

AUSTRIA¹

**National Procedures for Mutual Legal Assistance on laundering,
search, seizure and confiscation of proceeds of crime (ETS 141)**

Updated on 27/02/2021

Procedure for search (asset-tracing) and seizure

The Central Authority responsible for mutual legal assistance: (including freezing and seizure)	Federal Ministry of Justice Department V 1 Museumstrasse 7, 1070 Wien, Austria Tel: ++43/1/52152-2226 Fax: ++43/52152-2500 E-mail: : team.s@bmj.gv.at According to Austrian legislation the public prosecution service is competent to carry out requests for Mutual Legal Assistance.
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If different from the Central Authority, the authority to which the request should be sent:	Name of the institution Address Telephone Fax E-mail
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Channels of communication for the request for mutual legal assistance: (directly or other)	See Article 24.
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Means of communication: (eg. by post, fax, e-mail ²)	Austrian judicial authorities accept any means of communication that are capable of producing written records and allow to establish the authenticity of the document.
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Language requirements:	Translations of requests or supporting documents are not required under the Convention ETS no. 141.
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Double criminality requirement, if applicable:	Requests for search and seizure, including disclosure of information on bank accounts and bank transactions require double criminality.
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¹ Please indicate your state.

² Please indicate if encryption or electronic signature is required.

<p>Other requirements:</p> <p>(e.g. 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>	<p>MLA requests must contain a detailed description of the criminal conduct concerned as well as the legal qualification in the requesting State.</p> <p>A link between the proceeds and the criminal offence is required.</p> <p>If a coercive measure is requested, the absolute necessity and the aim of the requested coercive measure should be indicated properly.</p> <p>Under domestic law, orders for house search, seizure of assets or goods and orders of disclosure of bank accounts have to be approved by a court.</p> <p>MLA requests for coercive measures for search and seizure and disclosure of bank accounts and bank transactions have to be accompanied by an order issued by a court of the requesting State. If the provisions of this State do not foresee a court order for such measures, the requesting authority has to indicate that the internal legal requirements for the measure sought are met according to the legislation of the requesting State.</p>
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<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>	<p>The central register of real estate as well as the company register is open to public inspection.</p> <p>The central register of bank accounts is held by the Federal Ministry of Finance and contains information on bank accounts and stock deposits in Austrian banks since 01.03.2015. The information on bank accounts is retained for ten years after the dissolution of the bank account or stock deposit. Access is provided to prosecutors and penal courts for prosecution purposes.</p>
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<p>Limitation of use of evidence obtained:</p>	<p>In principle, there is no limitation of use of evidence obtained. However, the provisions laid down in the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108) have to be observed.</p>
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<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>Provisional measures:</p> <p>Seizure:</p> <p>Pursuant to sect. 110 para. 1 no. 3 CCP, a seizure is, inter alia, admissible, if it is considered necessary to secure confiscation (sect. 19a Austrian Criminal Code - CC), forfeiture (sect. 20 CC), extended forfeiture (sect. 20b CC), redemption (sect. 26 CC) or any other offence-related property order. In general, a seizure is executed by the criminal police upon an order of the public prosecution office (sect. 110 para 2 CC).</p>
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	<p>How to effect a seizure:</p> <p>Sect. 109 para. 1 CCP provides for two mechanisms how to effect a seizure: Either, the criminal police establishes factual authority (Verfügungsmacht) over an object, or an order is issued that prohibits to the current holder of the object/asset to pass on the object/asset, to sell it or pledge it (Drittverbot). A Drittverbot is typically issued to banks/financial institutions in order to freeze assets on bank accounts.</p> <p>In case such Drittverbot-order is issued, the public prosecution office immediately has to apply for sequestration of the object/asset by the court. Pursuant to sect. 115 para 1 no. 3 CCP sequestration is admissible, if the object/asset seized shall secure confiscation (sect. 19a CC), forfeiture (sect. 20 CC), extended forfeiture (sect. 20b CC), redemption (sect. 26 CC) or any other offence-related property order whose execution would otherwise be endangered or considerably more difficult. In a decision of sequestration on the grounds to secure a judicial decision of forfeiture (sect. 20 CC) or extended forfeiture (sect. 20b CC), the court has to determine an amount of money that will cover the assets presumably subject to forfeiture (sect. 115 para 5 CCP). Sequestration of the object/asset has to be cancelled, if such amount of money is deposited with the court.</p> <p>According to sect. 115 Para. 6 CCP, the prosecution authority, or after the indictment has been filed the court, also has to lift the seizure, if and when the prerequisites for seizure fail or cease to exist.</p> <p>With respect to real estate, the prohibition to transfer ownership or to mortgage property can be registered with the Austrian land register. Such prohibition is effected by a court-order of sequestration pursuant to sect. 109 no. 2 lit. b CCP.</p>
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<p>Available asset management system including preservative measures (for example prejudgment selling) concerning the seized goods:</p>	<p>Pursuant to sect. 114 CCP the criminal police have to arrange for the storage of seized objects until it reports the seizure to the public prosecution office (such a report has to be filed without undue delay, but in any case within 14 days). Upon receipt of such report, the Public Prosecution Office is competent for the management of the seized objects. The Public Prosecution Office has to ensure that the objects are adequately stored, be it with the police, the court (at the larger courts, depositary units are established pursuant to Art. 614 Geo, which can be used by the public prosecution office to store seized objects) or third parties (e.g. by leasing storage space to store larger objects such as cars).</p> <p>The Austrian Asset Recovery Office maintains a database of seized and confiscated objects.</p> <p>Pursuant to sect. 115e CCP objects and assets that were seized or sequestered in order to secure confiscation (sect. 19a CC), forfeiture (sect. 20 CC), extended forfeiture (sect.</p>
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	20b StGB), redemption (sect. 26 CC) or any other offence-related property order may be disposed of by the court upon application of the public prosecution office (during preliminary proceedings or during main trial), if they are subject to a decline in value or their storage entails disproportionate costs. The disposing, however, has to be avoided as long as the objects are required for evidentiary purposes (sect. 110 para. 4 CCP). Persons affected by the sale, have to be informed. The objects and assets have to be disposed of by way of a public auction (sect. 115 a para. 1 in connection with sect. 377 CCP). The disposing due to disproportionate costs is not made if an amount covering such costs is deposited (sect. 115e para. 2 CCP).
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Procedure for confiscation/ Recognition of foreign decisions. Recovery of confiscated assets.

The Central Authority Responsible for confiscation / recognition of foreign judgments/decisions/measures:	Federal Ministry of Justice Department V 1 Museumstrasse 7, 1070 Wien, Austria Tel: ++43/1/52152-2226 Fax: ++43/52152-2500 E-mail: : team.s@bmj.gv.at
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If different from the Central Authority, the authority to which the request should be sent	Name of the institution Address Telephone Fax E-mail
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Channels of communication for the request for mutual legal assistance: (directly or other)	Directly to the Central Authority. However, in urgent cases direct contacts between the competent authorities are admissible.
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Means of communication (eg. by post, fax, e-mail ³):	Austrian judicial authorities accept any means of communication that are capable of producing written records and allow to establish the authenticity of the document.
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Language requirements:	Under the Convention ETS no. 141 no translations are required.
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Document requirements and modalities/requirements for the procedure of confiscation:	According to the Austrian Declaration proceeds from tax offences within the meaning of Art. 3 may be subject to confiscation both nationally and through international
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³ Please indicate if encryption or electronic signature is required.

	cooperation, under national and international tax-debt recovery legislation.
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<p>Other requirements, if applicable: (e.g, a link between the proceeds and the criminal offence.)</p> <p>In case of money laundering, what are the requirements for the predicate offence(s)</p>	
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<p>Procedure /possibilities to trace assets/proceeds when a (foreign) confiscation order is already given:</p>	The provisional measures of seizure and the disclosure of information contained in the registry of bank accounts and disclosure of information about bank accounts and bank transactions – as described above - are also available in cases where tracing of assets or proceeds is needed for the execution of a foreign confiscation order.
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<p>Procedure for sharing of assets, if applicable:</p>	According to the Austrian Federal Law an Extradition and Mutual Legal Assistance confiscated assets/proceeds shall accrue to the Federal State of Austria. Asset sharing is only possible if a bilateral treaty allows for this possibility.
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<p>Where applicable, limitations to the possibility for the requesting state to serve judicial documents directly to the persons concerned:</p>	Direct service of judicial documents is possible under Article 16 of the Second Additional Protocol to the European Convention on Mutual Legal Assistance, ETS No.182, or other bilateral and multilateral applicable instruments
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Other particularly relevant information on special types of assistance

<p>Non-Conviction Based Confiscation:</p>	<p>Independent procedure pursuant to sections. 445 and 445a CCP:</p> <p>Apart from the final court judgment following the main trial against the accused persons, a court can decide on forfeiture (Sect. 20 CC), extended forfeiture (Sect. 20b CC), redemption (Sect. 26 CC) or any other offence-related property order in a so-called independent procedure (“selbständiges Verfahren”) if:</p> <ul style="list-style-type: none"> • It is evident that the suspect cannot be punished, but the court can decide on an offence-related property order • The property order shall be issued against a third party, while no criminal proceedings can be conducted against the suspect; or • The court has decided in its judgement following main trial that the decision on a property order will be rendered in the course of an independent procedure (sect. 443 para. 2 CCP).
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	<ul style="list-style-type: none"> • Disposing of cash money, bank deposits and securities pursuant to Sect. 115a to 115d CCP • If no decision on forfeiture or extended forfeiture can be made during main trial or in an independent procedure pursuant to Sect. 445 and 446 CCP, sect. 115a to 115d CCP provide for an additional procedure for the disposal of cash money, bank deposits and securities. The main scope of application concerns cases, where assets (typically bank deposits or securities) have been seized or sequestered but the suspect's identity or his/her whereabouts are unknown. <p>Upon application of the public prosecution office, the court can publish an edict in which the assets to be disposed of are described precisely and in which it is announced that the assets will be disposed of, if there is no application for cancellation of the seizure or sequestration within one year. This edict has to be made publicly available for at least one year. If no circumstances become known that hinder a disposing of the assets (e.g. justified claims of third parties) and the assets have been seized or sequestered for at least two years, the court has to render a resolution on the disposal. Once such resolution is legally binding (i.e. no longer subject to appeal) the court has to request the debtor (usually the bank) to transfer custody over the account to the court within 14 days. If the debtor does not comply with such court order, enforcement proceedings are initiated (Sect. 408 CCP).</p>
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MLA regarding liability of legal persons: (criminal, civil or administrative)	Yes (criminal)
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Other information: (for example, extended confiscation, confiscation for the purpose of victims)	
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Links to national legislation, national guides on procedure:	Please find all mentioned provisions of the Criminal Code and the Criminal Code of Procedure under https://www.ris.bka.gv.at/ in German language as well as a selection of provisions in English language under https://www.ris.bka.gv.at/RisInfo/LawList.pdf .
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