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Comments:

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A. General information

A. General information

1. General information

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Federal Ministry for Economic Cooperation and Development
Administration of the German Bundestag
Federal Office of Justice

Please provide information on the ratification/acceptance/approval/accesion process of the United Nations Convention against Corruption in your country (date of ratification/acceptance/approval of/accesion to the Convention, date of entry into force of the Convention in your country, procedure to be followed for ratification/acceptance/approval of/accesion to international conventions etc.).

Ratification of the Convention

The Convention was signed on 9 December 2003. Germany deposited its instrument of ratification with the Secretary-General of the United Nations on 12 November 2014.

The Convention and Germany's legal system

Article 25 of the Constitution states that generally accepted rules of international law shall form an integral part of Germany's domestic law and shall override any other contrary provision of domestic law. The UN Convention against Corruption has become an integral part of Germany's domestic law following ratification of the Convention (see above), and entry into force on 12 December 2014 in accordance with Article 68 of the Convention.

Please briefly describe the legal and institutional system of your country.

Please cf. SACL for first review cycle

In a separate communication addressed and e-mailed to the secretariat (uncac.cop@unodc.org), please provide a list of relevant laws, policies and/or other measures that are cited in the responses to the self-assessment checklist along with, if available online, a hyperlink to each document and, if available, summaries of such documents. For those documents not available online, please include the texts of those documents and, if available, summaries thereof in an attachment to the e-mail. If

available, please also provide a link to, or the texts of, any versions of these documents in other official languages of the United Nations (Arabic, Chinese, English, French, Russian or Spanish). Please revert to this question after finishing your self-assessment to ensure that all legislation, policies and/or other measures you have cited are included in the list.

Please see attachment.

Please provide a hyperlink to or copy of any available assessments of measures to combat corruption and mechanisms to review the implementation of such measures taken by your country that you wish to share as good practices.

N/A

Please provide the relevant information regarding the preparation of your responses to the self-assessment checklist.

N/A

Please describe three practices that you consider to be good practices in the implementation of the chapters of the Convention that are under review.

Please cf. answers under Article 54, paragraph 1 (c) for the possibility of non-conviction based confiscation in cases of organized crime.

Please further cf. answers under Articles 14 and 52 for the new anti-money laundering legislation.

Please describe (cite and summarize) the measures/steps, if any, your country needs to take, together with the related time frame, to ensure full compliance with the chapters of the Convention that are under review, and specifically indicate to which articles of the Convention such measures would relate.

II. Preventive measures

14. Measures to prevent money-laundering

40. Subparagraph 1 (a) of article 14

1. Each State Party shall:

(a) Institute a comprehensive domestic regulatory and supervisory regime for banks and non-bank financial institutions, including natural or legal persons that provide formal or informal services for the transmission of money or value and, where appropriate, other bodies particularly susceptible to money-laundering, within its competence, in order to deter and detect all forms of money-laundering, which regime shall emphasize requirements for customer and, where appropriate, beneficial owner identification, record-keeping and the reporting of suspicious transactions;

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

The provisions of the Convention are implemented in Germany mainly in the Money Laundering Act (*Geldwäschegesetz*), the Banking Act (*Kreditwesengesetz*) and the Payment Services Supervision Act (*Zahlungsdiensteaufsichtsgesetz*). The Act Transposing the Fourth EU Money Laundering Directive, Implementing the EU Fund Transfer Regulation and Reorganising the Financial Intelligence Unit entered into force on 26 June 2017. The previous version of the Money Laundering Act has been completely revised and re-adopted within this framework. The following comments are based on the new version of the law.

Obligated entities as defined in section 2(1) of the Money Laundering Act are obliged to identify their customers including the customers' beneficial owners (section 10 et seqq. of the Money Laundering Act), and to retain the information and documents obtained in the process (section 8 of the Money Laundering Act); where there is a suspicion of money laundering or terrorist financing, a report must be sent to the German Financial Intelligence Unit (known in German as the Zentralstelle für Finanztransaktionsuntersuchungen) pursuant to section 43 of the Money Laundering Act.

I. Obligated entities

Pursuant to section 2(1) of the Money Laundering Act, the following persons, inter alia, are considered "obliged entities":

- credit and financial institutions; insurance companies and insurance intermediaries; asset management companies;
- lawyers, legal advisors, patent attorneys and notaries whenever they are involved in planning or carrying out the following transactions for their clients:
 - a) buying and selling real estate or commercial enterprises;

- b) managing money, securities or other assets;
 - c) opening or managing bank, savings or securities accounts;
 - d) organising funds for the purpose of establishing, operating or managing companies or partnerships;
 - e) establishing, operating or managing trusts, companies, partnerships or similar arrangements; or if they carry out financial or real estate transactions in the name and for the account of their clients;
- auditors, chartered accountants, tax advisors and tax agents;
 - service providers for companies, partnerships and trusts or trustees who are not members of the professions referred above whenever they provide any of the following services for third parties:
 - a) establish a legal person or partnership;
 - b) act as the director or manager of a legal person or partnership, a partner of a partnership, or act in a similar position;
 - c) provide a registered office, business address, address for administration or correspondence and other related services for a legal person, a partnership or a legal arrangement;
 - d) act as a trustee of a legal arrangement;
 - e) act as a nominee shareholder for another person other than a corporate entity listed on an organised market that is subject to transparency requirements with regard to voting rights consistent with EU laws, or subject to equivalent international standards;
 - f) arrange for another person to perform the functions described in (ii), (iv) and (v) above.
 - real estate agents;
 - traders in goods.

II. Due diligence requirements under money-laundering provisions, including identification of the customer and the beneficial owner

The due diligence requirements shall be fulfilled when (section 10(3)):

- a) establishing business relations;
- b) carrying out a transaction with a value of €15,000 or more outside an existing business relationship;
- c) there are factual circumstances to indicate that the assets or property connected with a transaction or business relationship are the product of money laundering or are related to terrorist

financing, notwithstanding any exceptions, exemptions or thresholds set forth in the Money Laundering Act;

- d) there is doubt as to the veracity of the information collected in relation to the identity of the customer or the beneficial owner.

For certain obliged entities (such as dealers in goods), special rules exist regarding when the due diligence requirements are to be fulfilled.

Pursuant to section 10(1) of the Money Laundering Act, the obliged entities must:

- a) identify the customer and, if applicable, a person acting on its behalf, including checking whether the person who is acting on its behalf is authorised to do so;
- b) clarify whether the customer is acting on behalf of a beneficial owner and, if so, identify the beneficial owner. If the customer is not a natural person, this includes an obligation to take adequate measures to understand the ownership and control structure of the customer;
- c) obtain information on the purpose and intended nature of the business relationship where this is not already clear from the business relationship in the individual case;
- d) determine, using an appropriate risk-oriented procedure, whether the contractual partner or the beneficial owner is a politically exposed person, a family member or a person known to be a close associate of this person, and
- e) continuously monitor the business relationship, including the transactions carried out in the course of the business relationship.

The beneficial owner is legally defined in section 3 of the Money Laundering Act.

The specific scope of the above-mentioned measures must reflect the respective risk of money laundering or terrorist financing, especially with regard to the contracting party, the business relationship or transaction. To this end, under section 4(1) and (2) and section 5 of the Money Laundering Act, obliged entities must carry out a risk assessment in order to identify the company-specific risks of money laundering and terrorist financing and must base their internal safeguards, as well as the type and scope of customer identification, on this assessment. Furthermore, when evaluating risks in an individual case, they must take into account at least the purpose of the account or the business relationship, the amount of assets paid in by the customer or the scope of the transactions carried out, as well as the regularity or duration of the business relationship. The specifics of the stricter customer due diligence obligations regarding so-called “politically exposed persons” (PEPs) are governed by section 15(3)(1a) in connection with section 15(4) of the Money Laundering Act.

Section 11(6) of the Money Laundering Act sets out that the customer shall provide the obliged entity with the information and documents necessary for

fulfilling the due diligence requirements and shall advise it without undue delay of any changes arising during the course of the business relationship. The customer shall disclose to the obliged entity whether it intends to establish, continue or carry out the business relationship or transaction on behalf of a beneficial owner. Such disclosure to the obliged entity shall also include information that verifies the identity of the beneficial owner.

If the obliged entities are unable to fulfil the due diligence requirements, they are not permitted to establish or continue the business relationship or carry out any transactions (section 10(9) of the Money Laundering Act). Where a business relationship already exists, the obliged entities shall terminate or otherwise end the business relationship regardless of any other statutory provisions or contractual terms (section 10(9) of the Money Laundering Act).

The obliged entities must identify the customer, and, if applicable, a person acting on its behalf and the customer's beneficial owner, before establishing a business relationship or carrying out a transaction. The identification process may be completed while the business relationship is being established if this is necessary in order to avoid interrupting the normal course of business and there is a low risk of money laundering or terrorist financing (section 11(1) of the Money Laundering Act). The obliged entity may dispense with the identification if it has already identified the relevant customer and beneficial owners and made a record of the information obtained, unless external circumstances lead to doubts of the veracity of the information obtained during the earlier identification process (section 11 (3) of the Money Laundering Act). The obliged entity is furthermore required to file a suspicious transaction report where factual circumstances indicate that the customer failed to comply with its duty to disclose whether it intends to establish, continue or carry out the business relationship or transaction on behalf of a beneficial owner (section 43(1)(3) of the Money Laundering Act).

In the case of a beneficial owner, institutions and persons covered by the Money Laundering Act shall find out at least the name of the beneficial owner and, where this is appropriate given the risk of money laundering or terrorist financing that exists in an individual case, shall collect further identifying information. Details of the beneficial owner's date and place of birth and address may be collected irrespective of the ascertained risk. The obliged entity must satisfy itself, by taking risk-appropriate measures, that the information gathered to identify the persons in question is accurate; however the obliged entity may not rely exclusively on the information in the transparency register.

A key component of the new Money Laundering Act is the establishment of a register of beneficial owners (transparency register). The transparency register will complement the existing commercial register, business register, register of associations and other registers already in place. The law establishing the transparency register entered into force on 26 June 2017, fulfilling Germany's obligation under the 4th Anti-Money Laundering Directive (EU/2015/849). The scope of the register applies to private legal persons and registered private companies as well as to trusts and similar legal arrangements.

Regarding legal ownership of private legal persons and registered private companies, the register will, in substance, provide a link to the already existing

registers containing up-to-date and reliable information on legal ownership. Where the beneficial owner is different from the legal owner, entities are obliged to register the beneficial owner in the transparency register. In addition, foundations as legal persons are not yet recorded in any other register. With regard to them, the transparency register will contain genuinely new information on the beneficial ownership. Also, trusts and similar legal arrangements are not yet contained in any other register. Trustees which are residents of Germany need to notify the transparency register regarding beneficial ownership of a trust; this also applies to similar legal arrangements as defined in the new Money Laundering Act.

Three groups will have access to the register: (1) competent authorities and financial intelligence units, (2) obliged entities when fulfilling the customer due diligence obligations under the Money Laundering Act, and (3) any person or organisation that can demonstrate a legitimate interest. The term "legitimate interest" will be further defined in secondary legislation in line with the 4th Anti-Money Laundering Directive.

III. Recording and retention obligations

Pursuant to section 8(1) of the Money Laundering Act, obliged entities must record and retain

1. the data and information collected during the course of fulfilling due diligence requirements
 - a) regarding contracting parties, persons acting on behalf of the contracting parties, if applicable, and beneficial owners,
 - b) on business relationships and transactions, especially transaction records, to the extent that they could be necessary for investigating transactions,
2. sufficient information about the performance and about the results of the risk assessment pursuant to section 10(2), section 14(1) and section 15(2) of the Money Laundering Act and about the appropriateness of the measures taken on the basis of these results,
3. the results of the investigation pursuant to section 15(5)(1) of the Money Laundering Act and
4. explanations of, and a comprehensible justification for, the results of the evaluation of a situation with respect to the notification obligation pursuant to section 43(1) of the Money Laundering Act.

The records pursuant to section 8(1)(1)(a) include records of the measures taken to identify the beneficial owners with regard to legal persons as defined in section 3(2).

The records must be retained for five years.

IV. Suspicious transaction reporting

Section 43(1) of the Money Laundering Act states as follows:

If facts exist which indicate that

1. property related to a business relationship, brokerage or transaction is derived from a criminal offence which could constitute a predicate offence for money laundering,
2. a business transaction, a transaction or property is related to terrorist financing, or
3. the contracting party has not fulfilled its obligation under section 11(6), third sentence, to disclose to the obliged entity whether it intends to establish, continue or execute the business relationship or transaction on behalf of a beneficial owner,

the obliged entity shall report this matter, irrespective of the amount involved, to the Financial Intelligence Unit without delay.

The recommendations made by the Federal Ministry of Finance for interpreting the manner in which the reporting system for suspicious activity is dealt with continue to apply. With regard to the reporting threshold, the recommendation is as follows: "The obliged entity and the employees acting on its behalf by no means need to be certain of a connection between a) a transaction or business relationship and b) an instance of money laundering, a corresponding specific predicate offence or an instance of terrorist financing. In order to meet the requirement for a suspicion that must be reported, it is sufficient if facts are known that indicate the existence of a business relationship or a transaction designed to facilitate terrorist financing, or through which illegal funds would be protected against confiscation by law enforcement agencies, or the origin of illegal assets could be concealed. A criminal background of terrorist financing or a crime as defined in section 261 of the German Criminal Code (*Strafgesetzbuch*) cannot be excluded in such cases." This makes it clear that the obliged entity and the employees acting on its behalf have a certain amount of discretion when assessing a situation. Among other things, the outcome of the situation depends on the obliged entity's subjective assessment of the specific circumstances. As indicated by the recommendations, there must be an understandable justification for an assessment that a specific matter involves a crime. The associated report should not be indiscriminate. Conversely, there is also no need for the presentation of a detailed legal analysis. Instead, the obliged entity "shall evaluate a matter on the basis of general experience and the professional knowledge possessed by its employees as regards the matter's unusual nature and abnormality in the given business context [...]". Such an evaluation shall take into account: the transaction purpose and type; peculiarities of the customer or beneficial owner; the financial and business background of the customer; and the origin of the asset/property associated with the transaction.

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

Germany's Federal Financial Supervisory Authority (BaFin), working together with the German Banking Industry Committee, has developed "Interpretative notes and guidance on the prevention of money laundering, terrorist financing or other criminal offences". These provide financial institutions with detailed guidance on how the due diligence requirements under anti-money-laundering rules are to be

fulfilled, including the identification of customers and the clarification of beneficial owners, as well as the treatment of PEPs. These interpretative notes and guidance are currently being revised by BaFin in the light of the new version of the Money Laundering Act that came into force on 26 June 2017.

BaFin also regularly informs banks via circulars about countries that have been listed by the Financial Action Task Force as having inadequate systems to combat money laundering and terrorist financing. BaFin also provides information about which countries must be subjected to stricter due diligence obligations by institutions when conducting transactions with these countries.

The German federal states (*Länder*), which are responsible for the supervision of the non-financial sector, have also drawn up a series of guidance notes (available online), which are intended to assist persons trading in goods, real estate agents and other obliged entities in the non-financial sector in fulfilling their due diligence obligations.

41. Subparagraph 1 (b) of article 14

1. Each State Party shall:

...

(b) Without prejudice to article 46 of this Convention, ensure that administrative, regulatory, law enforcement and other authorities dedicated to combating money-laundering (including, where appropriate under domestic law, judicial authorities) have the ability to cooperate and exchange information at the national and international levels within the conditions prescribed by its domestic law and, to that end, shall consider the establishment of a financial intelligence unit to serve as a national centre for the collection, analysis and dissemination of information regarding potential money-laundering.

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

The new Money Laundering Act, which came into force on 26 June 2017, also created the legal framework for the reorganisation of the German central body for receiving and evaluating suspicious transaction reports (known as the Financial Intelligence Unit or FIU). The German FIU was already established in 2002. However it had previously been organised along police lines and was located at the Federal Criminal Police Office (*Bundeskriminalamt*), within the portfolio of the Federal Ministry of the Interior. The FIU is now located as an authority within the Central Customs Authority (GZD), under the remit of the Federal Ministry of Finance. It is now organised along administrative lines, as is generally the case on the international level.

Pursuant to section 43 of the Money Laundering Act, all suspicious transaction reports from obliged entities must be sent to the FIU. The FIU is then responsible for carrying out targeted and comprehensive analysis to determine whether the reported circumstances are related to money laundering and/or terrorist financing. If this is the case, the FIU forwards all the information that has been collected to the responsible law enforcement authority. The FIU is now being given access to more data than before, in order to support its analytical activities; its powers to request information and data from law enforcement, revenue and administrative authorities are now enshrined in law. This allows the FIU to analyse a suspicious transaction report in a targeted way so that it can perform a "filter" function, meaning that only the genuinely substantial cases are forwarded to the competent law enforcement authorities. If the FIU has indications that a transaction is related to money laundering or terrorist financing, it also possesses the authority to prevent the transaction from being executed.

Overall, cooperation with all domestic authorities that are responsible for the investigation, prevention and/or prosecution of money laundering and/or terrorist financing has been enhanced. For example, mutual information rights and obligations will exist in the future: Revenue authorities pursuant to section 31b of the Fiscal Code and other authorities who, pursuant to section 44 of the Money

Laundering Act, obtain knowledge of facts that indicate that an asset is related to money laundering or terrorist financing must submit a report to the FIU. Conversely, the FIU will also pass on findings from the evaluation of suspicious transaction reports to other domestic authorities, to the extent that their competences are affected (see section 32 of the Money Laundering Act). At the same time, the exchange of information on the international level is being simplified and intensified (see section 33 et seq. of the Money Laundering Act).

In addition, cf. answer to Article 46 in self-assessment checklist for first review cycle.

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

The German FIU publishes an annual report on its activities, where further information including detailed statistics can be found.

Annual reports 2002 - 2015 in English:

https://www.bka.de/EN/CurrentInformation/AnnualReports/FinancialIntelligenceUnitGermany/financialintelligenceunitgermany_node.html

Annual reports 2002 - 2016 in German:

https://www.bka.de/DE/AktuelleInformationen/StatistikenLagebilder/Lagebilder/-FinancialIntelligenceUnitDeutschland/financialintelligenceunitdeutschland_node.html

42. Paragraph 2 of article 14

2. States Parties shall consider implementing feasible measures to detect and monitor the movement of cash and appropriate negotiable instruments across their borders, subject to safeguards to ensure proper use of information and without impeding in any way the movement of legitimate capital. Such measures may include a requirement that individuals and businesses report the cross-border transfer of substantial quantities of cash and appropriate negotiable instruments.

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

The described review of measures to ensure the adequate monitoring of the transport of cash and cash equivalents has already been extensively implemented in section 1(4), section 5(1)(2) and section 12a in conjunction with section 31a of the Customs Administration Act (*Zollverwaltungsgesetz*). Under these provisions, movements of cash and cash equivalents within and beyond Germany's external borders are monitored by German Customs. In addition, the monitoring of cash that is transported by natural persons across the external borders of the European Union to or from Germany is carried out in accordance with Regulation (EC) No 1889/2005 of the European Parliament and of the Council of 26 October 2005 on controls of cash entering or leaving the Community (Official Journal L 309, 25 November 2005, p. 9).

Cash and cash equivalents above a total value of €10,000 that are moved across borders must be declared in terms of their type, number and value, and, upon request by Customs, the origin, the beneficial owner and the purpose of this cash and cash equivalents must be explained. If there are reasons to assume that cash or cash equivalents transported in cross-border movements are being moved specifically for the purposes of money laundering or terrorist financing, customs officials may temporarily seize the cash or cash equivalents and take it into customs custody in order to investigate the origin or intended purpose.

A new cash control regulation is currently being negotiated on the European level, which is intended to replace the existing regulation. Under the new regulation, it is intended to make it possible for quantities of cash below the €10,000 threshold to be seized in future where indications of criminal activity exist. The term "cash" itself will be expanded to also cover commodities as highly liquid stores of value as well as prepaid cards that can be used as a substitute means of payment. In this regard, the Commission will also be authorised to adapt the definition of cash, by means of delegated acts, to react to new trends, including in particular developments in the electronic money market. In addition, a disclosure obligation is to be created with regard to cash that is transported by e.g. post, freight transport or courier. Finally, the exchange of information between the competent authorities and the respective central reporting unit (Financial Intelligence Unit) is also to be intensified with regard to the findings from cash controls, by enshrining

continual data exchange in law, thereby expanding its scope.

The aim is to sustainably enhance the fight against money laundering and terrorist financing by having effective rules that apply to all Member States.

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

German Customs seized undeclared cash in the value of €8.2 million in 2016. It initiated 2,600 administrative fine proceedings and imposed fines totalling €5 million for violations of disclosure obligations in connection with cross-border movements of cash and cash equivalents.

43. Paragraph 3 of article 14

3. States Parties shall consider implementing appropriate and feasible measures to require financial institutions, including money remitters:

- (a) To include on forms for the electronic transfer of funds and related messages accurate and meaningful information on the originator;
- (b) To maintain such information throughout the payment chain; and
- (c) To apply enhanced scrutiny to transfers of funds that do not contain complete information on the originator.

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

The requirements of the Convention are implemented uniformly in Germany by the EU Funds Transfer Regulation (Regulation (EU) 2015/847 of the European Parliament and of the Council of 20 May 2015 on information accompanying transfers of funds and repealing Regulation (EC) No 1781/2006).

Pursuant to Article 4 of the Regulation, the payment service provider of the payer has to ensure that transfers of funds are accompanied by the following information on the payer:

- (a) the name of the payer;
- (b) the payer's payment account number; and
- (c) the payer's address, official personal document number, customer identification number or date and place of birth.

In addition, the payment service provider of the payer has to ensure that transfers of funds are accompanied by the following information on the payee:

- (a) the name of the payee; and
- (b) the payee's payment account number.

In the case of a transfer not made from or to a payment account, the payment service provider of the payer shall ensure that the transfer of funds is accompanied by a unique transaction identifier rather than the payment account number(s). Depending on whether all payment service providers involved in the payment chain are established in the European Union and/or whether the value of the transfer is less than €1,000 (unless the transaction is carried out in several smaller transactions that appear to be linked), the Regulation provides some facilitations.

Before transferring funds, the payment service provider of the payer has to verify

the accuracy of the information referred to above on the basis of documents, data or information obtained from a reliable and independent source (Article 4(4)). For verification purposes, the provisions of the Money Laundering Act apply. Article 4(5) of the Regulation states that verification may be deemed to have taken place where:

(a) a payer's identity has been verified in accordance with Article 13 of Directive (EU) 2015/849 (4th Anti-Money Laundering Directive) and the information obtained pursuant to that verification has been stored in accordance with Article 40 of that Directive; or

(b) Article 14(5) of Directive (EU) 2015/849 applies to the payer.

Finally, pursuant to Article 4(6) of the Regulation, the payment service provider of the payer is not allowed to execute any transfer of funds before ensuring full compliance with the above-mentioned provisions.

Article 10 of the Regulation states that intermediary payment service providers have to ensure that all the information received on the payer and the payee that accompanies a transfer of funds is retained with the transfer.

Under Article 7 of the Regulation, the payment service provider of the payee has to implement effective procedures to detect whether the fields relating to the information on the payer and the payee in the messaging or payment and settlement system used to effect the transfer of funds have been filled in using characters or inputs admissible in accordance with the conventions of that system.

According to Article 8 of the Regulation, the payment service provider of the payee has to implement effective risk-based procedures, including procedures based on the risk-sensitive basis referred to in Article 13 of Directive (EU) 2015/849, for determining whether to execute, reject or suspend a transfer of funds lacking the required complete payer and payee information and for taking the appropriate follow-up action.

Where the payment service provider of the payee becomes aware, when receiving transfers of funds, that the information regarding the payer or payee referred to in Article 4(1) or (2), Article 5(1) or Article 6 is missing or incomplete or has not been filled in using characters or inputs admissible in accordance with the conventions of the messaging or payment and settlement system as referred to in Article 7(1), the payment service provider of the payee shall reject the transfer or ask for the required information on the payer and the payee before or after crediting the payee's payment account or making the funds available to the payee, on a risk-sensitive basis. Under Article 9, the payment service provider of the payee has to consider missing or incomplete information on the payer or the payee as a factor when assessing whether a transfer of funds, or any related transaction, is suspicious and whether it is to be reported to the Financial Intelligence Unit (FIU).

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

According to the FIU's annual report, financial services institutions (i.e.

undertakings which provide financial services to others commercially or on a scale which requires commercially organised business operations, and which are not credit institutions, section 1 (1a) Banking Act) submitted 4,316 suspicious transaction reports in 2016; in the previous year (2015), the total was only 2,253. Hence the number of suspicious transaction reports from financial services institutions almost doubled within a year.

44. Paragraph 4 of article 14

4. In establishing a domestic regulatory regime and supervisory regime under the terms of this article, and without prejudice to any other article of this Convention, States Parties are called upon to use as a guideline the relevant initiatives of regional, interregional and multilateral organizations against money-laundering.

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Germany has implemented the 40 recommendations of the Financial Action Task Force on Money Laundering (FATF) as well as the relevant directives of the European Union to combat money laundering and terrorist financing (see most recently Directive (EU) 2015/849) in its domestic legislation.

Germany is comprehensively contributes to various international and multinational bodies aimed at combating money laundering. These include cooperation mechanisms such as Eurojust, Europol, and the European Judicial Network as well as FATF.

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

[Act Transposing the Fourth EU Money Laundering Directive,](https://www.bgbl.de/xaver/bgbl/start.xav?start=//%5b@attr_id='bgbl117s1822.pdf'%5d)

[Implementing the EU Fund Transfer Regulation and Reorganising the Financial Intelligence Unit, entered into force on 26 June 2017.](https://www.bgbl.de/xaver/bgbl/start.xav?start=//%5b@attr_id='bgbl117s1822.pdf'%5d)

45. Paragraph 5 of article 14

5. States Parties shall endeavour to develop and promote global, regional, subregional and bilateral cooperation among judicial, law enforcement and financial regulatory authorities in order to combat money-laundering.

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

BaFin has signed a Memorandum of Understanding (MoU) with many countries around the world which in each case provides a basis for an intensive exchange of information and cooperation with regard to the monitoring of financial institutions. In this respect, please refer to the overview available at: https://www.bafin.de/DE/Internationales/BilateraleZusammenarbeit/MoU/gemeinsamestandpunkte_mou_node.html

Germany supports the International Anti-Corruption Coordination Centre (IACCC) in grand corruption cases. Germany also participates in the Intergovernmental Working Group on Asset Recovery and the experts meeting on International Cooperation.

The Federal Ministry for Economic Development and Cooperation is funding a Global Programme on Combatting Illicit Financial Flows (IFF). The capacity-building project (volume 5m EUR, implementing period 2015-2018) promotes FATF standards, aims at initiating change processes in detecting and tracing IFFs, helps implementing AML measures as well as promoting related international cooperation in criminal matters. Current project regions are Latin America (Peru), Western Balkan (Macedonia), East Africa (Kenya).

German Technical Cooperation also contributes expertise as part of a CTF/AML project consortium financed by the European Commission under the Instrument contributing to Stability and Peace (IcSP), with a MENA and South East Asia focus.

The German Development Bank KfW complies in all project financing with the German Banking Act, the Money Laundering Act and the UN-/EU-Sanctions- and Procurement laws, thus keeping all international standards in particular with respect to money laundering, fraud and corruption prevention. This includes contractual clauses which also oblige the contractual partners accordingly.

Please also see the answer to Article 46 in the self-assessment checklist for the first review cycle.

Please provide examples of the implementation of those measures, including related court or other

cases, available statistics etc.

The above mentioned Global Programme on Combatting Illicit Financial Flows supports the analysis of money laundering risks in various sectors and assists in updating and implementing the national plan to combat money laundering in Peru. The project also works together with the OECD on the recently launched Tax Crime Academy in Nairobi, Kenya.

46. Technical Assistance

The following questions on technical assistance relate to the article under review in its entirety.

Please outline actions required to ensure or improve the implementation of the article under review and describe any specific challenges you might be facing in this respect.

Do you require technical assistance for the implementation of this article? If so, please specify the forms of technical assistance that would be required. For example:

(NO) No assistance would be required

Is any technical assistance already being provided to you? If so, please provide a general description of the nature of the assistance, including donor information.

V. Asset recovery

51. General provision

225. Article 51

1. The return of assets pursuant to this chapter is a fundamental principle of this Convention, and States Parties shall afford one another the widest measure of cooperation and assistance in this regard.

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention, including identifying both any legal authorities/procedures for accepting requests for asset recovery and assessing that these requests are reasonably substantiated and supplemented as well as any time frame established under domestic laws and procedures for their execution, taking into account requests received from countries with similar or different legal systems and any challenges faced in this context.

Domestic legal system

In order to strengthen and streamline the effective confiscation of assets, Germany passed new asset confiscation legislation in 2017 that comprehensively reformed existing provisions. It entered into force on 1 July 2017.

The rigid time limits for the duration of the temporary freezing of assets were abolished and the scope needed to effectively freeze proceeds of crime, particularly in complex cases with an international dimension, was widened.

The decision on confiscation of proceeds of crime can now be separated from the main court proceedings, encouraging the judiciary to confiscate assets without risking excessively long proceedings particularly in cases involving organized crime (sections 422, 423 Code of Criminal Procedure).

Extended confiscation of proceeds of crime (i.e. confiscation of objects if the circumstances justify the assumption that these objects were acquired as a result of unlawful acts, or for the purpose of committing them) is now possible for all criminal offences rather than limited to a catalogue of more serious offences (section 73a Criminal Code).

Anything invested in the illegal activity is subject to confiscation, guaranteeing comprehensive confiscation of proceeds of crime: Expenses incurred by offenders no longer have to be considered when confiscating assets and no plea invoking a loss of enrichment may be made. If, following the judgement, an offender is found to have previously undiscovered assets, these may be confiscated at a later stage.

Assets of unclear origin may be confiscated without evidence of a specific offence being necessary. This enables the judiciary to confiscate assets related to organized crime by lowering the requirements to the court's conviction that assets

have a criminal source based on a major disparity between the value of the assets and the legal income of the accused. If such a disparity is established, burden of proof is shifted to the accused regarding the assets' legitimate origin, making the system comparable to non-conviction based confiscation (section 76a para 4 Criminal Code, section 437 Code of Criminal Procedure).

Victim compensation has been fundamentally reformed, the new model guarantees consistent and fair compensation for all injured parties while at the same time unburdening courts and prosecutors by moving victim compensation to the stage of enforcement proceedings (sections 111i, 111n Code of Criminal Procedure, section 459 h et seq. Code of Criminal Procedure).

International cooperation

The Act on International Legal Assistance in Criminal Matters (*Gesetz über die international Rechtshilfe in Strafsachen* - IRG) governs how and under what preconditions support may be provided to criminal proceedings in another country. It forms the basis for the field of mutual legal assistance.

Germany is a signatory to the important multilateral agreements which are designed to facilitate cross-border asset recovery. Relevant in this regard are primarily Conventions of the European Union, of the Council of Europe (e.g. the European Convention on Legal Assistance in Criminal Matters with its additional protocols, Convention on Laundering, Search, Seizure and Confiscation of the Proceeds of Crime, and the Criminal Law Convention on Corruption) and the United Nations (e.g. UNCAC and UNTOC). These are complemented by various bilateral agreements (please cf. SACL for first review cycle).

Pursuant to German legal rules, however, performance of mutual legal assistance is also possible without an existing international law agreement. In its non-treaty-based assistance with a large number of states, Germany also has good and trusting cooperation in sanctioning and preventing criminal offences. Section 59 of the IRG is a broadly-framed provision which enables investigative acts for tracing assets; in principle, this is allowed in the same scope as the mutual legal assistance which German courts or authorities could provide to one another. In addition to the IRG, the provisions of general German criminal procedure law apply to acts of mutual legal assistance. Within that context, measures to trace assets are possible even if there is merely an initial suspicion; this means that there are adequate factual indications that allow the conclusion that an offence has been committed. The requirements needing to be met for MLA to be granted are, inter alia, laid out in the [Step by Step Guide on Requesting Mutual Legal Assistance in Criminal Matters from G8 Countries](https://www.unodc.org/documents/terrorism/Handbook_on_Criminal_Justice_Responses_to_Terrorism_en.pdf) <https://www.unodc.org/documents/terrorism/Handbook_on_Criminal_Justice_Responses_to_Terrorism_en.pdf>, in the [Step by Step Guide on Requesting Mutual Legal Assistance in Criminal Matters from G20 Countries](http://www.bmjv.de/SharedDocs/Downloads/EN/G20/Requesting%20Mutual%20Legal%20Assistance%20in%20Criminal%20Matters%20from%20G20%20Countries%20-%20A%20step-by-step%20guide.pdf) <<http://www.bmjv.de/SharedDocs/Downloads/EN/G20/Requesting%20Mutual%20Legal%20Assistance%20in%20Criminal%20Matters%20from%20G20%20Countries%20-%20A%20step-by-step%20guide.pdf>> as well as in 'UNODCs Mutual Legal Assistance Request Writer Tool <<http://www.unodc.org/mla/index.html>>.

With the Federal Office of Justice and the Federal Criminal Police Office,

Germany has established two asset recovery offices which can provide information to domestic and foreign authorities and, due to the special skills and experience of those officials, can facilitate and effectively promote cooperation. Coordination takes place through an expert meeting of the heads of the asset recovery offices at the Criminal Police Offices of the Länder, the Federal Police Headquarters, the Central Customs Authority and the BKA.

As designated central authority, the Federal Office of Justice cooperates and communicates with its foreign counterparts. Direct communication and consultations between practitioners are possible if necessary and useful in the specific circumstances of a case. The German FIU also shares information with its foreign counterparts. The sharing of tax information is regulated by a great number of bilateral treaties. Contact points have been designated to StAR, the Interpol Asset Recovery Focal Point Initiative, the Camden Asset Recovery Network (CARIN), and the network of asset recovery offices. Germany has also designated an Asset Recovery Office within the EU framework. At EUROPOL level, the Anti- Money Laundering Operational Network (AMON) meets annually. For the first time in 2017, there was also a meeting of all participants of the Analysis Project (AP) Sustrans.

Germany provides technical assistance by organizing workshops for practitioners in foreign countries and participating in bilateral and multilateral conferences on asset recovery. Germany established a guide to asset recovery and provided for translations into other languages (<http://star.worldbank.org/star/document/asset-recovery-under-german-law-english> - please note that the reform of asset recovery is not yet included in the brochure). On the bilateral level, Germany has supported capacity building for national authorities, which are responsible for asset recovering. For example, Germany provides technical assistance to the anticorruption agency of Bangladesh to develop its capacity for anti-money-laundering and has long-term bilateral anti-corruption programs in Indonesia and Kenya. The latter program addresses the entire law enforcement chain with the goal to enhance the capabilities of state and non-state actors to effectively fight corruption and other misuse of power. The project has recently been redesigned on the basis of the recommendations of the UNCAC review of the 1st cycle. Furthermore, Germany is supporting the judiciary through technical assistance in a number of developing countries.

In addition, German Development Cooperation is putting increased emphasis on the fight against illicit financial flows. The Global Programme on Combatting Illicit Financial Flows was commissioned in 2015 and is running currently with 5 million Euros for three years. Through regional hubs in Latin America, Africa and the West Balkan, the program is supporting its partners in their efforts to counter tax evasion and avoidance, to fight money laundering and to strengthen law enforcement and mutual legal assistance. In collaboration with the German Ministry for Justice and Consumer Protection, these activities are to be expanded to the MENA region to meet its need for enhanced capacities in the area of asset recovery.

The fight against illicit financial flows also requires policy coherence. Therefore, the German government is actively working on this at national level through an inter-ministerial dialogue on illicit financial flows. Involved German ministries such

as the Ministry of Finance, the Foreign Office, the Ministry of Interior, the Ministry of Justice and Consumer Protection, the Ministry for Economic Affairs and Energy and the Ministry for Economic Cooperation and Development meet regularly and exchange views on this subject.

Procedural aspects

Special units have been integrated into the police structures of the Federation and the Länder to cover responsibilities in the field of asset forfeiture. The officers in these units have been provided with several weeks of special training covering both legal and tactical aspects. These special units generally act at the request of the police unit responsible for investigating the specific crime.

The support given by the specialist units for asset investigations/forfeiture functions according to the following procedure:

Once the public prosecutor has launched proceedings, e.g. relating to the giving or receiving of bribes, and the relevant police unit has been entrusted with investigating the case, the special unit for asset investigation/forfeiture in the police organisation is brought on board.

In coordination with the relevant prosecutor's office, investigations into the assets of the relevant suspects are carried out with a view to identifying both incriminated and legal assets. To this end, use is made of the following sources of information:

- identification of bank accounts
- evaluation of monies coming into and leaving the accounts
- identification of real estate, vehicles, shareholdings
- survey of foreign assets via the networks of the ARO (Asset Recovery Office pursuant to EU Decision 2007/845/JHA of 6 December 2007) and CARIN (Camden Asset Recovery InterAgency Network)

Once the assets have been identified, calculations are made of the amount of the assets which the offender(s) has or have obtained as a result of the crime, taking into account the findings of the criminal investigations. Under German law, it is also possible to estimate the assets (Section 73d Criminal Code).

In consensus with the prosecutor's office, decisions on seizure (of incriminated assets) or attachment orders (for legal assets) are drafted. The execution of the court decisions on movable assets can be undertaken by the police on behalf of the prosecutors' offices. The attachment of claims (bank accounts, yields from loans, life insurance contracts, etc.) and the production of applications for the entry of mortgage attachments in the land register is undertaken by the prosecutors' offices.

This asset identification procedure is usually followed in all cases in which

offenders or third parties have gained assets from the crime.

Asset recovery also takes place within the procedural framework of the Customs Investigation Service and is interdisciplinary. Each Customs Office has set up a special work area for recovery of assets.

Further, please cf. answer to Article 46 in SACL for first review cycle.

CODE OF CRIMINAL PROCEDURE

Section 111i Insolvency proceedings

(1) Where at least one aggrieved person has become entitled, by the offence, to a claim to compensation of the value of the object obtained, and where insolvency proceedings are opened with regard to the assets of the debtor of the attachment, the collateral mortgage pursuant to section 111h (1) established with regard to the object or to the proceeds attained by its realisation shall expire as soon as this becomes part of the estate under administration. The collateral mortgage shall not expire for objects situate in a state in which the opening of the insolvency proceedings is not recognised. Sentences 1 and 2 shall apply *mutatis mutandis* to the lien on the collateral mortgage lodged pursuant to pursuant to section 111g (1).

(2) If there are several aggrieved persons and the value of the object secured by the collateral mortgage established by the enforcement of the attachment, or the proceeds attained by its realisation, does not suffice to satisfy the claims of the aggrieved persons for compensation of the value of the object obtained, to which they have become entitled by the offence and which they have asserted vis-à-vis the public prosecutor's office, then the public prosecutor's office shall file a request to open insolvency proceedings regarding the assets of the debtor of the attachment. The public prosecutor's office shall refrain from filing a request to open insolvency proceedings if there is reason to doubt that the insolvency proceedings will be opened by reason of the request.

(3) Where a surplus remains following the final distribution, the state shall acquire a lien up to the amount of the attached assets over the debtor's claim to surrender of such surplus. The insolvency administrator is to surrender the surplus to the public prosecutor's office in that scope.

Section 111n Surrender of movable objects

(1) Where a movable object that has been seized or otherwise secured pursuant to section 94, or that has been seized pursuant to section 111c (1), is no longer required for purposes of the criminal proceedings, it shall be surrendered to the last person having custody over it.

(2) In derogation from subsection (1), the object shall be surrendered to the aggrieved person who has been deprived of it by the crime, if that person is

known.

(3) If the claim of a third party contravenes the surrender to the last person having custody over the object or to the aggrieved person, the object shall be surrendered to the third party if that third party is known. Such surrender shall take place only if the pre-requisites therefor are common knowledge.

Section 422 **Separation of confiscation proceedings**

Were the process of obtaining a decision on the confiscation pursuant to sections 73 to 73c of the Criminal Code to inappropriately impair or delay the decision on the other legal consequences of the offence, the court may separate the confiscation proceedings from the other proceedings. Regardless of the status reached in the proceedings, the court may order that the confiscation proceedings once again become part of them.

Section 423 **Confiscation following the separation**

(1) Should the court separate the confiscation proceedings from the other proceedings pursuant to section 422, it shall take the decision on the confiscation once the judgment in the main action has become final. The court shall be bound by the decision handed down in the main action and by the facts as found by it, on which such decision is based.

(2) The decision as to confiscation shall be taken no later than six months after the judgment in the main action has become final.

(3) The court shall decide by order. The decision may be challenged by an immediate appeal.

(4) In derogation from subsection (3), the court may order that the decision is to be handed down as a judgment based on a hearing for oral argument. The court must issue the order pursuant to the first sentence if the public prosecutor's office or the party against whom the confiscation is directed files a corresponding request. Sections 324 and 427 to 431 shall apply *mutatis mutandis*; the regulations governing the main hearing shall have supplemental application *mutatis mutandis*.

Section 459h **Compensation of the aggrieved person**

(1) An object confiscated pursuant to sections 73 to 73b of the Criminal Code shall be restituted to the aggrieved person, who has become entitled to a claim to return of the object obtained, or to his successor in title. The same shall apply if the object has been confiscated pursuant to section 76a (1) of the Criminal Code, also read in conjunction with section 76a (3) of the Criminal Code. In the cases governed by section 75 (1), second sentence, of the Criminal Code, the object confiscated shall be surrendered to the aggrieved person or to his successor in title provided he has filed his right with the enforcement authority in due time.

(2) Where the court has ordered the confiscation of the equivalent value pursuant to sections 73c and 76a (1), first sentence, of the Criminal Code, also

read in conjunction with section 76a (3) of the Criminal Code, then the proceeds attained by the realisation of the objects seized as per the attachment of assets or the confiscation order shall be disbursed to the aggrieved person, who has become entitled to a claim to return of the object obtained by the offence, or to his successor in title. Section 111i shall apply *mutatis mutandis*.

CRIMINAL CODE

Section 73a

Expanded confiscation of the proceeds of offences from principal and secondary participants

(1) Where an unlawful act has been committed, the court shall order the confiscation of objects of the principal or secondary participant also in those cases in which the objects were obtained by other unlawful acts or for such acts.

(2) Where the principal or secondary participant was involved in some other unlawful act prior to the confiscation having been ordered pursuant to subsection (1) and where a decision is to be taken once again regarding the confiscation of his objects, the court shall take account, in so doing, of the order already issued.

Section 76a

Independent confiscation

[...]

(4) An object originating from an unlawful act, which has been seized in proceedings brought for the suspicion of a crime having been committed that is listed in the third sentence hereof, is to be confiscated independently also in those cases in which it is impossible to prosecute or sentence for the crime the person affected by the confiscation. Where the confiscation of an object is ordered, title to the property or the right shall devolve to the state once the order becomes final; section 75 (3) shall apply *mutatis mutandis*. Crimes within the meaning of the first sentence are the following:

1. Under the present Code:

- a) Preparation of a serious violent offence endangering the state pursuant to section 89a and financing of terrorism pursuant to section 89c subsections (1) to (4),
- b) Forming criminal organisations pursuant to section 129 (1) and forming terrorist organisations pursuant to section 129a subsections (1), (2), (4), (5), in each case also read in conjunction with section 129b (1),
- c) Controlling prostitution pursuant to section 181a (1), also read in conjunction with subsection (3),
- d) Distribution, acquisition, and possession of child pornography in the cases governed by section 184b (2),
- e) Human trafficking, forced prostitution, and forced labour professionally organised as a commercial undertaking by a crime gang pursuant to sections 232 to 232b as well as human trafficking organised by a crime gang for the purpose of work exploitation and exploitation while taking advantage of an unlawful deprivation of liberty pursuant to sections 233 and

- 233a,
- f) Money laundering; hiding unlawfully obtained financial benefits pursuant to section 261 subsections 1, 2 and 4,
2. Under the Fiscal Code:
 - a) Tax evasion subject to the pre-requisites set out in section 370 (3) number 5,
 - b) Professional, violent or organised smuggling pursuant to section 373,
 - c) Receiving, holding or selling goods obtained by tax evasion in the case of section 374 (2),
 3. Under the Asylum Act:
 - a) Incitement to submit fraudulent applications for asylum pursuant to section 84 (3),
 - b) Commercial and organised incitement to submit fraudulent applications for asylum pursuant to section 84a,
 4. Under the Residence Act:
 - a) Smuggling of foreigners into the federal territory pursuant to section 96 (2),
 - b) Smuggling of foreigners into the federal territory resulting in death as well as smuggling for gain and as organised gangs pursuant to section 97,
 5. Under the Foreign Trade and Payments Act:
Crimes intentionally committed as set out in sections 17 and 18,
 6. Under the Narcotics Act:
 - a) Crimes as defined by a regulation included by reference in section 29 (3), second sentence, number 1, subject to the pre-requisites set out therein,
 - b) Crimes pursuant to sections 29a, 30 (1) numbers 1, 2 and 4 as well as pursuant to sections 30a and 30b,
 7. Under the Act on the Control of Weapons of War:
 - a) Crimes pursuant to section 19 subsections (1) to (3) and section 20 subsections (1) and (2), as well as section 20a subsections (1) to (3), in each case also read in conjunction with section 21,
 - b) Crimes pursuant to section 22a subsections (1) to (3),
 8. Under the Weapons Act:
 - a) Crimes pursuant to section 51 subsections (1) to (3),
 - b) Crimes pursuant to section 52 (1) numbers 1 and 2 letters c and d as well as subsections (5) and (6).

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

German authorities provide mutual legal assistance in several thousand criminal proceedings per year that are conducted by foreign criminal prosecution authorities. No statistical records are kept in this regard.

Germany established a guide to asset recovery and provided for translations into other languages (<http://star.worldbank.org/star/document/asset-recovery-under-german-law-english>) - please note that the reform of asset recovery is not yet included in the brochure).

Example for technical assistance:

Combating illicit financial flows, project by the Federal Ministry for Economic

Cooperation and Development

The objective of the project is to improve conditions for the inter-sectorial, inter-state and inter-regional fight against illicit financial flows, both within and out of developing and emerging countries, at sector, national and regional levels. For details and results, see <https://www.giz.de/en/worldwide/39748.html>

Example for inclusion of civil society:

Transparency International Germany and the Friedrich Ebert Foundation organize a biennial joint seminar on "Prosecuting corruption", which brings together representatives from judicial practice, legal policy and academia. The seminar last took place in 2016 and focused on the reform of asset recovery, the Act to Combat Corruption (see response to question 8) and the liability of legal persons for corruption offences. The Federal Ministry of Justice and Consumer Protection was represented and engaged in dialogue regarding the reform of asset recovery.

226. Technical Assistance

The following questions on technical assistance relate to the article under review in its entirety.

Please outline actions required to ensure or improve the implementation of the article under review and describe any specific challenges you might be facing in this respect.

Do you require technical assistance for the implementation of this article? If so, please specify the forms of technical assistance that would be required. For example:

(NO) No assistance would be required

Is any technical assistance already being provided to you? If so, please provide a general description of the nature of the assistance, including donor information.

52. Prevention and detection of transfers of proceeds of crime

227. Paragraph 1 of article 52

1. Without prejudice to article 14 of this Convention, each State Party shall take such measures as may be necessary, in accordance with its domestic law, to require financial institutions within its jurisdiction to verify the identity of customers, to take reasonable steps to determine the identity of beneficial owners of funds deposited into high-value accounts and to conduct enhanced scrutiny of accounts sought or maintained by or on behalf of individuals who are, or have been, entrusted with prominent public functions and their family members and close associates. Such enhanced scrutiny shall be reasonably designed to detect suspicious transactions for the purpose of reporting to competent authorities and should not be so construed as to discourage or prohibit financial institutions from doing business with any legitimate customer.

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Please cf. answers to questions under Article 14.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

Please cf. answers to questions under Article 14.

228. Subparagraph 2 (a) of article 52

2. In order to facilitate implementation of the measures provided for in paragraph 1 of this article, each State Party, in accordance with its domestic law and inspired by relevant initiatives of regional, interregional and multilateral organizations against money-laundering, shall:

(a) Issue advisories regarding the types of natural or legal person to whose accounts financial institutions within its jurisdiction will be expected to apply enhanced scrutiny, the types of accounts and transactions to which to pay particular attention and appropriate account-opening, maintenance and record-keeping measures to take concerning such accounts; and

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Pursuant to section 15(2) of the Money Laundering Act, obliged entities have to fulfil stricter due diligence obligations if they determine, as part of a risk analysis or in an individual case, taking into account the risk factors specified in annexes 1 and 2 to the Money Laundering Act, that a higher risk of money laundering or terrorist financing may exist. The obliged entities must specify the precise scope of the measures to be adopted in accordance with the respective higher risk of money laundering or terrorist financing.

Pursuant to section 15(3) of the Money Laundering Act, a higher risk shall be deemed to exist in particular where

1. the contracting party of the obliged entity or the beneficial owner is
 - a. a politically exposed person, a family member or a person known to be a close associate, or
 - b. a natural or legal person located in one of the third countries identified by the European Commission as having a high risk pursuant to Article 9 of Directive (EU) 2015/849;
2. the transaction in question, in relation to comparable cases,
 - a) is particularly complex or large,
 - b) proceeds in an unusual manner or
 - c) takes place without any apparent economic or lawful purpose, or
3. the financial institutions or financial companies are in a cross-border correspondent banking relationship with respondent institutions established in a third country or, subject to an assessment by the obliged entities as a higher risk, in a country of the European Economic Area.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

N/A

229. Subparagraph 2 (b) of article 52

2. In order to facilitate implementation of the measures provided for in paragraph 1 of this article, each State Party, in accordance with its domestic law and inspired by relevant initiatives of regional, interregional and multilateral organizations against money-laundering, shall:

...

(b) Where appropriate, notify financial institutions within its jurisdiction, at the request of another State Party or on its own initiative, of the identity of particular natural or legal persons to whose accounts such institutions will be expected to apply enhanced scrutiny, in addition to those whom the financial institutions may otherwise identify.

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Please cf. answers to questions under Article 14.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

N/A

230. Paragraph 3 of article 52

3. In the context of paragraph 2 (a) of this article, each State Party shall implement measures to ensure that its financial institutions maintain adequate records, over an appropriate period of time, of accounts and transactions involving the persons mentioned in paragraph 1 of this article, which should, as a minimum, contain information relating to the identity of the customer as well as, as far as possible, of the beneficial owner.

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Please cf. answers to questions under Article 14.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

Please cf. answers to questions under Article 14.

231. Paragraph 4 of article 52

4. With the aim of preventing and detecting transfers of proceeds of offences established in accordance with this Convention, each State Party shall implement appropriate and effective measures to prevent, with the help of its regulatory and oversight bodies, the establishment of banks that have no physical presence and that are not affiliated with a regulated financial group. Moreover, States Parties may consider requiring their financial institutions to refuse to enter into or continue a correspondent banking relationship with such institutions and to guard against establishing relations with foreign financial institutions that permit their accounts to be used by banks that have no physical presence and that are not affiliated with a regulated financial group.

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Pursuant to section 25m of the German Banking Act (*Kreditwesengesetz*), the following are prohibited:

1. the establishment or maintenance of a correspondent banking relationship or any other business relationship with a shell bank as defined in section 1(22) of the Money Laundering Act and
2. the setting-up and management of these types of accounts in the name of the institution or on behalf of third-party institutions, where the customers of the institution or of the third-party institutions can operate the accounts independently for the purpose of conducting their own transactions.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

N/A

232. Paragraph 5 of article 52

5. Each State Party shall consider establishing, in accordance with its domestic law, effective financial disclosure systems for appropriate public officials and shall provide for appropriate sanctions for non-compliance. Each State Party shall also consider taking such measures as may be necessary to permit its competent authorities to share that information with the competent authorities in other States Parties when necessary to investigate, claim and recover proceeds of offences established in accordance with this Convention.

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

a) Members of the Federal Parliament (*Deutscher Bundestag*)

Disclosure of remunerated side activities and other outside ties with respect to Members of Parliament (MPs) is governed by Sections 44a and 44b of the Members of the Bundestag Act (*Abgeordnetengesetz* - 1977, most recently amended 2017) and the Code of Conduct for Members of the Bundestag in Annex 1 of the Rules of Procedure of the German Bundestag (*Geschäftsordnung des Deutschen Bundestages: Anlage 1: Verhaltensregeln für Mitglieder des Deutschen Bundestages* - 1986, most recently amended 2014) and Implementing Provisions to the Code of Conduct issued by the President of the Bundestag pursuant to Rule 1(4) of the Code of Conduct (*Ausführungsbestimmungen zu den Verhaltensregeln für Mitglieder des Deutschen Bundestages* - 2013).

In the beginning of an electoral term all MPs receive information on their disclosure obligations (a brochure with information about subjects to declare to the President of the Bundestag). Along with the brochure further information is handed out depending on whether or not the MP has been elected for the first time or reelected:

- MPs elected the first time receive an additional form by which they declare potential conflicts of interests according to the provisions of the Code of Conduct. They are obliged to submit the completed form within three months.
- Reelected MPs receive an extract of Bundestag's database on declarations pursuant to Rule 3 of the Code of Conduct. They are compelled to either correct or include information or to simply sign and send it back within three months.

Further information on disclosure obligations of MPs is provided for via the

Bundestag's administrative service by telephone or email, on the website and the intranet of the Bundestag. According to Rule 7 of the Code of Conduct MPs are entitled and obliged to ask for advice in cases of doubt regarding the scope of their obligations under the Code of Conduct. Dedicated counsellors in Bundestag's administrative services provide such advice in a detailed manner.

Officials of Bundestag's Administrative Services check if submitted declarations are complete. If the information given is incomplete or ambiguous they notify the MP concerned and pursue clarification. Eventually, submitted information subjected to publication pursuant to Rule 3 of the Code of Conduct is published. If there are sufficient indications that the duty to submit a correct and complete declaration within the relevant deadline has not been complied with, the President of the Bundestag, according to Rule 8 of the Code of Conduct, will prompt a statement from the MP concerned and then set in motion an investigation of the case. In doing so the President of the Bundestag is informed and assisted by the aforementioned counsellors.

The focus of disclosure is primarily on business activities and potential conflicts of interests regarding positions held. Nevertheless received gifts, donations and sponsored travels are to be declared, too. Namely:

- Interests held in a private corporation or partnership, if this results in more than 25 percent of the voting rights, have to be declared (Rule 1(2) no. 6 of the Code of Conduct in conjunction with No. 7 para. 2 of the Implementing Provisions).
- Assets and Liabilities are not required to be declared.
- Income: According to Rule 1(2) no. 1 of the Code of Conduct, remunerated activities must be declared. Income has to be declared if it exceeds € 1,000 per month or € 10,000 per year (Rule 1(3) of the Code of Conduct).
- Occupations in expert opinions and writing or lecturing activities have to be declared only if the income agreed upon exceeds € 1,000 per month or € 10,000 per year (Rule 1(2) no. 1 of the Code of Conduct). In this case income has to be declared, too (Rule 1(3) of the Code of Conduct).
- Activities as a member
 - of a board of management, supervisory board, administrative board, advisory board or other body of a company or of an enterprise operated in another legal form (Rule 1(2) no. 2 of the Code of Conduct),
 - of a board of management, supervisory board, administrative board, advisory board or other body of a corporation or institution

under public law (Rule 1(2) no. 3 of the Code of Conduct),

- of a board of management or other managerial or advisory body of a club, association or similar organisation, or of a foundation of not exclusively local importance (Rule 1(2) no. 4 of the Code of Conduct)

must be declared regardless of whether the activity is remunerated or not. If the activity in question is remunerated, income has to be declared if it exceeds € 1,000 per month or € 10,000 per year (Rule 1(3) of the Code of Conduct).

- The existence or making of agreements whereby the Member of the Bundestag is to be assigned certain activities or receive pecuniary benefits during or after membership of the Bundestag (Rule 1(2) no. 5 of the Code of Conduct) must be declared regardless of whether the activity is remunerated or not. If the activity in question is remunerated, income has to be declared if it exceeds € 1,000 per month or € 10,000 per year (Rule 1(3) of the Code of Conduct).
- Gifts received by MPs as a guest or host in connection with their mandate have to be notified and handed to the President of the Bundestag if their material value exceeds € 200. Members may apply to retain the gift in exchange for equivalent reimbursement to the Federal Cash Office (Rule 4(6) of the Code of Conduct, No. 11 of the Implementing Provisions).
- Donations to support political activities of MPs (including campaign contributions) must be declared if the value of the benefit individually exceeds € 5,000 or if individual donors' benefits fall short of this threshold but exceed it in total within a year (Rule 4(1), 4(2) of the Code of Conduct). If the aggregated value of donations exceeds € 10,000 the declarations are published pursuant to Rule 4(3) of the Code of Conduct.
- Gifts of pecuniary value by third parties to support the political activity of MPs (benefits) received in connection with
 - interparliamentary or international activities or participation in events to state the viewpoints of the Bundestag (Rule 4(5) no. 1 of the Code of Conduct) or
 - participation in events for the purpose of imparting political information, presenting the positions of the German Bundestag or of its parliamentary groups or representing the German Bundestag (Rule 4(5) no. 2 of the Code of Conduct,

such as reimbursements of travel, accommodation and subsistence expenses, must be declared (i.e. name and address of third party sponsor, value) if the value of the benefit individually exceeds € 5,000 or if individual

donors' benefits fall short of this threshold but exceed it in total within a year (Rule 4(5) in conjunction with Rule 4(2) of the Code of Conduct). If the aggregated value of donations exceeds € 10,000 the declarations are published pursuant to Rule 4(5) in conjunction with Rule 4(3) of the Code of Conduct.

- Private gifts are exempt from declaration.

For the exercise of his or her mandate, a Member of the Bundestag may not accept any allowance or other pecuniary benefit besides those which the law provides for. In particular gifts which are only granted in the expectation that the interests of the donor will be represented and asserted in the Bundestag must not be accepted (Section 44a(2) of the Members of the Bundestag Act). Likewise donations for their political activity evidently made in the expectation of, or in return for, some specific financial or political advantage must not be accepted (Rule 4(4) of the Code of Conduct in connection with Section 25(2) of the Political Parties Act).

In cases where Ministers are also MPs, they are subject to the same provisions as MPs.

Public accessibility of disclosed information:

Pursuant to Section 44a(4) of the Members of the Bundestag Act in conjunction with Rule 3 of the Code of Conduct, declared information is publicly available. The information subjected to publication by the Code of Conduct is published in the Official Handbook and on the website of *Deutscher Bundestag*, <http://www.bundestag.de/en/members>.

Public access to information concerning disclosure system functioning

Citizens are enabled to obtain public records by the Freedom of Information Act (Informationsfreiheitsgesetz 2005, most recently amended 2013). As Rule 3 of the Code of Conduct sets the boundaries for publicly available information, such entitlement is restricted correspondingly.

Admonishments, which are issued by the President of the Bundestag in less serious cases, or cases of minor negligence (e.g. failure to declare information in due time), are exempt from publication. In more severe cases of non-compliance a statement by the Presidium of the Bundestag stating that the MP concerned has failed to meet his or her duties by the Code of Conduct is published. The Presidium may as well decide to impose a coercive fine (Rule 8 of the Code of Conduct).

b) Members of the Federal Government

Relevant provisions are contained in the Act governing the legal status of the members of the Federal Government (*Bundesministergesetz* 1953, most recent amendment: 2015; <http://www.gesetze-im-internet.de/bundesrecht/bming/gesamt.pdf>).

Type of information disclosed:

- **Positions and Incomes:** Members of the Federal Government may not hold any paid outside positions. Exemptions can be made by the Federal Government in limited exceptional cases.
Since 25 July 2015, new legal provisions, regulating cooling-off periods for members of the Federal Government, as well as for Parliamentary State Secretaries, are in force. The purpose of the Act is to avoid conflict of interest and to protect the trust of the general public in the integrity of the Federal Government by avoiding an outward impression that the administration of these office holders is biased by the expectation of subsequent career opportunities, and by precluding these office holders from privately benefitting from knowledge gained in office after the termination of such office. The Act provides that incumbent and former members of the Federal Government, as well as Parliamentary State Secretaries, who intend to take any occupation outside the public service within a period of 18 months after the termination of office, have to declare this to the Federal Government. The employment or other occupation may be prohibited if, by taking it, public interests may be negatively affected. As a rule, the duration of such prohibition should not exceed one year; in exceptional cases, such duration may extend up to 18 months. The Federal Government would take its decision upon recommendation of a consultative body, whose members had been in functions at the top of state institutions or non-governmental organizations, or who have gained experience from holding an important political office. If the taking of the intended occupation is prohibited, the affected person has a right to a transitional allowance for at least the duration of the cooling off period.
- **Gifts:** Members of the Federal Government have to declare gifts received in relation to their office to the Federal Government. The Federal Government decides on the disposal of the gifts.

c) Civil Servants

Relevant provisions are contained in the Federal Civil Service Act (2009, most recent amendment 2015) as well as in the Administrative Procedure Act (1976, most recent amendment 2003) and the Federal Government Directive Concerning the Prevention of Corruption in the Federal Administration including the Anti-Corruption Code of Conduct annexed to the Directive (2004).

When taking the oath of office or agreeing to abide by the requirements of their position, staff members shall be informed of the risk of corruption (including conflict of interests) and the consequences of corrupt behavior. In addition, all staff members should be given an anti-corruption code of conduct, which provides inter alia for disclosure requirements in cases of possible conflict of interests. Staff members working in or transferred to areas especially vulnerable to corruption are given additional, job-specific instruction at regular intervals.

Type of information disclosed:

- **Properties, Investment and Liabilities, Incomes, Gifts and Travel:** If a civil servant recognizes, given a specific official task, that his/her obligations and private interests or the interests of third parties to whom he/ she feels obliged might come into conflict, the public official is under a duty to inform his/her supervisor so that he/she may respond appropriately (e. g. by releasing the public official from activities in a specific instance); such obligations and interests can include properties, investments, liabilities, incomes, gifts and travels.
- **Positions and Income:** Civil servants may only take up outside activities with prior approval of their office. When seeking approval, civil servants have to declare the income to be received from the outside activities; in addition, civil servants have to declare any changes in their income from outside activities. The requirement for reporting and/or a permission to accept secondary employment is thoroughly regulated in sections 97 to 105 of the Act on Federal Public Servants (*Bundesbeamtengesetz*) and the Ordinance on Secondary Employment (*Nebentätigkeitsverordnung*), both applying to federal public servants, and in the Act on the Status of Public Servants (*Beamtenstatusgesetz*) and Länder legislation for public servants of the states (*Länder*). In case of a conflict of interest, staff may be prohibited from specific secondary employment.
- **Gifts:** Civil servants are prohibited from accepting gifts or any other in-kind advantages, irrespective of their value. If they should receive a gift, civil servants have to immediately notify the head of their office and declare the receipt of the gift.

Disclosed information is not publicly accessible.

The disclosure requirements for civil servants apply *mutatis mutandis* to members of the judiciary.

MEMBERS OF THE BUNDESTAG ACT (ABGEORDNETENGESETZ)

Section 44a

Exercise of the mandate

- (1) The exercise of the mandate of a Member of the Bundestag shall be central to his or her activity. Without prejudice to this obligation, activities of a professional or other nature alongside the exercise of the mandate are permissible in principle.
- (2) For the exercise of his or her mandate, a Member of the Bundestag may not accept any consideration besides those for which the law provides or any other pecuniary benefit. In particular, it is inadmissible to accept money

or allowances with monetary value which are only granted in the expectation that the interests of the payer will be represented and asserted in the Bundestag. It is also inadmissible for a Member of the Bundestag to accept money or allowances with monetary value if he or she does not render an appropriate service in return. The foregoing provisions shall be without prejudice to the receipt of donations.

- (3) Considerations or pecuniary benefits which are inadmissible under paragraph 2 above or their monetary equivalent shall be payable to the federal budget. The President shall assert this entitlement by means of an administrative act, provided that a period of three years has not elapsed since the receipt of the consideration or pecuniary benefit. Loss of membership of the Bundestag shall not affect this entitlement. Details shall be regulated in the Code of Conduct pursuant to section 44b of this Act.
- (4) Activities predating the acceptance of the mandate and activities concurrent with the exercise of the mandate which may indicate combinations of interests with implications for the exercise of the said mandate shall be disclosed and published in accordance with the Code of Conduct (section 44b). If disclosable activities or income are not reported, the Presidium may impose an administrative penalty of up to half of the annual Member's remuneration. The President shall affirm the penalty by means of an administrative act. The foregoing provisions shall be without prejudice to section 31 of the present Act. Details shall be regulated in the Code of Conduct pursuant to section 44b of this Act.
- (5) In the case of a non-minor breach of order or failure to respect the dignity of the Bundestag during its sittings, the President may impose a fine of 1,000 euros on a Member of the Bundestag. Any repetition shall result in an increase in the fine to 2,000 euros. In the case of a serious breach of order or failure to respect the dignity of the Bundestag, a Member may be ordered to leave the Chamber for the remainder of the sitting and suspended from taking part in sittings of the Bundestag and meetings of its bodies for up to 30 sitting days. Details shall be regulated in the Rules of Procedure of the Bundestag.

Section 44b Code of Conduct

The Bundestag shall lay down its own Code of Conduct, which must include provisions relating to

1. cases in which there is an obligation to disclose activities pursued prior to membership of the Bundestag and activities pursued concurrently with the exercise of the mandate;
2. cases where there is a duty to disclose the type and amount of income where a specified minimum amount is exceeded;
3. the duty to keep separate account and disclose donations where specified minimum amounts are exceeded;
4. the publication of particulars in the Official Handbook and on the Internet;
5. procedure, as well as the rights and duties of the Presidium and President, in respect of decisions under section 44a(3) and (4) of this Act.

Please find the Code of Conduct for Members of the Bundestag as well as the Implementing Provisions attached.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

Admonishments are being issued as a matter of routine. As such information is exempt from disclosure, there are no statistics on this issue. The latest statement indicating that a Member of the Bundestag has neglected his duties under the Members of the Bundestag Act has been published as a printed paper on April 11th, 2017 (BT-Drs. 18/11920).

233. Paragraph 6 of article 52

6. Each State Party shall consider taking such measures as may be necessary, in accordance with its domestic law, to require appropriate public officials having an interest in or signature or other authority over a financial account in a foreign country to report that relationship to appropriate authorities and to maintain appropriate records related to such accounts. Such measures shall also provide for appropriate sanctions for non-compliance.

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

During the preparations for the ratification of the Convention, consideration was given to introducing a corresponding requirement for public officials. The outcome of these deliberations was that no use is to be made of the provisions of Article 52 paragraph 6.

In terms of national law, German tax authorities are obliged to report suspected cases of bribery to public prosecutor's offices. The detection of suspected bribery payments during tax audits triggers a large number of the criminal investigations conducted by public prosecutor's offices.

In 2014, the Federal Republic of Germany committed itself to the automatic exchange of financial account information by signing the Multilateral Competent Authority Agreement for the Common Reporting Standard (CRS). The first exchange of information for the 2016 reporting period began on 30 September 2017. The multilateral agreement came about largely as the result of Germany's initiative. By now, over 100 countries have committed themselves to the CRS. The national implementation of the agreement was carried out by means of the Act on the Automatic Exchange of Financial Account Information in Tax Matters (*Finanzkonten-Informationsaustauschgesetz*, or FKAustG).

German reporting financial institutions are obliged to collect the data listed in the [FKAustG <http://www.gesetze-im-internet.de/fkaustg/index.html>](http://www.gesetze-im-internet.de/fkaustg/index.html) (in German) for every reporting account, as of the beginning of the 2016 calendar year. They are obliged to send this data, or have this data sent by a third-party provider, in officially defined data sets to the Federal Central Tax Office (BZSt) - which was defined as the competent authority - by 31 July of the following calendar year. The data that is to be reported by the financial institutions to the Federal Central Tax Office includes:

- Date and place of birth
- Address
- Account number
- The name and identifying number of the reporting German financial institution
- Account balance or value as of the end of the relevant calendar year

- In the case of custodial accounts, the total gross amount of interest, the total gross amount of dividends, and the total gross amount of other income generated with respect to the assets held in the account, and credited to the account
- In the case of depository accounts, the total gross amount of interest that was paid or credited to the account
- In the case of all other types of account, the total gross amount paid or credited to the account holder with respect to the account and with respect to which the reporting German financial institution is the obligor or debtor. The aggregate amount of any redemption payments made during the reporting period is to be included.
- In the case of custodial accounts, the total gross proceeds from the sale or redemption of financial assets paid or credited to the account with respect to which the German financial institution acted as a custodian, broker, nominee, or otherwise as an agent for the account holder

The submitted data are forwarded by the BZSt to the CRS partner countries by 30 September of the calendar year following the calendar year to which the data refer.

In return, the BZSt receives data from the CRS partner countries regarding the foreign reporting accounts whose holders are persons who are tax residents of Germany. The information is forwarded to the responsible revenue authorities of the *Länder*, who are responsible for carrying out the taxation procedure.

A reporting German financial institution as defined in the FKAustG is a

- financial institution established in Germany (but not its branches located abroad)
- as well as branches of a financial institution established in a foreign country that are located in Germany.

A financial institution is defined as an institution which is active in the Federal Republic of Germany as

- a custodial institution (e.g. a bank that administers a customer's securities account),
- a depository institution (e.g. a bank that manages current or savings accounts on behalf of its customers),
- an investment entity (e.g. investment funds) or
- a specified insurance company (e.g. companies that sell life insurance policies).

The financial information that must be reported includes various types of investment income (including interest, dividends, income from certain insurance contracts and other similar income), as well as account balances and proceeds from the sale of financial assets.

Reportable accounts include the accounts of reportable natural persons and legal persons (including trusts and foundations). The standard also includes the obligation to check passive entities and, where appropriate, provide notification of the natural persons who exercise ultimate effective control over these entities.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

Given that the first exchange for the 2016 reporting period will take place on 30 September 2017, it is not yet possible to provide any examples of implementation measures.

234. Technical Assistance

The following questions on technical assistance relate to the article under review in its entirety.

Please outline actions required to ensure or improve the implementation of the article under review and describe any specific challenges you might be facing in this respect.

Do you require technical assistance for the implementation of this article? If so, please specify the forms of technical assistance that would be required. For example:

(NO) No assistance would be required

Is any technical assistance already being provided to you? If so, please provide a general description of the nature of the assistance, including donor information.

53. Measures for direct recovery of property

235. Subparagraph (a) of article 53

Each State Party shall, in accordance with its domestic law:

(a) Take such measures as may be necessary to permit another State Party to initiate civil action in its courts to establish title to or ownership of property acquired through the commission of an offence established in accordance with this Convention;

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Under German law, states - like other legal persons - have legal capacity and thus have the capacity to be parties to court proceedings within the meaning of section 50 of the Code of Civil Procedure [Zivilprozessordnung, ZPO]. Foreign legal persons with legal capacity under their own country's law are entitled to assert their claims before German civil courts.

Code of Civil Procedure

Section 50 (Capacity to be a party to court proceedings)

(1) Any person having legal capacity shall also have the capacity of being a party to court proceedings.

(2) An association having no legal capacity may sue and be sued; in a legal dispute, the association shall have the same position as an association having legal capacity.

In addition, please cf. answer to Art. 53, subparagraph (b)

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

The capacity of states to be parties to court proceedings is consistent with the rulings of the Federal Court of Justice.

(see for example Urteil vom 13. Juli 1972 - III ZR 29/70, NJW 1972, 1862).

236. Subparagraph (b) of article 53

Each State Party shall, in accordance with its domestic law:

...

(b) Take such measures as may be necessary to permit its courts to order those who have committed offences established in accordance with this Convention to pay compensation or damages to another State Party that has been harmed by such offences; and

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Independently of involvement of the criminal prosecution authorities, every person, including a legal person, damaged by a criminal offence is free to take action under civil law, e.g., to assert claims for payment of compensation for damages incurred due to a criminal offence committed by the defendant. Assets that have been taken from public funds due to a criminal offence may, pursuant to section 823 (2) Civil Code (*Bürgerliches Gesetzbuch/BGB*) in conjunction with a statute intended to protect another person, for example breach of trust pursuant to section 266 Criminal Code, be returned as compensation for damages. For the substantive law requirements for compensation, please cf. answer to Art. 35 (question 140 of SACL for first review cycle; https://www.unodc.org/documents/treaties/UNCAC/SA-Report/2016_09_27_Germany_SACL.pdf).

The injured person must lay out the facts of the case to the court; the court does not investigate *ex officio*. As such, the injured person is primarily responsible for substantiating the case and providing evidence as to whether and which incriminated assets exist, or how other damages were incurred by way of a criminal offence.

Therefore, suing possible criminal offenders or holders of illicit assets under civil law offers the advantage that the injured person is in control of the proceedings and may assert his claims personally and directly. The German courts specifically have jurisdiction if the defendant has his usual place of residence or permanent residence in Germany. Under certain preconditions, pursuant to section 23 of the Code of Civil Procedure (*Zivilprozessordnung - ZPO*), the German court in whose district the assets of the defendant are located has jurisdiction. Claims of more than €5,000 require representation before the court by an attorney.

As soon as an enforceable judgment has been obtained from the court, the plaintiff can initiate compulsory execution. However, execution within Germany presupposes that assets of the defendant are located there. If the plaintiff fears that the defendant will move his assets to an undisclosed location in the course of the civil proceeding and therefore prevent a future execution, he may move for

seizure by way of injunctive relief pursuant to sections 916 et seq. ZPO. Claims to seizure (section 916 et seq. ZPO) and injunctions (section 935 et seq. ZPO) may be issued if a claim and a reason for such measures can be substantiated. The latter means that a showing of special urgency is necessary because otherwise the claims are in danger of being thwarted.

Only a summary hearing takes place; this is based on the currently available facts. In this proceeding, the moving party is obligated to substantiate its claim. In contrast to criminal proceedings, the court does not investigate *ex officio*.

Code of Civil Procedure

Section 23

Specific jurisdiction of assets and of an object

For complaints under property law brought against a person who has no place of residence in Germany, that court shall be competent in the jurisdiction of which assets belonging to that person are located, or in the jurisdiction of which the object being laid claim to under the action is located. Where claims are concerned, the debtor's place of residence and, in cases in which an object is liable for the claims as collateral, the place at which the object is located shall be deemed to be the location at which the assets are located.

Section 916

Claim to seizure

- (1) Seizure is a remedy serving to secure compulsory enforcement against movable or immovable property for a monetary claim or a claim that may evolve to become a monetary claim.
- (2) The admissibility of a seizure is not ruled out by the fact that the claim is subject to conditions or has a fixed maturity date, unless the claim so subject to conditions does not have any current asset value in light of the remote possibility of the condition in fact occurring.

Section 917

Grounds for a writ of seizure to be issued in the case of seizure against the assets of a potential debtor

- (1) Seizure is an available remedy wherever there is the concern that without a writ of pre-judgment seizure being issued, the enforcement of the judgment would be frustrated or be significantly more difficult.
- (2) It is to be deemed sufficient grounds for a writ of seizure to be issued if the judgment would have to be enforced abroad and reciprocity has not been granted. No grounds for a writ of seizure need be given if the seizure is being implemented solely by way of securing the compulsory enforcement against a ship.

Section 918

Grounds for a writ of seizure to be issued in the case of a debtor being arrested in person

Arresting a debtor in person is an available remedy only if this is required in order to ensure compulsory enforcement against the property of the debtor when such compulsory enforcement is at risk.

Section 919
Court responsible for the seizure

Both the court before which the main action is being pursued as well as the local court (Amtsgericht, AG) in the district of which the object to be seized or the person whose personal liberty is to be limited are situate or resident shall be responsible for issuing the writ of seizure.

Section 920
Request for writ of seizure

- (1) The request is to set out the designation of the claim, specifying the amount of money or the monetary value, as well as the grounds for a writ of seizure to be issued.
- (2) The claim and the grounds for a writ of seizure to be issued are to be demonstrated to the satisfaction of the court.
- (3) The request may be recorded with the registry for the files of the court.

Section 921
Decision regarding the request for a writ of seizure

Insofar as the claim or the grounds for a writ of seizure to be issued have not been demonstrated to its satisfaction, the court may issue a writ of seizure, provided that security is provided for the disadvantages that the opponent risks suffering. The court may make the issuance of the writ of seizure dependent on security being provided even if the claim and the reasons for a writ of seizure to be issued have been demonstrated satisfactorily.

Section 922
Judgment ordering seizure and order of seizure

- (1) The decision regarding the request shall be delivered by a final judgment if the matter is dealt with in a hearing for oral argument, and in all other cases by a court order. Where a decision ordering the seizure is to be enforced abroad, the decision is to cite the reasons on which it is based.
- (2) The party that has obtained the court order of seizure is to have that order served.
- (3) The court order dismissing the request for a writ of seizure or declaring that security must first be provided shall not be communicated to the opponent.

Section 923
Authorisation to avert enforcement

The writ of seizure is to determine an amount of money that, if lodged, will

suspend the enforcement of the seizure and will entitle the debtor to file a petition for the enforced seizure to be set aside.

Section 924 Opposition

- (1) Filing an opposition against the court order directing the seizure is an available remedy.
- (2) In its opposition, the party filing it is to demonstrate the grounds that it intends to assert in order for the seizure to be set aside. The court is to schedule a hearing for oral argument ex officio. Where the court responsible for the seizure is a local court (Amtsgericht, AG), the opposition shall be lodged in writing, or it is to be recorded with the registry for the files of the court, citing the grounds that are to be asserted as the basis on which the seizure is to be set aside.
- (3) Lodging an opposition will not suspend the enforcement of the seizure. However, the court may issue an interim order pursuant to section 707; section 707 (1), second sentence, shall not be applied.

Section 925 Decision following an opposition having been lodged

- 1) In cases in which an opposition is lodged, a final judgment is to decide on whether or not the seizure is lawful.
- (2) The court may confirm the seizure as a whole or in part, may modify or repeal it, and may also make the confirmation, modification, or repeal dependent on security being provided.

Section 926 Order as to proceedings having to be brought in the courts

- (1) If the main action is not pending, the court responsible for the seizure is to order, upon corresponding application being made and without holding a hearing for oral argument, that the party having obtained the writ of seizure is to bring proceedings in the courts within a period to be determined.
- (2) Should this order not be complied with and a corresponding application be made, the seizure is to be set aside in a final judgment.

Section 927 Seizure set aside due to a change in circumstances

- (1) Also after the seizure has been confirmed, a petition may be filed for it to be set aside due to a change in circumstances, in particular because the reasons for the writ of seizure to be issued have been conclusively dealt with, or because an offer has been made to provide security.
- (2) The decision is to be delivered by a final judgment; it shall be issued by the court ordering the seizure and, where the main action is pending, by the court before which the main action is being pursued.

Section 928
Enforcement of the seizure

The rules governing compulsory enforcement shall apply mutatis mutandis to the enforcement of the seizure unless otherwise provided for by the sections hereinbelow.

Section 929
Court certificate of enforceability; enforcement period

- (1) A writ of seizure shall require a court certificate of enforceability only if it is to be enforced for a different creditor than the creditor designated in the writ of seizure, or against a different debtor than the debtor designated in the writ of seizure.
- (2) The enforcement of the writ of seizure is no longer an available remedy if one (1) month has lapsed since the date on which the writ of seizure was issued or on which it was served on the party at the request of which it was issued.
- (3) The enforcement may admissibly be pursued prior to the writ of seizure being served on the debtor. However, it shall be without effect if the writ of seizure is not served within one (1) week following the enforcement and prior to the expiry of the period determined for same in the preceding subsection.

Section 930
Enforcement against movable property and receivables

- (1) The seizure of movable property is enforced by attachment. The attachment shall be implemented in accordance with the same principles as any other attachment; it creates a security right having the effects set out in section 804. The court responsible for the seizure shall have jurisdiction, as execution court, for the attachment of receivables.
- (2) Any money that has been attached, and any amount of the proceeds accruing to the creditor in the course of the proceedings for the distribution of assets available for creditors, will be lodged.
- (3) The court responsible for execution may direct, upon corresponding application being made, that a movable asset of a physical nature be sold at auction if it is subject to the risk of a significant loss of value or if its storage would entail unreasonable costs, and that the proceeds be lodged.
- (4) Enforcing seizure against an unregistered ocean-going vessel is inadmissible where the vessel is travelling and not lying at harbour.

[...]

Section 935
Injunction regarding the subject matter of the litigation

Injunctions regarding the subject matter of the litigation are an available

remedy given the concern that a change of the status quo might frustrate the realisation of the right enjoyed by a party, or might make its realisation significantly more difficult.

Section 936
Application of the rules governing arrest

The rules regarding the order of writs of seizure and regarding the attachment procedure shall apply mutatis mutandis to the order of injunctions and the further procedure, unless the following sections set out deviating rules.

Civil Code (Bürgerliches Gesetzbuch/BGB)

Section 823
Liability in damages

(1) A person who, intentionally or negligently, unlawfully injures the life, body, health, freedom, property or another right of another person is liable to make compensation to the other party for the damage arising from this.

(2) The same duty is held by a person who commits a breach of a statute that is intended to protect another person. If, according to the contents of the statute, it may also be breached without fault, then liability to compensation only exists in the case of fault.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

The requirements for civil law claims for damages are laid out in the guide to asset recovery available at <http://star.worldbank.org/star/resource/asset-recovery-under-german-law-english>.

No statistical records are kept in this regard.

237. Subparagraph (c) of article 53

Each State Party shall, in accordance with its domestic law:

...

(c) Take such measures as may be necessary to permit its courts or competent authorities, when having to decide on confiscation, to recognize another State Party's claim as a legitimate owner of property acquired through the commission of an offence established in accordance with this Convention.

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Under the reformed confiscation of proceeds of crime legislation, assets can be confiscated irrespective of claims by injured parties (Section 73 para 1 Criminal Code).

Any injured party, including a state, can then claim victim compensation during enforcement proceedings by registering their claim at the public prosecution office under reference to the criminal court judgment that determines their status as injured party as well as the damage incurred; a civil law title or special judicial admission are not required.

In addition, please cf. answer to Art. 57.

Criminal Code

Section 73

Confiscation of the proceeds of offences from principal and secondary participants

(1) Where the principal or secondary participant has obtained something by an unlawful act or for such an unlawful act, the court shall order its confiscation.

(2) Where the principal or secondary participant has derived benefits from what was obtained, the court shall also order their confiscation.

(3) The court may order confiscation of objects that the principal or secondary participant has acquired

1. By the sale of the object obtained or as compensation for its destruction, damage, or seizure, or

2. On the basis of a right obtained.

Code of Criminal Procedure

Section 111i

Insolvency proceedings

(1) Where at least one aggrieved person has become entitled, by the offence, to a claim to compensation of the value of the object obtained, and where insolvency proceedings are opened with regard to the assets of the debtor of the attachment, the collateral mortgage pursuant to section 111h (1) established with regard to the object or to the proceeds attained by its realisation shall expire as soon as this becomes part of the estate under administration. The collateral mortgage shall not expire for objects situate in a state in which the opening of the insolvency proceedings is not recognised. Sentences 1 and 2 shall apply *mutatis mutandis* to the lien on the collateral mortgage lodged pursuant to pursuant to section 111g (1).

(2) If there are several aggrieved persons and the value of the object secured by the collateral mortgage established by the enforcement of the attachment, or the proceeds attained by its realisation, does not suffice to satisfy the claims of the aggrieved persons for compensation of the value of the object obtained, to which they have become entitled by the offence and which they have asserted vis-à-vis the public prosecutor's office, then the public prosecutor's office shall file a request to open insolvency proceedings regarding the assets of the debtor of the attachment. The public prosecutor's office shall refrain from filing a request to open insolvency proceedings if there is reason to doubt that the insolvency proceedings will be opened by reason of the request.

(3) Where a surplus remains following the final distribution, the state shall acquire a lien up to the amount of the attached assets over the debtor's claim to surrender of such surplus. The insolvency administrator is to surrender the surplus to the public prosecutor's office in that scope.

Section 111n

Surrender of movable objects

(1) Where a movable object that has been seized or otherwise secured pursuant to section 94, or that has been seized pursuant to section 111c (1), is no longer required for purposes of the criminal proceedings, it shall be surrendered to the last person having custody over it.

(2) In derogation from subsection (1), the object shall be surrendered to the aggrieved person who has been deprived of it by the crime, if that person is known.

(3) If the claim of a third party contravenes the surrender to the last person having custody over the object or to the aggrieved person, the object shall be surrendered to the third party if that third party is known. Such surrender shall take place only if the pre-requisites therefor are common knowledge.

Section 459h

Compensation of the aggrieved person

(1) An object confiscated pursuant to sections 73 to 73b of the Criminal Code shall be restituted to the aggrieved person, who has become entitled to a claim to return of the object obtained, or to his successor in title. The same shall apply if

the object has been confiscated pursuant to section 76a (1) of the Criminal Code, also read in conjunction with section 76a (3) of the Criminal Code. In the cases governed by section 75 (1), second sentence, of the Criminal Code, the object confiscated shall be surrendered to the aggrieved person or to his successor in title provided he has filed his right with the enforcement authority in due time.

(2) Where the court has ordered the confiscation of the equivalent value pursuant to sections 73c and 76a (1), first sentence, of the Criminal Code, also read in conjunction with section 76a (3) of the Criminal Code, then the proceeds attained by the realisation of the objects seized as per the attachment of assets or the confiscation order shall be disbursed to the aggrieved person, who has become entitled to a claim to return of the object obtained by the offence, or to his successor in title. Section 111i shall apply *mutatis mutandis*.

Section 459j
Procedure for
restitution and surrender

(1) The aggrieved person or his successor in title is to file with the enforcement authority his claim to restitution or to surrender pursuant to section 459h (1) within six months of having been notified that the confiscation order has become final.

(2) Where the entitlement of the claimant filing the request is immediately evident from the confiscation order and the determinations underlying it, the object confiscated shall be restituted or surrendered to the claimant filing the request. In all other cases, this shall require permission by the court. The court shall permit the restitution or surrender subject to the provisions set out in section 459h (1) hereof. Such permission is to be refused if the claimant filing the request fails to provide satisfactory evidence of his being entitled to the claim; section 294 of the Code of Civil Procedure is to have application.

(3) Prior to taking the decision on the restitution or surrender, that party is to be heard against whom the order of confiscation is directed. This shall apply only if there is the prospect of that hearing said party will be possible.

(4) In the event of non-adherence to the period set out in subsection (1), first sentence, *restitutio in integrum* shall be granted, subject to the pre-requisites designated in sections 44 and 45 hereof.

(5) Notwithstanding the procedure stipulated by subsection (1), the aggrieved person or his successor in title may assert his claim to restitution or surrender pursuant to section 459h (1) by submitting an enforceable final judgment within the meaning of section 704 of the Code of Civil Procedure, or some other enforceable legal document within the meaning of section 794 of the Code of Civil Procedure, from which the claim being asserted is evident.

Section 459k
Procedure for the disbursement of the realisation proceeds

(1) The aggrieved person or his successor in title is to file with the enforcement authority his claim to disbursement of the realisation proceeds pursuant to section 459h (2) within six months of having been notified that the confiscation order has become final. The request is to set out the amount of the claim.

(2) Where the entitlement of the claimant filing the request and the amount of the claim are immediately evident from the confiscation order and the determinations underlying it, the proceeds of realisation shall be disbursed in that scope to the claimant filing the request. In all other cases, this shall require permission by the court. The court shall permit the disbursement of the realisation proceeds subject to the provisions set out in section 459h (2) hereof. Such permission is to be refused if the claimant filing the request fails to provide satisfactory evidence of his being entitled to the claim; section 294 of the Code of Civil Procedure is to have application.

(3) Prior to taking the decision on the disbursement, that party is to be heard against whom the order of confiscation is directed. This shall apply only if there is the prospect of that hearing said party will be possible.

(4) In the event of non-adherence to the period set out in subsection (1), first sentence, *restitutio in integrum* shall be granted, subject to the pre-requisites designated in sections 44 and 45 hereof.

(5) Notwithstanding the procedure stipulated by subsection (1), the aggrieved person or his successor in title may assert his claim to disbursement of the realisation proceeds pursuant to section 459h (2) by submitting an enforceable final judgment within the meaning of section 704 of the Code of Civil Procedure, or some other enforceable legal document within the meaning of section 794 of the Code of Civil Procedure, from which the claim being asserted is evident. Enforceable legal documents under public law for receivables in money that have become final shall be equivalent to an enforceable final judgment within the meaning of section 704 of the Code of Civil Procedure.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

No statistical records are kept in this regard.

238. Technical Assistance

The following questions on technical assistance relate to the article under review in its entirety.

Please outline actions required to ensure or improve the implementation of the article under review and describe any specific challenges you might be facing in this respect.

Do you require technical assistance for the implementation of this article? If so, please specify the forms of technical assistance that would be required. For example:

(NO) No assistance would be required

Is any technical assistance already being provided to you? If so, please provide a general description of the nature of the assistance, including donor information.

54. Mechanisms for recovery of property through international cooperation in confiscation

239. Subparagraph 1 (a) of article 54

1. Each State Party, in order to provide mutual legal assistance pursuant to article 55 of this Convention with respect to property acquired through or involved in the commission of an offence established in accordance with this Convention, shall, in accordance with its domestic law:

(a) Take such measures as may be necessary to permit its competent authorities to give effect to an order of confiscation issued by a court of another State Party;

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

According to sections 48 and 49 of the German Act on International Cooperation in Criminal Matters (IRG), assistance for criminal proceedings may be provided through enforcement of a penalty or any other sanction imposed with final and binding force in a foreign country. In cases of confiscation, assistance can only be provided, inter alia, where such an order could have been made according to German law. For detailed requirements, please cf. section 49 below.

Act on International Cooperation in Criminal Matters

Section 48 Principle

For criminal proceedings assistance may be provided through enforcement of a penalty or any other sanction imposed with final and binding force in a foreign country. Part IV of this Law shall also apply to requests for the enforcement of an order for confiscation, made by a court exercising other than criminal jurisdiction in the requesting State if the order is based on a punishable offence.

Section 49 Additional Prerequisites for Admissibility of Assistance

- (1) The enforcement shall not be admissible unless
1. a competent authority of the foreign State submitting the complete, legally binding and enforceable decision has requested it;
 2. in the proceedings on which the foreign decision is based the convicted person had an opportunity to be heard and to present an adequate defence, and the sanction has been imposed by an independent court or, in the case of a fine, was imposed by an authority whose decision may be appealed to an independent court;
 3. under German law notwithstanding possible procedural obstacles and, as

appropriate mutatis mutandis,

(a) a criminal penalty, measure of rehabilitation and incapacitation or a regulatory fine could have been imposed in respect of the offence on which the foreign judgment is based or,

(b) where enforcement of an order for confiscation is requested, such an order could have been made;

4. no decision of the kind mentioned in s. 9 no. 1 has been made, unless the enforcement of an order for confiscation is requested and such an order could be made independently under s. 76a of the Strafgesetzbuch;

5. the statute of limitations for the enforcement under German law has not lapsed or would not have lapsed mutatis mutandis; the above notwithstanding the enforcement of an order for confiscation shall be admissible if

a) German criminal law does not apply to the offence on which the order is based or

b) such an order could be made mutatis mutandis by analogous application of s. 76a(2) no. 1 of the Strafgesetzbuch.

(2) If a custodial sanction has been imposed in a foreign State and the convicted person is located there, enforcement shall not be admitted unless the convicted person, after having been advised, consented and his consent was entered into the record of a court in the requesting State or the consent was declared before a German consular career official empowered to certify legally relevant declarations. The consent cannot be revoked.

[...]

(4) If German law does not recognise any type of sanction corresponding to the sanction imposed in the foreign State, enforcement shall not be admissible.

(5) If in the foreign order for confiscation a decision has been made concerning the rights of third parties, it shall be binding unless

a) the third party had not been given sufficient opportunity to defend their rights, or

b) the decision is incompatible with a German civil court decision issued in the same matter or

c) the decision relates to third party rights to real estate located on German territory or to a real estate rights; third party rights shall also include priority notices.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

No statistical records are kept in this regard.

240. Subparagraph 1 (b) of article 54

1. Each State Party, in order to provide mutual legal assistance pursuant to article 55 of this Convention with respect to property acquired through or involved in the commission of an offence established in accordance with this Convention, shall, in accordance with its domestic law:

...

(b) Take such measures as may be necessary to permit its competent authorities, where they have jurisdiction, to order the confiscation of such property of foreign origin by adjudication of an offence of money-laundering or such other offence as may be within its jurisdiction or by other procedures authorized under its domestic law; and

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Under German law, a court has to issue a confiscation order if any property was acquired through or involved in a criminal offence.

The offence of money laundering also explicitly covers objects which originate from predicate offences committed abroad (section 261(8) of the Criminal Code [Strafgesetzbuch, StGB]). These objects may be confiscated (section 261(7) Criminal Code).

Criminal Code

Section 261

Money laundering; hiding unlawfully obtained financial benefits

- (1) Whosoever hides an object which is a proceed of an unlawful act listed in the 2nd sentence below, conceals its origin or obstructs or endangers the investigation of its origin, its being found, its confiscation or its being officially secured shall be liable to imprisonment from three months to five years. Unlawful acts within the meaning of the 1st sentence shall be
1. felonies;
 2. misdemeanours under
 - (a) Sections 108e, 332 (1) and (3) as well as section 334, also in conjunction with section 335a,
 - (b) Section 29 (1) 1st sentence No 1 of the Drugs Act and section 19 (1) No 1 of the Drug Precursors (Control) Act;
 3. misdemeanours under section 373 and under section 374 (2) of the Fiscal Code, and also in conjunction with section 12 (1) of the Common Market Organisations and Direct Payments (Implementation) Act;
 4. misdemeanours
 - (a) under section 152a, section 181a, section 232 (1) to (3), 1st sentence and (4), section 232a (1) and (2), section 232b (1) and (2), section

233 (1) to (3), section 233a (1) and (2), section 242, section 246, section 253, section 259, sections 263 to 264, section 265 c, section 266, section 267, section 269, section 271, section 284, section 299, section 326 (1), (2) and (4), section 328 (1), (2) and (4) and section 348;

(b) under section 96 of the Residence Act and section 84 of the Asylum Procedure Act and section 370 of the Fiscal Code, section 38(1) to (4) of the Securities Trading Act as well as sections 143, 143a and 144 of the Act on the Protection of Trade Marks and other Symbols, 106 to 108b of the Act on Copyright and Related Rights, 25 of the Utility Models Act, 51 and 65 of the Design Act, 142 of the Patent Act, 10 of the Semiconductor Protection Act and 39 of the Plant Variety Rights (Protection) Act. which were committed on a commercial basis or by a member of a gang whose purpose is the continued commission of such offences; and

5. misdemeanours under section 89a and under section 129 and section 129a (3) and (5), all of which also in conjunction with section 129b (1), as well as misdemeanours committed by a member of a criminal or terrorist organisation (section 129 and section 129a, all of which also in conjunction with section 129b (1)).

The 1st sentence shall apply in cases of tax evasion committed on a commercial basis or as a gang under section 370 of the Fiscal Code, to expenditure saved by virtue of the tax evasion, of unlawfully acquired tax repayments and allowances, and in cases under the 2nd sentence no 3 the 1st sentence shall also apply to an object in relation to which fiscal charges have been evaded.

[...]

(7) Objects to which the offence relates may be subject to a confiscation order. Section 74a shall apply.

(8) Objects which are proceeds from an offence listed in subsection (1) above committed abroad shall be equivalent to the objects indicated in subsections (1), (2) and (5) above if the offence is also punishable at the place of its commission.

(9) Whosoever

1. voluntarily reports the offence to the competent public authority or voluntarily causes such a report to be made, unless the act had already been discovered in whole or in part at the time and the offender knew this or could reasonably have known and
2. in cases under subsections (1) or (2) above under the conditions named in No 1 above causes the object to which the offence relates to be officially secured

shall not be liable under subsections (1) to (5) above. Whosoever is liable because of his participation in the antecedent act shall not be liable under subsections (1) to (5) above, either. [...]

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

N/A

241. Subparagraph 1 (c) of article 54

1. Each State Party, in order to provide mutual legal assistance pursuant to article 55 of this Convention with respect to property acquired through or involved in the commission of an offence established in accordance with this Convention, shall, in accordance with its domestic law:

...

(c) Consider taking such measures as may be necessary to allow confiscation of such property without a criminal conviction in cases in which the offender cannot be prosecuted by reason of death, flight or absence or in other appropriate cases.

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Under the new confiscation legislation, the scope of non-conviction based confiscation has been extended, which broadens the possibilities of German authorities to seek or execute mutual legal assistance related to such proceedings. Confiscation of proceeds of crime shall be ordered if it is impossible to prosecute or sentence a person for the crime. Confiscation can thus be ordered in cases of death, flight, or unfitness to stand trial (section 76a para 1 Criminal Code). It is also possible to confiscate the proceeds of an offence which has become statute barred and for which therefore no conviction can be obtained (section 76a para 2 Criminal Code).

In addition, according to section 76a para 4 Criminal Code, proceeds can be confiscated without a conviction if they have been seized in proceedings brought for the suspicion of organized crime (under section 76 a para 4, 3rd sentence). In such cases, the court needs only be satisfied that the proceeds are of a criminal origin; no proof of a specific offence is necessary. The court may base its conviction of the criminal origin of the proceeds on circumstantial evidence including a major disparity between the value of the seized assets and the legal income of the defendant (section 76a para 4 Criminal Code, section 437 Code of Criminal Procedure). The procedural provision governing independent confiscation in proceedings brought for the suspicion of organized crime provides indicators the court may take into account when forming its conviction as to the whether the object originates from an unlawful act (section 437 Code of Criminal Procedure).

In 2017, the Act on International Cooperation in Criminal Matters was amended in order to introduce the principle of mutual recognition as the general basis for cooperation between Member States of the EU in the field of mutual legal assistance.

Criminal Code

Section 76a Independent confiscation

(1) If it is impossible to prosecute or sentence a certain person for the crime, the court shall independently order the confiscation of the object or that the object be rendered unusable, provided that, in all other regards, the pre-requisites are given subject to which the measure is stipulated by law. Where confiscation is permissible, the court may independently order it subject to the pre-requisites set out in the first sentence. The confiscation shall not be ordered if there has been no request to prosecute, authorisation to prosecute, or request to prosecute by a foreign state, or if a decision with regard to said confiscation has already been taken and become final.

(2) Subject to the pre-requisites stipulated by sections 73, 73b, and 73c, it shall be permissible for the court to independently order the confiscation of the proceeds of offences and to independently confiscate the value of the proceeds of offences also in those cases in which the prosecution of the crime has become statute-barred. Subject to the pre-requisites stipulated by sections 74b and 74d, the same shall apply to instances in which the court independently orders an object to be confiscated by way of security or that it be rendered unusable, or in which it independently orders documents to be confiscated.

(3) Subsection (1) is to be applied also if the court refrains from meting out punishment or if the proceedings are withdrawn based on a regulation that allows this to be done, as the public prosecutor's office or the court may decide at its discretion, or as they may decide by mutual consent.

(4) An object originating from an unlawful act, which has been seized in proceedings brought for the suspicion of a crime having been committed that is listed in the third sentence hereof, is to be confiscated independently also in those cases in which it is impossible to prosecute or sentence for the crime the person affected by the confiscation. Where the confiscation of an object is ordered, title to the property or the right shall devolve to the state once the order becomes final; section 75 (3) shall apply *mutatis mutandis*. Crimes within the meaning of the first sentence are the following:

1. Under the present Code:

- a) Preparation of a serious violent offence endangering the state pursuant to section 89a and financing of terrorism pursuant to section 89c subsections (1) to (4),
- b) Forming criminal organisations pursuant to section 129 (1) and forming terrorist organisations pursuant to section 129a subsections (1), (2), (4), (5), in each case also read in conjunction with section 129b (1),
- c) Controlling prostitution pursuant to section 181a (1), also read in conjunction with subsection (3),
- d) Distribution, acquisition, and possession of child pornography in the cases governed by section 184b (2),
- e) Human trafficking, forced prostitution, and forced labour professionally organised as a commercial undertaking by a crime gang pursuant to sections 232 to 232b as well as human trafficking organised by a crime gang for the purpose of work exploitation and exploitation while taking advantage of an unlawful deprivation of liberty pursuant to sections 233 and 233a,

- f) Money laundering; hiding unlawfully obtained financial benefits pursuant to section 261 subsections 1, 2 and 4,
- 2. Under the Fiscal Code:
 - a) Tax evasion subject to the pre-requisites set out in section 370 (3) number 5,
 - b) Professional, violent or organised smuggling pursuant to section 373,
 - c) Receiving, holding or selling goods obtained by tax evasion in the case of section 374 (2),
- 3. Under the Asylum Act:
 - a) Incitement to submit fraudulent applications for asylum pursuant to section 84 (3),
 - b) Commercial and organised incitement to submit fraudulent applications for asylum pursuant to section 84a,
- 4. Under the Residence Act:
 - a) Smuggling of foreigners into the federal territory pursuant to section 96 (2),
 - b) Smuggling of foreigners into the federal territory resulting in death as well as smuggling for gain and as organised gangs pursuant to section 97,
- 5. Under the Foreign Trade and Payments Act:

Crimes intentionally committed as set out in sections 17 and 18,
- 6. Under the Narcotics Act:
 - a) Crimes as defined by a regulation included by reference in section 29 (3), second sentence, number 1, subject to the pre-requisites set out therein,
 - b) Crimes pursuant to sections 29a, 30 (1) numbers 1, 2 and 4 as well as pursuant to sections 30a and 30b,
- 7. Under the Act on the Control of Weapons of War:
 - a) Crimes pursuant to section 19 subsections (1) to (3) and section 20 subsections (1) and (2), as well as section 20a subsections (1) to (3), in each case also read in conjunction with section 21,
 - b) Crimes pursuant to section 22a subsections (1) to (3),
- 8. Under the Weapons Act:
 - a) Crimes pursuant to section 51 subsections (1) to (3),
 - b) Crimes pursuant to section 52 (1) numbers 1 and 2 letters c and d as well as subsections (5) and (6).

Code of Criminal Procedure

Section 437

Special provisions governing independent confiscation proceedings

In taking the decision on independent confiscation pursuant to section 76a (4) of the Criminal Code, the court may base its conviction as to the object originating from an unlawful act in particular on any gross imbalance between the value of the object and the legal income of the person affected. Moreover, in taking its decision it may also take the following into account:

1. The result of the investigations of the offence giving rise to the proceedings;
2. The circumstances under which the object was found and secured; as well as
3. The other personal and economic circumstances of the person affected.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

As the new legislation entered into force on 1 July 2017, there are not yet any examples of implementation available.

242. Subparagraph 2 (a) of article 54

2. Each State Party, in order to provide mutual legal assistance upon a request made pursuant to paragraph 2 of article 55 of this Convention, shall, in accordance with its domestic law:

(a) Take such measures as may be necessary to permit its competent authorities to freeze or seize property upon a freezing or seizure order issued by a court or competent authority of a requesting State Party that provides a reasonable basis for the requested State Party to believe that there are sufficient grounds for taking such actions and that the property would eventually be subject to an order of confiscation for purposes of paragraph 1 (a) of this article;

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

According to section 111 b of the German Code of Criminal Procedure (in cases of MLA in conjunction with section 67 of the Act on International Cooperation in Criminal Matters), objects may be secured by seizure if there are grounds (=sufficient factual indications) to assume that the conditions for their forfeiture or for their confiscation have been fulfilled.

objects may be handed over at the request of another State as long as no pertinent final and enforceable foreign order for confiscation exists (ie in cases that do not fall under Article 57 subparagraphs 3 a) and b)): According to section 66 German Act on International Cooperation in Criminal Matters (IRG), at the request of a competent authority of a foreign State objects may be handed over which the person concerned or an accomplice have obtained for or through the offence on which the request is based; which the person concerned or an accomplice have obtained through the sale of such object or as a replacement for its being destroyed, damaged or taken away or on the basis of a right accrued to them or as usufruct or; which were created by or used or meant to be used in the commission or preparation of the offence on which the request is based.

According to section 66 paragraph 2 number 3, surrender shall not be admissible unless measures are in place to ensure that the rights of third parties will not be infringed and that objects handed over under a condition will be returned upon request without undue delay.

Section 58 paragraph 3 of the Act on International Cooperation in Criminal Matters (IRG) provides safeguarding measures in cases of a request for enforcement relating to an order for confiscation, or in cases of a request for preliminary measures in order to ensure enforcement through seizure.

Code of Criminal Procedure

Section 111b

(1) If there are grounds to assume that the conditions for confiscation or destroying an object or making it unusable have been fulfilled, it can be seized to secure execution of sentence. Section 94 subsection (3) shall remain unaffected.

(2) Sections 102 to 110 shall apply *mutatis mutandis*.

Act on International Cooperation in Criminal Matters

Section 58

Measures Safeguarding Enforcement

(...)

(3) If the request for enforcement relates to a fine, a regulatory fine or an order for confiscation, or if a competent authority of the requesting State has, with identification of the person sought, the offence on which the criminal proceedings are based and the time and place of its commission prior to receipt of such request, requested preliminary measures for the purpose of ensuring enforcement under ss. 111b to 111d of the Strafprozessordnung, s. 67(1) shall apply *mutatis mutandis*. For the purpose of the preparation of an order for confiscation in the requesting State, which may also relate to the monetary value, decisions under ss. 111b to 111d of the Strafprozessordnung may be issued if the conditions of s. 66(2) nos. 1 and 2 are fulfilled.

Section 66

Handing Over of Objects

(1) At the request of a competent authority of a foreign State objects may be handed over

1. which may serve as evidence in foreign proceedings or
2. which the person concerned or an accomplice have obtained for or through the offence on which the request is based,
3. which the person concerned or an accomplice have obtained through the sale of such object or as a replacement for its being destroyed, damaged or taken away or on the basis of a right accrued to them or as usufruct or
4. which were created by or used or meant to be used in the commission or preparation of the offence on which the request is based.

(2) Surrender shall not be admissible unless

1. the offence on which the request is based contains elements of the *actus reus* and *mens rea* of a criminal offence or of an offence permitting the imposition of a fine under German law or unless *mutatis mutandis* it would be such an offence under German law,

2. an order for seizure by a competent authority of the requesting State is submitted or a declaration of such an authority shows that the requirements for

seizure would exist if the objects were located in the requesting State and

3. measures are in place to ensure that the rights of third parties will not be infringed and that objects handed over under a condition will be returned upon request without undue delay.

(3) The handing over under subsection (1) nos. 2 to 4 above shall be admissible only as long as no pertinent final and enforceable foreign decision exists with regard to the above-mentioned objects.

(4) The public prosecution service at the Landgericht shall prepare the decision about the handing over and shall execute it if granted. The public prosecution service at the Landgericht in whose district the object is located shall have jurisdiction. S. 61(2) 2nd sentence shall apply mutatis mutandis.

Section 67 Search and Seizure

(1) Objects that may be considered for handing over to a foreign State may be seized or otherwise secured even prior to the receipt of the request for surrender. To this end, a search may be conducted.

(2) If the conditions specified in s. 66(1) no. 1 and (2) no. 1 apply, objects may also be seized or otherwise secured if necessary for the enforcement of a request which is not directed at the handing over of the objects. Subsection (1) 2nd sentence above shall apply mutatis mutandis.

(3) The Amtsgericht in whose district they are to be performed shall have jurisdiction to order the search and seizure. S. 61(2) 2nd sentence shall apply mutatis mutandis.

(4) If cases of emergency the public prosecution service or its agents (s. 152 of the Gerichtsverfassungsgesetz) may order the search and seizure.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

No statistical records are kept in this regard.

243. Subparagraph 2 (b) of article 54

2. Each State Party, in order to provide mutual legal assistance upon a request made pursuant to paragraph 2 of article 55 of this Convention, shall, in accordance with its domestic law:

...

(b) Take such measures as may be necessary to permit its competent authorities to freeze or seize property upon a request that provides a reasonable basis for the requested State Party to believe that there are sufficient grounds for taking such actions and that the property would eventually be subject to an order of confiscation for purposes of paragraph 1 (a) of this article; and

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Please cf. answer to paragraph 2 (a).

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

No statistical records are kept in this regard.

244. Subparagraph 2 (c) of article 54

2. Each State Party, in order to provide mutual legal assistance upon a request made pursuant to paragraph 2 of article 55 of this Convention, shall, in accordance with its domestic law:

...

(c) Consider taking additional measures to permit its competent authorities to preserve property for confiscation, such as on the basis of a foreign arrest or criminal charge related to the acquisition of such property.

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Please cf. answer to article 54 paragraph 2 subparagraph (a).

According to section 111 b of the German Code of Criminal Procedure, objects may be secured by seizure if there are grounds to assume that the conditions for their forfeiture or for their confiscation have been fulfilled.

If compelling reasons are present, ordering the provisional seizure of property (sections 111b et seqq. of the Code of Criminal Procedure) is the normal statutory procedure ("should"). For all other cases, section 111b grants the law enforcement authorities a wide margin of discretion ("can"). This differentiated approach provides the law enforcement authorities with flexibility in terms of seizure options - flexibility which is necessary in order to make appropriate decisions on a case-by-case basis. At the same time, it protects the persons concerned against overly hasty interference and disproportionate seizures in minor cases.

If there are grounds to assume that the conditions for confiscation of equivalent value have been fulfilled, attachment may be ordered in respect of the movable and immovable assets of the person concerned, for the purpose of securing the execution of sentence (section 111e et seq. Code of Criminal Procedure).

In addition, where an unlawful act has been committed, the court shall order the confiscation of objects of the principal or secondary participant also in those cases in which the objects were obtained by other unlawful acts or for such acts ("extended confiscation of the proceeds of offences", section 73a Criminal Code).

Subject to confiscation is anything invested in the illegal activity; expenses incurred by offenders do not have to be considered when confiscating assets and no plea invoking a loss of enrichment may be made. If, following the judgement, an offender is found to have previously undiscovered assets, these may be confiscated at a later stage.

Code of Criminal Procedure
Section 111 b

(1) If there are grounds to assume that the conditions for confiscation or destroying an object or making it unusable have been fulfilled, it can be seized to secure execution of sentence. Section 94 subsection (3) shall remain unaffected.

(2) Sections 102 to 110 shall apply *mutatis mutandis*.

Criminal Code

Section 73a

Extended confiscation of the proceeds of offences from principal and secondary participants

(1) Where an unlawful act has been committed, the court shall order the confiscation of objects of the principal or secondary participant also in those cases in which the objects were obtained by other unlawful acts or for such acts.

(2) Where the principal or secondary participant was involved in some other unlawful act prior to the confiscation having been ordered pursuant to subsection (1) and where a decision is to be taken once again regarding the confiscation of his objects, the court shall take account, in so doing, of the order already issued.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

No statistical records are kept in this regard.

245. Technical Assistance

The following questions on technical assistance relate to the article under review in its entirety.

Please outline actions required to ensure or improve the implementation of the article under review and describe any specific challenges you might be facing in this respect.

Do you require technical assistance for the implementation of this article? If so, please specify the forms of technical assistance that would be required. For example:

(NO) No assistance would be required

Is any technical assistance already being provided to you? If so, please provide a general description of the nature of the assistance, including donor information.

55. International cooperation for purposes of confiscation

246. Paragraph 1 of article 55

1. A State Party that has received a request from another State Party having jurisdiction over an offence established in accordance with this Convention for confiscation of proceeds of crime, property, equipment or other instrumentalities referred to in article 31, paragraph 1, of this Convention situated in its territory shall, to the greatest extent possible within its domestic legal system:

(a) Submit the request to its competent authorities for the purpose of obtaining an order of confiscation and, if such an order is granted, give effect to it; or

(b) Submit to its competent authorities, with a view to giving effect to it to the extent requested, an order of confiscation issued by a court in the territory of the requesting State Party in accordance with articles 31, paragraph 1, and 54, paragraph 1 (a), of this Convention insofar as it relates to proceeds of crime, property, equipment or other instrumentalities referred to in article 31, paragraph 1, situated in the territory of the requested State Party.

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

According to Number 19 and 20 of the Directive on the International Cooperation in Criminal Matters (RiVAST), a request for legal assistance being received by the performing authority shall immediately be submitted to the competent approval authority. Following the approval of the legal assistance, the request shall, as long as it has not been foreseen differently in the statute and treaty, be dealt with by the enforcing authority in accordance with the same provisions which would apply where the request had been submitted by a German authority.

Directive on the International Cooperation in Criminal Matters (RiVAST)

No 19

Decision on approval of legal assistance

(1) A request for legal assistance being received by the performing authority shall immediately be submitted to the competent approval authority.

(2) Where the approval authority intends to reject the request for legal assistance, it shall inform the highest justice and administrative authority, attaching also the request, and wait for its statement.

(3) Where the approval authority deems necessary that Oberlandesgericht (editor's note: Higher Regional Court) renders a decision on the admissibility of the legal assistance in accordance with § 61, par 1, sentence 2 IRG, it shall inform the highest justice and administrative authority, attaching also the request, and wait for its statement.

(4) Where the Oberlandesgericht decides to have a decision rendered by Federal Supreme Court (§ 61, par 1, sentence 4 i.V.m. § 21 IRG), the prosecution

office at the Oberlandesgericht transmits the documents immediately to the Federal Prosecution Office General; It shall simultaneously report to the superior authority.

(5) In the event of incoming requests, the violation of the provisions on the public legal duties or smuggling, the approval authority ensures the involvement of the tax and customs search services, unless the request is about delivery or enforcement legal assistance.

No 22 **Dealing with requests**

(1) Following the approval of the legal assistance, the request shall, as long as it has not been foreseen differently in the law and contract, be dealt with by the enforcing authority in accordance with the same provisions which would apply where the request had been submitted by a German authority; this applies also the coercive measures, which are indispensable for dealing with the request (§ 59 par. 3, § 77 IRG). Specific wishes of the requesting authority shall be met, as long as no binding provisions prohibit this.

(2) The accomplishment of legal assistance shall not as a rule start before the approval of the legal assistance. Exceptionally, the enforcing authority may accomplish the legal assistance before obtaining the approval in the event of imminent danger, where no reserves about granting the approval exist. Where the accomplishment of the legal assistance is done prior to obtaining the approval, the enforcing authority shall send the request and the accomplishment documents to the approval authority.

(3) Where in accordance with the German provisions the participants in the proceedings may be present in the course of investigation acts, presence shall be allowed by the enforcing authority also to the respective persons being involved in foreign proceedings. Permission to the foreign judges or officials to be present in their official capacity may be granted only after the consent of the competent authority (compare no 138, 139), as long as this is not granted in connection with certain states in general.

(4) Where appointments information is requested, the appointments have to be set in terms of time in such a way that the participants residing abroad can participate therein. In the appointments information report it shall be indicated that it is up to the requesting authority to inform the proceedings participants residing abroad.

(...)

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

No statistical records are kept in this regard.

The common practice is for the requesting State to be informed of the progress of the procedure, e.g. about the lodging of legal remedies or the legal force of the judicial decision etc.

247. Paragraph 2 of article 55

2. Following a request made by another State Party having jurisdiction over an offence established in accordance with this Convention, the requested State Party shall take measures to identify, trace and freeze or seize proceeds of crime, property, equipment or other instrumentalities referred to in article 31, paragraph 1, of this Convention for the purpose of eventual confiscation to be ordered either by the requesting State Party or, pursuant to a request under paragraph 1 of this article, by the requested State Party.

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Requests on tracing assets can be made by a police MLA request or judicial MLA request; the execution of freezing or confiscation orders can be requested by judicial MLA.

There is a variety of asset tracing instruments, including, inter alia, an automated bank account access system, a register of beneficial owners (transparency register), land registers and business registers. For detailed information on asset tracing possibilities in Germany, please cf. the [German Asset Tracing Country Profile](http://www.bmjv.de/SharedDocs/Downloads/EN/G20/Asset_Tracing_Country_Profiles.pdf) [<http://www.bmjv.de/SharedDocs/Downloads/EN/G20/Asset_Tracing_Country_Profiles.pdf>](http://www.bmjv.de/SharedDocs/Downloads/EN/G20/Asset_Tracing_Country_Profiles.pdf) (p. 52).

In addition, please cf. answers to article 54.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

No statistical records are kept in this regard.

248. Paragraph 3 of article 55

3. The provisions of article 46 of this Convention are applicable, mutatis mutandis, to this article. In addition to the information specified in article 46, paragraph 15, requests made pursuant to this article shall contain:

(a) In the case of a request pertaining to paragraph 1 (a) of this article, a description of the property to be confiscated, including, to the extent possible, the location and, where relevant, the estimated value of the property and a statement of the facts relied upon by the requesting State Party sufficient to enable the requested State Party to seek the order under its domestic law;

(b) In the case of a request pertaining to paragraph 1 (b) of this article, a legally admissible copy of an order of confiscation upon which the request is based issued by the requesting State Party, a statement of the facts and information as to the extent to which execution of the order is requested, a statement specifying the measures taken by the requesting State Party to provide adequate notification to bona fide third parties and to ensure due process and a statement that the confiscation order is final;

(c) In the case of a request pertaining to paragraph 2 of this article, a statement of the facts relied upon by the requesting State Party and a description of the actions requested and, where available, a legally admissible copy of an order on which the request is based.

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Requirements are not explicitly regulated in German law. The the standards set out in the Convention are sufficient for an effective formal request.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

No statistical records are kept in this regard.

249. Paragraph 4 of article 55

4. The decisions or actions provided for in paragraphs 1 and 2 of this article shall be taken by the requested State Party in accordance with and subject to the provisions of its domestic law and its procedural rules or any bilateral or multilateral agreement or arrangement to which it may be bound in relation to the requesting State Party.

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Act on International Cooperation in Criminal Matters

Section 59

Admissibility of Assistance

[...]

(3) Legal assistance may be provided only in those cases in which German courts and executive authorities could render mutual legal assistance to each other.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

N/A

250. Paragraph 5 of article 55

5. Each State Party shall furnish copies of its laws and regulations that give effect to this article and of any subsequent changes to such laws and regulations or a description thereof to the Secretary-General of the United Nations.

Is your country in compliance with this provision?

(Y) Yes

Please provide a reference to the date these documents were transmitted, as well as a description of any documents not yet transmitted.

In order to fulfill this requirement, Germany furnished the guide to asset recovery to the Secretary General of the United Nations in English and German in 2015.

The guide is available at <http://star.worldbank.org/star/document/asset-recovery-under-german-law-english> - please note that the reform of asset recovery is not yet included in the brochure.

251. Paragraph 6 of article 55

6. If a State Party elects to make the taking of the measures referred to in paragraphs 1 and 2 of this article conditional on the existence of a relevant treaty, that State Party shall consider this Convention the necessary and sufficient treaty basis.

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Germany does not make the taking of measures conditional on the existence of a relevant treaty. The UNCAC is the necessary and sufficient treaty.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

N/A

252. Paragraph 7 of article 55

7. Cooperation under this article may also be refused or provisional measures lifted if the requested State Party does not receive sufficient and timely evidence or if the property is of a *de minimis* value.

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

The requirements for MLA to be granted are, inter alia, laid out in the [Step by Step Guide on Requesting Mutual Legal Assistance in Criminal Matters from G8 Countries](#) <https://www.unodc.org/documents/terrorism/Handbook_on_Criminal_Justice_Responses_to_Terrorism_en.pdf>, in the [Step by Step Guide on Requesting Mutual Legal Assistance in Criminal Matters from G20 Countries](#) <<http://www.bmjv.de/SharedDocs/Downloads/EN/G20/Requesting%20Mutual%20Legal%20Assistance%20in%20Criminal%20Matters%20from%20G20%20Countries%20-%20A%20step-by-step%20guide.pdf>> as well as in UNODCs Mutual Legal Assistance Request Writer Tool <<http://www.unodc.org/mla/index.html>>.

Where the legal assistance faces a remediable obstacle, the requesting state should be provided the opportunity to supplement the request, No. 18 Directive on the International Cooperation in Criminal Matters.

Legal assistance and transmission of data without request shall not be granted if this would conflict with basic principles of the German legal system, Section 73 Act on International Cooperation in Criminal Matters (IRG). One of the governing principles of German law is the principle of proportionality, which is derived from the general rule of law and fundamental rights. According to this principle, an act of an authority must be suitable, necessary and reasonable in order to be lawful. For asset recovery, the principle of proportionality is stated in Section 74 b of the Criminal Code.

Directive on the International Cooperation in Criminal Matters

No 18 Supplementation

Where the legal assistance faces a remediable obstacle, the requesting state should be provided the opportunity to supplement the request.

Criminal Code Section 74f Principle of proportionality

(1) If confiscation is not otherwise prescribed it may not be ordered in cases under sections 74 and 74a if it is disproportionate to the act committed and the blameworthiness of the person affected by the confiscation order. In cases under sections 74 to 74 b and section 74d the court shall defer the confiscation order if the purpose of a confiscation order can also be attained through a less incisive measure thus. Particular consideration shall be given to instructions

1. to destroy the objects;
2. to remove particular fittings or distinguishing marks from or otherwise modify the objects; or
3. to dispose of the objects in a specified manner.

If the instructions are carried out the deferment order shall be rescinded; otherwise the court shall subsequently order the confiscation

[...]

Act on International Cooperation in Criminal Matters

Section 73

Limitations on Assistance (Ordre Public)

Legal assistance and transmission of data without request shall not be granted if this would conflict with basic principles of the German legal system. Requests under Parts VIII, IX and X shall not be granted if compliance would violate the principles in Article 6 of the Treaty on the European Union.

[...]

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

No statistical records are kept in this regard.

253. Paragraph 8 of article 55

8. Before lifting any provisional measure taken pursuant to this article, the requested State Party shall, wherever possible, give the requesting State Party an opportunity to present its reasons in favour of continuing the measure.

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

According to number 196 of the Directive on the International Cooperation in Criminal Matters (RiVAST), the requested State Party shall give the requesting State Party an opportunity to present its reasons in favour of continuing the measure. This provision concerns the mutual legal assistance between member states of the European Union. Nevertheless it is also a general principle of the Cooperation with other states, which takes place in our daily practice.

Directive on the International Cooperation in Criminal Matters (RiVAST)

Number 196

Duration and revocation of freezing measures

(1) The authority granting enforcement may, in accordance with the circumstances of the individual case, set appropriate conditions in order to limit the duration of freezing measures. Prior to this, the competent authority of the requesting Member State is, where applicable, to be given the opportunity to provide a statement within an appropriate time limit. If applicable, the time limits of section 111b (3) of the Code of Criminal Procedure (*Strafprozessordnung*, StPO) are to be followed and the requesting authority is to be asked for supplementary information on the stage reached in the proceedings and on the criminal suspicion concerned in order to permit an examination of whether the preconditions are in place for the measure to be continued.

(2) Paragraph 1, second sentence, shall apply *mutatis mutandis* where asset freezing mechanisms are to be revoked.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

No statistical records are kept in this regard.

254. Paragraph 9 of article 55

9. The provisions of this article shall not be construed as prejudicing the rights of bona fide third parties.

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Confiscation from a third party is only permissible under certain conditions which serve to protect the rights of third parties who acted in good faith (sections 73b and 74a Criminal Code).

According to section 66 paragraph 2 number 3 of the German Act on International Cooperation in Criminal Matters (IRG), surrender shall not be admissible unless measures are in place to ensure that the rights of third parties will not be infringed and that objects handed over under a condition will be returned upon request without undue delay.

Criminal Code

Section 73b

Confiscation from others of the proceeds of offences

(1) The order of confiscation pursuant to sections 73 and 73a shall be directed against another person who is not the principal or secondary participant if

1. That person has obtained something by the offence and the principal or secondary participant acted on his behalf;
2. The object so obtained
 - a) Was transferred to that person without consideration or without a legal reason, or
 - b) Was transferred to that person and he recognised, or ought to have recognised, that the object obtained originates from an unlawful act, or
3. The object so obtained
 - a) Has devolved to that person in his capacity as heir, or
 - b) Has been transferred to that person in his capacity as a party entitled to the compulsory portion of an estate or as a legatee.

Numbers 2 and 3 of the first sentence shall have no application if the object obtained was previously transferred, against consideration and on the basis of a legal reason, to a third party who did not recognise or did not have any reason to recognise that the object obtained originates from an unlawful act.

(2) Where, subject to the pre-requisites set out in subsection (1), first sentence, number 2 or number 3, the other party obtains an object which is equivalent in value to the object obtained, or benefits that have been derived from such object, the court shall order its/their confiscation as well.

(3) Subject to the pre-requisites stipulated by subsection (1), first sentence,

number 2 or number 3, the court may also order the confiscation of whatever was acquired

1. By the sale of the object obtained or as compensation for its destruction, damage, or seizure, or
2. On the basis of a right obtained

Section 74a
Extended conditions of confiscation

If a law refers to this provision, objects can be subject to a confiscation order as an exception to section 74(3) if at the time of the decision the person who owns or has a right to them

1. at least with gross negligence contributed to them being used for the act or its preparation or being the object of the act, or
2. acquired them dishonestly with knowledge of the circumstances that would have allowed their confiscation.

Act on International Cooperation in Criminal Matters

Section 66
Handing Over of Objects

(...)

(2) Surrender shall not be admissible unless

1. the offence on which the request is based contains elements of the actus reus and mens rea of a criminal offence or of an offence permitting the imposition of a fine under German law or unless mutatis mutandis it would be such an offence under German law,
2. an order for seizure by a competent authority of the requesting State is submitted or a declaration of such an authority shows that the requirements for seizure would exist if the objects were located in the requesting State (...)

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

No statistical records are kept in this regard.

Speaking from experience, it can be stated that so far, any required assurance pursuant to section 66 (2) no. 3 IRG has always been provided. We have no information on any breach of assurance in this regard.

255. Technical Assistance

The following questions on technical assistance relate to the article under review in its entirety.

Please outline actions required to ensure or improve the implementation of the article under review and describe any specific challenges you might be facing in this respect.

Do you require technical assistance for the implementation of this article? If so, please specify the forms of technical assistance that would be required. For example:

(NO) No assistance would be required

Is any technical assistance already being provided to you? If so, please provide a general description of the nature of the assistance, including donor information.

56. Special cooperation

256. Article 56

Without prejudice to its domestic law, each State Party shall endeavour to take measures to permit it to forward, without prejudice to its own investigations, prosecutions or judicial proceedings, information on proceeds of offences established in accordance with this Convention to another State Party without prior request, when it considers that the disclosure of such information might assist the receiving State Party in initiating or carrying out investigations, prosecutions or judicial proceedings or might lead to a request by that State Party under this chapter of the Convention.

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

The purpose of sections 61a, 92c IRG is to authorise “spontaneous sharing of information”, i.e. transmission of data without prior request. Section 61a IRG is the general legal basis for spontaneous sharing of information. Section 92c IRG is the special provision at European level, to the extent provided for by an international agreement or Framework Decision 2006/960/JHA. However, section 61a IRG in conjunction with section 91 (1) IRG is also applicable to Member States of the EU to the extent that section 92c IRG does not contain any specific provisions.

Regarding section 61a IRG:

Section 61a (1) IRG regulates the requirements for spontaneous transmission of information by German courts and public prosecution offices. The provision applies solely to “personal data from criminal proceedings”.

A transmission may be made only to “public authorities” of another State or to intergovernmental or supranational authorities.

Section 61a (1) no. 1 IRG allows data to be shared spontaneously only if the transmission “would be permissible without request to a German court or to a German public prosecution office”. This is particularly aimed at preventing German requirements from being circumvented by transmission and return transmission of personal data.

The preconditions for spontaneous sharing of information for foreign criminal proceedings are specified in section 61a (1) no. 2 a) IRG. Thus, a transmission is only permitted if facts warrant the assumption that the transmission is necessary in order to prepare a request for legal assistance for the purpose of prosecution or execution of a sentence, and the criminal offence at issue is punishable under German law by a maximum penalty of more than five years of imprisonment. This means that the information cannot be directly used as evidence in the foreign proceedings. Lastly, there should be no legal bar to arranging the legal assistance

- it must be possible for the German authorities to comply with the request for mutual legal assistance.

If an adequate level of data protection is ensured in the receiving State in accordance with section 61a (1) 2nd sentence IRG, this provision stipulates that the range of relevant criminal offences can also be expanded to encompass offences of “significant gravity”, in deviation from section 61a (1) no. 2 a) IRG.

In contrast to section 61a (1) no. 2 a) IRG, section 61a (1) no. 2 b) IRG does not require that information be shared only for criminal prosecution purposes; it is preventive in nature. It must be necessary in the individual case to avert an existing danger to the existence or the security of the State, or to the life, limb or freedom of a person, or to property of significant value, protection of which is in the public interest, or to prevent a criminal offence of the type referred to in section 61a (1) no. 2 a) IRG.

Pursuant to section 61a (1) no. 3 IRG, the receiving authority in the foreign country must be competent to implement the appropriate measures under section 61a (1) no. 2 IRG.

Section 61a (2) IRG also lays down conditions for transmitting information. The foreign State must observe the time limits pursuant to German law for data deletion and for review of data deletion, and the use of the transmitted data is subject to strict restrictions due to data protection. If an error pursuant to section 61a (4) IRG occurs in the transmission of data, the transmitted data must be immediately deleted or corrected by the receiving State upon receipt of respective notification by the Federal Republic of Germany.

Lastly, section 61a (3) IRG prohibits transmission of information if it is evident that the interests of the person affected by the data transmission outweigh the receiving State's interest in receiving the information.

Regarding section 92c IRG:

As a rule, the addressees of the provision are public authorities within the meaning of section 2 of the Federal Data Protection Act [*Bundesdatenschutzgesetz*, BDSG]. Potential recipients must be public authorities of a Member State of the European Union or a Schengen-Associated State as well as bodies and institutions of the EU itself.

Spontaneous data transmission pursuant to section 92c (1) IRG is permitted only for data that give rise to the suspicion that an offence has been committed.

Like section 61a IRG, section 92c (1) IRG allows data to be shared spontaneously only if transmission of data would be permissible without making a request to a German court or to a German public prosecution office.

In contrast to the stricter requirement of necessity under section 61a (1) no. 2 IRG, the transmission is only required to be useful in initiating criminal

proceedings in the receiving State or assisting criminal proceedings already pending there (section 92c (1) no. 2 a) and b) IRG). In essence, authorisation to transmit information spontaneously at the European level does not require that the criminal offence be of a particular seriousness, but it does exclude the spontaneous sharing of data for preventive reasons.

Lastly, pursuant to section 92c (1) no. 3 IRG, the authority to whom the data are transmitted must have jurisdiction for the measures under no. 2.

With regard to the procedure, transmission prohibitions, and correction and deletion obligations, section 92c (2) IRG refers to section 61a (2-4) IRG.

Act on International Cooperation in Criminal Matters

Section 61a

Transmission of Personal Data Without Request

(1) Courts and the public prosecution service may transmit personal data from criminal proceedings to the public authorities of another State as well as to Interstate and supranational authorities without request by the latter if

1. transmission without request to a German court or to a German public prosecution service were admissible,

2. facts exist which warrant the expectation that the transmission is necessary

a) in order to prepare a request by the receiving State for assistance for the purpose of prosecution or enforcement of a sentence for an offence which would be punishable by a maximum term of more than five years' imprisonment under German law, and the conditions for granting assistance on request would be fulfilled if such a request was made or

b) in the individual case to avert a danger to the existence or security of the State, or to the life, limb or freedom of a person, or to property of significant value, protection of which is in the public interest, or to prevent a crime as described under a) above, and

3. the public authority to which the data are transmitted is competent to implement the appropriate measures under no. 2 above.

If an adequate level of data protection is ensured in the receiving State, the 1st sentence no. 2a) above shall apply with the proviso that an offence punishable under German law by a maximum term of more than five years' imprisonment shall be substituted by an offence of significant gravity.

(2) The transmission shall occur under the condition that

a) time limits pursuant to German law for data deletion and for review of data deletion will be observed,

b) transmitted data will only be used for the purposes for which they were transmitted and

c) transmitted data will be deleted or corrected immediately upon information in accordance with subsection (4) below.

(3) Transmission shall be precluded if it is evident to the court or the public prosecution service that - taking into consideration the special public interest in the transmission - the protected interests of the person demand the preclusion of

the transmission in the individual case; the protected interests of the person concerned include the existence of an adequate level of data protection in the receiving State.

(4) The receiving authority shall be notified without undue delay upon discovery that the transmission of data was inadmissible or that the transmitted data were incorrect.

Section 92c **Data Transmission without Request**

(1) To the extent that an international agreement or Framework Decision 2006/960/JHA so provide, public authorities may transmit without request personal data that give rise to the suspicion that an offence has been committed, to public authorities of another Member State of the European Union or a Schengen-associated State as well as organs and institutions of the European Union, if

1. a transmission without request to a German court or prosecution service were permissible and
2. the transmission is useful in
 - a) initiating criminal proceedings in another Member State or
 - b) assisting criminal proceedings already pending there and
3. the authority to whom the data are transmitted has jurisdiction for the measures under no. 2 above.

(2) S. 61a(2) to (4) shall apply mutatis mutandis.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

No statistical records are kept in this regard.

257. Technical Assistance

The following questions on technical assistance relate to the article under review in its entirety.

Please outline actions required to ensure or improve the implementation of the article under review and describe any specific challenges you might be facing in this respect.

Do you require technical assistance for the implementation of this article? If so, please specify the forms of technical assistance that would be required. For example:

(NO) No assistance would be required

Is any technical assistance already being provided to you? If so, please provide a general description of the nature of the assistance, including donor information.

57. Return and disposal of assets

258. Paragraph 1 of article 57

1. Property confiscated by a State Party pursuant to article 31 or 55 of this Convention shall be disposed of, including by return to its prior legitimate owners, pursuant to paragraph 3 of this article, by that State Party in accordance with the provisions of this Convention and its domestic law.

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Return of confiscated property to the prior legitimate owner can be achieved either directly under German national law, by claiming compensation or damages during criminal or through civil proceedings (see below), or through mutual legal assistance (please cf. answers to Article 57 paragraph 2 and subparagraphs 3 (a) and (b)).

Under German law, the confiscation of an object generally has the effect of transferring ownership of the property or the right to the state (section 75 Criminal Code). However, confiscated objects - or, where appropriate, the equivalent value - must be handed over to any aggrieved persons who, as a result of an offence, have become entitled to compensation (section 459h Code of Criminal Procedure). These particularly include the former rightful owners within the meaning of section 75(1).

Any injured party, including a state, can claim victim compensation during enforcement proceedings by registering their claim at the public prosecution office under reference to the criminal court judgment that determines their status as injured party as well as the damage incurred (§§ 111i, 111n, §§ 459 h ff. Code of Criminal Procedure); a civil law title or special judicial admission are not required.

If the illegally obtained object still exists and can be seized from the offender, the court orders confiscation of the illegally obtained object in its judgment. The object then passes to the state once the judgment becomes final and binding. If victims contact the competent public prosecution office within six months, the confiscated object will be returned to them during criminal enforcement proceedings. If the illegally obtained object is no longer existent, the court, in its judgment, orders the confiscation of a monetary amount equivalent to the (no longer available) illegally obtained object. This means the offender is ordered to pay the state a sum of money equivalent to the value of the illegally obtained object. On this basis, once the judgment has become final and binding, the public prosecution office can enforce against the perpetrator's (already temporarily frozen) assets and monetize seized objects.

The competent authority for compensation out of the proceeds of the offence during enforcement proceedings is the public prosecution authority (cf. sections 459h, 459j and 459k Code of Criminal Procedure). The public prosecution authority will inform the victim as soon as the confiscation order has become legally binding (section 459i Code of Criminal Procedure). After receiving the information, the victim may claim compensation within six months (section 459j para 1 and section 459k para 1 Code of Criminal Procedure).

If the compensation claim can be based on the factual findings of the confiscation orders, the prosecution authority will order the compensation. In case the factual findings are not sufficient to support the compensation claim, the court will have to decide on the claim (cf. section 459j para 2 and section 459k para 2 Code of Criminal Procedure).

Compensation can only be claimed with regard to losses/damages that correspond (section 459h Code of Criminal Procedure). Further damages or a compensation for pain and suffering will have to be claimed in separate proceedings.

If the proceeds are sufficient to satisfy any victim who is entitled to claim compensation, the public prosecution will distribute the proceeds among the victims in accordance with their respective compensation claims. In case the proceeds are not sufficient to satisfy all compensation claim, the public prosecution will file for the opening of insolvency proceedings (sections 111i, 459h para 2 sentence 2 Code of Criminal Procedure). In such cases, the public prosecution office will release the temporarily frozen assets for the insolvency proceedings. The victim will then be compensated in the insolvency proceedings together with the perpetrator's other creditors. The victim compensation model thus adheres to the principle of equal treatment of creditors.

Finally, if the public prosecution rejects a compensation claim of a victim is partially or fully, the victim may invoke the court (section 459o Code of Criminal Procedure). If the court rejects a compensation claim, the victim may file a complaint.

If the victim wants to claim further damages, they can either invoke the civil court or claim such damages in an adhesion procedure ("Adhäsionsverfahren") during the criminal proceedings. For civil action to establish title or ownership of property, or to claim compensation or damages, please cf. answers to Art. 53 subparagraphs a) and b).

The adhesion procedure allows the victim to claim damages (or compensation for pain and suffering) within the criminal proceedings (section 403 Code of Criminal Procedure). A request of the victim is sufficient to initiate the procedure. This request can also be submitted in oral form at the trial hearing (section 404 para 1 Code of Criminal Procedure).

In case the criminal court fully grants the application (section 406 para 1 sentence

1), the victim obtains a title which can be enforced against the offender.

Criminal Code

Section 75

Effects of the confiscation

(1) Where confiscation of an object is ordered, title to the property or the right shall devolve to the state once the order becomes final if the object

1. Belongs to the person affected by the order at that time or if the person affected by the order is entitled to the object at that time, or if the object
2. Belongs to some other person, or if some other person is entitled to it, who has granted it for the offence or for other purposes while being aware of the circumstances of the offence.

In other cases, title to the property or the right shall devolve to the state once six months have expired following the notice as to the order of confiscation having become final, unless that person who held title to the property or held the right has previously filed his right with the enforcement authority.

(2) In all other regards, the rights of third parties to the object shall continue in force. In the cases designated in section 74b, however, the court shall order the expiry of these rights. In the cases provided for by sections 74 and 74a, the court may order the expiry of the right of a third party if that third party

1. Has contributed at least negligently to the object being used by the offender as a means or resource, or to its being the object of the offence, or
2. Has acquired the right to the object in a reprehensible manner while being aware of the circumstances giving rise to the confiscation.

(3) Until the devolution of title to the property or of the right, the order of confiscation or the order reserving the right to confiscate shall have the effect of a prohibition of disposal within the meaning of section 136 of the Civil Code.

(4) In the cases governed by section 111d (1), second sentence, of the Code of Criminal Procedure, section 91 of the Insolvency Statute shall have no application.

Code of Criminal Procedure

Section 459h

Compensation of the aggrieved person

(1) An object confiscated pursuant to sections 73 to 73b of the Criminal Code shall be restituted to the aggrieved person, who has become entitled to a claim to return of the object obtained, or to his successor in title. The same shall apply if the object has been confiscated pursuant to section 76a (1) of the Criminal Code, also read in conjunction with section 76a (3) of the Criminal Code. In the cases governed by section 75 (1), second sentence, of the Criminal Code, the object confiscated shall be surrendered to the aggrieved person or to his successor in title provided he has filed his right with the enforcement authority in due time.

(2) Where the court has ordered the confiscation of the equivalent value pursuant to sections 73c and 76a (1), first sentence, of the Criminal Code, also read in conjunction with section 76a (3) of the Criminal Code, then the proceeds attained by the realisation of the objects seized as per the attachment of assets or the confiscation order shall be disbursed to the aggrieved person, who has become entitled to a claim to return of the object obtained by the offence, or to his

successor in title. Section 111i shall apply *mutatis mutandis*.

Section 459j
Procedure for
restitution and surrender

(1) The aggrieved person or his successor in title is to file with the enforcement authority his claim to restitution or to surrender pursuant to section 459h (1) within six months of having been notified that the confiscation order has become final.

(2) Where the entitlement of the claimant filing the request is immediately evident from the confiscation order and the determinations underlying it, the object confiscated shall be restituted or surrendered to the claimant filing the request. In all other cases, this shall require permission by the court. The court shall permit the restitution or surrender subject to the provisions set out in section 459h (1) hereof. Such permission is to be refused if the claimant filing the request fails to provide satisfactory evidence of his being entitled to the claim; section 294 of the Code of Civil Procedure is to have application.

(3) Prior to taking the decision on the restitution or surrender, that party is to be heard against whom the order of confiscation is directed. This shall apply only if there is the prospect of that hearing said party will be possible.

(4) In the event of non-adherence to the period set out in subsection (1), first sentence, *restitutio in integrum* shall be granted, subject to the pre-requisites designated in sections 44 and 45 hereof.

(5) Notwithstanding the procedure stipulated by subsection (1), the aggrieved person or his successor in title may assert his claim to restitution or surrender pursuant to section 459h (1) by submitting an enforceable final judgment within the meaning of section 704 of the Code of Civil Procedure, or some other enforceable legal document within the meaning of section 794 of the Code of Civil Procedure, from which the claim being asserted is evident.

Section 459k
Procedure for the
disbursement of the realisation proceeds

(1) The aggrieved person or his successor in title is to file with the enforcement authority his claim to disbursement of the realisation proceeds pursuant to section 459h (2) within six months of having been notified that the confiscation order has become final. The request is to set out the amount of the claim.

(2) Where the entitlement of the claimant filing the request and the amount of the claim are immediately evident from the confiscation order and the determinations underlying it, the proceeds of realisation shall be disbursed in that scope to the claimant filing the request. In all other cases, this shall require permission by the court. The court shall permit the disbursement of the realisation proceeds subject to the provisions set out in section 459h (2) hereof. Such permission is to be refused if the claimant filing the request fails to provide satisfactory evidence of his being entitled to the claim; section 294 of the Code of Civil Procedure is to have application.

(3) Prior to taking the decision on the disbursement, that party is to be heard against whom the order of confiscation is directed. This shall apply only if there is the prospect of that hearing said party will be possible.

(4) In the event of non-adherence to the period set out in subsection (1), first

sentence, *restitutio in integrum* shall be granted, subject to the pre-requisites designated in sections 44 and 45 hereof.

(5) Notwithstanding the procedure stipulated by subsection (1), the aggrieved person or his successor in title may assert his claim to disbursement of the realisation proceeds pursuant to section 459h (2) by submitting an enforceable final judgment within the meaning of section 704 of the Code of Civil Procedure, or some other enforceable legal document within the meaning of section 794 of the Code of Civil Procedure, from which the claim being asserted is evident. Enforceable legal documents under public law for receivables in money that have become final shall be equivalent to an enforceable final judgment within the meaning of section 704 of the Code of Civil Procedure.

Section 111i

Insolvency proceedings

(1) Where at least one aggrieved person has become entitled, by the offence, to a claim to compensation of the value of the object obtained, and where insolvency proceedings are opened with regard to the assets of the debtor of the attachment, the collateral mortgage pursuant to section 111h (1) established with regard to the object or to the proceeds attained by its realisation shall expire as soon as this becomes part of the estate under administration. The collateral mortgage shall not expire for objects situate in a state in which the opening of the insolvency proceedings is not recognised. Sentences 1 and 2 shall apply *mutatis mutandis* to the lien on the collateral mortgage lodged pursuant to section 111g (1).

(2) If there are several aggrieved persons and the value of the object secured by the collateral mortgage established by the enforcement of the attachment, or the proceeds attained by its realisation, does not suffice to satisfy the claims of the aggrieved persons for compensation of the value of the object obtained, to which they have become entitled by the offence and which they have asserted vis-à-vis the public prosecutor's office, then the public prosecutor's office shall file a request to open insolvency proceedings regarding the assets of the debtor of the attachment. The public prosecutor's office shall refrain from filing a request to open insolvency proceedings if there is reason to doubt that the insolvency proceedings will be opened by reason of the request.

(3) Where a surplus remains following the final distribution, the state shall acquire a lien up to the amount of the attached assets over the debtor's claim to surrender of such surplus. The insolvency administrator is to surrender the surplus to the public prosecutor's office in that scope.

Section 111n

Surrender of movable objects

(1) Where a movable object that has been seized or otherwise secured pursuant to section 94, or that has been seized pursuant to section 111c (1), is no longer required for purposes of the criminal proceedings, it shall be surrendered to the last person having custody over it.

(2) In derogation from subsection (1), the object shall be surrendered to the aggrieved person who has been deprived of it by the crime, if that person is known.

(3) If the claim of a third party contravenes the surrender to the last person having custody over the object or to the aggrieved person, the object shall be surrendered to the third party if that third party is known. Such surrender shall take place only if the pre-requisites therefor are common knowledge.

Section 403
[Conditions]

The aggrieved person or his heir may, in criminal proceedings, bring a property claim against the accused arising out of the criminal offence if the claim falls under the jurisdiction of the ordinary courts and is not yet pending before another court, in proceedings before the Local Court irrespective of the value of the matter in dispute.

Section 404
[Application by the Aggrieved Person]

(1) The application asserting the claim may be made in writing or orally to be recorded by the registry clerk, or also orally at the main hearing before the closing speeches begin. The application must specify the subject of, and the grounds for, the claim and should set forth the evidence. If the application is not made at the main hearing, it shall be served on the accused.

[...]

Section 406
[Decision]

(1) The court shall grant the application in the judgment in which the accused is pronounced guilty of a criminal offence or in which a measure of reform and prevention is ordered in respect of such criminal offence, so far as the application is based on such criminal offence. The decision may be limited to the ground for, and part of, the asserted claim; section 318 of the Code of Civil Procedure shall apply *mutatis mutandis*. The court shall dispense with a decision if the application is inadmissible or insofar as it appears unfounded. In all other cases the court may dispense with a decision only if the application is not suitable to being dealt with in criminal proceedings even after taking into account the legitimate interests of the applicant. An application will be unsuitable to being dealt with in criminal proceedings particularly where its further examination, even where a decision is only conceivable on the ground for, or a part of, the asserted claim, would considerably protract the proceedings. Where the applicant has asserted a claim in respect of damages for pain and suffering (section 253 subsection (2) of the Civil Code) a decision may only be dispensed with in accordance with the third sentence.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

Given that the new asset confiscation legislation entered into force on 1 July 2017, there is no experience yet with regard to compensation of victims.

259. Paragraph 2 of article 57

2. Each State Party shall adopt such legislative and other measures, in accordance with the fundamental principles of its domestic law, as may be necessary to enable its competent authorities to return confiscated property, when acting on the request made by another State Party, in accordance with this Convention, taking into account the rights of bona fide third parties.

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Please cf. answers to subparagraphs 3 (a) and (b).

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

No statistical records are kept in this regard.

Given that the new asset confiscation legislation entered into force on 1 July 2017, there is no experience yet with regard to compensation of victims.

260. Subparagraph 3 (a) of article 57

3. In accordance with articles 46 and 55 of this Convention and paragraphs 1 and 2 of this article, the requested State Party shall:

(a) In the case of embezzlement of public funds or of laundering of embezzled public funds as referred to in articles 17 and 23 of this Convention, when confiscation was executed in accordance with article 55 and on the basis of a final judgement in the requesting State Party, a requirement that can be waived by the requested State Party, return the confiscated property to the requesting State Party;

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

In general, where confiscation of an object is ordered, title to the property or the right shall devolve to the German state once the order becomes final, section 56 para 4 IRG in conjunction with section 75 Criminal Code.

When enforcing an order for confiscation from a requesting state, 56b IRG provides for the possibility to enter into an ad hoc agreement with the competent authority of the requesting State about the disposal, return or distribution of the confiscated assets.

A precondition for such an agreement is that reciprocity is assured (section 56 (1), section 88f. IRG) and whether an agreement can be concluded must be decided on a case-by-case basis.

Full return of all assets to the requesting state can be agreed on in the ad hoc agreement under section 56b.

For Member States of the European Union, section 88f of the Act on International Cooperation in Criminal Matters (IRG) stipulates that half the revenue from the enforcement shall be assigned to the competent authority of the requesting Member State if without deduction of costs and compensation (s. 56a) its value exceeds EUR 10,000 and no agreement under s. 56b(1) has been reached. This shall not apply if the consent necessary under s. 56b(2) was refused.

In addition, please cf. answer to article 53 paragraph 3(a).

Act on International Cooperation in Criminal Matters

Section 56 Granting Assistance

[...]

(4) The granting of a request for legal assistance seeking the enforcement of an order for confiscation or shall be equivalent to a final order and decision within the

meaning of ss. 73, 74 of the Strafgesetzbuch. S. 433 of the Strafprozessordnung shall apply mutatis mutandis.

Section 56b
Agreement on Disposal, Return and Distribution of Seized Assets

(1) The authority in charge of granting assistance may enter into an ad hoc agreement with the competent authority of the requesting State about the disposal, return or distribution of the assets resulting from the enforcement of an order for confiscation if reciprocity is assured.

(2) Agreements relating to objects within the meaning of ss. 1 and 10 of the Gesetz zum Schutz deutschen Kulturgutes gegen Abwanderung require the consent of the Representative of the Federal Government for Cultural and Media Affairs. If the consent is refused, s. 16(3) 2nd sentence of the Gesetz zum Schutz deutschen Kulturgutes gegen Abwanderung* shall apply mutatis mutandis.

Part IX.
Assistance by Enforcement to Member States of the European Union

Section 88f
Distribution of Revenue

Half the revenue from the enforcement shall be assigned to the competent authority of the requesting Member State if without deduction of costs and compensation (s. 56a) its value exceeds EUR 10,000 and no agreement under s. 56b(1) has been reached. This shall not apply if the consent necessary under s. 56b(2) was refused.

Criminal Code

Section 75
Effects of the confiscation

(1) Where confiscation of an object is ordered, title to the property or the right shall devolve to the state once the order becomes final if the object

1. Belongs to the person affected by the order at that time or if the person affected by the order is entitled to the object at that time, or if the object
2. Belongs to some other person, or if some other person is entitled to it, who has granted it for the offence or for other purposes while being aware of the circumstances of the offence.

In other cases, title to the property or the right shall devolve to the state once six months have expired following the notice as to the order of confiscation having become final, unless that person who held title to the property or held the right has previously filed his right with the enforcement authority.

(2) In all other regards, the rights of third parties to the object shall continue in force. In the cases designated in section 74b, however, the court shall order the expiry of these rights. In the cases provided for by sections 74 and 74a, the court may order the expiry of the right of a third party if that third party

1. Has contributed at least negligently to the object being used by the offender as a means or resource, or to its being the object of the offence, or
2. Has acquired the right to the object in a reprehensible manner while being aware of the circumstances giving rise to the confiscation.

(3) Until the devolution of title to the property or of the right, the order of confiscation or the order reserving the right to confiscate shall have the effect of a prohibition of disposal within the meaning of section 136 of the Civil Code.

(4) In the cases governed by section 111d (1), second sentence, of the Code of Criminal Procedure, section 91 of the Insolvency Statute shall have no application.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

No statistical records are kept in this regard.

261. Subparagraph 3 (b) of article 57

3. In accordance with articles 46 and 55 of this Convention and paragraphs 1 and 2 of this article, the requested State Party shall:

...

(b) In the case of proceeds of any other offence covered by this Convention, when the confiscation was executed in accordance with article 55 of this Convention and on the basis of a final judgement in the requesting State Party, a requirement that can be waived by the requested State Party, return the confiscated property to the requesting State Party, when the requesting State Party reasonably establishes its prior ownership of such confiscated property to the requested State Party or when the requested State Party recognizes damage to the requesting State Party as a basis for returning the confiscated property;

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Please cf. answer to subparagraph 3(a).

The conclusion of an ad hoc agreement (described under subparagraph 3 (a)) is possible irrespective of the type of the underlying offence.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

No statistical records are kept in this regard.

262. Subparagraph 3 (c) of article 57

3. In accordance with articles 46 and 55 of this Convention and paragraphs 1 and 2 of this article, the requested State Party shall:

...

(c) In all other cases, give priority consideration to returning confiscated property to the requesting State Party, returning such property to its prior legitimate owners or compensating the victims of the crime.

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Please cf. answers to article 53, subparagraph (b) and subparagraph (c), and article 57, paragraph 3 (a).

In addition, compensation of the injured party is required under Section 56a of the German Act on International Cooperation in Criminal Matters (IRG). The party injured by the offence on which the foreign decision is based shall receive compensation from public funds if a German or foreign court has issued an enforceable decision awarding damages against the convicted person or if the latter has declared his obligation to pay to the injured person in an enforceable document (title) and, inter alia, the injured person shows that he could not obtain full satisfaction of his claim from the enforcement of the title. Compensation is awarded in exchange for cession of the claim for damages to an equal amount.

Act on International Cooperation in Criminal Matters

Section 56a

Compensation of the Injured Party

(1) If upon the request of another State a foreign decision ordering confiscation was executed into the assets of the convicted person within German territory, the party injured by the offence on which the foreign decision is based shall receive compensation from public funds if

1. a German or foreign court has issued an enforceable decision awarding damages against the convicted person or if the latter has declared his obligation to pay to the injured person in an enforceable document (title),
2. the title is enforceable within German territory,
3. the injured person shows that the title covers the damages arising from the offence on which the decision for confiscation is based and
4. the injured person shows that he could not obtain full satisfaction of his claim from the enforcement of the title.

Compensation shall be awarded in exchange for cession of the claim for damages to an equal amount.

(2) Compensation shall not be granted if the rights of the injured person under s. 73e(1) 2nd sentence continue to exist.

(3) The amount of compensation shall be limited by the remaining revenue accruing to German public funds from the enforcement of the confiscation order into the domestic assets. If several injured parties have filed an application under subsection (1) above, their compensation shall be determined by the sequence of their applications. If several applications are filed on the same day and the revenue is insufficient to satisfy these persons they shall receive compensation pro rata according to the amount of the claims for damages.

(4) The application shall be filed with the competent enforcement authority. It may be denied if six months have passed since the end of the enforcement proceedings related to the asset from which compensation could be paid. The enforcement authority may set appropriate time limits in which the injured person must adduce the necessary documentation.

(5) The decision of the enforcement authority may be reviewed in the civil courts.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

No statistical records are kept in this regard.

263. Paragraph 4 of article 57

4. Where appropriate, unless States Parties decide otherwise, the requested State Party may deduct reasonable expenses incurred in investigations, prosecutions or judicial proceedings leading to the return or disposition of confiscated property pursuant to this article.

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Generally, the affected states waive all claims of reimbursement of costs (section 75 IRG). An exception is made in case of exorbitant costs.

Act on International Cooperation in Criminal Matters

Section 75

Costs

The reimbursement of costs incurred in the provision of legal assistance from the requesting State may be waived.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

No statistical records are kept in this regard.

264. Paragraph 5 of article 57

5. Where appropriate, States Parties may also give special consideration to concluding agreements or arrangements, on a case-by-case basis, for the final disposal of confiscated property.

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Please cf. answer to article 57 para 3 (b).

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

No statistical records are kept in this regard.

The overall experience with regard to the distribution of assets on the basis of sections 56b and 88f IRG has been very positive in recent years.

265. Technical Assistance

The following questions on technical assistance relate to the article under review in its entirety.

Please outline actions required to ensure or improve the implementation of the article under review and describe any specific challenges you might be facing in this respect.

Do you require technical assistance for the implementation of this article? If so, please specify the forms of technical assistance that would be required. For example:

(NO) No assistance would be required

Is any technical assistance already being provided to you? If so, please provide a general description of the nature of the assistance, including donor information.

58. Financial intelligence unit

266. Article 58

States Parties shall cooperate with one another for the purpose of preventing and combating the transfer of proceeds of offences established in accordance with this Convention and of promoting ways and means of recovering such proceeds and, to that end, shall consider establishing a financial intelligence unit to be responsible for receiving, analysing and disseminating to the competent authorities reports of suspicious financial transactions.

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

In 2002, Germany created a body known as the Zentralstelle für Verdachtsmeldungen in German and the Financial Intelligence Unit in English, which was located at the Federal Criminal Police Office. With the entry into force of the new Money Laundering Act on 26 June 2017, this body has now been moved from the remit of the Federal Ministry of the Interior to the remit of the Federal Ministry of Finance. Its German name has been changed to the Zentralstelle für Finanztransaktionsuntersuchungen and it has been re-established as an autonomous agency with an administrative focus (instead of the previous organisation along police lines).

As well as the suspicious transaction reports from obliged entities pursuant to section 43 of the Money Laundering Act, the FIU also receives reports from revenue authorities, which are obliged to submit these on the basis of the Fiscal Code (section 31b). In addition to the revenue authorities, the FIU will also receive suspicious transaction reports from other authorities pursuant to section 44 of the Money Laundering Act, if these authorities are aware of facts that indicate that an asset is connected with money laundering or terrorist financing.

Once a suspicious transaction report related to money laundering has been received, the reported information is first of all checked to see if it is “abnormal”. The FIU has now been equipped with significantly more staff, new software and additional powers to access data, allowing it to comprehensively analyse the suspicious transaction reports that it receives and to augment these reports with additional information. Only the “substantial” reports are then forwarded to the competent law enforcement authorities. This filter function of the FIU is intended to relieve the law enforcement authorities, allowing them to better concentrate on the complex proceedings which often require time-consuming investigations. In addition, depending on the circumstances of the individual case, other domestic authorities such as the Federal Office for the Protection of the Constitution (i.e. the domestic intelligence agency) are also notified of any findings resulting from the analysis of the suspicious transaction reports.

The exchange of information on the international level is also being simplified and

thereby intensified.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

There is no information available yet on the implementation of measures by the new FIU located within the remit of the Finance Ministry, because it only began its work a few weeks ago. However, it will publish its first annual report next year.

The FIU that was located at the Federal Criminal Police Office published an annual report about its activities in 2016. According to this annual report, a total of 40,690 suspicious transaction reports were sent to the FIU in 2016 (compared with 29,108 in 2015). Of these, 35,038 reports came from banks.

More detailed statistics can be found in the FIU's annual reports, which are available at the following address:

2002 - 2015 (in English)

https://www.bka.de/EN/CurrentInformation/AnnualReports/FinancialIntelligenceUnitGermany/financialintelligenceunitgermany_node.html

2002 - 2016 (in German):

https://www.bka.de/DE/AktuelleInformationen/StatistikenLagebilder/Lagebilder/FinancialIntelligenceUnitDeutschland/financialintelligenceunitdeutschland_node.html

267. Technical Assistance

The following questions on technical assistance relate to the article under review in its entirety.

Please outline actions required to ensure or improve the implementation of the article under review and describe any specific challenges you might be facing in this respect.

Do you require technical assistance for the implementation of this article? If so, please specify the forms of technical assistance that would be required. For example:

(NO) No assistance would be required

Is any technical assistance already being provided to you? If so, please provide a general description of the nature of the assistance, including donor information.

59. Bilateral and multilateral agreements and arrangements

268. Article 59

States Parties shall consider concluding bilateral or multilateral agreements or arrangements to enhance the effectiveness of international cooperation undertaken pursuant to this chapter of the Convention.

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

During current contract negotiations with other states the provisions of this chapter are respected and proposed by Germany.

For a list of Germany's bilateral and multilateral agreements, please cf. question 221 of SACL for first review cycle (Art. 46 para 30).

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

N/A

269. Technical Assistance

The following questions on technical assistance relate to the article under review in its entirety.

Please outline actions required to ensure or improve the implementation of the article under review and describe any specific challenges you might be facing in this respect.

Do you require technical assistance for the implementation of this article? If so, please specify the forms of technical assistance that would be required. For example:

(NO) No assistance would be required

Is any technical assistance already being provided to you? If so, please provide a general description of the nature of the assistance, including donor information.

B. Other information

B. Other information

270. Other information

Please provide any other information you believe is important for the Conference of the States Parties to the United Nations Convention against Corruption to consider at this stage regarding aspects of, or difficulties in, implementing the Convention other than those mentioned above.

Please provide any other information you believe is important for the Conference of the States Parties to the United Nations Convention against Corruption to consider at this stage regarding aspects of or difficulties in implementing the Convention other than those mentioned above