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Executive summary

Note by the Secretariat

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II. Executive summary

Germany

1. Introduction: overview of the legal and institutional framework of Germany in the context of implementation of the United Nations Convention against Corruption

Germany signed the Convention on 9 December 2003 and deposited its instrument of ratification on 12 November 2014. International treaties form an integral part of the domestic law of Germany as a consequence of the respective act of parliament in accordance with article 59 of the Basic Law of Germany (GG). The Convention therefore has the status of a federal law.

Germany is a federal parliamentary republic consisting of 16 states (Länder). The federation and the states have concurrent legislative powers in areas related to corruption prevention and asset recovery (arts. 70–74, GG).

The implementation by Germany of chapters III and IV of the Convention was reviewed in the fourth year of the first review cycle. The anti-corruption and anti-money-laundering frameworks of Germany have been assessed by the Council of Europe's Group of States against Corruption (GRECO), the Organization for Economic Cooperation and Development (OECD), the Financial Action Task Force (FATF), and the Financial Sector Assessment Program (FSAP) of the International Monetary Fund.

The national legal framework for preventing corruption and asset recovery comprises, notably, the GG, the Criminal Code (StGB), the Federal Budget Code (BHO), the Act on Federal Civil Servants (BBG), the Federal Civil Servant Status Act (BeamtStG), the Act against Restraints of Competition (GWB), the Freedom of Information Act (IFG), the Money Laundering Act (AMLA) and the Act on International Legal Assistance in Criminal Matters (IRG).

Relevant corruption prevention and asset recovery authorities include the Federal Ministry of the Interior, Building and Community (BMI), the Federal Ministry of Justice and Consumer Protection (BMJV), the Supreme Audit Institution (BRH), the Financial Intelligence Unit (FIU), the Federal Office for Justice (BfJ), the Federal Criminal Police Office (BKA) and the competent authorities (prosecution offices and courts) of the federal states.

2. Chapter II: preventive measures

2.1. Observations on the implementation of the articles under review

Preventive anti-corruption policies and practices; preventive anti-corruption body or bodies (arts. 5 and 6)

To prevent corruption, Germany relies on the existing legal and regulatory framework consisting of various provisions under criminal law, public service law and other rules for the administration at both federal and state levels. The Cabinet of Germany adopted a Directive Concerning the Prevention of Corruption in the Federal Administration of 30 July 2004 (CPD), which sets out key elements of the federal administration's preventive strategy and requires, inter alia, each federal administration body, and other bodies in receipt of federal funding, to develop effective internal corruption prevention measures and to appoint a contact person for corruption prevention. In addition, the Strategy on Corruption of the Standing Conference of the Interior Ministers of the Länder (IMK) from 1995 guides corruption prevention efforts of federal states.

The implementation and periodic revisions of CPD are coordinated by an interministerial working group consisting of corruption prevention contact persons and experts of internal audit units.

Germany has not measured the impact of the corruption prevention strategy, particularly in sectors considered prone to corruption.

There are several bodies in Germany at federal and state levels charged with coordinating and overseeing the implementation of the aforementioned anti-corruption policies. A lead division on corruption prevention has been set up in BMI (Division DG I 3). Internal audit units and contact points for corruption prevention are also actively involved in preventive activities and may monitor and assess any indications of corruption.

BRH, a constitutionally independent body, monitors certain aspects of the implementation of CPD by federal administration bodies and provides comments on the BMI's annual CPD implementation reports submitted to the parliament (Bundestag). The Bundestag has the final oversight over the implementation of CPD and can issue decisions that have to be taken into account by the federal administration. All federal states have autonomous and independent audit institutions with mandates largely similar to that of BRH.

Germany actively participates in various international and regional anti-corruption initiatives, projects and programmes. Germany is a member of GRECO, the OECD Working Group on Bribery in International Business Transactions, the OECD Working Party of Senior Public Integrity Officials and the Group of 20 Anti-Corruption Working Group.

Public sector; codes of conduct for public officials; measures relating to the judiciary and prosecution services (arts. 7, 8 and 11)

The legal framework regulating the recruitment, promotion, remuneration and retirement of civil servants comprises the GG, BBG, BeamtStG and related federal and state laws.

Public bodies conduct recruitment individually. Candidates are selected based on their aptitude, qualifications and professional achievements. This principle is enshrined in constitutional law, namely in article 33, paragraph 2, of the GG, as well as in the relevant federal and Länder laws concerning civil servants. Generally, vacancies to be filled with external candidates are publicly advertised. New staff are trained on corruption prevention issues and relevant codes of conduct upon induction.

Special procedures for the selection, training and rotation of individuals in positions vulnerable to corruption are required under CPD.

The criteria for candidates to be elected to federal public offices are provided in the GG and Federal Electoral Act. Comparable regulations exist for candidates to elected offices at state and local levels. Criminal convictions for certain crimes disqualify candidates automatically (sect. 45 (1), StGB), as may acts of bribery (sect. 108 (e) (5), StGB).

Political parties must submit annual financial reports to the President of the Bundestag detailing their assets, liabilities, income and expenditure in both campaign and off-campaign periods (sect. 23(1), Political Parties Act (PartG)). Anonymous (up to 500 euros) and cash (up to 1,000 euros) donations are permitted and details of donations above 10,000 euros must be disclosed publicly (sect. 25, PartG). If parliamentarians or candidates receive donations for political parties directly, they shall report and transmit them to their party's treasurer (sect. 25, PartG). Section 23a of PartG further provides for the verification of financial statements by the President of the Bundestag.

Germany promotes integrity, responsibility and honesty among public officials through relevant provisions of, inter alia, StGB, BBG and BeamtStG. There are restrictions on accepting gifts and secondary employment (sect. 60 et seq., BBG; sect. 33 et seq., BeamtStG; and sects. 108e and 331 et seq., StGB). The statutory provisions are supplemented by guidelines and administrative regulations.

CPD contains an Anti-Corruption Code of Conduct and Guidelines for Supervisors and Heads of Public Authorities/Agencies, which are binding on federal administration bodies. The Directive, which is applicable to federal ministries, does not specify application to ministers. Other codes of conduct apply to members of the Bundestag and at state level.

There is no stand-alone legal or administrative framework to comprehensively address whistle-blowing in the public sector. General protections against discrimination for whistle-blowers acting in good faith are found in the GG, StGB, the Civil Code, labour laws and case law.

Regarding conflicts of interest, sections 20 and 21 of the Federal Administrative Procedure Act and the equivalent laws of the states exclude individuals from administrative procedures who, inter alia, are affiliated with affected companies or may directly benefit or suffer as a result. If permitted and no conflict or interference with primary responsibilities arises, civil servants may engage in enumerated paid or unpaid secondary activities (sects. 97–101, BBG).

Civil servants must report financial and non-financial obligations and interests (including third-party interests) that might conflict with their official functions to their supervisors for appropriate action. This includes secondary employment and activities after the end of the civil service.

Post-employment restrictions and accompanying disclosure requirements for current and former members of the Federal Government and parliamentary state secretaries are provided under the Act Governing the Legal Status of Members of the Federal Government and the Act on the Legal Relationships of Parliamentary State Secretaries.

Members of the Bundestag may engage in secondary employment, subject to disclosure and publication requirements in the Code of Conduct for Members of the Bundestag. In addition, the Code requires members to disclose gifts (above 200 euros), donations (above 5,000 euros) and outside activities, including sponsored travels (above 5,000 euros). Every member of the Bundestag in receipt of remuneration for activities in connection with a subject to be debated in a committee of the Bundestag shall, prior to the deliberations, disclose as a member of that committee any link between these interests and the subject to be debated where this is not evident from the information published under the provisions of the Code. There is no similar obligation for debates and deliberations in the plenary. Members of the Bundestag are not required to declare their dealings with lobbyists and other third parties, liabilities or significant assets, with the exception of shareholdings in a private corporation or partnership if they possess more than 25 per cent of the voting rights.

Disciplinary or other measures may be taken against public officials if they breach the above laws or codes.

The Judiciary Act (DRiG) establishes requirements and procedure for the appointment of federal judges and regulates their outside activities and discipline. BBG applies to federal judges, unless DRiG provides otherwise. Therefore, CPD applies to federal judges insofar as it does not undermine their judicial independence established under the GG.

Additionally, relevant laws ensure integrity among judges (e.g. sections 41 and 42 of the Civil Procedure Code (ZPO), on recusal of judges). Judges must declare conflicts of interest and secondary activities to presidents of the courts when they arise. Judges are subject to ongoing training on skills and ethics organized by the German Judicial Academy. These trainings are also open to prosecutors and other staff of the judiciary.

Public prosecutors are subject to general civil service laws and regulations described above.

Public procurement and management of public finances (art. 9)

Public procurement in Germany is decentralized and each public body conducts procurements under the framework set by various laws. For procurements above the thresholds set under relevant European Union laws (Directives 2014/23/EU, 2014/24/EU and 2014/25/EU), the basic rules are mainly provided under GWB. Procurements below the thresholds at federal level are conducted in accordance with the general principles in section 55 of BHO, the Code of Procedure for Procuring Supplies and Services below the European Union Thresholds (UVgO), and applicable state laws, while public works contracts are subject to a special regime.

All stages of procurement shall be comprehensible and controllable for all those involved (sect. 97(1), GWB). Contract notices, selection criteria and award notices must be published in advance.

GWB provides for mandatory (sect. 123) and discretionary (sect. 124) grounds to disqualify bidders. UVgO extends these rules to procurements below the European Union thresholds (sect. 31). A national competition register that will list companies that may or must be disqualified under GWB is expected to go online in late 2020. Steps are also under way to digitalize procurement processes and improve data collection and reporting.

Procurement officials who have personal interests in the outcome of procurements are excluded (sect. 6(1), Ordinance on the Award of Public Contracts).

For procurements above the European Union thresholds, unsuccessful bidders may request a review of procurement decisions by an independent body (e.g. procurement tribunals established under GWB). For other procurements, bidders may seek redress in civil proceedings. BRH or local audit authorities may conduct audits of procurement processes.

The GG, BHO, the Budget Principles Act, annual budget laws and various administrative provisions provide for requirements for and procedures on the adoption of the budget, budget management, periodic reporting, accounting and bookkeeping. The states have comparable provisions in their constitutions and financial regulations.

The draft budgetary plan is adopted in the Budget Act following consultations in the Bundestag and Bundesrat. Budget account statements are publicly accessible and information on budget performance is regularly reported. Financial and performance audits are conducted by BRH.

Federal administration bodies must have effective systems of risk management as required by CPD. Depending on the size of a public body, internal audit units shall also be established to conduct internal audits in accordance with the standards of the Institute of Internal Auditors. BMI regularly organizes meetings of internal audit units to share experience and standardize audit procedures.

Measures to preserve the integrity of financial documentation related to public finances, including minimum retention periods, are found in BHO (sects. 70–79), StGB and related administrative regulations and guidelines.

Public reporting; participation of society (arts. 10 and 13)

IFG provides any person with the right to access information held by federal bodies, subject to restrictions designed to protect public and private interests. Many federal states have their own legislation that largely corresponds to IFG.

IFG does not mandate federal administration bodies to take specific and uniform measures to operationalize the Act and does not specify the content and form of IFG requests and to whom they shall be made; each body can introduce entity-specific arrangements and procedures.

IFG vests the Federal Commissioner for Freedom of Information (BfDI) with oversight powers over the Act. Complaints against decisions denying IFG requests

may be lodged with BfDI or administrative courts. In case of the former, BfDI may approve the authority's decision or object to it and ask for reconsideration.

Germany recently enacted measures to improve transparency of and promote public participation in decision-making processes. For example, the Open Data Act 2017 requires the federal administration to proactively publish data as open data. The portal www.govdata.de provides a means of accessing administrative data.

The Act on E-Government served as the basis for the Government's programme "Digital Public Administration 2020". The Act to Improve Online Access to Administrative Services (OZG) requires the federal and state governments to offer their administrative services in electronic form via administrative portals and to link these portals in a network by the end of 2022.

The Federal Government annually publishes reports on its corruption prevention efforts (BMI) and the National Situation Report on Corruption (BKA). Federal states also publish reports on corruption risks through IMK or individually.

The Federal Government raises awareness of issues of corruption among the public, including through government websites, press, public relations and issuances of booklets. Schools and universities in Germany have introduced various education programmes and initiatives on anti-corruption.

The authorities seek input from relevant stakeholders (associations, industries and expert groups) regarding draft bills pursuant to the Federal Government's Joint Rules of Procedure and publish them on their websites.

Bodies responsible for anti-corruption are known to the public and anyone can report corruption or other criminal acts to them, including anonymously.

Private sector (art. 12)

Prevention of corruption involving the private sector is addressed through legal provisions and regulatory frameworks such as the Commercial Code (HGB), the Stock Corporations Act (AktG), the Limited Liability Companies Act (GmbHG), the Securities Trading Act (WpHG) and the Corporate Governance Code (DGCK).

Generally, German companies must apply German accounting standards; the International Financial Reporting Standards are mandatory for capital market-oriented companies in their consolidated financial statements. The Financial Reporting Enforcement Panel and Federal Financial Supervisory Authority (BaFin) are authorized to examine the financial statements of capital market-oriented companies. Section 283 of StGB and sections 238, 239, 246 and 264 of HGB prohibit the accounting practices listed under article 12, paragraph 3, of the Convention. Violations of accounting regulations can be punished as administrative offences pursuant to article 334 of HGB. Serious breaches of bookkeeping and accounting obligations are criminal offences under section 331 of HGB and section 283 of StGB.

Federal authorities and the private sector have established joint initiatives (e.g. the Alliance for Integrity) to develop common anti-corruption strategies and promote integrity and transparency domestically and abroad.

The Commercial Register, the Register of Cooperatives and the Transparency Register contain information on the identity of legal and natural persons involved in the establishment and management of companies, as well as on the companies' beneficial owners.

In line with the duty of due care (sections 76(1) and 93(1), AktG; and sections 35(1) and 43(1), GmbHG), company management may be held liable for failure to supervise company affairs in a way to prevent corruption, depending on the company's risk profile, as confirmed by recent jurisprudence. Furthermore, DCGK contains a set of non-statutory recommendations on anti-corruption measures for listed companies. Listed companies must disclose whether they comply with these recommendations and if not, explain the reasons on their websites (sect. 161, AktG).

No specific legal framework on whistle-blowing in the private sector exists in Germany.

Under section 4(5) of the Income Tax Act, bribes or other expenses linked to corruption may not be deducted as business expenses.

Measures to prevent money-laundering (art. 14)

The system of preventive measures against money-laundering in Germany was enhanced with the revision and adoption of the amended AMLA in June 2017 within the framework of the Act Transposing the Fourth European Union Money Laundering Directive, Implementing the European Union Fund Transfer Regulation and Reorganizing the Financial Intelligence Unit. AMLA is supplemented by sector-specific laws such as the Banking Act and the Payment Services Supervision Act.

AMLA requires obliged entities (as defined in sect. 2(1)) to identify their customers, including the customers' beneficial owners (sect. 10 et seq.), to retain records obtained in the process (sect. 8), and to report suspicious transactions to the FIU (sect. 43). The scope of these measures must reflect the respective risk of money-laundering (sects. 4(1) and (2), and 5).

A register of beneficial owners became available on 27 December 2017. The register covers private legal persons and registered private companies, as well as trusts and similar legal arrangements. While there is no verification of the entered data, failure to comply with registration requirements will be sanctioned by the Federal Administrative Authority in charge of supervision of the register according to section 25 (6) of AMLA. Access to the register is granted to competent authorities as well as to anybody who can demonstrate a "legitimate interest", as defined in subsidiary legislation. Access to the registry will be broadened with the implementation of the Fifth European Union Anti-Money Laundering Directive (which was passed and will enter into force on 1 January 2020) granting access to every member of the public.

Germany is undertaking work on a national risk assessment, with particular focus on control measures for designated non-financial businesses and professions (DNFBPs). The national risk assessment was published in October 2019.

Anti-money-laundering supervisory and law enforcement authorities cooperate and exchange information domestically and internationally, as authorized by law (e.g., sects. 32, 33 et seq. and 44, AMLA; and sect. 31b, Fiscal Code). BaFin has signed memorandums of understanding with foreign counterparts, which provide a basis for information exchange and cooperation.

Movements of cash and cash equivalents across German borders are monitored by German Customs (sects. 1(4), 5(1) and (2), 12a and 31a, Customs Administration Act) and in accordance with Regulation (EC) No. 1889/2005 on controls of cash entering or leaving the Community. Cash and cash equivalents above a total value of 10,000 euros must be declared and, upon request by Customs, explained.

The European Union Funds Transfer Regulation (EU 2015/847) is implemented in Germany and requires payment service providers to ensure, inter alia, that funds transfers are accompanied by accurate and complete information on the payer.

Germany contributes to various international and multinational bodies, including the FATF, Eurojust, the European Union Agency for Law Enforcement Cooperation, the European Judicial Network, the Camden Asset Recovery Inter-Agency Network and the Egmont Group of Financial Intelligence Units. Germany also provides development support to other countries to combat money-laundering and illicit financial flows.

2.2. Successes and good practices

- Germany supports other States on corruption prevention through its development programmes (art. 5, para. 4).
- The annual reports of the FIU list occasions of international cooperation by country, for the most active countries; reports are published bilingually (art. 14, para. 1 (b)).
- The international support that Germany provides to combat money-laundering and illicit financial flows (art. 14, para. 5).

2.3. Challenges in implementation

It is recommended that Germany:

- Consider seeking, where appropriate, input from stakeholders outside the public sector on the implementation and future revisions of CPD; Germany is also encouraged to specify the application of the Directive to Ministers (art. 5, para. 1);
- Consider further enhancing transparency in political party financing by: (a) lowering the threshold for public disclosure of donations; (b) lowering or eliminating entirely the anonymous donations threshold; and (c) strengthening the record-keeping and disclosure requirements for parliamentarians and candidates (art. 7, para. 3);
- Consider strengthening measures and systems to facilitate the reporting of corruption to appropriate authorities by providing: (a) a comprehensive definition of protected disclosures in the legislation; (b) clear reporting channels and systems to make protected disclosures; (c) effective protections against discrimination for persons making protected disclosures; and (d) adequate awareness-raising among public officials. In this context, consideration should be given to providing protections for reports of irregularities or misconduct not rising to the level of actual or alleged violations of the law, and establishing evidentiary presumption of good faith for persons making protected disclosures (art. 8, para. 4);
- Endeavour to enhance transparency of outside interests and activities of members of the Bundestag by adopting: (a) additional disclosure requirements for members of the Bundestag covering conflicts between their private interests and parliamentary functions; and (b) effective and comprehensive regulations on transparency of interaction of members of the Bundestag with lobbyists and other third parties (art. 8, para. 5);
- Ensure that an effective system of appeal is introduced for public procurements below the European Union thresholds (art. 9, para. 1);
- Strengthen oversight of the operation of IFG (art. 10 (a));
- Strengthen measures to facilitate reporting of corruption in the private sector (art. 12, para. 2);
- In light of the decentralized approach to anti-money-laundering supervision of the non-financial sector, continue efforts towards strengthening anti-money-laundering oversight and supervision, in particular of the non-financial sector. Germany could also study the possibility of establishing a verification mechanism to ensure the validity of data entered in the transparency register and to facilitate access by persons and entities having a legitimate interest in accessing the register, with a view to enhancing transparency (art. 14, para. 1).

3. Chapter V: asset recovery

3.1. Observations on the implementation of the articles under review

General provision; special cooperation; bilateral and multilateral agreements and arrangements (arts. 51, 56 and 59)

The IRG forms the basis for mutual legal assistance in criminal matters, including requests related to asset recovery.

Section 59 of IRG is a broadly-framed provision which enables investigative acts for tracing and freezing assets; in principle, this allows for the same scope of assistance as German courts or authorities could provide one another. Confiscation of assets based on a foreign decision is regulated in sections 48 et seq. Legal assistance and transmission of data without request shall not be granted if this would conflict with basic principles of the German legal system (sect. 73, IRG).

In addition, the provisions of the criminal procedure law (CPC) apply to acts of mutual legal assistance. Within that context, measures to trace assets are possible even if there is merely an initial suspicion that an offence has been committed. Germany passed new confiscation legislation that entered into force on 1 July 2017.

The requirements for mutual legal assistance are laid out in *Requesting Mutual Legal Assistance in Criminal Matters from G20 Countries: A Step-by-Step Guide* (2012) and the Guide to Asset Recovery (2014), which was under revision at the time of review.

In practice, most mutual legal assistance requests are sent and executed through direct channels, especially within the European Union (for Germany, these are the prosecution offices and courts of the federal states). Requests under this Convention are channelled through the central authority of Germany, the BfJ. Germany does not collect statistics on mutual legal assistance requests at either federal or state level.

The spontaneous sharing of crime-related information by the relevant authorities is authorized (sects. 61a and 92c, IRG; and sects. 33 et seq., AMLA).

Germany has signed several multilateral agreements to facilitate cross-border asset recovery and can cooperate on asset recovery regardless of the existence of a treaty.

Germany considers this Convention as a basis for mutual legal assistance, although its provisions have not become directly applicable as national law (sect. 1(3), IRG). There have been no concluded cases of asset return or disposal based on this Convention. Two requests were pending at the time of review.

Prevention and detection of transfers of proceeds of crime; financial intelligence unit (arts. 52 and 58)

The anti-money-laundering regime of Germany requires obliged entities to identify their customers, including the customers' beneficial owners (sect. 10 et seq., AMLA) and to apply a risk-based approach to customer identification (sects. 4(1) and (2), and 5, AMLA). Enhanced due diligence is required, inter alia, in respect of politically exposed persons, their family members or known close associates (sect. 15(3) and (4), AMLA). Where there is a suspicion of money-laundering or terrorist financing, a report must be sent to the FIU (sect. 43, AMLA).

Records must be retained for five years (sect. 8(4), AMLA), in accordance with article 40 of the Fourth European Union Anti-Money Laundering Directive and FATF recommendation 10.

BaFin, working together with the German Banking Industry Committee, has developed interpretative notes and guidance on the prevention of money-laundering, to guide financial institutions on the due diligence requirements. BaFin regularly informs banks via circulars about countries that have been listed by the FATF as having inadequate systems to combat money-laundering.

The federal states of Germany, which are responsible for the supervision of the non-financial sector, have also drawn up guidance notes (available online), to assist

obliged entities in the non-financial sector in fulfilling their due diligence obligations. The FIU also provides guidance and typology documents for each (financial and non-financial) sector. These documents are available at the FIU website for obliged entities after registration.

To conduct banking operations in Germany, a physical presence is required (sects. 32 and 33, Banking Act). Section 25m prohibits, inter alia, the establishment or maintenance of correspondent banking or other business relationships with "shell banks", as defined in section 1(22) of AMLA.

Germany has considered adopting financial declaration requirements for appropriate public officials but has opted for a system focused on the disclosure of interests, including certain financial interests such as income from secondary activities and donations, as discussed under article 8, paragraph 5, of the Convention.

Without prejudice to anti-money-laundering measures, including due diligence requirements for domestic and foreign politically exposed persons, Germany has considered but does not require public officials to disclose their interest in or control over foreign financial accounts. The Common Reporting Standard provides for the automatic exchange of financial account information.

AMLA created the legal framework for the reorganization of the FIU of Germany. The new FIU became operational on 26 June 2017 and is organized along administrative lines under the Federal Ministry of Finance. The FIU guarantees that each case is subject to immediate screening upon receipt, to ensure that cases with a fixed deadline, urgent cases, and reports involving potential terrorist financing, are prioritized.

Measures for direct recovery of property; mechanisms for recovery of property through international cooperation in confiscation; international cooperation for purposes of confiscation (arts. 53, 54 and 55)

Under German law, states and other legal persons (both domestic and foreign) have legal capacity to be parties to court proceedings (sect. 50, ZPO). The capacity of States to be parties to court proceedings is consistent with the rulings of the Federal Court of Justice.

Assets that have been taken from public funds due to a criminal offence may be returned as compensation for damages to injured persons, pursuant to section 823(2) of the Civil Code in conjunction with a statute intended to protect another person, for example breach of trust (sect. 266, StGB).

The confiscation of proceeds of offences from principal and secondary participants is mandatory irrespective of claims by injured parties (sect. 73(1), StGB). Any injured party, including a state, may claim victim compensation during enforcement proceedings. The criminal court judgment determines their status as injured party and the damage incurred; a civil law title or special judicial admission is not required. Notice is given to aggrieved persons (sect. 459i, CPC).

Assistance in criminal proceedings may be provided through enforcement of a penalty or other sanction having final and binding force in a foreign country (sects. 48 and 49, IRG). In confiscation cases, assistance can only be provided, inter alia, where such an order could have been made according to German law (sect. 49, IRG). These measures apply to any country, unless there are international treaties governing these provisions (sect. 1(3), IRG). Special provisions for European Union member countries are contained in sections 91a et seq. of IRG. Germany has returned assets through the enforcement of foreign orders, including under the European Union Directive on the freezing and confiscation of instrumentalities and proceeds of crime (2014/42/EU).

In addition to the mandatory confiscation of assets (sect. 73(1), StGB), objects originating from predicate offences to money-laundering committed abroad may also be confiscated (sect. 261(7) and (8), StGB).

Germany has established non-conviction-based confiscation (sect. 76a (1) and (2), StGB). A recent court judgment applying these measures was provided. The extended confiscation of assets is also possible (sect. 73a, StGB).

Assets may be traced even if there is merely an initial suspicion that an offence has been committed (sect. 59, IRG). Objects may be seized if there are sufficient factual grounds to assume that the conditions for their forfeiture or confiscation have been fulfilled (sect. 111b, CPC, in conjunction with sect. 67, IRG). Seized objects may be handed over to the competent authority of a foreign State (sect. 66, IRG).

Section 111b of CPC grants the law enforcement authorities a margin of discretion to take decisions on provisional measures and preservation of seized assets, which are also applicable in international cooperation cases.

The rights of bona fide third parties are protected (sects. 58(3) and 66(2), IRG).

Some guidance on the content of requests is contained in the Guidelines for Relations with Foreign Countries in Matters of Criminal Law (RiVASt) and the Guide to Asset Recovery (2014). Where the request faces a remediable obstacle, the requesting State is provided the opportunity to supplement the request (No. 18, RiVASt). Consultations are held before provisional measures are lifted (No. 196, RiVASt).

Return and disposal of assets (art. 57)

In general, confiscated property vests in the German State once the order becomes final (sect. 56(4), IRG, and sect. 75, StGB). However, when enforcing a confiscation order from a requesting State, the authority in charge of granting assistance may enter into an ad hoc agreement with the competent requesting authority about the disposal, return or distribution of the assets if reciprocity is assured (sect. 56b, IRG). Such decisions are taken on a case-by-case basis and must be based on objective reasons (No. 189, RiVASt). For European Union member States, sect. 88f of IRG applies, which stipulates rules on the disposal of assets for competent authorities of requesting member States.

The compensation of injured parties is required, inter alia, if the injured persons show that they could not obtain full satisfaction of their claim from the enforcement of the title (sect. 56a, IRG).

There is no provision requiring the return of confiscated assets to a requesting State in cases of offences under the Convention, although the principles of the Convention would be applied in each ad hoc agreement.

Germany generally waives all claims of reimbursement of costs, except if costs are exorbitant (sect. 75, IRG).

Germany has entered into asset disposal agreements with other European Union member States in specific cases. No statistics are kept in this regard.

3.2. Successes and good practices

- The possibility under article 56a of IRG of compensation from public funds if an injured person cannot obtain full satisfaction of a claim from enforcement of the title (art. 57).

3.3. Challenges in implementation

It is recommended that Germany:

- Continue efforts towards improving the system of data collection concerning mutual legal assistance requests by exploring ways to compile relevant information and statistics (art. 51);
- Include updated information on the required content for mutual legal assistance requests in the next version of the asset recovery guide, in order to provide greater certainty to requesting countries (art. 55, para. 3);

- In the absence of cases and given that the Convention is not directly applicable, adopt measures providing for the mandatory return of assets in line with article 57. It would also be beneficial to include a reference to the obligations under article 57 in the updated asset recovery guide (art. 57, para. 3);
- Continue steps to capacitate the newly established FIU, including through the provision of necessary resources and satisfaction of increased staff requirements to effectively carry out its mandate (art. 58).