

Ukraine – national procedures for mutual legal assistance on
laundrying, search, seizure and confiscation of proceeds of crime (ETS
No. 141)
Updated 28/10/2017

States Parties are requested to fill in this table with the necessary information and return it to the Secretariat of the PC-OC. The information contained in this table should be updated on a yearly basis.

Procedure for search (asset-tracing) and seizure	
<p>The Central Authority (name of the institution, address, telephone, fax and e-mail where available) responsible for mutual legal assistance (including freezing and seizure):</p>	<p><u>Pre-trial stage of criminal proceedings</u></p> <p>The Prosecutor General’s Office of Ukraine</p> <p style="padding-left: 40px;">13/15 Reznitska street, Kyiv-11, Ukraine, 01011 Tel. +38044 5967844 Fax: +380442802851 e-mail: indep@gp.gov.ua</p> <p><u>Trial stage of criminal proceedings</u></p> <p>The Ministry of Justice of Ukraine.</p> <p style="padding-left: 40px;">13, Horodetskogo street, Kyiv, Ukraine, 01001 Tel: +38044 2796879 Fax: +38044 2705453 e-mail: itex@minjust.gov.ua</p>
<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</p>	<p>National Agency of Ukraine for finding, tracing and management of assets derived from corruption and other crimes (in case of requests of foreign ARO-AMOs) Address: 1 Borys Grinchenko Str., Kyiv, 01601 E-mail: info@arma.gov.ua</p> <p>The State Financial Monitoring Service of Ukraine (in case of requests of foreign FIUs)</p>

available):	Address: Ukraine 04050 Kyiv, Biloruska, 24 Tel./fax: +38044 594-16-52 E-mail: sdfm@sdfm.gov.ua
Channels of communication for the request for mutual legal assistance (directly, or other):	Direct communication to the relevant Central Authority. Requests may be sent to a foreign State or received from a foreign State also through the intermediary of the International Criminal Police Organization (“Interpol”).
Means of communication (e.g. by post, fax, e-mail ¹):	By post, fax, e-mail. Central Authorities of Ukraine may take into consideration a request that came from the requesting party electronically, by facsimile or other means of communication. But the Requesting Party shall ensure the prompt provision of a written original of this request. Materials received as a result of the execution of such a request shall be provided to the Requesting Party after the receipt of the original request.
Language requirements:	Requests and annexed documents shall be sent to Ukraine together with a <u>translation into Ukrainian</u> or into one of the official languages of the Council of Europe unless they are drawn up in those languages.
Double criminality requirement, if applicable:	In the absence of an international treaty of Ukraine the request shall be denied if the request concerns an offense, which is not a criminal offense under the law of Ukraine on criminal responsibility (Art. 557 par. 2(4) of the CCP of Ukraine).
Other requirements: for example a link between the proceeds	It is necessary to indicate a link between the stolen assets and committed criminal offence. For the better cooperation and execution of LoR requesting party may inform that a request for confiscation

¹ Please indicate if encryption or electronic signature is required.

<p>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>will be made later in future.</p>
<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>According to Article 568 Paragraphs 1, 2 of the CPC of Ukraine upon a request for international legal assistance, appropriate authorities of Ukraine shall conduct procedural actions as provided for in this Code, to detect and arrest assets, money and valuables obtained as proceeds from crime, as well as assets that belongs to suspects, accused or sentenced persons.</p> <p>When arresting assets referred to in part one of this Article, measures shall be taken necessary to its preservation until court takes a decision in respect of such assets, and the requesting party shall be informed thereon.</p> <p>Specific requirements for the execution of MLA requests for search, tracing of assets, etc. is court order.</p> <p>In Ukraine a state register for the proprietary rights on real estate exists, there is no a register of bank accounts.</p>
<p>Limitation of use of evidence obtained:</p>	<p>Information or evidence provided by it under Chapter III of the Convention may not, without its prior consent, be used or transmitted by the authorities of the requesting party in investigations or proceedings other than those specified in the request.</p>
<p>Modalities/requirements related to the execution of provisional measures (freezing, prejudgment seizing) including lifting of these measures</p>	<p>A relevant judicial decision from the authority of the requesting party (court decision or prosecutor's decision) has to be added to the MLA request in which the freezing of the assets is requested.</p>

<p>(possibilities to seize (im)movable properties) and applicable time limits, if any:</p>	
<p>Available asset management system including preservative measures, (for example prejudgment selling), concerning the seized goods:</p>	<p>Asset management system is introduced by Chapter III of the Law of Ukraine «On the National Agency of Ukraine for finding, tracing and management of assets derived from corruption and other crimes» (hereinafter – Law «On ARMA»).</p> <p>According to Article 19 of the Law the ARMA shall manage the assets seized in criminal proceedings, including as injunctive relief only in respect of a claim filed in the interests of the state with setting a prohibition on disposal and/or use such assets, the amount or value of which equals or exceeds 200 minimum salaries established as of 1st January of a relevant year.</p> <p>The ARMA carries out management of assets, which have been seized in criminal proceedings, i.e.:</p> <ul style="list-style-type: none"> - funds (in cash and non-cash forms in any currency) and banking metals; - movable and immovable property, - securities, proprietary; - other rights. <p>Property, including in the form of things or large batches of goods, the storage of which due to bulkiness or for other reasons is impossible without unnecessary difficulties or costs incurred to ensure special conditions of storage of which or management of which are commensurate with a value of such property, or the property which quickly depreciates, as well as the property in the form of perishable goods or products shall be sold at prices no less than the market prices.</p> <p>The said assets shall be provided for sale without consent of the owner on the basis of a decision made by an investigative judge or court, and a copy of such decision shall be sent to the ARMA immediately after making such decision together with a relevant application of the prosecutor. Provision of assets for sale can be also done by consent of their owner, a copy of which shall be provided to the ARMA together with a relevant application of the prosecutor.</p> <p>Moreover, according to Article 25 of the aforesaid Law the ARMA shall form and keep the Unified State Register of assets seized in criminal proceedings, which shall in particular contain the information regarding:</p> <ul style="list-style-type: none"> decisions of foreign competent authorities on seizure and confiscation of assets in Ukraine, and the status of fulfillment thereof; decisions of Ukrainian competent authorities on seizure and confiscation of assets in foreign countries, and the status of fulfillment thereof.

	The full introduction of functioning of the Unified State Register of Assets under Arrest in Criminal Proceedings is scheduled for the end of 2018.
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:	The Central Authority concerning judicial decisions on <u>trial or post trial stage of criminal proceedings</u> The Ministry of Justice of Ukraine. 13, Horodetskogo street, Kyiv, Ukraine, 01001 Tel: +38044 2796879 Fax: +38044 2705453 e-mail: itex@minjust.gov.ua
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):	
Channels of communication for the request for mutual legal assistance (directly, or other):	Directly to the Ministry of Justice of Ukraine.
Means of communication (e.g.	By post, fax, e-mail. Central Authorities of Ukraine may take into consideration a request that came from the requesting party electronically, by facsimile or

by post, fax, e-mail ²):	other means of communication. But the requesting party shall ensure the prompt provision of a written original of this request. Materials received as a result of the performance of such a request shall be provided to the requesting party after the receipt of the original request. An encryption or electronic signature is not necessarily required.
Language requirements:	The requests and documents supporting such requests have to be sent to Ukraine accompanied by a <u>translation into Ukrainian</u> or into one of the official languages of the Council of Europe, if they are not drawn up in these languages.
Document requirements and modalities/requirements for the procedure of confiscation:	<ul style="list-style-type: none"> - guilty verdict of the foreign court (or other valid judicial decision) in which an amount of money or a list of property which has to be confiscated is indicated; - text of relevant legislative provisions of the requesting state, under which a person concerned was found guilty for committing of illegal acts; - information, on whether the assets must be returned to victims or shared between the contracting states if appropriate; - information on previous MLA requests in the matter and results of their execution (if available); - other relevant information in the matter.
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)	It is necessary to indicate a link between the stolen assets and committed criminal offence. According to point 1 of the Note to Article 209 of the Criminal Code of Ukraine socially dangerous illicit action that preceded the legalization (laundering) of profits according to this Article, is an action for which the Criminal Code of Ukraine provides for main sentence of imprisonment or fine for over 3000 tax -free minimum incomes, or actions, committed outside Ukraine, if it is recognized as a socially dangerous illicit action that preceded the legalization (laundering) of profits under the criminal law of the country where it has been committed and a crime under the Criminal Code of Ukraine and as the result of which is the illegally obtained income.

² Please indicate if encryption or electronic signature is required.

<p>Procedure /possibilities to trace assets/proceeds when a (foreign) confiscation order is already given:</p>	<p>According to Article 568 Para 1 of the CPC of Ukraine upon request for international legal assistance, appropriate authorities of Ukraine shall conduct procedural actions as provided for in the CPC of Ukraine, to detect assets, money and valuables obtained as proceeds from crime, as well as assets that belongs to the suspects, accused or sentenced persons.</p> <p>For example, according to Article 16 Para 1 of the Law «On ARMA» for the purpose of tracing and finding of assets, the ARMA shall:</p> <ol style="list-style-type: none"> 1) upon requests of the pre-trial investigation authorities, prosecutor's office and courts, take measures on tracing and finding of assets; cooperate with such authorities for the purpose of seizure and confiscation of such assets; 2) on the international scale cooperate with the relevant authorities of foreign states in terms of sharing experience and information concerning the issues of finding, tracing and management of assets; 3) ensure cooperation with international intergovernmental organizations and networks the operation of which is aimed at ensuring international cooperation in the field of finding, tracing and management of assets, including with the Camden Asset Recovery Inter-Agency Network (CARIN), and represent Ukraine in this organization. <p>The ARMA shall cooperate on the international scale upon request of a relevant authority of a foreign state or central authorities (the Prosecutor General's Office of Ukraine or Ministry of Justice of Ukraine). The ARMA shall be entitled to cooperate on the international scale on the basis of the principle of reciprocity or according to the international agreements of Ukraine, if it facilitates tracing and finding of assets by the relevant authorities of a foreign state.</p>
<p>Procedure for sharing of assets, if applicable:</p>	<p>Recovery or sharing of assets is carried out according to the MLA request.</p> <p>According to Article 568 Para 3 of the Criminal Procedural Code of Ukraine upon request of the requesting Party, the detected assets:</p> <ol style="list-style-type: none"> 1) may be surrendered to the competent authority of the requesting Party as evidence in criminal proceedings, in compliance with the requirements of Article 562 of this Code, or for being returned to the owner thereof; 2) may be confiscated basing on a sentence or any other decision made by the court of the requesting Party which has entered into legal force. <p>According to Article 568 Para 6 of the CPC of Ukraine upon a motion of the Central Authority of Ukraine, a court may rule to transfer the assets confiscated under Para 3, Subparagraph 2 of Article 568 of the CPC of Ukraine, as well as its money equivalent:</p> <ol style="list-style-type: none"> 1) to the requesting Party that ruled to confiscate the assets as a compensation for damage inflicted on the victims of the offense;

	2) in accordance with the international treaties of Ukraine on the sharing of confiscated assets or their money equivalent.
Where applicable, limitations to the:	<p>On the basis of the CETS 141 Ukraine has not declared any objections concerning the possibility for the requesting state to serve judicial documents directly to the persons concerned.</p> <p>It should be noted that during ratification of the Second Additional Protocol (2001) to the Convention on Mutual Legal Assistance in Criminal Matters (1959) Ukraine declared that it shall enjoy the right not to accept Article 16, which envisages possibility for the requesting state to serve judicial documents directly to the persons concerned.</p>
Other particularly relevant information on special types of assistance	
Non Conviction Based Confiscation:	At present moment there is no NCBC– Non Conviction Based Confiscation Regime.
MLA regarding liability of legal persons (criminal, civil or administrative):	<p>According to Article 96-6 of the Criminal Code of Ukraine the following criminal law measures may be applied to legal entities:</p> <ol style="list-style-type: none"> 1) fine; 2) confiscation of property; 3) liquidation. <p>For legal entities, fines and liquidation may be applied only as the main criminal law measures, and confiscation of property is only an additional one. In case the criminal law measures are applied, a legal entity is obliged to reimburse the damages and losses in full extent, as well as the amount of the unlawful benefit, which was received or could have been received by a legal entity.</p> <p>MLA regarding liability of legal entities is possible in criminal, civil and administrative matters.</p>
Other information (for example, extended confiscation, confiscation for the purpose of victims):	<p>At present in Ukraine the confiscation regimes include:</p> <ul style="list-style-type: none"> - confiscation as a penalty for commitment of a crime, which is applicable to all assets the defendant owns upon a judgment of conviction (extended confiscation); - Special confiscation as a compulsory measure for committing a crime, applicable to unlawfully acquired assets by a convicted person upon a judgment of conviction. Mentioned assets are subject to direct connection with committed crime – the instrument of crime, proceeds

	<p>from crime etc. Special confiscation includes also valued and the third party confiscation, confiscation of property of legal entities. Applied to all the crimes in particular to corruption crimes.</p> <p>Under Article 96-2 of the Criminal Code of Ukraine special confiscation shall be applied in case if money, valuables and other property were obtained as a result of a crime and/or are the proceeds from such property, intended (used) to persuade a person to commit a crime, to finance and/or material support of a crime or reward for its commission; were the subject of a crime, as means or instrumentalities; in cases where the person is not subject to criminal responsibility (underage, insanity etc., except lapse of periods of limitation); from a third party if he/she has acquired such property from a suspect, an accused, and knew or should have and could have known, that such assets meets the conditions of Article 96-2 of the CC of Ukraine; the assets shall be subject to special confiscation in whole or partially, or the sum of money corresponding the value of such property shall be confiscated.</p> <p>Special confiscation shall not be applied to the property owned by a bona fide purchaser.</p> <p>Special confiscation shall not be applied to the money, valuables and other property specified in Article 96-2 of the CC of Ukraine, which according to the law must be returned to the owner (the legal owner), and in case when he/she is not established - they become the property of the state, or are intended for compensation of the damage caused by the crime.</p> <p>The confiscation for the purpose of the victims pursuant to the Ukrainian national legislation in criminal matters is possible based on the final and binding court judgment. Additionally, confiscation of assets for the victims is possible based on the court decision following the consideration of a civil lawsuit.</p> <p>Moreover, according to Article 233-1 of the Civil Procedure Code of Ukraine the prosecutor shall file a claim in the interests of the State for recognition of unjustified assets (cash or other property, as well as proceeds from them) and collection of such assets from the persons within the time limit of the general limitation period from the day of the legal validity of the judgment of conviction concerning a person authorized to perform functions of the state or local self-government for the commission of a corruption crime or money-laundering (legalization) or a related with him/her person, - a legal entity which is the owner (user) of the property.</p> <p>The recognized as unjustified assets (part of assets) or their money equivalent are collected in favor of the State.</p>
<p>Links to national legislation, national guides on</p>	<p>Criminal Procedural Code of Ukraine (Section IX «International Cooperation in Criminal Proceedings» – Articles 541-614) (link: https://rm.coe.int/16802f6016)</p>

procedure:	<p>Law of Ukraine «On preventing and counteracting to legalization (laundering) of the proceeds of crime, terrorist financing, and financing proliferation of weapons of mass destruction» http://www.sdfm.gov.ua/content/file/Site_docs/2017/20170203/LAW%20OF%20UKRAINE.pdf)</p> <p>Law of Ukraine «On the National Agency of Ukraine for finding, tracing and management of assets derived from corruption and other crimes» (link: https://arma.gov.ua/en/regulatory-framework)</p>
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