

BOSNIA AND HERZEGOVINA

National procedures for mutual legal assistance on laundering, search, seizure and confiscation of proceeds of crime (ETS No. 141)

Updated 17/2/2017

Procedure for search (asset-tracing) and seizure	
The Central Authority (name of the institution, address, telephone, fax and e-mail where available) responsible for mutual legal assistance (including freezing and seizure):	
Ministry of Justice of Bosnia and Herzegovina Sector of International and Inter-Entity Legal Assistance and Cooperation Ul. Trg BiH br. 1 71000 Sarajevo Tel:0038733281556 ; fax:0038733201653; nikola.sladoje@mpr.gov.ba neven.kurtovic@mpr.gov.ba dragan.simic@mpr.gov.ba	
If different from the Central Authority, the authority to which the request should be sent (name of the institution, address, telephone, fax and e-mail where available):	
The Ministry of Justice of BiH is the Central Authority to receive requests for assistance. However, the requests can be directly delivered to the competent prosecutor's offices in Bosnia and Herzegovina with a copy of the request sent by the Central Authority. Contact as stated above	
Channels of communication for the request for mutual legal assistance (directly, or other):	
The same as under 2.	
Means of communication (e.g. by post, fax, e-mail ¹):	
By ordinary post, fax, e-mail with an obligation to send it by ordinary post.	
Language requirements:	
The official languages of Bosnia and Herzegovina:	

¹ Please indicate if encryption or electronic signature is required.

	Bosnian, Croatian and Serbian.
Double criminality requirement, if applicable:	Double criminality is a prerequisite for providing any form of legal assistance in criminal matters. The crime offences do not have to be identical but it is necessary that the requested action relates to a criminal offence punishable in BiH.
Other requirements: for example a link between the proceeds and the criminal offence, or that a request for the confiscation judgment or measure will be made later, or that leave is given by a judge for the seizure of assets/goods:	<p>Given Article 110 of the BiH CC provides that:</p> <p>“(1) Nobody is allowed to retain material gain acquired by the perpetration of a criminal offence. (2) The material gain, revenue, profit or other benefits derived from material gain referred to in paragraph 1 of this Article shall be confiscated by the court decision, which established the perpetration of a criminal offence, under the terms set forth by law.”</p> <p>and that there are no restrictions or reference to certain crimes, i.e. that the general rules mentioned above apply to all criminal offenses prescribed by criminal legislation of BiH, it is understood that in carrying out the seizure of assets/goods the starting point is that there are grounds for suspicion that the assets/goods are proceeds of crime. The seizure is carried out in order to establish and / or secure possible confiscation. The court issues an order for seizure of material gain, revenue, profits or other benefits derived from material gain.</p>
Modalities/requirements for the execution of MLA requests for investigative assistance (search, tracing, special investigative techniques), existence of a central register of real estate/ bank accounts, duration of preservation of bank data, etc.:	<p>Considering that mutual legal assistance, as requested by another state, is provided in accordance with the legislation of our country, we emphasize the following when it comes to the possibility of searching, tracing and seizing of objects and material gain acquired by criminal offense:</p> <p>The prosecutor may move the court to authorize investigative actions such as search of dwellings, premises and persons (Art. 51 and 52 of BiH CPC) only when there are sufficient grounds for suspicion that the perpetrator, the accessory, traces of a criminal offense or objects relevant to the criminal proceedings might be found there; in addition, CPC provides for a possibility of confiscation of objects (that were used in any way, wholly or partly, or destined for use in the perpetration of a criminal offence, or that</p>

	<p>resulted from the perpetration of a criminal offence - Art. 74 of BiH CC, or that may be used as evidence in the criminal proceedings – Art. 65 of BiH CPC), inspection of bank accounts and records, as well as the temporary freezing of cash and cash transactions and seizure of money and other types of assets and objects (real estate, movable property, rights), to establish and / or secure any confiscation of the assets (Art. 63-74 BiH CPC), as well as carrying out special investigative actions in accordance with Articles 116 and 117 of BiH CPC.</p> <p>In accordance with the BiH CPC, a prosecutor conducts an investigation and has the right to require submission of information from all state bodies, companies, individuals and legal entities and to take all investigative actions. Authorized officials under Art. 20 g) of BiH CPC are obliged to co-operate in coordination with the prosecutor.</p> <p>Upon request of another state, the Central authority to receive requests for assistance may apply to the court for data from the Property Register.</p> <p>Therefore, there are no specific and restrictive conditions for carrying out the above-mentioned actions within international legal assistance, except that they have to be taken in accordance with the legislation of Bosnia and Herzegovina.</p>
<p>Limitation of use of evidence obtained:</p>	<p>According to the criminal legislation of Bosnia and Herzegovina, a judgment can be based only on legally obtained evidence.</p>
<p>Modalities/requirements related to the execution of provisional measures (freezing, prejudgment seizing) including lifting of these measures (possibilities to seize (im)movable properties) and applicable time limits, if any:</p>	<p>The prosecutor may move the court to authorize investigative actions such as search of dwellings, premises and persons (Art. 51 and 52 of BiH CPC) only when there are sufficient grounds for suspicion that the perpetrator, the accessory, traces of a criminal offense or objects relevant to the criminal proceedings might be found there; in addition, CPC provides for a possibility of confiscation of objects (that were used in any way, wholly or partly, or destined for use in the perpetration of a criminal offence, or that</p>

	<p>resulted from the perpetration of a criminal offence - Art. 74 of BiH CC, or that may be used as evidence in the criminal proceedings – Art. 65 of BiH CPC), inspection of bank accounts and records, as well as the temporary freezing of cash and cash transactions and seizure of money and other types of assets and objects (real estate, movable property, rights), to establish and / or secure any confiscation of the assets (Art. 63-74 BiH CPC), as well as carrying out special investigative actions in accordance with Articles 116 and 117 of BiH CPC.</p> <p>At any time during the proceedings, the court may, upon the motion of the prosecutor, issue an order for seizing the illicitly gained property to prevent any use, transfer or disposal of such property (Art. 73 of BiH CPC). Further, the CPC provides for a possibility, in case of an emergency, if there is a risk of delay, of an authorized official's seizing property, provided that he should immediately inform the prosecutor about the measures taken and the measures taken must be confirmed by the court within 72 hours. When it comes to an order to a bank or another legal person performing financial operations, in case of an emergency, the Prosecutor may order the provision of relevant information, provided that a court warrant should be issued within 72 hours. (Art. 72 of BiH CPC).</p>
<p>Available asset management system including preservative measures, (for example pre-judgment selling), concerning the seized goods:</p>	<p>In Bosnia and Herzegovina there is a legally regulated system of management of seized assets and goods acquired through criminal activities at the levels of Entities and Brcko District, which are operated by agencies / offices below, established in accordance with laws below governing the matter of management of seized assets and operation of the agencies / offices.</p> <p>Seized Assets Management Agency of the Republika Srpska - Law on Confiscation of Proceeds of Crime ("RS Official Gazette", number 12/10);</p> <p>Federation Seized Assets Management Agency - Law on Confiscation of Illegally Acquired Property ("Official Gazette of FBiH", number 71/14)</p> <p>BD Office of the Public Property Management - Law on Confiscation of Illegally Acquired Property ("Official Gazette of BD", number 29/2016)</p> <p>In Bosnia and Herzegovina, there is no seized assets</p>

	management agency at the state level.
Procedure for confiscation/ Recognition of foreign decisions. Recovery of confiscated assets.	
The Central Authority (name of the institution, address, telephone, fax and e-mail where available) responsible for Confiscation/ recognition of foreign judgments/decisions/measures:	<p>The Ministry of Justice is the central body for receiving requests for recognition and enforcement of foreign judgments, which are transmitted with the supporting documents to the following:</p> <p>the Court of Bosnia and Herzegovina for crimes falling under its jurisdiction</p> <p>the competent Entity ministries of justice and the Judicial Commission of Brcko District for the crimes under their jurisdiction</p> <p>the Ministry of Justice of Bosnia and Herzegovina Sector of International and Inter-Entity Legal Assistance and Cooperation Ul. Trg BiH br. 1 71000 Sarajevo Tel:0038733281556; fax:0038733201653; nikola.sladoje@mpr.gov.ba neven.kurtovic@mpr.gov.ba dragan.simic@mpr.gov.ba</p>
If different from the Central Authority, the authority to which the request should be sent (name of the institution, address, telephone, fax and e-mail where available):	<p>Ministry of Justice of Bosnia and Herzegovina Sector of International and Inter-Entity Legal Assistance and Cooperation Ul. Trg BiH br. 1 71000 Sarajevo Tel:0038733281556; fax:0038733201653; nikola.sladoje@mpr.gov.ba neven.kurtovic@mpr.gov.ba dragan.simic@mpr.gov.ba</p>
Channels of communication for the request for mutual legal assistance (directly, or other):	<p>Ministry of Justice of Bosnia and Herzegovina Sector of International and Inter-Entity Legal Assistance and Cooperation Ul. Trg BiH br. 1 71000 Sarajevo Tel:0038733281556; fax:0038733201653; nikola.sladoje@mpr.gov.ba neven.kurtovic@mpr.gov.ba</p>

	dragan.simic@mpr.gov.ba
Means of communication (e.g. by post, fax, e-mail ²):	By ordinary post, fax, e-mail with an obligation to send it by ordinary post.
Language requirements:	The official languages of Bosnia and Herzegovina: Bosnian, Croatian and Serbian.
Document requirements and modalities/requirements for the procedure of confiscation:	The procedure of confiscation is related to the recognition of a foreign judgment, so the first necessary step is to follow the procedure of recognition of a foreign judicial decision in order to carry out the procedure of confiscation ordered in it.
Other requirements, if applicable: For example: a link between the proceeds and the criminal offence. In case of money laundering, what are the requirements for the predicate offence(s):	<p>Article 396(1) of the Criminal Procedure Code of BiH provides that the confiscation of property gain obtained by commission of criminal offense may be ordered by court in a verdict by which the accused is declared guilty, in a decision on correctional measure and in verdict determining that a criminal offence was committed in the state of mental incompetency.</p> <p>Article 110 of the BiH CC provides that nobody is allowed to retain material gain, revenue, profit or other benefits derived from material gain acquired by criminal offense and the material gain, revenue, profit or other benefits derived from material gain shall be confiscated by the court decision, which established the perpetration of a criminal offence, under the terms set forth in this Code.</p> <p>Thus, it is clear that the seizure / confiscation of material gain, revenue, profit and other benefits derived from material gain may be carried out only if they result from the commission of criminal offence.</p> <p>As for the criminal offense of money laundering, Article 209 paragraph 5 of BiH CC provides that money, material gain, revenue, profits or other benefits derived from material gain shall be confiscated if acquired through</p>

² Please indicate if encryption or electronic signature is required.

	<p>criminal offense.</p> <p>Please note that the prosecution of the perpetrator of the crime of money laundering does not require a judgment for the predicate offense.</p>
<p>Procedure /possibilities to trace assets/proceeds when a (foreign) confiscation order is already given:</p>	<p>Through a request for judicial assistance to be submitted to the competent court to determine assets/proceeds in accordance with national legislation.</p>
<p>Procedure for sharing of assets, if applicable:</p>	<p>The process of sharing of property is possible only through bilateral agreements between specific countries for specific acts.</p>
<p>Where applicable, limitations to the possibility for the requesting state to serve judicial documents directly to the persons concerned:</p>	<p>There is no such possibility. The requesting state may serve judicial documents only through the competent court of BiH.</p>
<p>Other particularly relevant information on special types of assistance</p>	
<p>Non Conviction Based Confiscation:</p>	<p>Article 396 of the Criminal Procedure Code of BiH also provides for the possibility of confiscation of proceeds of crime on the basis of a decision on correctional measure.</p>
<p>MLA regarding liability of legal persons (criminal, civil or administrative):</p>	<p>The new concept of BiH CC provides for criminal liability of legal persons, while civil and administrative liability of legal persons has always been provided for.</p>
<p>Other information (for example, extended confiscation, confiscation for the purpose of victims):</p>	<p>Art. 110a of BiH CC provides for extended confiscation of property, i.e. confiscation when the owner is required to prove that the property was acquired in a lawful manner, where criminal proceedings involve certain criminal offences under BiH CC. They are: crimes against humanity</p>

	<p>and values protected by international law, crimes against the economy and market integrity and in the area of customs, criminal offences of corruption and criminal offences against official duty or other responsible duty, criminal offences of copyrights violation, crimes against the armed forces of Bosnia and Herzegovina, conspiracy, preparation, associating and organised crime. Art. 110a provides that the court may issue a decision to confiscate the material gain for which the prosecutor provided sufficient evidence to reasonably believe that such material gain was acquired by the perpetration of these criminal offences, while the perpetrator failed to prove that the gain was acquired in a lawful manner.</p> <p>.</p> <p>NOTE: The matter of seizure and confiscation of proceeds of crime is governed at the level of the Entities and Brcko District in their criminal legislation in a similar manner as in the above-mentioned legislation, which has provided for seized assets management agencies / offices.</p>
<p>Links to national legislation, national guides on procedure:</p>	<p>www.mpr.gov.ba www.sluzbenilist.ba www.sudbih.ba</p>