

Germany Asset Recovery Action Plan Implementation Road Map 2013

Action Plan commitment	Progress so far	Timetable for next steps
<p>Seek to enhance responsiveness: Take into account the importance of transition countries' requests for case assistance in recovering proceeds of corruption and organized crime and accordingly give them priority, where legally permissible, and encourage regional partner countries to do the same. Implementation: Immediate</p>	<p>Germany had received requests from Egypt, Libya and Tunisia. Those requests have been discussed on a bilateral basis. German law enforcement practitioners give them a high priority. Appropriate legislation, especially the German Act on International Cooperation in Criminal Matters, provides a comprehensive legal basis for government entities and independent courts to respond to transition countries' requests for mutual legal assistance.</p> <p>Recently in a seminar in Cairo legal requirements have been discussed with practitioners from Egypt and Tunisia. German experts offered comprehensive advice on mutual legal assistance requests and outlined best practices on how to formulate such requests.</p>	<p><u>On-going:</u> German authorities as reiterated at many occasion by MoFA will continue to provide the fullest possible measure of support to Arab Spring countries seeking assistance in the recovery of stolen assets. It is intended to work very closely on pilot cases and to establish models for future requests.</p>
<p>Adopt and enforce international frameworks: Ratify the U.N. Convention Against Corruption as soon as possible, and take steps to enhance their enforcement of laws against foreign bribery, in order to provide a universal legal framework for asset recovery cooperation.</p>	<p>The ratification of the Convention remains in the preparatory stage. The Federal Government is, in principle, still aiming for such ratification and is planning for it to take place after the necessary amendments to the provisions of the German Criminal Code on the fight against corruption have been made.</p>	<p><u>On-going</u></p>
<p>Promote transparency and effective cooperation. Each G8 member will:</p>		
<p>Publish a guide that describes specific steps required for assistance and cooperation in matters related to tracing, freezing, confiscation, and return of proceeds of corruption, whether through formal mutual legal assistance (MLA) or other forms of cooperation and make the guide available in Arabic</p>	<p>The German guide is published on the StAR website and is available in Arabic, English and German language versions. http://star.worldbank.org/star/ArabForum/country-guides-asset-recovery-0</p>	<p><u>Fully implemented</u></p>
<p>Designate or appoint the office/persons responsible for inquiries, guidance, or other investigative cooperation permitted by law, both for MLA and for other forms of cooperation not requiring MLA requests</p>	<p>The German authority responsible for inquiries and guidance related to MLA is the</p> <p>Federal Office of Justice Adenauerallee 99 - 103 53113 Bonn, Germany poststelle@bfj.bund.de</p> <p>Police-to-police and intelligence enquiries can be initiated</p>	<p><u>Fully implemented</u></p>

	through the representatives on CARIN, the Focal Point network, and Egmont, or using the contacts given in Germany's asset recovery guide available on the StAR website.	
Designate the appropriate points of contact to relevant networks , including but not limited to the global asset recovery Focal Point network, UNCAC COSP, and CARIN, that may be useful for coordination	Germany has designated points of contact for each of the relevant networks.	<u>Fully implemented</u>
Facilitate cooperation leading to effective recovery.		
Each G8 member will act urgently on the following key measures:		
Ensure that there are mechanisms in place for enforcement of foreign orders of confiscation unless inconsistent with fundamental principles of domestic law. This would include, wherever possible, considering measures as may be necessary to enforce non-conviction based confiscation orders (such as confiscation orders which do not require a criminal trial and conviction), at a minimum in the circumstances envisaged by UNCAC and FATF Recommendations. Such enforcement should be permitted even in the absence of a domestic system for non-conviction based confiscation or other equivalent avenue	Germany can enforce foreign confiscation orders, including non-conviction based confiscation orders, in the German courts using the German Act on International Cooperation in Criminal Matters.	<u>Fully implemented</u>
Consider, to the extent consistent with fundamental principles of domestic law and judicial proceedings, establishing systems that allow for recovery through non-conviction-based confiscation or equivalent (at minimum in cases of death, flight, or absence) and adopting legislation that establishes a non-criminal standard for burden of proof or reverses the onus of proof through rebuttable presumptions	German criminal law foresees the possibility to confiscate proceeds of crime without a conviction in cases of flight or "absence" (where the offender cannot be identified) through a so-called "independent order". In the case of death, non-conviction based confiscation (NCBC) is precluded, as, according to fundamental principles of domestic law, the possibility to prosecute expires upon death. The instrument of extended confiscation allows for a deviation from the criminal standard for burden of proof to some extent. Extended confiscation involves the confiscation of assets where circumstances justify the assumption that these assets were acquired as a result of criminal acts even though a connection between these assets and a specific criminal act cannot be established. Extended confiscation is also applicable in NCBC proceedings.	<u>Fully implemented</u> (to the extent consistent with fundamental principles of domestic law).
Ensure that domestic legal frameworks (i.e., legislation	The German Federal Criminal Police in its competence as	<u>Fully implemented</u>

<p>and/or regulations) allow for swift identification and tracing of assets, including in response to international requests.</p>	<p>National Interpol Office deals with incoming requests for information and tracing of assets as long as there is no legal obligation to send a formal mutual legal assistance request. There are sufficient personal and technical resources to react promptly and efficiently on requests. The cooperation is based on rules within the German Law on the Federal Criminal Police.</p>	
<p>Ensure that domestic legislation and/or regulations allow sufficient time frames for freezing assets during the pendency of foreign investigations and proceedings</p>	<p>Assets frozen in Germany remain frozen until an independent court of law discharges (cancels) the freezing order.</p> <p>Germany fully implements the EU and UN sanctions regimes that freeze assets related to the former regimes in Egypt, Libya and Tunisia.</p>	<p><u>Fully implemented</u></p>
<p>Ensure that mutual legal assistance regarding asset recovery can be granted in the absence of a bilateral legal assistance agreement, under appropriate circumstances. If necessary, and without prejudice to the preceding point, recognize UNCAC as a sufficient legal basis for mutual legal assistance (MLA) by States Parties</p>	<p>German law provides for assistance in asset recovery cases on a non-treaty basis.</p>	<p><u>Fully implemented</u></p>
<p>Ensure that MLA requests for freezing can be permitted on an <i>ex parte</i> basis (i.e., no requirement to give the asset holder the opportunity to contest beforehand the provision of MLA)</p>	<p>German law provides that assets can be frozen without prior information of the asset holder.</p>	<p><u>Fully implemented</u></p>
<p>Allow domestic officials, in accordance with its domestic laws, to alert a foreign jurisdiction to an ongoing investigation in the disclosing jurisdiction and indicate that existing information could be of interest, a proactive form of assistance, and to do so on a peer-to-peer basis where permissible</p>	<p>Section 61a German Act on International Cooperation in Criminal Matters allows such spontaneous information.</p>	<p><u>Fully implemented</u></p>
<p>In case of a barrier to execution of a mutual legal assistance request, promptly communicate the nature of the difficulty to the requesting authorities so that it may be corrected expeditiously</p>	<p>German Guidelines on International Cooperation in Criminal Matters provide an obligation to the prosecutor to inform the requesting state. With respect to asset recovery cases the Federal Office of Justice and the Foreign Office assure take care the prompt communication with transition countries.</p>	<p><u>Fully implemented</u></p>
<p>Enhance case cooperation:</p>		
<p>During the post-transition period, work with local officials in requesting transition countries on the underlying investigations to develop leads for records and assets</p>	<p>Bilateral meetings with representatives of different transition countries took place in Germany and abroad. Cooperation in individual cases has been discussed with representatives of</p>	<p><u>Fully implemented.</u></p>

<p>located abroad as well as to facilitate international legal assistance. This would include, upon request, sending practitioners (whether from the G8 country governments themselves, relevant international organizations and initiatives or other appropriate sources) to the requesting country</p>	<p>the German Foreign Office, Ministry of Justice, Federal Office of Justice and with prosecutors. Germany offered comprehensive advice on the underlying legal requirements in Germany and on individual cases to facilitate legal assistance.</p> <p>In addition, Germany hosted a seminar in Cairo in which the international and national rules on asset recovery have been discussed and case studies have been presented outlining best practice approaches to transition countries.</p> <p>There had been contacts with a lawyer representing one of the transition countries to foster an even better understanding of legal requirements in Germany.</p>	
<p>Measures Related to Technical Assistance and Capacity Building:</p>		
<p>Provide Specialized Training: During the post-transition period, to the extent possible, provide funding and/or in-kind expertise to ensure that specialized training by international practitioners from relevant public authorities, whether from the G8 country governments themselves, relevant international organizations and initiatives (such as, inter alia, the World Bank/UN Office of Drugs and Crime Stolen Asset Recovery Initiative - StAR), or other appropriate sources is provided to requesting transition countries. The key topics would include: financial investigations, financial document analysis, asset confiscation and forfeiture, requesting international assistance, asset recovery and asset management tools, and other topics identified by the requesting countries</p>	<p>Germany has provided bilateral training to Egypt and Tunisia on mutual legal assistance and on asset recovery and financial investigation techniques. At the 15th International Anticorruption Conference Germany together with OECD organized a panel to help international development agencies and practitioners better understand the challenges of illicit financial flows; amongst others the Tunisian Minister for Governance and Anticorruption participated in the panel discussion.</p>	<p><u>Fully implemented</u></p>
<p>Support domestic coordination: During the post-transition period, assist a requesting transition country in setting up locally an Asset Recovery Task Force (ARTF), as a domestic coordination measure for the transition country partner, comprised of representatives of relevant law enforcement agencies (police, customs, prosecutors, etc) and regulatory bodies (such as financial intelligence units, central banks etc.), among whose functions will be cooperation with international practitioners</p>	<p>At the abovementioned seminar in Cairo the functioning and advantages of specialised units have been presented, the German practice had been explained and the role of networks had been explained.</p>	<p><u>Fully implemented</u></p>
<p>Promote legal and institutional reforms: During the post-transition period, to the extent possible, assist a requesting transition country in drafting appropriate legislation and/or</p>	<p>Germany has not yet received bilateral requests for assistance in this area.</p>	

<p>institutional reforms that will adhere to international standards, including, but not limited to, in pursuing criminal and/or non-conviction based forfeiture legislation; and to establish systems for disclosure of assets and interests by senior public officials and appropriate relations, consistent with international best practices; and other relevant legal frameworks. Urge relevant international organizations to assist in this regard</p>		
<p>Strengthen frameworks to manage recovered funds: During the post-transition period, to the extent possible, assist a requesting transition country with legislative drafting advice or other assistance in setting up locally a central fund, to receive assets confiscated at home or abroad and to ensure transparency in their administration.</p>	<p>Germany has not yet received bilateral requests for assistance in this area.</p>	
<p>Support the Arab Forum on Asset Recovery: Support the establishment of and participate as appropriate in the Arab Forum on Asset Recovery, including through financial support, where possible, expertise, and attendance at the inaugural meeting at the appropriate level.</p>	<p>Germany participated in the first Arab Forum on Asset Recovery in Doha and is going to participate in AFAR II in Morocco.</p>	<p><u>Fully implemented</u></p>