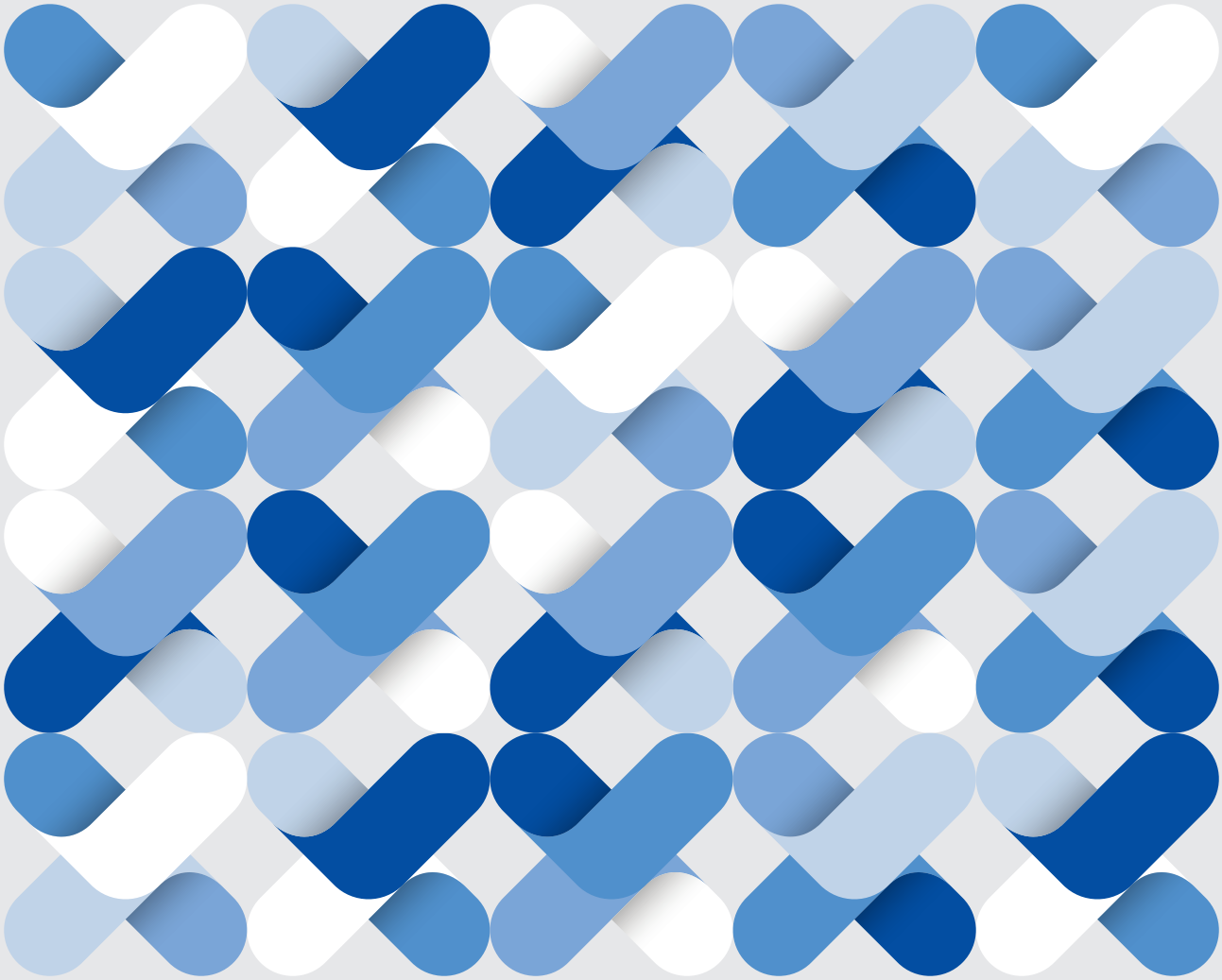
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MUTUAL LEGAL ASSISTANCE GUIDE

GERMANY



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Overview

This guide provides practical guidance on the preparation and execution of Mutual Legal Assistance (MLA) requests to Germany 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	Federal Office of Justice (Bundesamt für Justiz (BfJ))
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 Germany, providing guidance on how such requests are prepared, transmitted, and executed in practice.

I. Legal Basis for MLA Requests to Germany

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

- **Bilateral MLA Treaties:** between Germany and the Requesting State, if such a treaty exists.[1]

- **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.[2]

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.

- **Reciprocity:** if no bilateral or multilateral treaty applies, Germany may still grant assistance if the request meets the German legal requirements.[3] In particular the Act on International Cooperation in Criminal Matters (IRG), which provides the national framework and governs cooperation including where no treaty applies.[4]

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

- If a bilateral or multilateral treaty exists:

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

- If both States are Parties to the UNCAC or the UNTOC:

This request is made pursuant to Article 46 of the United Nations Convention against Corruption (UNCAC), to which both Germany and [Requesting State] are parties, and in accordance with the Gesetz über die internationale Rechtshilfe in Strafsachen (IRG).

OR

This request is made pursuant to Article 18 of the United Nations Convention against Transnational Organized Crime (UNTOC), to which both Germany and [Requesting State] are parties, and in accordance with the Gesetz über die internationale Rechtshilfe in Strafsachen (IRG).

- If no bilateral or multilateral treaty exists:

This request is made, pursuant to the Gesetz über die internationale Rechtshilfe in Strafsachen (IRG). 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.

Depending on the facts of the case, MLA requests may rely on both the UNCAC and the UNTOC, in particular where corruption offences are linked to money laundering or other forms of organized criminal activity.

II. Formal Requirements for Submitting an MLA Request to Germany

An MLA request to Germany 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

Germany acts on MLA requests when they relate to a criminal matter. The underlying conduct must constitute a criminal offence under both the law of the Requesting State and German law, consistent with the principle of dual criminality.[5]

Germany operates primarily a conviction-based confiscation system, under which confiscation follows a criminal conviction in accordance with sections 73–76 of the German Criminal Code (Strafgesetzbuch (StGB)).[6] German law does not provide for a separate non-conviction-based confiscation regime. However, in limited circumstances, German law allows for confiscation without a prior conviction under section 76a StGB (independent confiscation), for example where prosecution is not possible (e.g. due to death or absence of the suspect), or where no identifiable offender can be prosecuted, provided that a court is satisfied, based on sufficient evidence, that the assets originate from a specific unlawful act or from unlawful conduct in general.[7]

In the context of international cooperation, Germany may recognize and enforce foreign confiscation orders under the Law on IRG, including, in certain circumstances, orders issued without a prior conviction, provided that the measure is criminal in nature and compatible with the fundamental principles of German law.[8]

Note: Where domestic law permits independent confiscation, 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.

Central Authority

MLA requests to Germany, from outside the EU and in cases where the Ministry of Justice channel is permitted, are addressed to the Federal Office of Justice (Bundesamt für Justiz (BfJ)), which is Germany's central authority.[9]

Transmission Channels

When a request is 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. While bilateral treaties may explicitly name the central authority, most multilateral instruments require States Parties to designate a central authority. In practice, requests are transmitted directly between the designated Central Authorities. For Germany, this is the BfJ. Diplomatic transmission via

Ministries of Foreign Affairs or embassies is generally required where this is agreed in a treaty, and especially in situations where there is no treaty.[10]

Note: Early drafts or clarifications should preferably be discussed informally before filing the MLA request.

Official Language

Requests must be submitted in German or include a certified German translation. While informal consultations may take place in English, the final formal request and all key supporting documents should be in German to ensure acceptance and processing by the German authorities.[11]

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

Germany does not require a standardized form for MLA requests. A formal written request on official letterhead is sufficient, provided it contains all required information under the IRG and any applicable treaty. The request should be issued and signed by a competent authority of the Requesting State.

To enhance clarity and efficiency, requests should be clearly structured and bear the issuing authority's official seal where available. Where multiple copies are submitted, it is good practice for at least one copy to bear an original signature. Notarization or legalization is not generally required when the request is transmitted through official channels, unless expressly provided for in an applicable treaty.[12]

III. Key Content Requirements

The MLA request must include the following:

Description of the Case

The request should contain a clear and sufficiently detailed summary of the facts under investigation, including relevant dates, locations, persons or entities involved, and the nature of the suspected offence. The factual description must enable German authorities to assess dual criminality, particularly where coercive measures are sought. The request should also clearly explain the connection to Germany, such as the location of assets, bank accounts, companies, witnesses, or other evidence within German territory, to allow the competent authorities to determine jurisdiction and execute the measure.[13]

Legal Provisions

The Requesting State should clearly describe the offences under investigation, citing the relevant statutory provisions and legal definitions under its own law. German authorities assess dual criminality on the basis of the underlying conduct rather than the foreign legal classification, particularly where coercive measures are requested.[14]

For this reason, it is advisable that the Requesting State reviews the corresponding German offence categories to ensure that the described conduct would constitute a criminal offence under German law. Where the foreign offence does not have an exact equivalent, the underlying facts should be presented in clear and neutral terms, enabling German authorities to identify the closest corresponding domestic offence.

Note: Where appropriate, the Requesting State should strongly consider discussing the case with an official in the German 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 Germany, such as:[15]

- 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

If the connection to Germany has not yet been fully established but reasonable grounds or clear suspicions exist, the Requesting State may ask for assistance in clarifying specific leads, for example, identification of assets or targeted inquiries. Such requests must present a factual basis sufficient to demonstrate necessity and must avoid overly broad or speculative requests.[16]

Note: While a single MLA request to Germany 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 German authorities is strongly recommended to structure MLA requests accordingly.[17]

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

An MLA request to Germany should be accompanied by supporting documentation to ensure it can be executed effectively. Attachments may include:[18]

- **A certified copy of any freezing, seizure, or confiscation order** issued by a competent authority of the Requesting State. For provisional measures, the Requesting State should include the domestic order if available or indicate that one can be issued.
- **Evidence linking the assets to the offence**, such as bank records or company ownership documents, can reinforce the request. While not mandatory, providing such evidence strengthens the request.
- **Copies of the relevant legal provisions from the Requesting State**, such as the penal code sections for the offences or confiscation law provisions. A certified German translation is recommended and may be required by the executing authority.
- **Witness statements or investigator affidavits** summarizing key facts, particularly asset-related information, could also be useful.

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

In urgent cases, Germany may take provisional measures to preserve evidence or prevent asset dissipation upon receipt of an MLA request. Where appropriate, German authorities may also initiate parallel domestic investigations under the StPO and adopt preservation measures where a link to Germany exists. Where provisional action is taken before the formal request is transmitted, a properly transmitted MLA request must follow through the designated channels.

Under German law, courts may, at the request of the Requesting State, order provisional measures such as freezing or seizure of assets where dual criminality and urgency are demonstrated. Once a foreign confiscation order becomes final, Germany may recognize and enforce it under the IRG.[19]

German authorities may carry out urgent investigative acts such as searches or targeted document collection under the StPO, subject to judicial authorization or confirmation where required. Formal transmission of evidence to the Requesting State typically follows after the MLA request is admitted under the IRG.[20]

If credible information indicates an offence linked to Germany, prosecutors may open domestic proceedings under the StPO and adopt preservation measures. Where these

measures also serve a foreign proceeding, they are usually carried out under the framework of the MLA request and transmitted through the BfJ.[21]

International cooperation networks such as INTERPOL[22] and CARIN,[23] as well as FIU-to-FIU contact through the Egmont network can support preliminary discussion and information exchange.[24] While these mechanisms do not replace formal MLA requests, they can prompt targeted tracing and follow-up through MLA or FIU channels.[25]

Germany may spontaneously share information about assets or criminal proceeds, for example, under UNCAC Article 56 and, in organized crime cases, under UNTOC Article 18(4).[26]

An advance copy of the MLA request may be shared informally via the BfJ to the relevant authorities, after prior contact, for an initial informal review and coordination while the official transmission is completed. This has no legal effect but can expedite execution once the request formally arrives.

Note: Early coordination with German authorities can help clarify requirements and strengthen MLA requests. Such advance communication has no legal effect. In cases involving assets at risk, urgency should be highlighted to allow German authorities to timely seek preservation or seizure orders under domestic law.

IV. Execution of the MLA Request in Germany

MLA requests received in Germany are generally administered as follows:

Reception and Preliminary Review

The BfJ conducts a preliminary review and ensures the request is complete, properly translated, and based on valid legal grounds.[27]

If the request is incomplete, for example, lacking a translation or legal basis, the BfJ may request clarification or additional documentation. Execution may be suspended in the meantime. Once the request is deemed in order, it is transmitted to the competent judicial authority.[28]

Judicial Procedure and Legal Assessment

Requests are executed under German law in accordance with the IRG, StPO, and any applicable treaties.[29]
Depending on the nature of the request:[30]

- A public prosecutor (*Staatsanwaltschaft*) may handle investigative steps or preliminary inquiries.

- A court becomes involved when coercive measures are requested. Judicial authorization is generally required before execution. In urgent cases, where waiting for a judge would jeopardize the measure, the public prosecutor (and, on the prosecutor's instruction, the police) may order the coercive measure sought. In this case, judicial confirmation must be obtained without delay under the StPO.

For coercive measures, the relevant court verifies that the legal conditions are met, including: [31]

- Dual criminality
- Sufficient factual indications
- Respect for rights of defence and third parties

Note: German courts do not reassess the underlying foreign facts or re-litigate the case.[32]

Recognition, Enforcement, and Remedies

Where the legal conditions are met, a competent German criminal court may recognize and order the execution of a foreign confiscation decision under the IRG and any applicable treaties.[33] Enforcement is carried out by the competent public prosecutor's office (*Staatsanwaltschaft*) acting as the enforcement authority, with judicial involvement where required. Where applicable, other enforcement bodies act in accordance with the StPO and the national rules on seizure, management, and disposal of assets, which are largely decentralized at Federal States' level.[34] Recognition generally requires that the foreign order be final and enforceable, and may be refused on grounds such as lack of dual criminality, due process guarantees, political offences or offences of a military nature, incompatibility with fundamental principles such as public order, or to protect bona fide third-party rights.[35]

Affected persons, including third parties with a legitimate interest, may challenge seizures and confiscation measures before German courts. Appeal routes are available under the StPO and the IRG, and courts must safeguard defence rights and third-party protections.[36]

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

Asset Management

Once assets are seized or frozen, management is carried out by the competent public prosecutor's office (*Staatsanwaltschaft*) acting as the enforcement authority under the StPO. Germany has no single nationwide asset-management agency, and responsibilities are decentralized across the Federal States. The IRG governs recognition and enforcement of foreign orders and any transfer or return abroad.[37]

Scope of management includes:[38]

- **Custody:** seizure of movables is enforced by taking property into official custody.
- **Bank accounts and financial instruments:** Funds are typically blocked in situ following service of the freezing or attachment order on the financial institution. The account remains under the control of the institution but cannot be disposed of without authorization under the StPO.
- **Cash handling:** Seized cash is transferred into an official account for safekeeping in accordance with the StPO. The funds remain subject to seizure and are held pending final judicial disposition. They may be released to the lawful holder if the seizure is lifted, or transferred, returned, or shared following recognition and enforcement of a confiscation order under the IRG.
- **Disposal (pre-trial):** an emergency sale is possible where there is danger of value loss or disproportionate storage costs. The sale proceeds are held in an official account pending the IRG return or transfer decision. For foreign cases, consultation between the BfJ and the Requesting State is recommended, and the request may state whether pre-trial sale is authorized or should be avoided.

Note: The StPO rules on custody, administration, and pre-trial disposal apply both in purely domestic German cases and when assets are secured in Germany while executing a foreign MLA request under the IRG. Once a foreign confiscation order is recognized under the IRG, the final disposal/return or sharing is carried out according to the recognition order. Until then, management follows the StPO.

Follow-Up and Communication

German authorities typically coordinate and respond through the BfJ, and may: [39]

- Provide updates or court orders.[40]
- Request clarifications or additional information.[41]
- Expect prompt follow-up to avoid delays.[42]

Note: Engaging proactively with the BfJ and, where designated, the executing public prosecutor or court, could improve efficiency.

V. Transmission of Evidence to the Requesting State

After execution is completed, the competent German judicial authority transmits the collected evidence to the Requesting State.

Judicial Transmission

Evidence is transmitted under the supervision of the authority that executed the request, typically the competent public prosecutor's office or, where judicial measures were required, the relevant court. The BfJ, acting as the central authority, coordinates and carries out the formal transmission to the Requesting State through the channels determined by the applicable treaty or, in the absence of a treaty, under the provisions of the IRG. Physical objects or original files may be transmitted only where their return can be ensured.[43]

Upon receiving the evidence, the Requesting State should verify that everything requested is included and, if needed, request additional follow-up.[44]

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.

Use Restrictions

Evidence may be used only for the purposes stated in the MLA request. Requests for secondary use, for example in a different proceeding, should be addressed to the BfJ to obtain prior consent.[45]

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

The Requesting State may ask Germany to treat the MLA request confidentially, particularly where early disclosure could jeopardize an investigation, facilitate asset flight, or lead to evidence being destroyed. Measures sought must be proportionate and should not unduly affect third parties.[46]

Proportionality and Public Order

In Germany, all coercive measures requested through MLA are subject to a proportionality test. Judicial authorities assess whether the measure is suitable, necessary, and reasonable in light of the gravity of the offence, the value of the assets involved, and the rights of affected persons or third parties, ensuring compliance with German constitutional and procedural safeguards.[47]

When recognizing and enforcing foreign confiscation orders under the IRG, German courts verify that the legal conditions for recognition are satisfied, including dual criminality, respect for procedural guarantees, and compatibility with fundamental principles of German law.[48]

Where a request concerns assets, the Requesting State should describe the connection between the assets to be frozen, seized, or confiscated and the alleged criminal conduct. German authorities may request clarification or decline execution where requests lack sufficient specificity or appear exploratory.

In politically sensitive matters, the request should make clear that the case concerns an ordinary criminal offence. German courts and the BfJ review such requests carefully to ensure that cooperation complies with the IRG, the StPO, and applicable international conventions.[49]

Confidential Handling of Requests

Requesting States may ask for confidential handling of an MLA request when investigative secrecy is essential, for example in cases involving ongoing criminal investigations, undercover operations, or where there is a risk of asset dissipation or evidence tampering. German authorities may grant such confidentiality under the IRG, the StPO, and multilateral treaties, which requires that the existence and content of an MLA request remain confidential except where disclosure is necessary for lawful execution.[50]

Limited disclosure may be necessary to execute the request, for example to obtain a judicial order, notify a financial institution to freeze assets, or inform an affected person when notification becomes mandatory under German law. At the same time, the StPO allows the public prosecutor to restrict access to case files where immediate disclosure would jeopardize the purpose of the investigation. Such restrictions are subject to judicial review to ensure legality and proportionality.[51]

Once the need for confidentiality ceases, affected persons are informed and may exercise their procedural rights, including the right to appeal measures under the StPO or the IRG.

German courts ensure that any delay in disclosure remains justified to the investigative objectives.[52]

VII. Asset Disposal and Return

In Germany, the legal framework governing disposal and return is set out in the IRG, the StPO, and applicable international treaties. Once confiscation becomes final, ownership of the confiscated assets generally goes to the German State, subject to court decisions protecting victims and bona fide third parties. However, assets may be returned or shared with the Requesting State under a treaty, multilateral framework, or on the basis of reciprocity.[53]

In practice, the return of assets depends on: [54]

- The existence of a final and enforceable confiscation order issued by a German court or recognized under the IRG.
- An agreement or legal basis permitting the return or sharing of confiscated assets with the Requesting State.
- Compliance with German procedural safeguards, including proportionality and the protection of third-party rights.

Disposal and return occur only after all judicial proceedings and available remedies have concluded. Execution of confiscation and the subsequent transfer of assets are carried out under judicial supervision and coordinated by the BfJ. Where asset sharing or intergovernmental financial arrangements are involved, coordination with other federal authorities, including financial authorities, may occur.[55]

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

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.

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 aligns with international best practices for asset recovery, can help streamline cooperation and avoid delays.

Annex

I. MLA Checklist

1. Preliminary Consultation

- ☐ Identify focal point(s) in Germany and hold preliminary discussion about case, including intention to submit an MLA request – ask focal point for what Germany 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 German Law, and Which are Often Linked to the Issue of Asset Recovery.[56]

Corruption and Bribery
Money Laundering and Terrorist Financing
Fraud and Related Offences
Embezzlement and Misappropriation
Organized Crime and Participation in Criminal Groups
Tax and Customs Offences
Counterfeiting and Intellectual Property Crimes
Property and Economic Crimes
Tax Fraud / Tax Evasion
Bribery of Foreign Public Officials

III. Template

While no national template is provided, Germany 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

Germany:

Federal Office of Justice (Bundesamt für Justiz – BfJ)
poststelle@bfj.bund.de

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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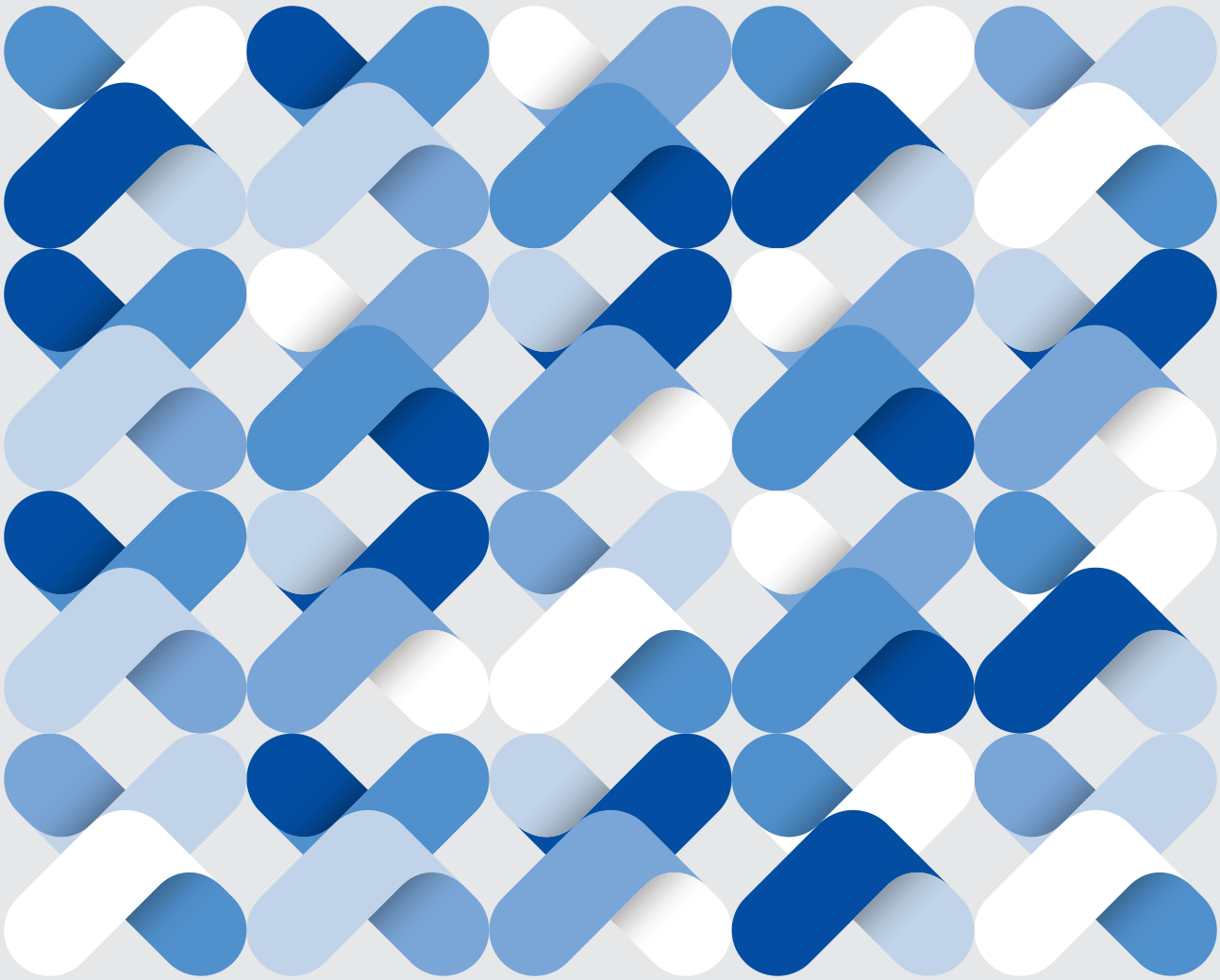
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