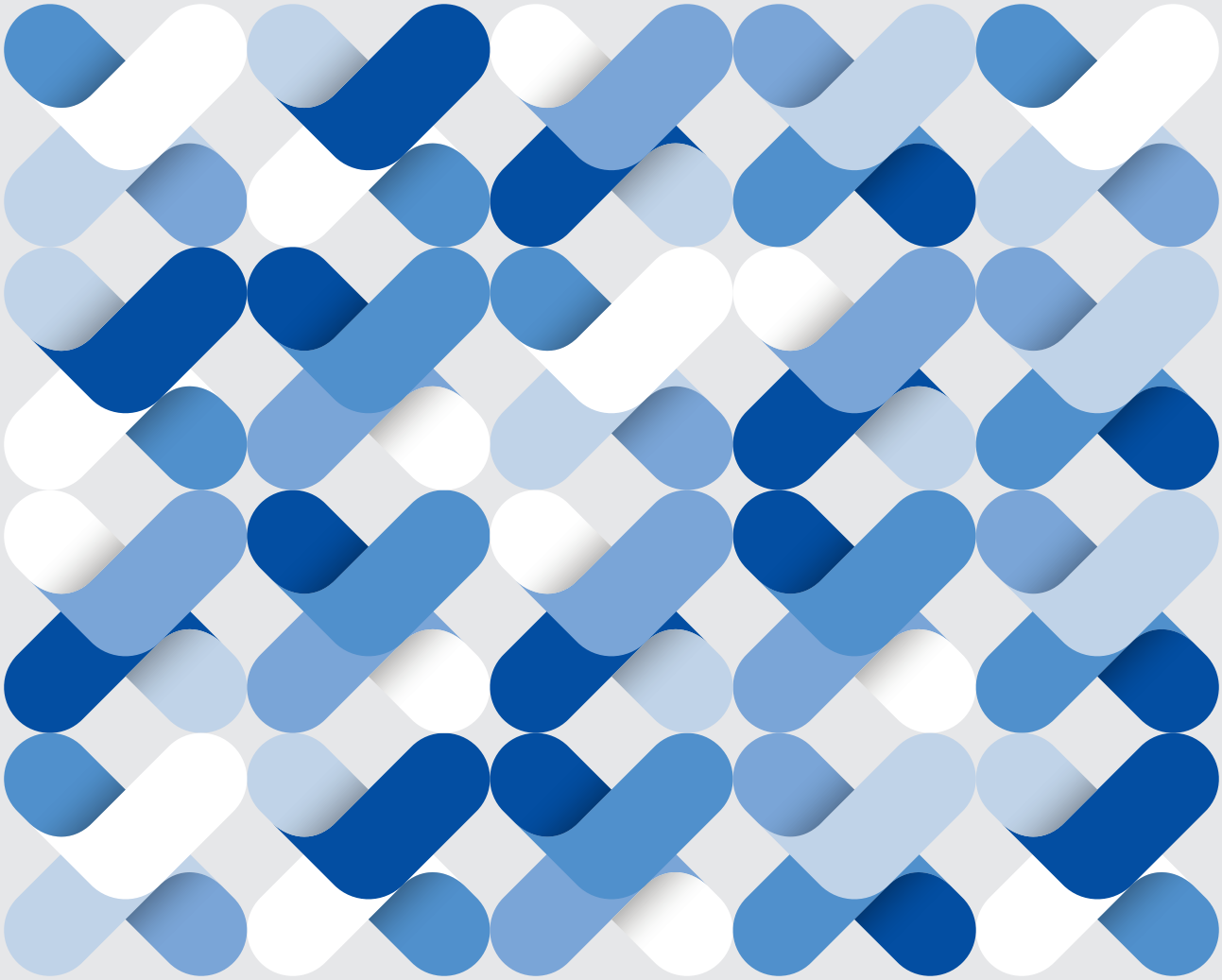
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MUTUAL LEGAL ASSISTANCE GUIDE

SPAIN



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Overview

This guide provides practical guidance on the preparation and execution of Mutual Legal Assistance (MLA) requests to Spain 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 the central authorities, the Unit for Criminal International Cooperation of the Public Prosecutor's Office (Unidad de Cooperación Internacional de la Fiscalía General del Estado – UCIF), and cooperation networks – such as the Camden Asset Recovery Inter-Agency Network (CARIN) – 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.	Ministry of Justice (Ministerio de Justicia) – Subdirectorate-General for International Legal Cooperation (Subdirección General de Cooperación Jurídica Internacional)
Cooperation Networks and Prosecutorial Contacts	Verify information, refine leads, trace or identify assets, and facilitate informal contact, and support preliminary prosecutorial coordination before a formal MLA request.	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 Spain, providing guidance on how such requests are prepared, transmitted, and executed in practice.

I. Legal Basis for MLA Requests to Spain

In Spain, MLA requests in criminal matters may be submitted under the following legal 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:** if in force between Spain and the Requesting State.[2]

- **Domestic Law:** Requests are executed in accordance with the applicable Spanish procedural legislation, principally the Ley de Enjuiciamiento Criminal (Criminal Procedure Law), together with any legislation implementing Spain's international cooperation obligations.[3]

- **Reciprocity:** In the absence of a treaty, requests may be accepted based on reciprocity as recognized in international law.[4]

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

- 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 Spain and [Requesting State] are parties, and in accordance with the Ley de Enjuiciamiento Criminal (Criminal Procedure Law).

OR

This request is made pursuant to Article 18 of the United Nations Convention against Transnational Organized Crime (UNTOC), to which both Spain and [Requesting State] are parties, and in accordance with the Ley de Enjuiciamiento Criminal (Criminal Procedure Law).

- 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 Ley de Enjuiciamiento Criminal (Criminal Procedure Law). 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 Spain

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

Criminal Nature and Admissibility of Confiscation Orders:

Spain 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 Spanish law, consistent with the principle of dual criminality.[5]

Spanish law also provides for non-conviction-based confiscation (NCBC). Confiscation measures are grounded in criminal proceedings and are generally ordered by a competent court following a criminal conviction, in accordance with the Spanish Criminal Code and the Criminal Procedure Law. In the context of international cooperation, Spain may recognize and enforce foreign confiscation orders where they are criminal in nature and compatible with Spanish law. Where a foreign confiscation measure has been issued without a prior conviction, Spanish authorities will assess whether the measure can be executed within the framework of Spanish criminal procedure and in compliance with constitutional and procedural guarantees, including the principle of dual criminality and respect for fundamental defence rights. Such measures can be treated as autonomous NCBC orders but are evaluated in light of their compatibility with Spain's criminal law framework.[6]

Note: Recognition and enforcement of foreign confiscation orders are subject to judicial review by the competent Spanish courts. These courts verify that the legal conditions for execution are met, that procedural safeguards have been respected, and that enforcement would not contravene Spanish public order. The Spanish courts do not re-examine the merits of the case but determine whether the foreign decision is enforceable under domestic legal standards.

Central Authority:

MLA requests are generally addressed to Spain's central authority, which is the Ministry of Justice (Ministerio de Justicia). Within the Ministry, the responsible body is the Subdirectorate-General for International Legal Cooperation (Subdirección General de Cooperación Jurídica Internacional). This entity handles incoming requests, in accordance with Spain's obligations under international treaties and its domestic law.[7]

Transmission Channels:

When a request is made under a treaty, the transmission method specified must be followed. Under international conventions such as the UNCAC and UNTOC, requests are typically transmitted through the designated central authorities. In Spain, this role is fulfilled by the Ministry of Justice, in particular the Subdirectorate-General for International Legal Cooperation. Where no treaty applies, requests may be handled on the basis of reciprocity and are still addressed to the Ministry of Justice.[8]

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

Official Language:

Requests must be submitted in Spanish or accompanied by an official Spanish translation. This applies to the request and all supporting documentation. Informal exchanges with Spanish authorities may be conducted in other languages. In urgent or exceptional cases, Spain may, as a first step, accept a submission in English, provided that the formal request in Spanish follows.[9]

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:

Spain does not prescribe a standardized form for MLA requests. A formal written request on official letterhead is sufficient, provided it contains all required information. Requests are commonly made in the form of a letter rogatory and should be issued and signed by a competent authority of the Requesting State.[10] To enhance clarity and efficiency, requests should be clearly structured and should 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 required, unless expressly provided for in an applicable treaty.[11]

III. Key Content Requirements

The MLA request must include the following:

Description of the Case

An MLA request to Spain should provide a clear and detailed summary of the facts, including relevant dates, locations, the nature of the offence, and the individuals or legal entities involved. The request must also specify the link to Spain, such as the presence of assets, evidence, or suspects within Spanish jurisdiction. These will allow Spanish authorities to assess dual criminality and determine whether the requested assistance is legally admissible under Spanish law.[12]

Legal Provisions

The Requesting State should clearly describe the offences under investigation, citing the relevant statutory provisions and legal definitions under its own law. This is particularly important where coercive measures such as searches, seizures, or freezing of assets are requested. Spanish authorities assess dual criminality on the basis of the underlying conduct, rather than the foreign legal classification. The competent judicial authority examines whether the described conduct would constitute an offence under Spanish law, even if the offence is defined differently in the Requesting State.[13]

Therefore, before submitting the request, the Requesting State is encouraged to review the relevant categories of offences under Spanish law to ensure that the conduct described can satisfy the dual-criminality requirement. Where the foreign offence does not have an exact equivalent under Spanish law, the request should present the facts in neutral factual terms, enabling Spanish 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 Spanish 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 assistance is being sought from Spain, such as:[14]

- Identification or tracing of assets (bank accounts, real estate, companies in which a defendant may be a beneficial owner)
- Freezing or seizure of assets or evidence
- Collection of evidence (bank records, property deeds, company documents)
- Conducting searches or seizures of evidence
- Taking statements from witnesses or suspects
- Enforcement of a foreign confiscation order
- Return of assets following confiscation

If the connection to Spain has not yet been fully established, but reasonable grounds or clear suspicions exist, the Requesting State may seek assistance to clarify 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.[15]

Note: While a single MLA request to Spain 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 Spanish authorities is strongly recommended to structure MLA request accordingly.

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

An MLA request to Spain should be accompanied by supporting documentation to ensure it can be executed effectively. Attachments may include:[16]

- **A certified copy of any freezing, seizure, or confiscation order**. For provisional measures, it is recommended for the Requesting State to attach a domestic order if available, or indicate that one can be issued. Where no order exists, a well-substantiated request may suffice.
- **Evidence linking the assets to the offence**, such as bank records, company registries, property deeds, or contracts, can strengthen the request. While not mandatory, providing such evidence strengthens the request, and can be bolstered by visual graphics showing such links.
- **Copies of the relevant legal provisions from the Requesting State**, particularly those defining the offence and governing confiscation or provisional measures. Where possible, official or certified translations into Spanish should be provided.
- **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

Spanish authorities may take provisional measures under domestic law to preserve evidence or prevent the dissipation of assets. Measures such as freezing, seizure, or securing evidence require judicial authorization under Spanish law. In urgent situations, Spanish courts may authorize such measures promptly where sufficient factual grounds are presented, including on the basis of provisional or preliminary information, provided that the formal MLA request and supporting documentation follow promptly.[17]

International cooperation networks, such as INTERPOL,[18] CARIN,[19] Spain's Financial Intelligence Unit, and the UCIF[20] can support informal, preliminary exchanges of information, which can later inform and strengthen the MLA request. Another non-coercive tracing tool is the INTERPOL Silver Notice, introduced in 2025, to help identify assets linked to corruption, fraud, or money-laundering cases. While these mechanisms do not replace formal MLA requests, they can prompt targeted tracing and follow-up through MLA or FIU channels.

Additionally, according to Spain's national practice, electronic communication (for example, by email) is accepted for urgent or supplementary exchanges, enabling the competent authority to assess or clarify the request before receiving the formal, signed document.[21]

Note: Such advance communication has no legal effect but can help identify requirements, clarify urgency, and accelerate execution once the formal request is received.

Spain may also spontaneously share information about assets or suspicious transactions in line with UNCAC and UNTOC standards.[22]

Note: Early communication with Spanish authorities is recommended, especially for urgent or complex cases. Clearly indicating the urgency of the case in the request helps Spanish authorities prioritize the necessary preservation or seizure measures under Spanish law.

IV. Execution of the MLA Request in Spain

MLA requests received in Spain are generally administered as follows:

Reception and Preliminary Review

Upon receipt, the Ministry of Justice carries out a preliminary review to verify that the request is addressed to the competent authority, accompanied by the necessary supporting documents, translated into Spanish where required, and contains sufficient factual and legal information to enable execution. Where formal deficiencies or gaps are identified, the Ministry will normally seek clarifications or additional information through the central authority channel rather than immediately refusing the request.[23]

Once the request is in order, the Ministry of Justice transmits it to the competent judicial authority for execution in accordance with Spanish law.[24]

Judicial Procedure and Legal Assessment

Requests are executed in accordance with Spanish law and under the control of the competent judicial authority.[25]

When an MLA request involves coercive measures:[26]

- An Investigating Judge (*Juez de Instrucción*) is required to authorize and oversee their execution, as intrusive measures may only be ordered by a judicial authority. Depending on subject matter or territorial jurisdiction, another competent criminal court (including the Audiencia Nacional) may exercise this function.
- The Public Prosecutor (Ministerio Fiscal) may initiate preliminary steps, participate in the proceedings, and support the execution of the request, but cannot independently authorize coercive measures.

Before authorizing the execution of a request, the competent judicial authority verifies that the request complies with Spanish law and constitutional safeguards, including:[27]

- Dual criminality
- Sufficient factual basis and proportionality of the measure
- Respect for rights of defence and third parties

Note: The judge does not re-examine the merits of the foreign case but ensures that the requested measures comply with Spanish procedural law.[28]

Recognition, Enforcement, and Remedies

Where the legal conditions are met, a Spanish criminal court may recognize and enforce a foreign confiscation order, provided the decision is final, enforceable, and compatible with Spanish law. Enforcement takes place under the authority and supervision of the competent court, which ensures compliance with procedural guarantees and fundamental rights.[29]

Affected parties, including third parties with a legitimate interest, may appeal the enforcement of confiscation orders before Spanish courts, particularly if they claim no connection to the alleged offence or if they were denied a fair hearing or trial abroad.[30] Spanish courts are mandated to uphold defence rights and ensure respect for constitutional guarantees. If doubts arise about the scope, basis or fairness of the foreign decision, Spanish authorities may request clarifications from the Requesting State.[31]

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

Asset Management

Once assets are seized in Spain, their custody, maintenance, and administration are subject to judicial oversight in accordance with Spanish procedural law. The court may entrust operational management to the Office for Asset Recovery and Management (Oficina de Recuperación y Gestión de Activos (ORGA)), which acts under the Ministry of Justice. Depending on the nature of the assets, such as perishable goods, real estate, or financial holdings, the court may alternatively appoint another authorized public body or administrator.[32]

Asset management includes:[33]

- Custody and preservation of the assets during the proceedings, ensuring they are not damaged or dissipated.
- Administration measures aimed at preserving value, including securing, insuring, or, where judicially authorized, temporarily exploiting property (e.g., leasing) to prevent depreciation.
- Disposal or pre-trial sale of assets when justified, for example, if they are perishable, costly to maintain, or risk losing value, subject to judicial approval.

- Coordination of return or sharing of assets after confiscation, according to the applicable treaty or court decision.

For frozen bank accounts, funds remain blocked under judicial control and may be transferred to an official court account or deposited in the General Deposit Fund (Caja General de Depósitos), in accordance with Spanish procedural law, until the final judicial decision.[34]

Note: In urgent cases, such as freezing bank accounts or securing perishable property, the Requesting State may indicate in its MLA request that Spanish authorities promptly notify the court or relevant administrator to expedite the safeguarding of assets. While Spanish law already obliges judicial authorities to act promptly, an explicit request may help ensure timely action and avoid delays.[35]

Follow-Up and Communication

Spain's central authority, the Ministry of Justice's Subdirectorate-General for International Legal Cooperation, handles communication on incoming MLA requests and may:[36]

- Provide updates on the status of the request or forward relevant court decisions.
- Request clarifications or additional documentation if the request is incomplete or unclear.
- Expect timely responses from the Requesting State to avoid unnecessary delays or suspension of proceedings.

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

V. Transmission of Evidence to the Requesting State

Once the requested measures have been executed, the Spanish authorities transmit the collected evidence to the Requesting State:[37]

Judicial Transmission

Evidence is transmitted under the supervision of the competent judicial authority (often the Investigating Judge). Transmission takes place through Spain's central authority. Where an applicable instrument allows direct judicial transmission, the court may send the material directly, with the Ministry of Justice informed. Diplomatic channels may be used if required by a treaty or at the Requesting State's request.

Note: Upon receiving the transmitted materials, it is good practice for the Requesting State to confirm receipt and verify that all requested items have been included. If the evidence must be certified, authenticated, or notarized to be admissible in the Requesting State, this should be specified clearly in the original MLA request.

Use Restrictions

Spain applies use-limitation conditions in line with UNCAC. Evidence may only be used for the purposes specified in the request and approved by the Spanish judicial authority. Any additional use, such as in unrelated proceedings, for other offences, or sharing with third parties, requires Spain's prior consent.

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 include a specific request for confidential handling, particularly where there is a risk that assets could be moved or hidden. The measures sought must also respect the principle of proportionality and avoid undue harm to third parties.[38]

Proportionality and Public Order

In Spain, coercive measures such as search, seizure, or freezing of assets are subject to a proportionality test. Courts assess whether the requested measure is appropriate and necessary in light of the seriousness of the offence, the value of the assets, and the rights of affected persons or third parties. Judicial oversight ensures that legality and proportionality are maintained throughout the process.

Recognition or enforcement may be refused if conditions are not satisfied, such as lack of dual criminality, breaches of due process, or undue harm to the rights of third parties. Spain may also refuse requests that undermine public order or fundamental rights. If the case is politically sensitive, the Requesting State should make clear that the request forms part of a bona fide criminal investigation and is not intended to persecute a person for political reasons.[39]

To facilitate execution, the Requesting State should demonstrate that the value of the assets sought is proportionate to the gravity of the offence, the harm caused, or the illicit gain.

Confidential Handling of Requests

Spanish authorities handle MLA requests and transmitted evidence in accordance with the Criminal Procedure Law and Spain's obligations under applicable international instruments. Requests, their contents, and any supporting materials are treated as confidential and may be disclosed only to the extent necessary for their execution or for judicial proceedings, in accordance with Spanish law.

Where confidentiality is required for investigative reasons, for example, in undercover proceedings or where the suspect is unaware of the investigation, the Requesting State should explicitly request non-disclosure and provide justification. Spanish judicial authorities may defer or restrict notification of affected persons to preserve the effectiveness of the measure, provided this remains compatible with defence rights. Notification typically occurs at the execution stage, unless earlier disclosure would not jeopardize the investigation. The same standard of protection applies reciprocally to the Requesting State with respect to transmitted materials.[40]

VII. Asset Disposal and Return

Following confiscation, Spain may, in accordance with applicable treaties (including UNCAC) and Spanish domestic procedure:[41]

- Enter into case-specific arrangements with the Requesting State regarding the return of confiscated assets, where permitted by law.
- Return confiscated assets in corruption-related cases in line with UNCAC Article 57, particularly where assets are to be returned, subject to a final confiscation decision and the competent authority's approval.

Arrangements are coordinated by the central authority and, where appropriate, through diplomatic channels. The competent court supervises the legal process, while the ORGA carries out administration and disposal under judicial authority.

Note: UNCAC encourages early consultation on the return or sharing of confiscated 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 local civil society organization.[42]

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.[43]

Annex

I. MLA Checklist

1. Preliminary Consultation

- ☐ Identify focal point(s) in Spain and hold preliminary discussion about case, including intention to submit an MLA request – ask focal point for what Spain 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 Spanish Law, and Which are Often Linked to the Issue of Asset Recovery.[44]

Money Laundering
Embezzlement of public funds
Bribery
Fraud
Drug Trafficking
Human Trafficking
Terrorism financing
Organized Crime
Tax Fraud
Corruption in private sector

III. Template:

While no national template is provided, Spain 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

Spain

Ministry of Justice
rogatoriaspenal@mjusticia.es

PPO (UCIF)
internacional.fge@fiscal.es

ARO (ORGA)
spain.judicial.aro@mjusticia.es

Spanish Law Enforcement (UDEF-OLA)
cgpj.bbcola4@policia.es

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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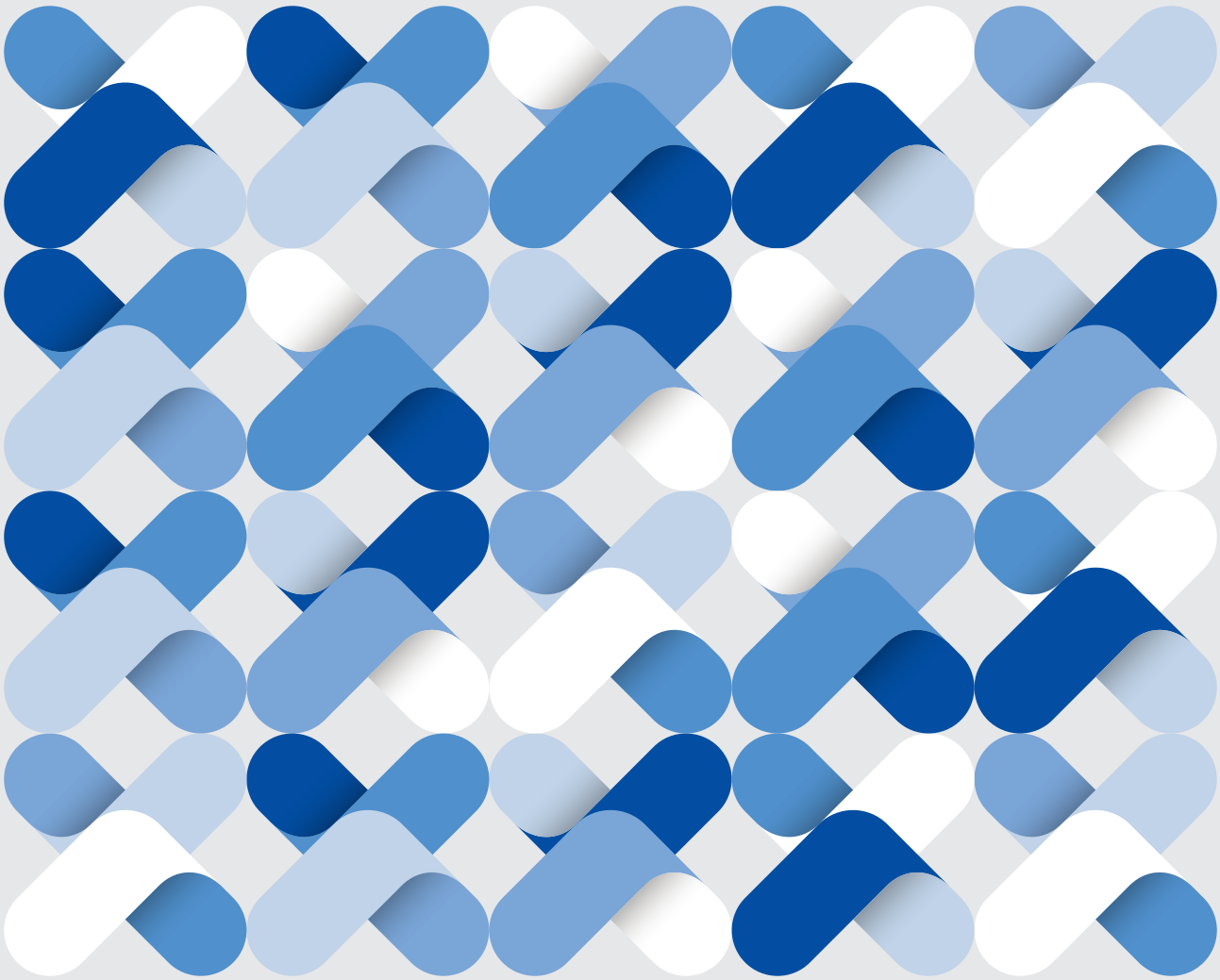
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