent Regional Court authorizes coercive measures after verifying that the legal conditions are met, including dual criminality, sufficient factual grounds to justify the requested measure, respect for procedural safeguards and rights of defence, as required under Austrian law, including protections for third parties.[29]

Note: Austrian authorities do not reassess the foreign facts or re-litigate the case.[30]

Recognition, Enforcement, and Remedies

Where the legal conditions are satisfied, Austrian courts may recognize and enforce a foreign confiscation order, under the ARHG. Enforcement takes place under judicial supervision, with the competent Regional Court issuing the necessary domestic orders for recognition and execution in coordination with the public prosecutor's office.[31] Recognition requires that the foreign confiscation order be final and enforceable in the Requesting State.[32]

Affected persons, including third parties with a legitimate interest, may challenge seizures or confiscation orders before Austrian courts. Judicial remedies are available where assets are not sufficiently connected to the offence or where the foreign proceedings did not respect fundamental rights.[33]

Note: The Requesting State is strongly encouraged to maintain close communication with Austrian authorities during the execution phase, particularly where clarifications or supplementary information may be required.

Asset Management

Once assets are seized or confiscated in Austria, their custody and management are handled under judicial supervision. Austria does not have a single specialized asset-management office. In practice, responsibilities are shared among the criminal police, the public prosecutor's office, and the competent court, depending on the stage of the proceedings.

During the investigation phase, seized assets are typically secured and stored by the criminal police acting under the direction of the public prosecutor, in accordance with the Austrian Code of Criminal Procedure (StPO). Decisions regarding confiscation and the disposal of assets are taken by the competent court. Where necessary, authorities may engage external custodians or service providers to preserve, maintain, or dispose of assets. Their functions include:[34]

- Custody and maintenance of seized property, including vehicles, real estate, or valuables, pending judicial decisions.
- Administration of funds and financial assets, such as holding seized bank accounts in secure accounts until a final decision is taken.
- Disposal or sale of assets, where ordered by the competent Austrian judicial authority, particularly for assets that are perishable, depreciating, or costly to maintain.

Follow-Up and Communication

Austrian authorities may:[35]

- Provide updates or court orders
- Request clarifications or additional information
- Expect prompt follow-up to avoid delays

Note: Engaging proactively with the designated focal point in Austria could improve efficiency.

V. Transmission of Evidence to the Requesting State

After execution is complete, the collected evidence is transmitted to the Requesting State under the supervision of the competent Austrian judicial authority.[36]

Judicial Transmission

In most cases, transmission of evidence takes place through the Federal Ministry of Justice. Where a treaty provides otherwise, transmission may occur directly between judicial authorities or, if necessary, via diplomatic channels. Physical objects or files may be transmitted subject to conditions determined by the Austrian authorities, including requirements for their return once they are no longer needed for the requesting proceedings.[37]

Upon receiving the evidence, the Requesting State should verify that everything requested is included and, if needed, request additional follow-up.

Another important aspect is the authentication of evidence. If the Requesting State requires the evidence to be certified or accompanied by an affidavit to be admissible in court, it should be specified in the MLA request.[38]

Use Restrictions

Austria applies use-limitation conditions in line with UNCAC and UNTOC. Evidence and information obtained through MLA may be used only for the purposes expressly stated in the request. Any secondary use, for example, in unrelated criminal, administrative, or civil proceedings, requires the prior consent of the Austrian authorities.[39]

Note: It is advisable to specify in the MLA request the intended use in the request to mitigate any concerns of possible misuse.

VI. Confidentiality and Proportionality

Austrian authorities attach procedural safeguards to ensure that confidentiality is maintained while respecting due process and the rights of defence. This balance is achieved through judicial oversight, which ensures that coercive measures are legally justified and proportionate.[40]

Proportionality and Public Order

In Austria, coercive measures are subject to a proportionality assessment. Courts examine whether the requested measure is appropriate and necessary in light of the gravity of the offence, the value of the assets, and the rights of affected persons. Judicial review ensures that proportionality and legality are upheld throughout the process.[41]

Austria may refuse to execute an MLA request where its execution would violate fundamental legal principles or threaten Austria's sovereignty, security, or public order. Refusal may also occur on several grounds, including:[42]

- Lack of dual criminality.
- Violation of due process or defence rights or other procedural safeguards under Austrian law.
- Absence of a sufficient territorial or factual link to Austria (such as assets, evidence, or persons located in Austria).
- Protection of bona fide third-party rights where seizure or confiscation would disproportionately affect legitimate interests.
- Political or purely military offences, or where execution would threaten sovereignty, security, or public order.
- Risk of persecution or discrimination on protected grounds (e.g., race, religion, nationality, political opinion).
- Serious human-rights concerns (e.g., fair-trial guarantees).
- Fiscal limitations: while certain restrictions apply to purely fiscal matters, Austria generally cooperates in serious tax and money-laundering cases consistent with UNCAC.

To facilitate execution, the Requesting State should clearly demonstrate the factual link between the offence and Austria, the proportionality of the requested measures, and that the proceedings are bona fide criminal proceedings rather than politically motivated actions.[43]

Confidential Handling of Requests

Requesting States may ask for confidential handling of an MLA request, its content, and any supporting documents or evidence, when investigative secrecy is essential, for example in cases involving ongoing criminal investigations or where there is a risk of asset dissipation or evidence tampering. Austrian authorities may grant such confidentiality under the ARHG and the StPO, in line with the UNCAC and UNTOC,

which provides that the existence and content of a request must remain confidential, unless limited disclosure is required for its lawful execution (for example, to obtain a court order, to notify a bank for asset freezing, or to inform an affected person once notification is required under Austrian law).[44] In accordance with this framework, Austrian authorities treat transmitted materials as confidential and may request that the Requesting State maintain an equivalent level of confidentiality when using the information or evidence obtained through MLA.[45]

The StPO governs investigative secrecy. The public prosecutor may restrict access to the case file before the investigation ends and only as far as immediate disclosure would jeopardize the purpose of the investigation. Such restrictions are subject to judicial review and may be maintained only for as long as necessary to protect the effectiveness of the investigation.[46]

Once the investigative phase concludes or confidentiality is no longer justified, access must be granted and affected persons informed. Courts ensure that any delay in disclosure remains justified and proportionate to investigative needs.[47]

VII. Asset Disposal and Return

Under the UNCAC, the return and disposal of confiscated assets is recognized as a fundamental principle. Under Austrian law, confiscated assets following criminal proceedings generally become the property of the Austrian State. However, they may be returned to the Requesting State in accordance with an international agreement or on the basis of reciprocity.[48]

In practice, asset return depends on:[49]

- the existence of a final and enforceable confiscation order issued by Austrian courts or recognized under the ARHG;
- proof of legal title by the Requesting State or another legitimate claimant where required; and
- compliance with Austrian domestic law, including protection of *bona fide* third-party rights and proportionality requirements.

In Austria, disposal and return of confiscated assets occur only after the conclusion of judicial proceedings, including the resolution of any appeals. The execution of confiscation orders and the transfer of proceeds are carried out under judicial supervision and coordinated by the Federal Ministry of Justice. Where financial transfers or settlement arrangements are required, the Federal Ministry of Finance may also be involved.[50]

Note: UNCAC encourages pre-request consultations regarding the possible sharing of assets.[51]

To facilitate asset return and build trust, it is advisable for the Requesting State to include in the MLA request a brief explanation of how the returned assets would be managed or monitored. This may include victim compensation or specified public projects. It is also good practice to indicate transparency and oversight measures that would be put in place, for example, through the involvement of an independent civil society organization.[52]

In practice, some Requested States are cautious about returning the confiscated assets to the Requesting State fearing that the funds could be misused after repatriation. Highlighting how returned assets will be handled in a transparent manner approach aligns with international best practices for asset recovery, can help streamline cooperation and avoid delays.[53]

Annex

I. MLA Checklist

1. Preliminary Consultation

- ☐ Identify focal point(s) in Austria and hold preliminary discussion about case, including intention to submit an MLA request – ask focal point for what Austria may need to see included in any MLA request.
- ☐ Confirm the appropriate transmission channel for the MLA request.
- ☐ Clarify formal requirements, including format, certifications, and supporting documentation.
- ☐ Confirm any specific requirements for coercive measures (e.g., freezing, seizure, searches).
- ☐ Identify any potential grounds for refusal under the Requested State's law.
- ☐ Where relevant, clarify the legal and procedural framework governing the return or disposal of assets.

2. Legal Basis

- ☐ Identify the applicable legal basis for the request (bilateral treaty, multilateral convention, or reciprocity).

3. Central Authorities

- ☐ Identify the competent central authority of the Requested State responsible for receiving MLA requests.

4. Official Language and Translations

- ☐ Confirm the language requirements of the Requested State.
- ☐ Attach required translations of the request and supporting documents where applicable.

5. Scope of Assistance Requested

- ☐ Identification of assets (bank accounts, real estate, companies)
- ☐ Investigative measures requested, such as:
  - ▶ Gathering of evidence (bank records, property deeds, corporate documents)
  - ▶ Taking of witness statements
  - ▶ Conducting searches or seizures

☐ Asset-related measures requested, such as:

- Freezing or seizure of assets
- Enforcement of a foreign confiscation order
- Return of assets following confiscation

6. Description of the Case

☐ Provide a clear, concise summary of the relevant facts of the case.
☐ Explain the link between the facts of the case and the assistance requested.

7. Offences and Legal Qualification

☐ Describe the offences in factual terms.
☐ Identify the relevant legal provisions, where appropriate.
☐ Address dual criminality requirements, where applicable.

8. Confidentiality and Proportionality

☐ Clearly state the purpose of the request.
☐ Explain why the requested measures are necessary and proportionate.
☐ Request confidential handling of the request, where necessary to protect the investigation.

9. Asset-Related Requests (if applicable)

☐ Clearly identify and, to the extent possible, locate the assets concerned.
☐ Explain the link between the assets and the offence.
☐ Indicate the status of confiscation proceedings (e.g., final confiscation order issued or pending).
☐ Include a request for asset seizure, confiscation and/or, when appropriate (if needed in a subsequent request), return of the assets.

10. Supporting Documentation

☐ Attach relevant supporting documents, such as court orders, warrants, judgments, or evidence summaries required for the execution of the request.

II. Offences Recognized by the Austrian Law, and Which are Often Linked to the Issue of Asset Recovery.[54]

Corruption and Bribery
Money Laundering
Tax and Fiscal Crimes
Misappropriation
Fraud, Embezzlement, and Property Offences
Terrorism and Terrorist Financing
Criminal Association and Organized Crime
Abuse of Office and Misuse of Public Funds

III. Template:

While no national template is provided, Austria adheres to international practice. Requesting States may use widely accepted MLA templates, such as the Basel Institute's, to ensure completeness.

It is recommended to consult the relevant central authority.

IV. Contacts

Austria:

Federal Ministry of Justice
team.s@bmj.gv.at

Other useful contact email addresses:

Camden Asset Recovery Inter-Agency Network (CARIN)
carin@europol.europa.eu

International Centre for Asset Recovery (ICAR)
info@baselgovernance.org

INTERPOL
To contact INTERPOL, complete the form available here.

Stolen Asset Recovery Initiative (StAR)
starinitiative@worldbank.org

United Nations Interregional Crime and Justice Research Institute (UNICRI)
unicri.assetrecovery@un.org

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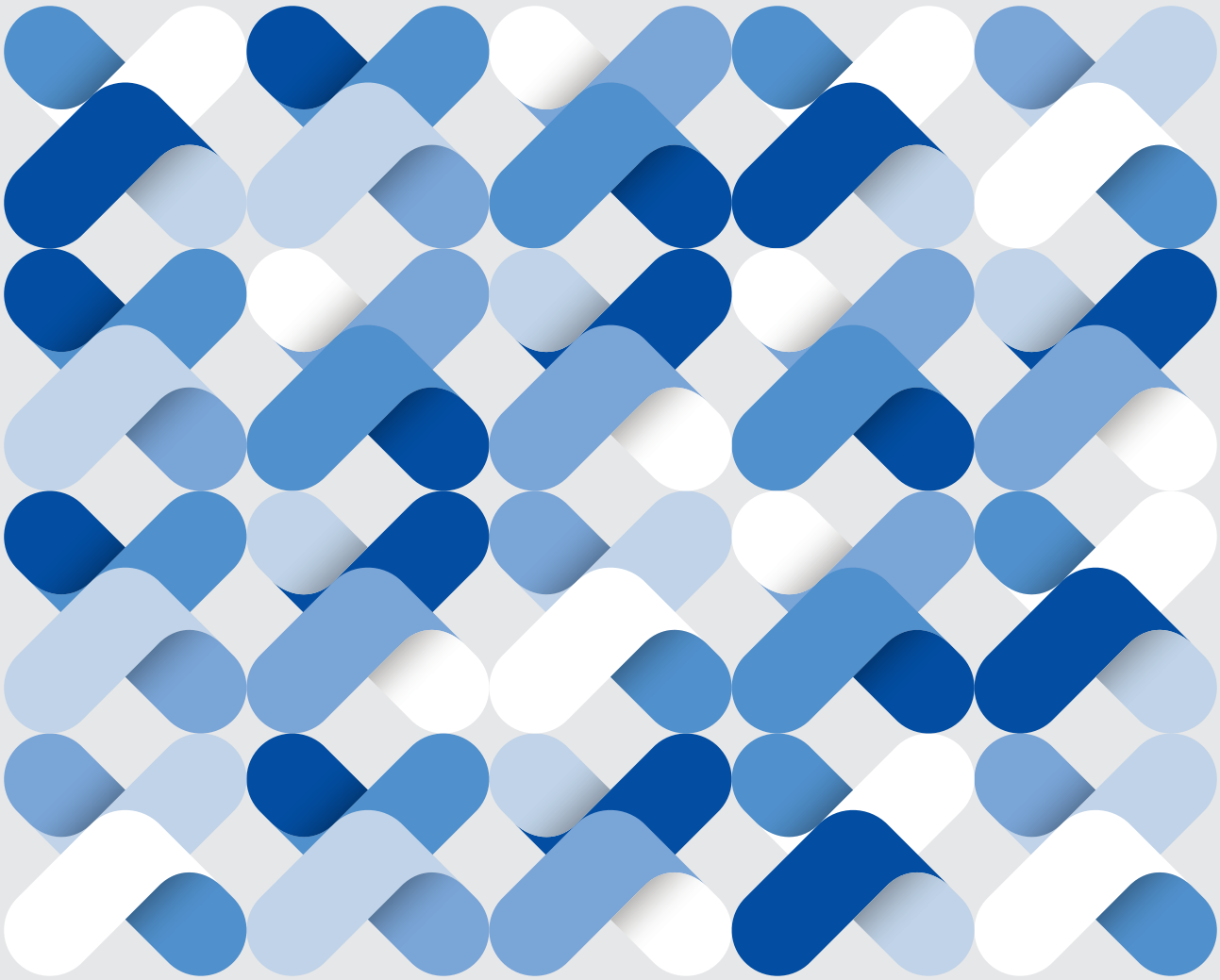
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