



OECD Anti-Corruption Network for Eastern Europe and Central Asia

International co-operation in corruption cases



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and Central Asia**

**INTERNATIONAL
CO-OPERATION IN
CORRUPTION
CASES**



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About the Anti-Corruption Network for Eastern Europe and Central Asia

Established in 1998, the main objective of the Anti-Corruption Network for Eastern Europe and Central Asia (ACN) is to support its member countries in their efforts to prevent and fight corruption. It provides a regional forum for the promotion of anti-corruption activities, the exchange of information, elaboration of best practices and donor coordination via regional meetings and seminars, peer-learning programmes, and thematic projects. ACN also serves as the home for the Istanbul Anti-Corruption Action Plan. Find out more at www.oecd.org/corruption/acn/.

About the thematic studies on criminalisation of corruption and law-enforcement in Eastern Europe and Central Asia

The ACN Work Programme for 2013–2015 included a thematic cross-country study (review) on the criminalisation of corruption and effective law enforcement. The first topic selected for the thematic study was the liability of legal persons for corruption, and the second concerned the offence of briber of foreign officials and its enforcement. This study is the third in the series and addresses international cooperation in corruption cases. The objectives of the studies are (1) to analyse the state of play in the relevant area, in order to identify common problems and best practices (in particular, by using case studies from selected countries), and to develop regional recommendations and (2) to identify capacity-building and training needs for the law enforcement authorities and the judiciary.

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FOREWORD

Corruption schemes are becoming increasingly sophisticated and often involve the commission of criminal acts in multiple jurisdictions. This makes the enforcement of criminal legislation especially challenging for law enforcement and prosecution agencies. As a result, international cooperation in its various forms has become critically important for successfully investigating and prosecuting high-profile and complex corruption cases. This cross-country report analyses international cooperation in corruption cases in Eastern Europe and Central Asia. The report focuses on the 25 countries participating in the Anti-Corruption Network for Eastern Europe and Central Asia (ACN). The report is based on data provided by the ACN governments in the form of replies to questionnaires as well as information obtained from desk research. It also reflects the discussions and examples of practices that have been presented during ACN meetings. The report was prepared in 2016.

The aim of this report is to create a practical tool to assist relevant authorities on the ground in their everyday work in engaging in international cooperation in corruption cases. The study's specific objectives are (1) to analyse the state of play in international cooperation for corruption cases, including legal and institutional arrangements as well as practical experience; (2) to identify good practices and common problems (including through case studies of good practice in selected countries) and to develop recommendations; (3) to identify capacity building and training needs for the relevant authorities; and (4) to contribute, along with other ACN follow-up activities, to establishing contacts among relevant professionals that support effective and efficient mutual legal assistance and other forms of international cooperation. The study addresses international cooperation, including mutual legal assistance, direct law enforcement cooperation, the use of joint investigative teams, cooperation in special investigative measures, and various modern mechanisms for cooperation in criminal matters.

This report has been prepared as a part of the OECD Anti-Corruption Network for Eastern Europe and Central Asia Work Programme.

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ACRONYMS AND ABBREVIATIONS

ACD	Anti-Corruption Directorate of Azerbaijan's PGO
ACN	Anti-Corruption Network for Eastern Europe and Central Asia
ACN LEN	ACN Law Enforcement Network
ADB	Asia Development Bank
ARO	Asset Recovery Office
Azerbaijan MLA Law	Law of the Azerbaijan Republic on Legal Assistance in Criminal Matters
BIH	Bosnia and Herzegovina
BIH MLA Law	Law on Mutual Legal Assistance in Criminal Matters of Bosnia and Herzegovina
BSEC	Black Sea Economic Cooperation
CARIN	Camden Assets Recovery Interagency Network
CC	Criminal Code
CCP	Code of Criminal Procedure
CCPE	Consultative Council of European Prosecutors
Chisinau Convention	Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Cases of 2002
CIS	Commonwealth of Independent States
COE Corruption	Council of Europe Criminal Law Convention on Corruption of 1999
COE MLA Convention	European Convention on Mutual Assistance in Criminal Matters of 1959
CPA	Criminal Procedure Act
CPC	Criminal Procedure Code
CPL	Criminal Procedure Law
Croatia MLA Law	Croatian Act on Mutual Legal Assistance in Criminal Matters
DNA	National Anti-Corruption Directorate of Romania
EAG	Eurasian Group on Combating Money Laundering and Financing of Terrorism
EBRD	European Bank for Reconstruction and Development
Egmont Group	Egmont Group of Financial Intelligence Units
EJN	European Judicial Network
EJTN	European Judicial Training Network
EPAC	European Partners against Corruption
ESW	Egmont Secure Web
Europol	European Police Office
FATF	Financial Action Task Force
FIU	financial intelligence unit
FYRM	Former Yugoslav Republic of Macedonia
GUAM	Organization for Democracy and Economic Development
Georgia LEC Law	Law of Georgia on International Cooperation in Law Enforcement
Georgia MLA Law	Law of Georgia on International Cooperation in Criminal Matters
GLEN	Global Law Enforcement Network
GPO	General Prosecutor's Office
GRECO	Council of Europe Group of States against Corruption
GUAM	Organization for Democracy and Economic Development
ICAR	Basel Institute on Governance's International Centre for Asset Recovery
ICCC	Georgia's International Criminal Cooperation Centre
ICU	International Cooperation Unit of Georgia's OCP
IICCC	International Intergovernmental Council on Combating Corruption
ILJC	Directorate of International Law and Judicial Cooperation of the Romanian MOJ
Interpol	International Police Organisation
JIT	Joint Investigative Team
KNAB	Latvia's Corruption Prevention and Combating Bureau
Minsk Convention	Convention on Legal Assistance and Legal Arrangements in Civil, Family

	and Criminal Matters of 1993
MLA	mutual legal assistance
MOFA	Ministry of Foreign Affairs
MOI	Ministry of the Interior
MOIA	Ministry of Internal Affairs
MOJ	Ministry of Justice
Moldova MLA Law	Law on International Legal Assistance in Criminal Matters of Moldova
Moneyval	Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism
Montenegro MLA Law	Law on Mutual Legal Assistance in Criminal Matters of Montenegro, nos. 04/2008 and 36/2013
MOU	Memorandum of Understanding
OCP	Georgia's Office of Chief Prosecutor
OECD	Organisation for Economic Co-operation and Development
OECD Convention	OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions
OLAF	European Anti-Fraud Office
OSCE	Organization for Security and Cooperation in Europe
PC-OC	Council of Europe Committee of Experts on the Operation of European Conventions on Co-Operation in Criminal Matters
PGO	Prosecutor General's Office
POHCCJ	High Court of Cassation and Justice of Romania
PPC	Penal Procedure Code
RAI	Regional Anti-Corruption Initiative for South Eastern Europe
Romania MLA Law	Romanian Law no. 302 of 28 June 2005 on International Judicial Cooperation in Criminal Matters
S4ACA	SIENA for Anti-Corruption Authorities
SCFM	Ukraine's State Committee for Financial Monitoring
SCIP	Section of International Cooperation and Programmes of Romania's DNA
SCO	Shanghai Cooperation Organisation
SEEPAG	Southeast European Prosecutors Advisory Group
SELEC	Southeast European Law Enforcement Centre
Serbia MLA Law	Law on Mutual Legal Assistance in Criminal Matters of the Republic of Serbia of 2009
SFO	United Kingdom Serious Fraud Office
SIENA	Europol's Secure Information Exchange Network Application
SIRENE	Supplementary Information Request at the National Entries
SIS	Schengen Information Centre
SJC	Section for International Judicial Cooperation, International Relations, and Programmes of Romania's POHCCJ
StAR Initiative	Stolen Asset Recovery Initiative of the World Bank and UNODC
STT	Special Investigative Service of Lithuania
UNCAC	United Nations Convention against Corruption of 2003
UNODC	United Nations Office on Drugs and Crime
UNTOC	United Nations Convention against Transnational Organized Crime of 2000
WGB	OECD Working Group on Bribery

ABOUT THE THEMATIC STUDY

The OECD Anti-Corruption Network for Eastern Europe and Central Asia (ACN) is a regional anti-corruption programme established in 1998 under the OECD Working Group on Bribery (WGB) and open to the countries of the region.¹ At its meeting on 11 December 2012, the ACN's Steering Group adopted the new ACN Work Programme for 2013–2015.² This programme includes a plan for peer review under the Istanbul Action Plan as well as the aim of producing three thematic cross-country studies. One of these studies is under the general topic of criminalisation of corruption and law enforcement and includes three separate reports to be explored consecutively: (i) the liability of legal persons for corruption, (ii) foreign bribery, and (iii) international cooperation in corruption cases.

The objective of the three reports is to (1) analyse state of play in the relevant areas, identify good practices and common problems (including through case studies of good practice in selected countries), and develop regional recommendations and (2) identify capacity building and training needs for the law enforcement authorities and judiciary.

The first thematic report, *Liability of Legal Persons for Corruption Offences*, was researched and drafted in 2014 and approved in March 2015.³ The second report, *Foreign Bribery Offence and Its Enforcement in Eastern Europe and Central Asia*, was completed in 2015 and published in early 2016. The current review constitutes the third, and last, of these thematic reports.

In preparation for the thematic study on international cooperation, the ACN Secretariat conducted initial research of available materials and prepared a thematic questionnaire (with input from an advisory group). The questionnaire was sent to the governments of ACN member countries in February 2016, with a request for replies and up-to-date texts of relevant legal provisions. Responses were received from the following 16 countries: Albania, Armenia, Azerbaijan, Bosnia and Herzegovina (BIH), Bulgaria, Georgia, Kazakhstan, Kyrgyzstan, Latvia, Lithuania, Moldova, Montenegro, Romania, Serbia, Slovenia, and Ukraine. Additional input in the form of comments to the draft report were provided by Croatia, FYRM, and Uzbekistan.

On the basis of these responses, along with additional desk research, Ms. Melanie Reed (OECD consultant) prepared the study under direction and coordination by Ms. Rusudan Mikhelidze and Mr. Brooks Hickman (OECD/ACN Secretariat). In order to verify information and validate the findings, the draft study was presented to an advisory group (composed of representatives from selected governments and experts on voluntary basis) and to the ACN countries in fall 2016. It was then discussed during the ACN's 7th Law Enforcement Network meeting on 19 December 2016 in Astana, Kazakhstan. The study was finalised on the basis of these discussions. Members of the advisory group, as well as Mr. Yitzchak Blum (of Israel) and Ms. Marianna Radu (of Romania), provided invaluable contributions at various stages of preparation of the report.

¹ The ACN is open to all countries in Eastern Europe and Central Asia, including Albania, Armenia, Azerbaijan, Belarus, Bosnia and Herzegovina, Bulgaria, Croatia, Estonia, FYRM, Georgia, Kazakhstan, Kyrgyzstan, Latvia, Lithuania, Moldova, Montenegro, Romania, Russia, Serbia, Slovenia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan. OECD countries can also participate in the ACN as partners or donors. The ACN is open for participation by international organisations, such as the Council of Europe Group of States against Corruption (GRECO), the Organization for Security and Cooperation in Europe (OSCE), the UN Office on Drugs and Crime, and the UN Development Programme, as well as multi-lateral development banks, such as the Asian Development Bank, Council of Europe Investment Bank, EBRD, and the World Bank. The ACN is also open for participation by non-governmental partners, such as Transparency International and other non-governmental and business associations.

² OECD/ACN, *Work Programme for 2013–2015* (Paris: OECD 2012).

³ OECD/ACN, *Liability of Legal Persons for Corruption in Eastern Europe and Central Asia* (Paris: OECD 2015).

This report aims not only to discuss the legal and procedural frameworks in place in the countries reviewed, but also to examine the tools available to and good practices of each jurisdiction. The report also indicates areas of challenge in international cooperation and makes recommendations for addressing these challenges. Depending on available funds, technical peer learning seminars may be organised at a later date to provide training to law enforcement practitioners, judges, and policy-makers on the issues raised in this report and to promote the use of good practice on selected topics.

INTRODUCTION

Corruption schemes are becoming increasingly sophisticated and often involve the commission of criminal acts in multiple jurisdictions. For example, a company might provide a bribe or other benefit to a public official or agent in a foreign country to obtain a business advantage, using shell companies in third countries to hide the illicit funds. A public official who has engaged in embezzlement of public funds might hold them in an offshore bank account to hide them from tax authorities. When corruption crosses borders in this way, enforcement of criminal laws can become extremely challenging in practice. Key documents, witnesses, or even suspects may be located in another jurisdiction, and funds may be difficult to trace. If the corruption involves high-level public officials, political concerns may also come into play.

Accordingly, international cooperation—whether through the mutual legal assistance (MLA) process or through less formal mechanisms—is critical to the success of investigations and prosecutions of international corruption cases. International organisations have recognised this need for international cooperation. For example, article 46.1 of the United Nations Convention against Corruption (UNCAC) of 2003, perhaps the most comprehensive anti-corruption instrument, provides,

State Parties shall afford one another the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to the offences covered by this Convention.

Other international instruments contain similar provisions.⁴

This report aims to give an overview of the frameworks governing international cooperation in ACN countries in relation to corruption and money laundering cases, as well as to provide insights on how these frameworks function in practice. The report focuses on international cooperation cases during the 2010–2015 time period. For the purposes of this study, the term “corruption” is defined to include the following crimes covered by UNCAC: (i) bribery of national, international, and foreign public officials (arts. 15 and 16); embezzlement and misappropriation of property by a public official (art. 17); trading in influence (art. 18); abuse of functions (art. 19); illicit enrichment (art. 20); private sector bribery (art. 21); and private sector embezzlement (art. 22). The term “international cooperation” refers to mutual legal assistance (MLA) and direct cooperation at the level of law enforcement authorities and financial intelligence units. Importantly, this report does not deal in detail with extradition and asset recovery.⁵

The hope is that by providing examples of practices and challenges throughout the ACN region this report will become a tool to assist relevant authorities on the ground in their everyday work. The report seeks to accomplish four objectives:

1. Provide an analysis of the state of play in the area of international cooperation in corruption cases (including legal and institutional arrangements as well as practical experience);

⁴ See, e.g., UN Convention against Transnational Organized Crime (UNTOC) art. 18; OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (OECD Anti-Bribery Convention) art. 9.

⁵ These are specialised forms of international cooperation that are subject to particular rules that have been extensively and separately discussed in a numerous international settings (and which, in fact, have their own separate sections in international instruments such as UNCAC). To have devoted more attention to these topics, which are of uncontested importance, would have rendered preparation of the draft study an even more complicated task than it already was. Moreover, extradition and asset recovery are forms of cooperation that become most relevant *at the end* of a successful investigation, but it has been the perception that many of the critical issues of international cooperation in corruption cases occur in the investigation and pre-trial phases of a case and that the most urgent need is a discussion of cooperation tools and practices during these earlier stages. Indeed, as part 2.3.6 below points out, nearly all assistance rendered by ACN states during the time period covered by this report occurred during the pre-trial period.

2. Identify good practices and common problems (including through case studies of good practice in selected countries) and develop recommendations;
3. Identify capacity building and training needs for the relevant authorities; and
4. Through follow-up activities, contribute to establishing contacts among professionals that can support effective and efficient MLA and other types of international cooperation.

1. THE LEGAL FRAMEWORK OF INTERNATIONAL COOPERATION

Historically, MLA could be provided in relation to criminal cases only through the use of a letter rogatory submitted through diplomatic channels. This system was fraught with problems. In particular, the many layers of bureaucracy involved in the process often resulted in delay in receiving information needed to investigate or prosecute a case.⁶ Fortunately, as globalisation has resulted in an ever-increasing flow of cross-border crimes, international organisations and individual countries have created new tools for exchanging information relating to criminal cases across borders. Some of these tools have been embedded in international treaties—whether on a multilateral or bilateral basis. Others have been adopted unilaterally by individual states as part of their domestic law.

ACN countries are parties to several multilateral and bilateral treaties that address international cooperation in criminal cases, or even specifically in corruption cases (see Annex 3 and Annex 4). In addition, most ACN countries also have a robust national legal framework that governs international cooperation. This section discusses the current legal frameworks for providing international assistance in ACN countries, especially as they relate to crimes of corruption.

1.1 International treaties providing for mutual legal assistance

1.1.1 *Multilateral instruments*

One of the earliest multilateral legal instruments addressing the issue of international cooperation in criminal cases was the European Convention on Extradition of 1957. The European Convention on Mutual Assistance in Criminal Matters (COE MLA Convention), which more specifically addresses MLA, followed soon thereafter in 1959. The COE MLA Convention requires state parties to provide “the widest measure of mutual assistance” to each other, including procuring evidence, making witnesses or experts available to testify, or search and seizure of property (among other things). All 47 COE members (including 18 ACN countries) have ratified this convention.

Other regional groups have also concluded agreements relating to international cooperation. For example, in 1993, the Commonwealth of Independent States, a group consisting of former Soviet states (including nine ACN countries), signed the Convention on Legal Assistance and Legal Arrangements in Civil, Family and Criminal Matters (the Minsk Convention).⁷ Members of the Organization of the Black Sea Economic Cooperation (BSEC) have also concluded agreements to facilitate international cooperation in criminal investigations and prosecutions among member states.⁸

⁶ OECD, *Typology on Mutual Legal Assistance in Foreign Bribery Cases*, at 14 (Paris: OECD 2012).

⁷ This agreement was updated in 2002 (the Chisinau Convention).

⁸ Twelve states belong to BSEC: Albania, Armenia, Azerbaijan, Bulgaria, Georgia, Greece, Moldova, Romania, Russia, Serbia, Turkey, and Ukraine. More information about the organisation is available at <http://www.bsec-organization.org/>. The agreements specifically relate to organised crime, although the provisions are broad enough to cover crimes of corruption.

Box 1. Cooperation among GUAM countries

GUAM is a regional organisation consisting of Georgia, Ukraine, Azerbaijan, and Moldova. It began as a consultative forum in 1997 and was founded as an independent organisation in 2001. In 2006, the organisation was reorganised and renamed the Organization for Democracy and Economic Development. The organisation's purposes include promoting the rule of law and facilitating "practical cooperation."⁹ To that end, the organisation has entered into several international cooperation agreements.

Just after its formation, in 2002, GUAM members entered into the Agreement on Cooperation among the Governments of GUUAM Participating States in the Field of Combat against Terrorism, Organized Crime and Other Dangerous Types of Crimes (GUAM Agreement).¹⁰ This agreement addresses international cooperation in relation to a wide variety of criminal activities, including corruption. A 2004 protocol sets forth an electronic system for the exchange of information between the countries, called the GUAM Interstate Information Management System (IIMS).¹¹ In 2012, GUAM members entered into a letter of intent with the Southeast European Law Enforcement Center (SELEC) regarding international cooperation between the two organisations through information exchanges, project work, and the sharing of expertise (among other things).¹²

As international organisations have developed multilateral anti-corruption instruments, they have also included provisions expressly relating to international assistance in the investigation and prosecution of corruption cases. For example, article 46.1 of the United Nations Convention against Corruption (UNCAC), the anti-corruption treaty with the broadest scope and application, provides that state parties shall "afford one another the widest measure of MLA in investigations, prosecutions and judicial proceedings in relation to the offences covered by [the] Convention." Similarly, article 26 of the Council of Europe Criminal Law Convention on Corruption (COE Corruption Convention) of 1999 requires state parties to "afford one another the widest measure of mutual assistance by promptly processing requests from authorities that, in conformity with their domestic laws, have the power to investigate or prosecute criminal offences established in accordance with the Convention."

One strength of agreements such as UNCAC and the COE Corruption Convention is that if the state requesting international assistance and the state receiving the request are both parties to the agreement, the two states can often rely solely on the multilateral instrument as the legal basis for providing assistance, even if the two states do not have a bilateral treaty in place regarding international assistance. For example, in 2016, the United Nations Office on Drugs and Crime (UNODC) observed that the "vast majority" of state parties to UNCAC had "confirmed the possibility of relying on the Convention itself as the legal basis and, in particular, of directly applying article 46 [regarding MLA] in cases where both the requesting and requested countries are parties to the Convention and when they are not bound by a special agreement on mutual legal assistance."¹³ UNODC noted that 17 states have reported requests made and/or received based solely on UNCAC.¹⁴

Thirteen of the 16 countries that responded to the questionnaire indicated that international treaties are "self-executing," that is, they automatically become part of domestic law and can form a sufficient basis

⁹ See Charter of Organization for Democracy and Economic Development – GUAM, Kyiv, 23 May 2006, art. 1, <http://guam-organization.org/en/node/450>.

¹⁰ GUAM Agreement, Kyiv, 20 July 2002 (entry into force 25 Aug. 2004), <http://guam-organization.org/en/node/924>.

¹¹ Protocol to the Agreement on Cooperation among the Governments of GUUAM Participating States in the Field of Combat against Terrorism, Organized Crime and other Dangerous Types of Crimes, Helsinki, 4 Dec. 2008, <http://guam-organization.org/node/555>.

¹² Letter of Intent between Organization for Democracy and Economic Development – GUAM and Southeast European Law Enforcement Center, Kyiv, 19 June 2012, <http://guam-organization.org/node/1336>.

¹³ UNODC, "Latest Developments with Regard to the United Nations Convention against Corruption," Note prepared by UNODC for 1st G20 Anti-Corruption Working Group Meeting, Beijing, 26–27 Jan. 2016, at 7.

¹⁴ *Ibid.* 8.

for international cooperation without additional legislation at the domestic level.¹⁵ Three countries (Azerbaijan, Latvia, and Serbia) require implementing legislation for a treaty to become domestic law. Once a treaty applies (whether it is self-executing or must be implemented through legislation), it takes precedence even in the case of discrepancy with domestic law, although it must still comply with the country's constitution.¹⁶

One ACN country (Kyrgyzstan) reported that it relies primarily on UNCAC as the basis for receiving and providing MLA in corruption cases. However, most ACN countries that responded to the questionnaire indicated that they rely on regional international instruments, in particular, the COE MLA Convention and the EU Convention on Mutual Legal Assistance in Criminal Matters of 2000.¹⁷ Application of regional instruments is not possible in cases where assistance is needed from a country outside of the region (and therefore is not a party to the regional agreement). This creates a gap that must be filled through broader participation in multilateral agreements, bilateral agreements, or domestic laws.

Annex 3 contains a table of selected international assistance and cooperation instruments that have been adopted by ACN countries. ACN members have universally ratified the UNCAC. Most of them have also ratified the COE MLA Convention.¹⁸ Furthermore, these treaties have the force of law even absent implementing legislation in all but three of the 16 countries that responded to the questionnaire (the exceptions are Azerbaijan, Latvia, and Serbia). As a practical matter, this means that either UNCAC or the COE MLA Convention can serve as a legal basis for cooperation in nearly all cases involving MLA between two or more ACN countries.

1.1.2 Bilateral treaties

If a multilateral treaty applies, all countries that responded to the questionnaire indicated that they would not require a bilateral treaty *in addition* to that multilateral treaty. Nonetheless, *all* of the countries that responded to the questionnaire have entered into bilateral treaties with multiple countries, including with countries that would be covered under other agreements, such as UNCAC or COE instruments. UNODC has observed that “bilateral treaties on assistance and regional instruments are usually considered to have priority and are expected to be invoked first, or at least in parallel to [UNCAC], if applicable to a corruption-related request.”¹⁹

If a multilateral agreement already applies, why would a country feel a need to enter into a bilateral agreement as well? Perhaps the practice can help to reinforce existing agreements or provide guidance regarding specific types of cooperation that are not provided for in a multilateral treaty. While a bilateral agreement may relate broadly to all criminal matters, it may also relate to specific crimes (e.g., corruption or terrorism) or to certain types of assistance (e.g., search and seizure). In addition, individual government agencies may enter into their own bilateral agreements with counterparts in foreign states. For example, as is discussed further in part 2.4 below, direct exchanges of information between law enforcement bodies are often an effective and efficient way for enforcement authorities to obtain information. To facilitate these exchanges, law enforcement agencies often negotiate agency specific agreements or memorandums of understanding (MOUs) with their counterparts abroad.

¹⁵ See, e.g., Constitution of Georgia art. 6(2); Law of Georgia on International Agreements of Georgia art. 6; Constitution of the Republic of Kazakhstan art. 4; Constitution of Montenegro art. 9; Constitution of the Republic of Serbia; Constitution of the Republic of Slovenia art. 8.

¹⁶ See, e.g., Constitution of the Republic of Armenia art. 5; Constitution of Georgia art. 6(2); Constitution of Ukraine art. 9.

¹⁷ Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union, 2000/C 197/01, 29 May 2000.

¹⁸ The only exceptions to the COE MLA Convention are Kazakhstan, Kyrgyzstan, Mongolia, Tajikistan, Turkmenistan, and Uzbekistan.

¹⁹ UNODC, “Latest Developments,” *supra*, at 7.

Annex 4 contains information about known bilateral international assistance agreements to which ACN member countries currently adhere. Importantly, however, bilateral agreements are constantly in flux. For example, in the context of this review, Lithuania noted that it is currently in the process of negotiating procedures for entering into new bilateral MLA agreements with Algeria, Brazil, Mexico, Egypt, Ecuador and the UAE.²⁰ Thus, it behoves any state to verify current applicable international instruments prior to preparing a request for international assistance.

1.2 Cooperation in the absence of a treaty: The principle of reciprocity

1.2.1 The legal framework for MLA based on reciprocity

The questionnaire submitted to ACN countries in preparation of this report requested information about the legal basis of any MLA provided in connection with a corruption case during the 2010–2015 time period. Only seven countries provided this information (Azerbaijan, Georgia, Kyrgyzstan, Latvia, Romania, Slovenia, and Ukraine). Only one of these countries (Kyrgyzstan) indicated that it had provided MLA in the absence of a treaty. All other MLA in connection with corruption cases had been provided on the basis of a treaty, whether multilateral or bilateral.

Nevertheless, in those rare instances when a treaty—whether multilateral or bilateral—does not provide a sufficient basis for international assistance, countries often look to provisions of their domestic laws for guidance. Among the 16 countries that responded to the questionnaire, 14 indicated that they have laws that allow for international assistance to be provided on the basis of “reciprocity,” that is, on the condition that the requesting state will provide similar assistance in the future (these countries are Azerbaijan, Armenia, BIH, Bulgaria, Georgia, Kazakhstan, Kyrgyzstan, Latvia, Moldova, Montenegro, Romania, Serbia, Slovenia, and Ukraine). In fact, Serbia’s very detailed MLA law only applies *in the absence of a treaty*; otherwise, the treaty is the law that governs MLA.²¹ Romania’s law allows it to provide assistance even in the absence of a prior experience of reciprocity, based on a prior official letter that promises future reciprocity.

Even when legislation does not expressly provide for reciprocity, international assistance may be provided on this ground based on a matter of practice. For example, Lithuania does not have legislation expressly dealing with reciprocity, but will still provide assistance based on established practice with the requesting country or a commitment by that country to provide reciprocity in the future. In any case, the decision to grant reciprocity will rely heavily on prior experience with the requesting country; usually the country’s Ministry of Foreign Affairs, Ministry of Justice, or another high-level agency makes this determination.

Special procedures may apply if a requesting state seeks assistance based on reciprocity. At a minimum, the requesting state will generally need to provide a guarantee of reciprocity in later interactions.²² For instance, in Moldova, the request must be transmitted through diplomatic channels. For outgoing requests, the minister of justice or the general prosecutor personally submits a letter detailing the conditions of reciprocity.

The application of reciprocity may also depend on the type of assistance requested. For example, in Georgia, reciprocity is allowed in all areas of international cooperation *except* for extradition or the enforcement of a foreign criminal judgment. When reciprocity is allowed, all procedures that would be available in domestic proceedings in Georgia are made available to the requesting state. On the other hand, Moldova’s law allows assistance to be provided even in the absence of reciprocity in cases where the request for legal assistance (i) “is necessary because of the nature of the act or compelling nature of the fight against certain forms of serious crime”; (ii) “can help improve the situation of the defendant or

²⁰ Lithuania has no multilateral treaties with these countries to serve as a legal basis for international cooperation in criminal matters.

²¹ See Serbia MLA Law art. 1.

²² See, e.g., Ukraine CCP art. 544.

convicted person or his social reintegration”; or (iii) “may serve to clarify the legal situation of a citizen of the Republic of Moldova.”²³

Box 2. Legislation expressly dedicated to the topic of international cooperation

Several countries in the ACN region have passed legislation expressly dedicated to the issue of international legal assistance, whether based on a treaty or on reciprocity. For example, in 2004, Romania passed Law no. 302 on International Judicial Cooperation in Criminal Matters (Romania MLA Law), which is read in conjunction with Romania’s Criminal Procedure Code and Criminal Code. The law covers in extensive detail the full range of issues relating to international legal assistance. Azerbaijan, Georgia, Moldova, Montenegro, and Serbia also have dedicated laws on international cooperation in criminal matters. Other countries in the region incorporate international assistance provisions directly into their codes of criminal procedure or criminal codes.

1.2.2 Inter-agency reciprocity

Reciprocity also can form the basis of the direct exchange of information between law enforcement agencies in different countries. For example, the FIUs of all ACN countries are members of the Egmont Group (see box 16 in part 2.4 below). Members of this group can exchange information on terrorism financing, money laundering, and associated predicate offences (including corruption) through that network on the basis of reciprocity.²⁴ The EU’s Third Anti-Money Laundering Directive has similar provisions.²⁵ Even if reciprocity is allowed under relevant treaties or other law, some countries’ law enforcement bodies will arrange MOUs with their counterparts in other countries in order to facilitate these exchanges. Annex 4 includes information about some of these agreements that have been concluded in ACN countries.

1.3 Challenges and good practices relating to the legal framework

All of the ACN countries that responded to the questionnaire indicated that their legal framework is sufficient to provide MLA and other types of international assistance in connection with corruption cases. All ACN countries are party to multilateral treaties that can serve as a legal basis for international cooperation. Importantly, reciprocity should not be required when two parties adhere to the same international agreement.²⁶ Despite this, one ACN country (Romania) noted in its response to the questionnaire that some UNCAC state parties require reciprocity before responding to an MLA request falling under that treaty, which is contrary to UNCAC requirements.

Even when a country adheres to multilateral conventions, it is often prudent to also negotiate regional or bilateral agreements with individual countries that may not be parties to relevant international treaties. Concluding bilateral treaties may have additional value, since they may contribute to building communication between two countries or may regulate specific aspects of international cooperation that are not regulated in detail by the multilateral treaties. When negotiating regional or bilateral agreements, countries should prioritise (i) agreements with countries not party to key multilateral instruments and (ii) agreements with neighbouring and other key countries whose assistance is most likely to be sought. Before pursuing bilateral agreements, it may be prudent to inform the country about the availability of multilateral options, as adherence to these may be a simpler process than the negotiation and ratification of a bilateral agreement.

²³ Moldova MLA Law art. 3(3).

²⁴ See Egmont Group, *Egmont Group of Financial Intelligence Units Principles for Information Exchange between Financial Intelligence Units* (July 2013), <https://egmontgroup.org/en/document-library/8>.

²⁵ See Directive 2005/60/EC of the European Parliament and of the Council, On the prevention of the use of the financial system for the purpose of money laundering and terrorist financing, 26 Oct. 2005.

²⁶ See Kevin M. Stephenson et al., *Barriers to Asset Recovery: An Analysis of the Key Barriers and Recommendations for Action*, at 81 n.81 (Washington: World Bank 2011), <https://star.worldbank.org/star/sites/star/files/Barriers%20to%20Asset%20Recovery.pdf>.

In instances where negotiating a treaty may be difficult, countries may want to consider other types of agreements, such as executive agreements or letters of exchange.²⁷ Such a “less formal” agreement can “outline” principles of international cooperation and may serve “as a placeholder to guide law enforcement while a full treaty is negotiated.”²⁸

Importantly, several ACN countries indicated that the constant state of flux in international law in this area presents challenges in terms of staying abreast of the field.²⁹ International instruments are constantly being introduced and updated, especially at the regional level. Combined with the sheer complexity of cases requiring international assistance, this means authorities must regularly follow international developments, update domestic structures for providing international assistance, and provide training to public officials who are engaged in international cooperation activities. A good practice is to devote the necessary resources to staying abreast of current developments, so that authorities are prepared when a situation arises where international assistance is needed; playing “catch up” can slow down the process of obtaining needed aid.

Finally, the research conducted for this report revealed that countries have widely varying legislative approaches to international assistance. Some countries rely almost entirely on the provisions of international agreements as the legal basis for providing cooperation, while others have comprehensive codes dedicated to the topic. In some areas, countries may even adopt ad hoc approaches to providing assistance (e.g., regarding the provision of spontaneous information to foreign law enforcement authorities or setting up joint investigative teams). To clarify the law in this area, ACN countries are advised to adopt legislative measures to ensure that legal assistance can be provided to other countries to the fullest extent possible. In addition, ACN countries are encouraged to adopt other guidance that can assist authorities (both domestic and foreign) in understanding the laws and procedures that apply when they are seeking or providing international cooperation measures.³⁰

²⁷ See Andrew K. Woods, *Data Beyond Borders: Mutual Legal Assistance in the Internet Age* (Washington: Global Network Initiative 2011), <https://globalnetworkinitiative.org/sites/default/files/GNI%20MLAT%20Report.pdf>.

²⁸ *Ibid.*, 14.

²⁹ On this issue, see also ADB & OECD, *Mutual Legal Assistance in Asia and the Pacific: Experiences in 31 Jurisdictions*, at 12–14 (Paris: OECD 2017), <https://www.oecd.org/corruption/ADB-OECD-Mutual-Legal-Assistance-Corruption-2017.pdf>.

³⁰ See, e.g., part 2.4 below (discussing informal direct cooperation between law enforcement).

1.4 Recommendations related to the legal framework

The international legal framework:

- Explore the possibility of ratifying multilateral instruments to which your country may not be a party.
- Encourage jurisdictions with which you engage in regular MLA to become state parties to relevant multilateral instruments to which they are not already members. If this is not possible, explore the option of negotiating additional bilateral MLA and/or law enforcement agreements, placing priority on (i) agreements with countries not party to key multilateral instruments and (ii) agreements with neighbouring and other countries where assistance is most likely to be sought.
- Explore the possibility of negotiating executive agreements, letters of exchange, or other types of agreements in instances where negotiating a bilateral treaty may be difficult.
- Commit to fully adhering to international agreements your jurisdiction has ratified, including the requirement under UNCAC and other agreements that an assurance of reciprocity is not required prior to providing international assistance to another state party.

The national legal framework:

- Review and adopt legislation to ensure that legal assistance can be provided to other countries to the fullest extent possible.
- Adopt guidance for authorities (both domestic and foreign) to help those seeking or providing international cooperation in connection with corruption cases to understand the laws and procedures that apply to such cooperation.
- Devote the necessary resources to keeping up with current developments in the area of international assistance and, in accordance with these developments, update relevant domestic legal and regulatory structures.

2. THE PROCEDURAL FRAMEWORK OF INTERNATIONAL COOPERATION

The procedures for international assistance vary greatly between ACN members. Some are simple, involving a single central authority and a streamlined process. Others may involve multiple agencies depending on the type of assistance sought, the stage of the proceedings, or the legal authority upon which assistance is based. The following sections highlight some of the broad issues that may arise in relation to the procedures for seeking and obtaining international assistance, whether through a formal MLA process or through more informal, direct exchanges of information between law enforcement bodies.

For more detailed information about specific countries, including their central authorities, see Annex 6. However, please note that because procedures for obtaining international assistance are constantly in flux, a requesting authority should consult the relevant laws and procedures at the time it prepares a request.

2.1 The central authority

2.1.1 Designation

A country's central authority is a critical part of an "effective institutional framework for MLA."³¹ It is nearly always the first institution to contact in regard to submitting a request for MLA. It often reviews outgoing requests and also accepts and manages execution of incoming requests for MLA.

UNCAC provides, "Each State Party shall designate a central authority that shall have the responsibility and power to receive requests for mutual legal assistance and either to execute them or to transmit them to the competent authorities for execution" (art. 46.13). While most ACN countries have designated just one "central authority," other countries have designated different authorities to act as the central authority in relation to different types of cases or in relation to different legal bases for the cooperation. For example, Azerbaijan has designated the Ministry of Justice (MOJ) as its "central authority" under UNCAC and the Prosecutor General's Office (PGO) as the "central authority" under the Minsk and Chisinau Conventions; requests arising under the COE MLA Convention may be submitted to the MOJ, PGO, or directly to the relevant court. In Lithuania, requests related to pre-trial stage are submitted to the PGO, while requests during trial are submitted to the MOJ. In three ACN countries (Kazakhstan, Moldova, and Ukraine) a designated anti-corruption authority may receive requests relating to cases under its jurisdiction.

While the designation of more than one central authority may lead to more efficient execution of requests, a requesting state may easily become confused regarding which "central authority" to use. This confusion can result in delay in obtaining needed evidence or other information. Accordingly, countries that have designated multiple authorities to receive MLA requests should be especially vigilant to make clear which should be used in which circumstance.

When MLA is provided on the basis of reciprocity instead of on the basis of a treaty, many countries require a request to be submitted through diplomatic channels instead of directly to the central authority. This can create delay and backlog, especially if diplomatic officials are not familiar with the MLA process. Countries can help ameliorate the lack of efficiency that may result from this process by allowing requesting states to submit requests directly to central authorities and (when that is not possible) by providing requesting states with confirmation of receipt and contact information for the executing authority, so that they can follow up on the progress on a request.

Effectively engaging with a foreign country's central authority first requires knowing how to identify and contact that central authority. International networks, such as the Eurojust network, maintain databases

³¹ G20, "High-Level Principles on Mutual Legal Assistance," at 2 (5–6 Sept. 2013), <https://www.oecd.org/g20/topics/anti-corruption/High-Level-Principles-on-Mutual-Legal-Assistance.pdf>.

of central authorities. However, some countries do not provide current information to these networks, and not all countries are members of all such networks.³² Thus, availability of easily accessible information on the central authority is essential. For example, a well-designed website (in a universal language, such as English) can provide requesting states with information about a country's laws and its peculiar procedural requirements for MLA.³³ Nonetheless, only some of the central authorities of ACN states indicated that they have websites available in English or Russian, in addition to their native language.³⁴

International agreements and other conventions may also affect the designation of a central authority. For example, although Bulgaria's MOJ is generally the central authority for receiving MLA requests, certain international conventions designate local prosecutor's offices or the Supreme Prosecutor's Office of Cassation as the central authority. Agreements relating to direct law enforcement exchanges may also designate other authorities for receiving requests, such as a country's FIU. Therefore, it is critical for any requesting state to consult any relevant treaties before submitting a request.³⁵ If a requesting state does not have a relevant agreement with a receiving state, the use of diplomatic channels will often be required.

Box 3. Designated central authorities in Armenia

Armenia can receive MLA requests through a number of different authorities:

1. The General Prosecutor's Office is competent to receive any request involving pre-trial proceedings.
2. The Ministry of Justice is competent to receive requests involving cases at the trial stage, including the execution of judgments.
3. If allowed under a relevant treaty, diplomatic channels (such as missions and consular offices in a foreign state) may receive a request. In this case, the mission or office will forward the request to the GPO or MOJ, depending on the state of the case.
4. The Armenian court, prosecutor, or inquest body that is entitled to execute a request may directly receive a request to carry out procedural steps, if allowed under a relevant treaty.³⁶

³² In 2016, UNODC expressed concerns that some state parties do not designate central authorities under UNCAC or do not provide other appropriate resources for fulfilling MLA requests. See UNODC, "Latest Developments," supra, at 9.

³³ G20, "High-Level Principles," supra, at 2.

³⁴ Those countries include Albania (in English), Azerbaijan (in English), BIH (in English), Croatia (English, MOI only), Estonian (in English and Russian), FYRM (in English), Georgia (in English), Kazakhstan (in English and Russian), Latvia (MOJ in English, PGO in English and Russian), Lithuania (in English), Moldova (in English and Russian, POCC only), Mongolia (in English, MOJ only), Montenegro (in English), Romania (in English), Serbia (in English, RPPO only), Ukraine (in English), and Uzbekistan (in Russian). See Annex 6 for more information.

³⁵ In addition, as discussed further below in this report, a requesting state should consult any relevant networks (see parts 5.2.1 and 5.5 below, along with Annex 7).

³⁶ Armenia CPC art. 475.

Box 4. Designated central authorities in Romania

Romania has four central authorities for receiving MLA, depending on the type of assistance sought:

1. The Ministry of Justice, through its Directorate of International Law and Judicial Cooperation (ILJC), is the central authority for all cases (i) at the trial stage or (ii) involving extradition, European arrest warrants, the transfer of sentenced persons, freezing and/or confiscation, or the recognition and/or execution of judgments. The MOJ is also the central authority when so provided by Romania's MLA Law, when a request is based on reciprocity, or when required by international treaty or convention.³⁷
2. The National Anti-Corruption Directorate (DNA), which is part of the Prosecutor's Office attached to the High Court of Cassation and Justice (POHCCJ), handles requests for international cooperation involving crimes under its jurisdiction at the investigative stage.³⁸ This includes medium and high-level corruption cases. DNA's Section for International Cooperation and Programmes (SCIP) is the operational authority in these requests.
3. POHCCJ's Section for International Judicial Cooperation, International Relations, and Programmes (SJC) handles most other requests, including requests relating to petty corruption, at the investigative stage.
4. Finally, the Ministry of Internal Affairs is the central authority for requests relating to judicial records.

2.1.2 Central authority resources

In 2015, a Global Network Initiative report stated the following:

The number of MLA requests is rising quickly. Until the process becomes more streamlined—and even after it has been maximally streamlined—additional staff will be necessary to review, track, and process incoming MLA requests. More MLA staff are also needed to evaluate and process outgoing requests for MLA. As a result, MLA staffing should be an urgent priority for every country in the world.³⁹

It goes without saying that central authorities (along with all other authorities involved in international cooperation) need adequate resources for managing requests for international assistance.⁴⁰ Six countries indicated that resource capacity is an issue in managing either incoming or outgoing requests (Azerbaijan, BIH, Kazakhstan, Latvia, Lithuania, Serbia). Specific concerns related to having adequate manpower and technical tools to keep up with the volume of requests.

The issue of manpower is about more than having staff to evaluate and process requests. A good practice for central authorities is not only to provide personnel with adequate training in the complexities of the international assistance process (see part 5.1 below), but also to invest in the retention of experienced and skilled international cooperation specialists. The individuals who understand MLA and international cooperation are a small and highly specialised portion of the general law enforcement apparatus in any given state, and their importance is not always recognised.

Another related, but sometimes underappreciated, resource is the language capacity of staff. Eight of the 16 countries that responded to the questionnaire cited language issues as a challenge in international cooperation (Azerbaijan, BIH, Bulgaria, Kyrgyzstan, Latvia, Lithuania, Romania, and Ukraine). While several ACN countries indicated that central authority staff members speak key foreign languages and that outside translation services are available for other languages, language abilities could be further enhanced throughout the network. In particular, individuals who speak key languages should be available at every central authority to respond to calls and emails, and translations of requests must be completely accurate.

³⁷ For example, Romania's bilateral MLA agreement with the United States establishes the MOJ as the central executing authority, irrespective of the stage of the trial or the criminal offence.

³⁸ See http://www.pna.ro/faces/about_us.xhtml for a list of the crimes under DNA's jurisdiction.

³⁹ Woods, *Data Beyond Borders*, supra, at 2.

⁴⁰ G20, "High-Level Principles," supra, at 2.

As is discussed further in part 2.5 below, technical tools could also be further developed, especially to track and follow up on both incoming and outgoing MLA requests.

2.2 Procedures for outgoing MLA requests

2.2.1 Introduction: MLA requests submitted by ACN member countries

Table A below shows statistics for requests sent by ACN countries in relation to corruption cases during the 2013–2015 time period. (Note that the countries included on the table are the 10 countries that provided such data as part of their responses to the questionnaire.)

Table A. MLA requests sent in relation to corruption cases, 2013–2015

	Azerbaijan	Georgia	Kazakhstan	Kyrgyzstan	Latvia	Lithuania ⁴¹	Moldova	Romania ⁴²	Slovenia	Ukraine ⁴³
Requests sent	33	22	111	11	43	5	71	254	10	314
Handled by CA	33	22	111	11	43	5	n/a	236	10	179
Executed	26	13	58	11	n/a	5	65	114	3	50
Still pending	0	9	53	0	n/a	0	0	133	7	84
Rejected	0	0	0	0	n/a	0	6	4	0	1
Average time to receive assistance or response	2–7 months	6–7 months	>1 month	3 months – 1 year	n/a	130 days	3–12 months	5–6 months	2 months	8 months

Source: Answers to the questionnaire submitted by ACN countries

The following sections discuss some of the procedures and practices used by ACN members when preparing and submitting outgoing MLA requests. A more complete overview of these procedures for specific ACN members is in Annex 6 to this report.

2.2.2 Preparing requests for assistance

Requests for MLA usually arise out of an investigator or prosecutor’s office, as facts are discovered in the course of an investigation or pre-trial proceedings. When this happens, a prosecutor or investigator will likely draft the request before submitting it to the appropriate central authority for submission to the foreign state. Nearly all of the reported MLA requests related to corruption cases that ACN authorities received or submitted by ACN countries in the past five years related to this pre-trial phase. Less often, the need for information from another country may arise in the course of a trial, in which case the court will usually draft the request before submitting it to the central authority for review.

A 2015 report by the Global Network Initiative explains how creating templates for MLA forms can help expedite the process of preparing requests:

One of the causes for delay in the handling of MLA requests is poorly or oddly formatted requests. Of all the MLA reforms, one of the simplest to implement would be to develop and encourage widespread use of a standardized MLA request form. This could include standard fields for things like “data sought,” “crime being investigated,” “facts that give reason for suspicion,” and so on in order to meet the legal requirements of the receiving country. . . . Standardized MLA request forms also offer a chance to educate law enforcement about the requirements for MLA in a particular country.⁴⁴

⁴¹ Data only relates to requests sent or received from STT.

⁴² Total of DNA and POHCCJ.

⁴³ Data relates to MLA requests across all criminal cases (not just corruption cases).

⁴⁴ Woods, *Data Beyond Borders*, supra, at 10.

Three countries (Albania, Georgia, and Romania) have developed standard templates for drafting *outgoing* MLA requests. These templates are useful for sending the requests to majority of the countries and can be adapted to a specific country's requirements, if needed. For example, Romania's template contains essential elements that would need to be included in any request, as well as other elements that are flexible and can be adapted to the requirements of the country receiving the request. Georgia has developed similarly flexible templates.

Other countries may look to provisions of international treaties for the form in which to draft an MLA request. For example, Ukraine utilises standard request forms developed by the COE. A country may also create common forms (e.g., for motions, applications, or requests) in the course of a specific case involving a particular foreign country. For example, Armenia explained that on a number of occasions it has developed "case specific" forms to use when working with one or a few other countries over the life of a particular case. While this can create efficiency in a given case, the forms may not be relevant as models in other cases.

The most important sources a country can look to when preparing an outgoing request are the laws and other requirements of the jurisdiction to which the request is to be submitted. Some international resources, such as the United Nations MLA Request Writer Tool or the European Judicial Network can be a helpful resource for a requesting state that is attempting to learn about another state's laws.⁴⁵ In addition, Annex 1 to this report provides a checklist that may be helpful in preparing outgoing MLA requests. When in doubt, though, the best option is to make direct, informal contact with the other jurisdiction prior to submitting the request (see part 5.2.1 below).

One thing a country preparing an outgoing request for MLA must keep in mind is its own law regarding how evidence must be collected or transmitted in order to be admissible in court. For this reason, a country preparing a request would be well-advised to provide with its request detailed information for the receiving state regarding the due process procedures that must be followed. A requesting country also may want to ask that a representative from its law enforcement be present during execution of the request to ensure that any necessary procedural requirements are observed (see part 5.4 below).

In most countries, requests for MLA are drafted in the native language and then translated, usually after the central authority has approved the request (although in Ukraine, both the Ukrainian version and the translation are submitted for approval). Personnel at the appropriate agency often have language skills for translating a request in-house or another government agency may assist with translation (e.g., the External Affairs Division in Armenia). Some countries send translation needs out to private service providers.

Box 5. Guidance for MLA requests in Serbia

In 2013, Serbia finalised a *Mutual Legal Assistance Manual*, which was developed as part of the COE's Project on Criminal Assets Recovery in Serbia.⁴⁶ This manual was the result of joint work of international and domestic experts and was created by adapting a variety of international tools and standards, to national circumstances—in particular, the UN Transnational Organised Crime Convention of 2000, the UN Convention against Corruption of 2003, and the European Convention on Mutual Assistance in Criminal Matters of 1959 (including its two Additional Protocols of 1978 and 2001). For example, the manual makes several references to UNODC's Technical Guide to UNCAC and includes templates for drafting MLA requests. These templates have been distributed to the prosecutors who attend MLA trainings.

⁴⁵ See UNODC, "Mutual Legal Assistance Request Writer Tool," <https://www.unodc.org/mla/en/index.html> (last visited 3 June 2017); European Judicial Network, "Practical Tools for Cooperation," <https://www.ejn-crimjust.europa.eu/ejn/> (last visited 3 June 2017).

⁴⁶ COE, *Mutual Legal Assistance Manual* (Belgrade: COE 2013), <https://rm.coe.int/16806eed1>.

2.2.3 Approval process

The central authority will almost always have the power to review a request for MLA before it is submitted to a foreign state. Only one country that responded to the questionnaire (Albania) would allow for approval at the regional level (in country) only. Sometimes, a request has more than one level of review (e.g., in Azerbaijan). All of the countries that responded to the questionnaire indicated that the approving authority is also the authority that sends the request to the appropriate foreign authority. Only one country (Bulgaria) indicated that it has no formal process of review and approval for outgoing MLA requests. Nonetheless, those requests that are transmitted through the MOJ in its capacity as a central authority may be reviewed for compliance with international treaties.

Box 6. The review process for MLA requests originating in Georgia

The Office of the Chief Prosecutor's International Cooperation Unit (ICU) reviews all outgoing MLA requests for compliance with respective laws and treaties. ICU will ask the initiator of the request to remedy any deficiencies (if needed) before approving the request, arranging for its translation (if needed) and transmitting it to the foreign state.

If the request is to be sent on the basis of national legislation (i.e., there is no international agreement in place with a country) to a country that is not on Georgia's "white list" of countries that assure adequate standards of personal data protection, the request must be reviewed and approved by the Personal Data Protection Inspector before it may be submitted to the foreign state.⁴⁷

2.2.4 Additional challenges and good practices for outgoing requests

The biggest challenge cited by countries relating to outgoing requests related to the "black hole" that develops once a request is submitted. As a practical matter, it is often impossible to know when (if ever) a response to an MLA request will be received. Consider the following example:

Box 7. Difficulties receiving responses to MLA in an investigation

In 2015, the Anti-Corruption Directorate with the Prosecutor General of the Republic of Azerbaijan (ACD) received information regarding suspicious transactions from Azerbaijan's FIU and opened an investigation into possible money laundering by an Azerbaijani citizen. In furtherance of its investigation, Azerbaijan sent MLA requests to 14 countries, in particular, asking for information regarding certain banking transactions as well as the questioning of potential witnesses and seizure of assets and bank accounts.

ACD received timely and complete responses to nine of the requests, and the information received was added to the case file and made part of the evidence submitted to the court. However, the other five countries either refused the request or did not answer at all. For example, one country responded late and only after a written reminder. Another country rejected assistance, referring to its national legislation. The case is now at the trial stage.

Most ACN countries do not have *formal* procedures for prioritising requests for MLA. Rather, prioritisation is usually done on a case-by-case basis, depending on how the requesting state frames the request or, even worse, requests are handled in the order in which they are received without regard to their complexity. The result can be that a relatively simple request can be unnecessarily stalled, leading to difficulties in investigating and trying cases.

If the executing state has not been made aware of the requesting state's procedural requirements, information or evidence received in response to a request may not be useable in the way hoped. Furthermore, responses that are poorly translated (or not translated at all) may delay furtherance of the investigation or trial.

ACN countries were asked to quantify the difficulties associated with challenges such as these. Twelve countries responded to this request and their ratings are listed on the table below:

⁴⁷ Law of Georgia on Personal Data Protection art. 41

Table B. Challenges in outgoing MLA requests relating to corruption cases (0 = not a challenge; 10 = insurmountable challenge)

	Armenia	Azerbaijan	BIH MOJ	BIH PO	Georgia	Kazakhstan	Kyrgyzstan	Latvia	Lithuania	Romania MOJ	Romania DNA	Ukraine
Lack of treaties, bilateral agreements as the legal basis for cooperation	0	0	0	7	2	0	5	3	2	10	3	0
Different legal systems or criminal justice standards (e.g., due process requirements)	3	5	2	7	0	0	5	8	6	10	4	0
Difficulty understanding other country's requirements and procedures	0	3	2	5	0	0	7	5	3	7	2	0
Legitimate invocation of a ground of refusal	5	0	0	4	0	0	5	3	2	9	1	0
Incomplete answers or assistance provided	0	8	3	6	2	0	7	9	4	7	3	0
Language barriers	3	7	0	6	0	0	7	5	2	7	2	2
Lack of cooperation or consultation in the process	0	5	0	6	0	0	5	6	2	9	4	2
Lack of trust between jurisdictions	0	5	0	6	0	0	1	5	2	6	0	5
Excessive restrictions on the use of assistance	0	0	0	4	1	0	0	5	0	1	2	0
Slow methods of transmitting information	8	5	0	6	1	0	7	5	1	5	0	0
Delay in responding to a request	8	8	3	4	7	0	0	9	6	8	5	8
Interference at the political level	0	0	0	6	0	0	0	2	0	0	0	0
Risk of tipping off or notifying a suspect	0	0	2	3	0	0	5	5	0	0	2	0

Source: Answers to the questionnaire submitted by ACN countries

Requesting states do have some control over how their requests for MLA are received and handled, however. A request that is drafted succinctly and clearly, in a language understandable to the recipient, is more likely to be handled expeditiously. Furthermore, a requesting state that demonstrates a clear need for assistance (and, when necessary, for expedited assistance) will be more likely to obtain that assistance, especially when all supporting documentation needed to complete the request (including the location of individuals or items, factual support, and legal justification) is included with the request. ACN countries are well-advised to provide training and other assistance to personnel who are involved in drafting and submitting requests to help ensure that they create high quality requests that are more likely to result in appropriate and timely execution (see part 5.1 below). Furthermore, consultations prior to submitting a request could significantly facilitate international cooperation (see part 5.2.1).

2.3 Procedures for incoming MLA requests

2.3.1 Introduction: MLA requests received by ACN member countries

Table C below shows statistics for requests received by ACN countries in corruption cases during the 2013–2015 time period. (Note that the countries included on the table are the 10 countries that provided such data as part of their responses to the questionnaire.)

Table C. MLA requests received in relation to corruption cases, 2013–2015

	Albania	Georgia	Kazakhstan	Kyrgyzstan	Latvia	Lithuania ⁴⁸	Moldova	Romania ⁴⁹	Slovenia	Ukraine ⁵⁰
Requests received	2	18	40	5	24	6	58	92	8	74
Handled by CA	2	18	40	7	24	6	n/a	46	8	37
Executed	2	18	40	7	24	6	56	76	4	29
Still pending	0	0	0	0	0	0	2	15	0	7
Rejected	0	0	0	0	0	0	0	1	4	1
To resolve	n/a	1 week	15 days - 1 month	n/a	n/a	n/a	n/a	3.8 months (DNA)	20 days	n/a
To execute	2 to 11 days	1-2 months		1-3 months	2 months	70 days	2-4 months	3.8 months (DNA)	n/a	6.5 months

Source: Answers to the questionnaire submitted by ACN countries

The following sections discuss some of the procedures and practices used by ACN members when handling and executing incoming MLA requests. A more complete overview of procedures for specific ACN members is in Annex 6 to this report.

2.3.2 Format of incoming requests

Most countries' laws or regulations prescribe the form and content for requests received by its central authority, and a failure to adhere to these requirements may result in rejection or delay of the request. The following examples illustrate the level of detail that may be required:

⁴⁸ Data only relates to requests sent or received from STT.

⁴⁹ Total of DNA and POHCCJ.

⁵⁰ Data relates to MLA requests across all criminal cases (not just corruption cases).

Box 8. Content of requests to Ukraine

Ukraine's CCP (art. 552(2)) requires any request for MLA to include the following:

- the name of the requesting authority;
- a reference to an applicable international treaty or a reciprocity arrangement;
- the title of the criminal case for which international legal assistance is requested;
- a brief description of the offence under investigation or prosecution, including its elements;
- a description of the allegedly wrongful acts;
- complete texts of any applicable Criminal Code articles;
- information about the person with respect to which the request has been sent, including name, status (as a defendant, witness or a convict), residential address or known whereabouts, nationality, the person's link to the criminal acts, and any other information that would facilitate execution of the request;
- a clear list of procedural activities requested, with a substantiation of their relevance to the criminal proceedings;
- information about persons who need to be present during the procedural activities, with a substantiation of that need; and
- any other information that may facilitate execution of the request.

When the request involves questioning a witness, expert, victim, suspect, or indicted individual, the request must be supported by a certified excerpt of Ukraine's CCP to make the individual aware of his or her procedural rights and obligations. The request should also contain a list of questions to be asked or information to be obtained. A request for a search of premises, inspection of a crime scene, seizure, arrest, or confiscation of assets (or of other activities requiring a court order) must also contain additional information explaining why the activities are necessary.

Box 9. Content of requests to Kyrgyzstan

Article 426 of Kyrgyzstan's CPC provides that any request for MLA must include the following:

- the name of the authority submitting the request;
- the name and address of the Kyrgyz authority to which the request is directed;
- the title of the criminal case and nature of the request;
- information about the persons with respect to which the request has been sent, including (for individuals), their dates and places of birth, citizenship, occupation, domicile or residence, and (for legal entities) their name and location;
- a description of the circumstances to be clarified;
- a list of the documents, material, and other evidence requested; and
- information about the factual circumstances of the alleged crime, elements of the crime, the text of the corresponding article of Kyrgyzstan's Criminal Code, and (if needed) information about the amount of damages caused by the alleged act.

All requests must be prepared in writing, signed by the official issuing the request, and certified by official seal of the corresponding body.

Even though some countries have developed templates for *outgoing* MLA requests, Slovenia is the only country that appears to make templates for *incoming* requests available to foreign states. Slovenia indicated that its templates are available on the European Judicial Network (EJN) and COE Committee of Experts on the Operation of European Conventions on Co-operation in Criminal Matters (PC-OC) webpages. Slovenia's MOJ also contains information about the legal frameworks that apply to international requests for assistance. ACN members may want to consider creating standardised forms that countries seeking assistance from them could use when formulating request letters. These forms could be made

available through venues such as the ACN LEN, as well as through wider international networks such as the Global Law Enforcement Network (GLEN), EJN, and PC-OC.

Six countries (Azerbaijan, Georgia, Kazakhstan, Lithuania, Serbia, and Ukraine) indicated that their authorities will accept a request via electronic means (e.g., email or facsimile), but usually the request cannot be responded to until the central authority has received the original. Bulgaria will accept and execute a request received via electronic means, provided the requesting state verifies its authenticity, if requested. Thus, the execution of the MLA request does not *per se* require receipt of the original for Bulgaria. The competent judicial authorities have the discretion to obtain it only if they deem it necessary for the execution of the request.

2.3.3 *Review and transfer*

The first step a central authority will do upon receiving a request for legal assistance is to examine it for compliance with the relevant international laws, as well as with the domestic laws of the receiving state. Some countries require the central authority to inform the requesting state if a request cannot be fulfilled for legal or practical reasons, and may also require the central authority to provide an explanation of the rejection. However, it is not clear that all central authorities are required to do so. Therefore, it is good practice to follow up on requests to find out why they have been delayed and how any deficiencies in the request might be remedied. The central authority will then send the request to the relevant agency for execution—whether this be an investigative unit, prosecutor’s office, or court.

The importance of consulting with the requesting state at this point cannot be overemphasised. It is the rare case where some additional explanation or clarification regarding the request is not needed prior to making a decision to deny or to execute the request. While some aspects may be clarified through consultation prior to submission of the request, a good practice is to maintain open channels of communication with the requesting state throughout the process. This point is discussed further in part 5.2 below.

Box 10. Review and transfer of MLA requests to Georgia

Initially, all incoming MLA requests (whether at the pre-trial or trial stage) are submitted to the Office of Chief Prosecutor’s International Cooperation Unit (ICU). The ICU begins by ascertaining whether the request can be executed as a practical matter—for example, checking to verify that a requested witness is alive and in the country. If not, the ICU immediately returns the request to the requesting country.

Otherwise, a case officer examines whether a request complies with the relevant legal framework. If there is a reasonable doubt to believe that executing the request might prejudice national security, the request is referred to the National Security Agency for consideration before the ICU proceeds further. Simultaneous to this examination process, the request is translated, if needed.

ICU then assigns the request to a prosecution service or police authority, based on location and/or the subject matter of the request. If desired by the requesting state, a request also may be sent to a local court for execution. ICU gives detailed guidance to the executing authority on how to best execute the request in view of the legal requirements of the requesting state.

After executing the request, the executing authority sends the materials obtained to the ICU to be forwarded to the requesting authority, unless the ICU has instructed the executing authority to send the response directly to the requesting state. (e.g., in cases of urgency).

2.3.4 *Prioritisation of requests*

Most ACN countries do not have a *formal* system for prioritising incoming requests. In most cases, requests are merely executed in the order in which they are received, although seven countries indicated that they engage in ad hoc prioritisation based on what is requested, or why (Georgia, Lithuania, Romania, Moldova, Romania, Serbia, and Ukraine). For example, Romanian authorities indicated that they consider a request urgent if a hearing date has been set in court, the request involves summons, or the request was formulated during an investigation. Lithuania prioritises incoming requests based on the nature of the requested actions, the seriousness of the offence, the complexity of case, the applied measure of constraint in the requesting state, and other factors.

Seven of the 16 countries that responded to the questionnaire also indicated that they would consider prioritising an urgent request if *asked to* by the requesting state (Albania, Armenia, Azerbaijan, BiH, Bulgaria, Georgia, and Latvia). Any request for prioritisation or urgent handling would need to be adequately substantiated (including, where appropriate, through documentary evidence) or else it would be considered in the usual course (that is, in the order in which it was received).

The lack of formal procedures for prioritising requests could create a serious problem, for example, if a prosecutor's office is bombarded by numerous, less-important requests and thus has no time to deal with particularly urgent or important requests. Even if prioritisation is often undertaken on an ad hoc basis, clear guidelines for prioritising requests would clarify the issue for busy law enforcement personnel. For example, Georgia has an internal policy that allows a request to be prioritised based on either (i) a request of urgency from the requesting country (although this is subject to review by Georgia's central authority) or (ii) the seriousness of the offence involved. If a request relates to a serious offence (which includes corruption), it will be prioritised even if the requesting country has not requested urgency.

In reality, truly "urgent" MLA requests may not arise all that often. In fact, Georgian authorities reported that "urgent" requests generally make up less than 5% of all requests received. That said, even if few requests are considered "urgent" by requesting countries, receiving countries should have procedures in place for these requests. Often the evidence or the ability to use it will be lost if such requests cannot be handled expeditiously. Furthermore, a system for prioritising *all* requests (not just the urgent ones) can create efficiency. Requests can be prioritised based not only on their urgency, but also on the ease or complexity of executing them and the ability of the requesting state to provide clarification and cooperation relation to their execution. Importantly, this prioritisation is an ongoing process. Central and executing authorities must regularly review the current case load and make adjustments when needed.

Box 11. Delays in obtaining a response to an MLA request

During a pre-trial investigation of bribery, graft, and forgery, Lithuania's Special Investigation Service (STT) learned that officers of Lithuania's Migration Department (part of the MOI) were receiving bribes to expedite the issuance of temporary residence permits. The officers received the bribes, either directly from applicants or through intermediaries such as lawyers. The investigation also revealed that the individuals engaging in this scheme discussed it via email, including through email accounts administered by companies based in a Working Group on Bribery (WGB) country.

In December 2012, before submitting a formal MLA request, Lithuanian authorities contacted the WGB country's authorities to ask them to freeze certain information related to suspects' email accounts, on the ground that the information would be requested through MLA at a later stage. This request was immediately followed by a formal MLA request to the WGB country. Specifically, STT asked for (i) copies of emails and their attachments, (ii) copies of records of correspondence via instant messaging services, and (iii) contacts that were part of the suspects' email accounts. Lithuania asked that the request be treated as confidential and urgent. The MLA request submitted in February 2013 was accompanied by a decision of the prosecutor of the Organised Crime and Corruption Investigation Division of the Vilnius Regional Prosecutor's Office, which included information approved by the pre-trial judge of the Second District Court of Vilnius City.

The WGB country's authorities did not respond until March 2014, after Lithuanian authorities followed up with them. At this time, the WGB country's authorities sent an official request for additional information in order to facilitate the execution of the MLA. STT submitted the requested information (along with an additional request for MLA) in April 2014. Nonetheless, the MLA remained unexecuted even though Lithuania's Prosecutor General's Office enquired further about it. In March 2015, the case was referred to the court for trial without having received any response. Fortunately, the lack of information did not affect the case. The offenders were prosecuted and found guilty and the appeal was rejected.

2.3.5 Timing of execution

Most domestic laws and international instruments do not set forth specific timeframes for executing MLA requests because the timing of execution depends on myriad legal and practical factors, such as the translation of documents, the availability of witnesses, and the need to obtain court orders. In fact, only two countries indicated that timeframes for responding to an MLA request are set by law, and even in those countries the deadlines are flexible. In one country (Lithuania), the CCP specifies that incoming requests are to be executed within four months. Furthermore, according to a guideline issued by the GPO aimed at establishing a uniform practice for executing requests, executing authorities are to complete the action as

soon as possible, but no later than a period that is specified for each case separately—taking into account all the circumstances of the case (e.g., scope of proceedings, what has been requested). If execution will take longer, the executing officer must inform the GPO and indicate when the request is expected to be executed in full. In the other country (Ukraine), the law provides that MLA requests should be executed within one month, but this deadline may be extended if the request requires complex actions or a court order.⁵¹

A general prosecutor or other authority also may set forth guidelines for responding to requests. For example, GPO guidelines in Azerbaijan recommend that requests be executed within 10 days. If this is not possible because of the prosecutor’s workload or other issues, the deputy general prosecutor may extend the period up to one month. An internal MOJ policy in Georgia sets recommended time limits of one to two months for prioritised requests and three to four months for other requests. Georgian authorities reported that these time limits are respected in about 80% of cases.

Box 12. Timeline for fulfilling requests in Latvia

Latvia’s central authority has 10 days after receiving a request to *decide* whether to execute or reject it (CPL § 848(1)). However, Latvia’s laws and regulations do not set forth a specific timeframe for actually executing requests. Rather, pursuant to section 848 CPL, Latvia’s central authority determines an appropriate timeframe, based on the circumstances of particular case. It then transmits the request, along with the recommended timeframe to KNAB (in the case of a corruption case). The average time for execution is two months.

In practice, ACN countries that responded to the questionnaire reported average response times ranging from 10 days to four months (when executing *incoming* requests). Interestingly, however, several countries explained that when they send *outgoing* requests, they often do not receive responses for six months or more (if ever). Further research may be required to comprehensively review this issue.

The issue of delay is of particular concern in cross-border corruption cases, which often involve rapidly moving parts, for instance, funds transferred through surreptitious means to facilitate a bribe payment, shell companies set up only briefly for illicit purposes, or individuals who relocate to other countries or otherwise become unavailable for prosecution or questioning. Because of this, even in the absence of a specific timeframe for executing requests, countries may want to consider putting in place “[m]echanisms for timely responses to MLA.”⁵² These may include, among other things, (i) information about procedural requirements for MLA, (ii) procedures to ensure prompt transmission from central authorities to executing authorities, (iii) mechanisms for direct communication and informal cooperation between central authorities, and (iv) flexibility regarding the manner and form of execution of requests “to allow for the full use of the assistance granted in the requesting States’ proceedings in accordance with countries’ legal systems.”⁵³

2.3.6 Execution of requests

International assistance is available for a wide variety of measures, and ACN countries have made use of many of these assistance types. Nearly all of these requests occurred during the pre-trial period. Seven countries that submitted a response to the questionnaire indicated the types of assistance they have provided in relation to corruption cases, as Table D shows.

⁵¹ Ukraine CCP arts. 545(3), 558(2).

⁵² G20, “High-Level Principles,” supra.

⁵³ Ibid.

Table D. Types of MLA provided in ACN countries in relation to corruption cases, 2010–2015

Type of assistance requested or rendered	Azerbaijan		Georgia		Kyrgyzstan		Latvia		Romania ⁵⁴		Slovenia		Ukraine ⁵⁵	
	Pre-trial	Trial	Pre-trial	Trial	Pre-trial	Trial	Pre-trial	Trial	Pre-trial	Trial	Pre-trial	Trial	Pre-trial	Trial
Service of documents	0	0	3	0	≥1	0	≥1	0	≥1	0	0	7	1	0
Taking evidence or statements from persons	1	1	22	0	≥1	0	≥1	0	≥1	0	0	1	17	0
Facilitating the voluntary appearance of persons in the requesting party state	0	0	0	0	≥1	0	≥1	0	0	0	0	0	0	0
Examination of objects/sites	0	0	0	0	≥1	0	≥1	0	≥1	0	0	0	0	0
Search and seizure	1	1	2	0	≥1	0	≥1	0	≥1	0	0	0	6	0
Providing information, evidentiary items, and/or expert evaluations	1	1	19	0	≥1	0	≥1	0	≥1	0	0	0	28	0
Providing originals or certified copies of government, bank, financial, corporate, business or other records	1	1	2	0	≥1	0	≥1	0	≥1	0	0	0	0	0
Monitoring or providing information regarding bank accounts or banking transactions	0	1	0	0	0	0	≥1	0	≥1	0	0	0	4	0
Obtaining or preserving digital evidence	0	0	0	0	≥1	0	≥1	0	≥1	0	0	0	0	0
Taking evidence through video-link	0	0	0	0	0	0	≥1	0	0	0	0	0	0	0
Engaging in electronic surveillance (e.g., wiretap)	0	0	0	0	≥1	0	≥1	0	0	0	0	0	0	0
Performing undercover or covert operations (e.g., sting operation)	0	0	0	0	0	0	≥1	0	0	0	0	0	0	0
Identifying or tracing proceeds of crime, property, instrumentalities or other things for evidentiary purposes	1	1	0	0	≥1	0	≥1	0	≥1	0	0	0	0	0
Freezing, confiscation, and/or disposal of assets	0	0	0	0	≥1	0	≥1	0	≥1	0	0	0	0	0
Administrative freezing of a suspicious transaction by the FIU	0	0	0	0	0	0	≥1	0	0	0	0	0	4	0

Source: Answers to the questionnaire submitted by ACN countries

If a court order is required in order to execute a request for MLA, 11 jurisdictions indicated that the executing authority would seek it from a local court in the executing state (Albania, Armenia, BIH, Bulgaria, Lithuania, Latvia, Moldova, Montenegro, Serbia, Slovenia, and Ukraine). Two jurisdictions indicated that the requesting state would need to provide a court order to the executing authority, which would then obtain a local court order before execution (Azerbaijan and Georgia). Romania indicated that it requires the requesting state to provide a court order only with regard to requests for the interception of telecommunications.

⁵⁴ Data only relates to requests sent or received from STT.

⁵⁵ Data relates to MLA requests across all criminal cases (not just corruption cases).

Box 13. The need for court orders in Georgia

When requested assistance involves coercive measures or the restriction of constitutional rights or personal freedoms (e.g., search and seizure), the assistance may only be provided if it has already been authorised by a relevant court or authority of the requesting state.⁵⁶ The Georgian prosecutor then files a motion before the local Georgian court regarding authorisation of the requested action.⁵⁷

2.3.7 Confidentiality and sharing of information with other countries

In eight countries that responded to the questionnaire, the same level of confidentiality applies to requests for MLA as applies to information pertaining to domestic criminal cases (Albania, Armenia, Azerbaijan, Bulgaria, Latvia, Lithuania, Moldova, and Slovenia). Five countries specifically provide for confidentiality in their MLA laws or in the MLA sections of their criminal procedure laws (Georgia, Kazakhstan, Montenegro, Romania, and Serbia).⁵⁸ One country relies on relevant international agreements as a basis for confidentiality (Ukraine). Another country (BIH) indicated that requests would be kept confidential only if the requesting authority asked for it.⁵⁹

In some instances, a question may arise regarding whether a country that receives a request for MLA may share information it received from a *prior request involving a third country* with the requesting state. Seven of the countries that responded to the questionnaire would only share information received from a third country with a requesting country if the third country gave permission (Armenia, Bulgaria, Georgia, Lithuania, Latvia, Romania, and Ukraine).⁶⁰ Armenia would also share such information if the requesting state were a joint party to a joint investigation team dealing with the same criminal case.

On the other hand, Albania *would* share information unless the third party had placed conditions on the use of the evidence. Azerbaijan also indicated that it would freely share the information with a requesting party, but would indicate in the response that the information was obtained from a third party. If the third country were to require confidentiality, the relevant authority of Azerbaijan would decide whether or not to share the information and inform the third party about this decision; however, even in this case no prior permission would be required.

To protect against improper sharing of information provided in the course of responding to an MLA request, countries would be prudent to indicate this in their response to any MLA request received from a foreign state.

2.3.8 Additional challenges and good practices for incoming requests

ACN countries were asked to quantify the difficulties associated with challenges they face when responding to incoming requests. Twelve countries did so, and their ratings are listed on Table E below:

⁵⁶ Georgia MLA Law art. 11(4).

⁵⁷ Ibid. art. 54(10).

⁵⁸ See, e.g., Georgia MLA Law art. 10(2); Kazakhstan CPC art. 568; Romania MLA Law art. 9.

⁵⁹ See also UNCAC art. 46(20) (providing that a requesting state party may require a requested state party to keep a request confidential, except to the extent necessary for fulfilling the request itself).

⁶⁰ See, e.g., Ukraine CCP art. 553(a).

Table E. Challenges in handling incoming MLA requests (0 = not a challenge; 10 = insurmountable challenge)

	Armenia	Azerbaijan	BIH MOJ	BIH PO	Georgia	Kazakhstan	Kyrgyzstan	Latvia	Lithuania	Romania MOJ	Romania DNA	Ukraine
Lack of treaties, bilateral agreements as the legal basis for cooperation	0	0	0	5	0	0	5	6	2	0	0	0
Different legal systems or criminal justice standards (e.g., due process requirements)	0	4	0	4	2	0	5	9	5	2	1	0
Difficulty understanding other country's requirements and procedures	0	4	3	6	0	0	6	5	3	1	1	0
Inability to provide information because of the restrictive domestic legislation (e.g. a ground for refusal)	5	0	0	5	0	0	5	0	2	8	0	0
Incomplete requests or insufficient supporting materials received	0	0	2	8	3	0	8	5	5	7	2	0
Language barriers	0	7	0	4	0	0	7	5	3	4	3	0
Poor communication or weak law enforcement ties/networks between the countries involved	0	0	0	7	0	0	8	5	1	0	0	0
Lack of trust between jurisdictions	0	5	0	4	0	0	2	5	2	1	0	0
Insufficient assurance that restrictions on the use of assistance will be honoured	0	0	0	5	0	0	5	0	1	1	0	0
Slow methods of transmitting information	0	3	0	4	0	0	8	7	0	8	0	0
Delay in execution of request	0	2	0	5	1	0	0	5	3	2	0	0
Difficulties related to the transmission of information from the central to executing authority	0	0	0	5	0	0	3	2	0	1	0	0
Lack of sufficient monetary, technical, or personnel resources	0	3	3	7	0	0	0	9	5	1	1	4
Lack of capacity and training	0	2	2	5	0	0	2	8	3	1	0	0
Interference at the political level	0	0	0	6	0	0	0	0	0	0	0	0
Risk of tipping off or notifying a suspect	0	0	0	3	0	0	5	2	0	0	0	0

Source: Answers to the questionnaire submitted by ACN countries

Some of the challenges countries identified are substantive, for example, differences in countries' legal systems or domestic laws that do not allow for the type of request desired. In these cases, countries would be prudent to engage in consultations to determine if any acceptable alternatives would be available.

Others are more practical. For example, one country indicated that requests that are poorly translated (or not translated at all) are the most significant hurdle to providing MLA. As already discussed, providing appropriate resources to language issues is critical for successful international cooperation.

ACN states also explained in their responses to the questionnaire that some requests received are incomplete or disorganised, for example, they do not clearly show a link between the facts of the case and the assistance requested or do not provide adequate information to locate a witness or evidence. As discussed further in part 5.2.2 below, several ACN countries will attempt to consult with the requesting state prior to denying a request for assistance. However, the need to engage in such consultation slows the process down. Furthermore, some countries reported that even when they attempt to obtain additional information needed in order to execute a request, they do not always receive it, which precludes them from being able to execute the request.

As the chart above shows, resource capacity is also an obstacle to the execution of MLA requests in some countries. For example, deadlines imposed by requesting states may be unreasonable in light of the type of request made. Many countries' government institutions are not accessible on weekends or holidays, which can make it difficult to forward and execute urgent requests.

The fact that most ACN countries have no formal system for prioritising incoming requests based on importance or urgency compounds this problem. As is discussed further below in part 2.5, case management is an essential tool for effectively executing MLA requests. This includes technical tools to

track and manage requests, even in more remote local offices. As well, a functional case management system must include tools for prioritising requests based on urgency and importance, so as to dedicate stretched personnel resources in the most efficient way possible. Finally, countries need to improve their systems for consulting both before and after the submission of an MLA request, to help ensure that problems can be dealt with before they become insurmountable hurdles.

Box 14. Successful execution of an MLA request leading to the opening of new investigative proceedings in the recipient state

An on-going investigation in a WGB country regards companies suspected of paying a bribe of approximately EUR 15 million to high-ranking Romanian officials. As part of this investigation, the WGB country's prosecutor's office prepared a request for MLA and submitted it to Romania's National Anti-Corruption Directorate (DNA). Prior to the request, the prosecutor's office engaged in consultations with DNA to ensure the timely execution of the request. The request specifically regarded identifying suspects and witnesses, conducting searches (including of residences) to obtain digital evidence, and summoning and interrogating suspects and witnesses. Romanian prosecutors requested and obtained search warrants from a Romanian court, based on the evidence sent by the other prosecutor's office. The foreign prosecutors came to Romania to participate in the search activities, as well as the interrogation of suspects and witnesses.

During the cooperation process, the possibility arose that Romania could take jurisdiction of the cases involving Romanian citizens who were representatives of the companies at issue. Accordingly, Romania (through DNA) started an investigation related to those individuals and is now in the process of consulting with the foreign prosecutor's office on the transfer of criminal proceedings for those Romanian citizens.

The assistance allowed the requesting state to obtain important evidence to solidify its case before going to court. It also allowed Romania to obtain information upon which to open an investigation file. Both countries benefitted from learning about each other's legal procedures and developing personal contacts with foreign counterparts.

The key factor for Romania's successful cooperation was the close and direct contact between the prosecutors and investigators of the requesting state and the prosecutors and investigators from DNA (both the Service of International Cooperation and the operative section that executed the request). The WGB country team came to Bucharest before drafting the MLA request and had preliminary discussions with the Romanian DNA team. These meetings allowed law enforcement from both countries to better understand each other's legislative and procedural requirements. In addition, this allowed the countries to form contacts prior to submitted the request. Throughout the request's execution, every step was clarified by phone or email discussions. This also occurred when Romanian DNA prosecutors sent an MLA request to the WGB country when it opened its own criminal proceedings.

2.4 Informal, direct communication between law enforcement agencies

A number of states allow law enforcement practitioners, prosecutors, judges, or other authorities to directly reach out to counterparts in other countries, in order to obtain information or data. The most important benefit of direct exchanges of information is that information can be obtained very quickly, sometimes almost instantaneously. Even when the information obtained is not admissible in court, such direct communications can help speed up the drafting and execution of an MLA request, identify the appropriate central or executing authority, or provide clarifications as a request is being prepared. They also can help ensure that appropriately precise and comprehensive information is included in the formal request that is ultimately submitted. Furthermore, direct communications allow the recipient to know who has initiated a request. This makes it easier to follow up regarding not only on the request itself, but also on similar or related proceedings.

Sharing of information provides for more legal options for pooling resources and prosecuting offenders.⁶¹ UNCAC article 48.1 specifically provides, "States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention." Among other things, states are encouraged to "cooperate with other States Parties, in conducting inquiries" regarding information such as the location of a person or the transfer of the proceeds of a crime (ibid.). They are also encouraged to "consider entering into bilateral or multilateral arrangements on direct cooperation between

⁶¹ Vy Le et al., "Elements of Best Practice in Policing Transnational Organized Crime: Critical Success Factors for International Cooperation," *International Journal of Management and Administrative Sciences* 2(3): 24–34, 26 (2013).

their law enforcement agencies” (ibid. subsection 2). As Annex 4 shows, law enforcement authorities of ACN member countries have entered into numerous such agreements.

Box 15. G20’s “High Level Principles on Mutual Legal Assistance”

The G20’s “High Level Principles on Mutual Legal Assistance” of 2013 emphasise the importance of informal, direct cooperation between law enforcement authorities. Principle 4 provides that countries should facilitate cooperation and coordination by “i) facilitating, where appropriate, direct contacts between law enforcement agencies; ii) clarifying the circumstances in which alternative forms of cooperation should be preferred to formal requests for MLA; [and] iii) developing mechanisms for collaborative or joint investigations.” Information exchanged through such channels may include financial intelligence, tax information, and securities information (among other things).⁶²

Direct cooperation may be based upon multilateral instruments, bilateral agreements/MOUs, or domestic law. For example, Georgia’s LEC Law (art. 4) gives law enforcement authorities the right to directly cooperate with counterparts in other countries, so long as there is a relevant international agreement in place or the head or deputy head of the relevant law enforcement agency determines that reciprocity should apply. The LEC Law provides for the following types of direct cooperation: (i) requesting, providing, and exchanging information; (ii) searching for persons or items, or establishing their whereabouts; (iii) controlled delivery; (iv) setting up joint crime detection teams; (v) deploying undercover officers; (vi) cross-border observations; (vii) protecting witnesses or other persons; and (viii) covertly gathering criminal intelligence information.

One challenge to direct international cooperation is finding the appropriate authority in another country. Often such contacts are made through participation in international networks and groups. A list of some such groups is available at Annex 7.

Domestic law can also be a barrier to such forms of cooperation. Some countries’ laws may not allow for such informal exchanges of information. Even if they do, if the country is not in compliance with international standards (e.g., an FIU’s noncompliance with relevant EU legislation and/or FATF Recommendations), it may be impossible to securely provide the information requested, even if it would otherwise be legally permissible. Because direct cooperation is such an important part of international assistance, countries would be wise to review their legislation to see where amendments could facilitate better cooperation in this area. Technical and financial resources need to be dedicated to developing systems to allow for such exchanges of information, as well as to overcome language barriers in providing it.

Box 16. The Egmont Group and FIU.net

The Egmont Group of Financial Intelligence Units is perhaps one of the most well-known networks for direct cooperation between law enforcement bodies. The group is comprised of 152 financial intelligence units (FIUs) from throughout the world. Under the 2012 FATF Recommendations, FIUs are expected to apply for membership in the group, suggesting that the group will continue to grow.⁶³ The group “provides a forum for FIUs around the world to enhance support to their respective governments in the fight against money laundering, financing of terrorism and other financial crimes,” including through the exchange of information, training and capacity-building activities, secure communication systems, and coordination among member FIUs.⁶⁴ To this end, the Egmont Group has established the Egmont Secure Web (ESW), through which members can exchange information quickly and securely.

FIU.net is a similar organisation at the EU level. It also maintains a decentralised secure computer network for the secure exchange of information.

⁶² See also Ludo Block, “Combating Organized Crime in Europe: Practicalities of Police Cooperation,” *Policing* 2(1): 74–81 (2008).

⁶³ See Egmont Group, “About,” <http://www.egmontgroup.org/about> (last visited 3 June 2017).

⁶⁴ See Egmont Group, “Membership,” <https://www.egmontgroup.org/fr/node/1595> (last visited 3 June 2017).

Another substantive hurdle presented by direct information exchanges is that such information is often not admissible in court. Even if the information exchanged in this manner is not admissible, however, the exchange of such information can often lead to formal MLA and admissible evidence. Therefore, this hurdle should not in and of itself dissuade the exchange of information through law enforcement channels.

Box 17. Working with foreign FIUs to obtain information to connect separate investigations

In 2014, Ukraine's State Committee for Financial Monitoring (SCFM) opened investigations into four different sets of suspicious financial transactions:

1. Public official A's personal financial transactions (including their source of funding);
2. Public official B's personal financial transactions (including their source of funding);
3. Suspicious financial dealings of company C; and
4. Financial transactions by companies related to B that benefitted from inflated contracts approved by Ukraine's parliament and cabinet.

In regard to cases 1 and 2, SCFM actively cooperated with FIUs in Latvia, Lithuania, and three other countries to obtain information about the assets of the two public officials and their relatives. In case 3, SCFM cooperated with a fifth country FIU and learned that B had used several personal companies to buy out shares in C, which had been owned by equity holders associated with both A and B. In the process of investigating case 4, SCFM actively cooperated with 14 foreign FIUs and learned that A and B were able to use their public influence to direct inflated public contracts to 28 different companies with which they were affiliated.

These efforts at international cooperation enabled SCFM to connect these four cases. SCFM concluded that A and B had set up companies with complex ownership relationships in order to launder money illicitly obtained from public funds. In many cases, the companies were shells whose sole purpose was to launder money. Using information obtained through cooperation with foreign FIUs, SCFM was able to identify facts supporting the crimes of abuse of power, embezzlement, and money laundering. After reviewing the information obtained through direct international cooperation, SCFM was able to hand the case over to Ukraine's General Prosecutor's Office for further investigation and prosecution.

Box 18. Law enforcement cooperation on a foreign bribery case

During an audit of an energy project in Lithuania, the European Anti-Fraud Office (OLAF) discovered information suggesting illicit activities. Based on this information, the UK Serious Fraud Office (SFO) opened an investigation. SFO learned that an international company, C (based outside of Lithuania), had paid approximately EUR 3 million in bribes to win the tender for a EUR 100 million project in the Lithuanian energy sector, funded by the European Reconstruction and Development Bank.

In connection with this investigation, SFO sent Lithuania's Special Investigative Service (STT) an MLA request in September 2012. Lithuania provided the requested assistance—collecting evidence about certain persons, conducting searches, interviewing individuals, and obtaining information about financial transactions from Lithuanian banks. Following this exchange of evidence, at the end of 2014, SFO charged two representatives of C's UK affiliate with bribing Lithuanian public servants. The case was referred to a UK court for a trial that is set to begin in 2017.

In January 2015, Lithuania also launched its own investigation. In connection with both of these cases, in June and August 2015, Lithuania's Prosecutor General's Office and STT met with representatives of SFO and OLAF at OLAF's headquarters in Brussels. During those meetings, the parties informally exchanged information, which they then later requested through the formal MLA process (some of these requests are still in the process of being executed).

Although the pre-trial investigation is still underway in Lithuania, the information obtained through MLA is acknowledged as evidence and will be used at trial. This evidence has been vital to these criminal proceedings.

Regardless of the law enforcement agencies engaged in this type of informal cooperation, it is important to keep the authorities responsible for more formal MLA relating to a particular case in communication on these activities. This can help avoid misunderstandings and problems that may arise if two agencies are duplicating efforts. Furthermore, in some instances, more formal forms of international cooperation (such as MLA) may be preferable for diplomatic or efficiency reasons (for example, if the information requested will be used in multiple cases). Knowing when to use less formal means to obtain

information versus more formal MLA processes is sometimes a difficult and nuanced determination and should be made on an educated basis, which includes prior consultations with the state in question.

Box 19. SIENA for Secure Information Exchanges among Law Enforcement

The Secure Information Exchange Network Application (SIENA) is Europol's secure law enforcement information exchange and communication platform. It enables quick exchanges of operational and strategic crime-related information among Europol's liaison officers, analysts, and experts; Europol members states; and third parties with which Europol has cooperation agreements. Asset recovery offices (AROs) have access to SIENA and can use it to exchange information about assets to be seized, frozen, or confiscated in EU countries.⁶⁵

In particular relationship to corruption cases, the Austrian Federal Bureau of Anti-Corruption (BAK), the Polish Central Anti-Corruption Bureau, and Europol also initiated a project called "SIENA for Anti-Corruption Authorities (S4ACA)" in 2014. This project specifically aims to improve the communication of operational data via the secure SIENA channel amongst law enforcement and anti-corruption authorities as they investigate and prosecute corruption cases.⁶⁶

2.5 Case management

As already discussed, case management is an essential tool for facilitating prompt and effective execution of MLA requests. Recently, UNODC reported on the need to "improve case management systems to respond in a timely fashion to requests for mutual legal assistance."⁶⁷ A report by the Global Network Initiative asserts, "Countries *must* develop an electronic system for submitting, managing, and responding to MLA requests."⁶⁸ That report further explains,

The existing MLA process is slow partly because so little of the process is standardized so as to allow digital certification, transmission, intake, and processing. For example, a request from a law enforcement agent in one country might be transmitted to that country's embassy in another country—by diplomatic pouch or secure communication—where it can be transmitted to a local diplomat who can turn it into a domestic legal instrument to compel the data. This process requires many hops: from local law enforcement in State A to central government of State A to foreign office of State A to foreign office of State B to central government of State B to local law enforcement of State B. Movement of initial requests and responses should be electronic (very often it is not) and requests should not need to be evaluated in piecemeal fashion (as they sometimes are).

A better process would be electronic each step of the way. . . . States should also create internal tracking systems for managing MLA requests. This would give requesting law enforcement a sense of how far along their request is in the process. . . . If such as system worked, it could significantly relieve the sense that many law enforcement agents have that their requests simply enter a black box.⁶⁹

Most of the ACN countries that responded to the questionnaire indicated that they have some type of case management system for both incoming and outgoing requests (Azerbaijan, Armenia, Georgia, Kyrgyzstan, Latvia, Lithuania, Romania, and Ukraine). Usually, these systems only allow for the tracking and monitoring of requests, however. Most often, the management system is an Excel spreadsheet (as in Georgia), an electronic registration database (as in Romania), or some other electronic document flow

⁶⁵ See Europol, "Secure Information Exchange Network Application (SIENA)," <https://www.europol.europa.eu/activities-services/services-support/information-exchange/secure-information-exchange-network-application-siena> (last visited 2 June 2017).

⁶⁶ For more information, see BAK, "S4ACA: SIENA for Anti-Corruption Authorities," http://www.bak.gv.at/cms/BAK_en/s4aca/start.aspx (last visited 3 June 2017).

⁶⁷ UNODC, "Latest Developments," *supra*, at 9.

⁶⁸ Woods, *Data Beyond Borders*, *supra*, at 2 (emphasis added).

⁶⁹ *Ibid.* 8.

system, rather than a comprehensive electronic case management software system. Software that would allow authorities to flag a case, would include automatic reminders, and would generate case reports and statistics are not yet in place, although some countries (such as Georgia) plan to introduce such mechanisms.

Only one country (Bulgaria) reported that it has no monitoring or management system for either outgoing or incoming requests. The investigator, prosecutor, or court involved in the request would be responsible for completing or following up on a request.

Whether a case management system is an electronic information system with many bells or whistles or a simple document register, having a system in place allows central and executing authorities to ensure the timely execution of requests. As well, it creates a way to review the MLA system periodically to assess it with an eye towards improving the process.

Nonetheless, an electronic database can eliminate the possibility for human error in the management process by automatically tracking pending requests. In addition, reports generated electronically can allow for analysis of on-going trends. Accordingly, more and more countries are looking at the possibility of introducing electronic case management software.

Even if an electronic system is in place, however, it cannot replace the importance of personal interactions when it comes to following up on pending requests for MLA.⁷⁰ The value of a phone call from a central authority to an executing authority, or between authorities in two different countries, cannot be overstated. Not only does personal follow-up allow for quick answers and solutions to problems, but it also helps build relationships between authorities.

Box 20. Case management in Latvia

Since 2014, Latvia has monitored incoming and outgoing requests through the United System of Mutual Legal Assistance Requests. This system was established in accordance with a 2013 Regulation of Latvia's Cabinet of Ministers on "Information System of the Mutual Legal Assistance Requests," which charges the MOJ with monitoring the system and sets forth rules regarding its usage and maintenance.

For incoming requests, the MOJ, PGO, and State Police input the following data concerning incoming requests: (i) country and the title of the institution sending the request, (ii) registration data (such as date and case number), (iii) type of request, (iv) legal basis, (v) case number for the foreign criminal proceeding, (vi) details regarding the person to whom the request relates, (vii) criminal elements, and (viii) details about the request's execution. Additionally, if the request relates to an investigation, information regarding the foreign representative's participation in the request's execution is included.

For outgoing requests, these agencies input the following data: (i) state and institution to which the request has been sent, (ii) registration data (such as date and case number), (iii) case number for the criminal proceeding, (iv) initiator of the request, (v) type of request, (vi) details regarding the person to whom the request relates, (vii) legal basis, (viii) elements of the crime, and (ix) details about the request's execution. Additionally, if the request regards the investigation stage, information concerning the Latvian representative's participation in the execution is included.

This system tracks incoming and outgoing requests and eases their execution. It also provides for statistical data on MLA requests.

In short, ACN countries would be well-advised to develop case management systems (if they do not have one already) and to review and update their systems (if they do). Given that database technologies are constantly changing, dedicated personnel should be responsible for keeping the system updated based on current good practices. This includes maintaining a system that not only tracks and monitors requests, but also is sufficiently secure, given the confidentiality of MLA materials.

Although case management systems for MLA requests are severely lacking in most ACN countries, law enforcement bodies (such as FIUs) in many of these same countries already have electronic systems in place for tracking and managing incoming and outgoing requests in direct cooperation involving their

⁷⁰ ADB & OECD, *Mutual Legal Assistance*, supra, at 31–32.

agency. These systems may in some cases serve as useful models for central authorities as they develop their case management systems.

2.6 Recommendations related to the procedural framework

The central authority:

- If not already in place, designate a central authority for acceptance of requests for international cooperation in cases where an international instruments (e.g., Eurojust or UNCAC) does not apply.
- Consider developing a publicly available internet website for each central authority that contains (i) information on the MLA process in a universal language (e.g., English); (ii) contact information for individuals who are available to respond to questions about requests and the preparation of requests; (iii) an overview of laws and other guidance for submitting requests; and (iv), where possible, sample templates for use when submitting MLA requests.
- Provide necessary guidance, including on the legislation of the requesting state, and support to executing authorities to facilitate execution of request.
- Consider whether additional resources could be provided to central authorities and other bodies involved in international cooperation, including technology, personnel, and language assistance.

Procedures for outgoing requests:

- Consider allowing requests from states based on reciprocity (rather than on the basis of a treaty) to be submitted directly to the central authority rather than through diplomatic channels or, when that is not possible, provide such requesting states with confirmation of receipt and contact information for the executing authority.
- Review and/or adopt procedures for prioritising incoming MLA requests based on importance and urgency.
- Adopt guidelines for the submission of urgent requests, including criteria for submitting urgent requests and procedures for submitted requests after business hours, on weekends, and during holidays; make these guidelines publicly available.
- Review or adopt guidelines requiring central authorities to consult with requesting authorities prior to denying a request for international cooperation.

Informal, direct law enforcement cooperation:

- Fully utilise existing and (where possible) explore the possibility of creating additional channels for direct communication and exchanges of information between law enforcement authorities, including financial intelligence units, securities regulators, tax authorities, customs authorities, international aid organisations, and others.
- Explore the possibility of allowing for information obtained through informal, direct law enforcement cooperation to be used to support court proceedings.

Case management:

- Review and/or adopt a case management system that:
 - Monitors incoming and outgoing requests for international cooperation to help ensure timely execution;
 - Allows for classification of requests and the use of statistics in order to analyse good practices.
- If your jurisdiction's case management is electronic, review and or implement appropriate cyber-security measures, including those that protect the names of individuals and other sensitive information.
- Develop guidelines for central and executing authorities on good practices for monitoring incoming and outgoing requests for MLA, as well as other types of international assistance, including timelines for execution.

3. PREREQUISITES OF COOPERATION; GROUNDS OF REFUSAL

The receiving states' legal requirements for processing requests for international assistance can create significant obstacles to obtaining assistance from abroad in a corruption case. A state authority preparing a request for international assistance would be well-advised to familiarise itself with these prerequisites and the potential grounds of refusal, so that they can be addressed at the front end in the request for assistance. In some instances, a country seeking international assistance can overcome this hurdle if it is able to provide sufficient reasoning that the refusal ground does not apply (for example, showing that dual criminality is met as a matter of substance, even if a crime has a different name in two countries) or is able to provide assurances about the use of the assistance (for example, vowing not to impose the death penalty). As is discussed further below in part 5.2, consulting with foreign counterparts while preparing a request is key to obtaining the best possible response.

This section discusses some of the most common grounds for refusing international assistance in relation to corruption cases in ACN countries. Annex 5 contains a full list of those grounds of refusal that are available in these countries. It should be noted that most ACN countries have had limited experience in international cooperation in corruption cases, and very few have actually rejected international assistance in such cases.⁷¹ Therefore, the information below primarily reflects the general rules applicable in each state. The application of such requirements and grounds of refusal in corruption cases should be further analysed as experience increases in this area.

3.1 Dual criminality and dual punishability

3.1.1 Dual criminality

Stated simply, “dual criminality” refers to the requirement that the conduct prompting a request for assistance must constitute a crime in both the requesting state and the state to which the request is directed.⁷² Dual criminality requirements may apply to formal MLA requests, as well as to direct requests for law enforcement cooperation. A strict application of dual criminality can be a significant hurdle in the fulfilment of MLA requests.⁷³ Accordingly, UNCAC suggests that this principle should be applied sparingly in corruption cases (if at all): “Each State Party may consider adopting such measures as may be necessary to enable it to provide a wider scope of assistance pursuant to this article in the absence of dual criminality” (art. 46.9(c)).

A multilateral instrument may eliminate the requirement of dual criminality for offences it covers (e.g., OECD Convention art. 9.2) or set forth a conduct-based approach to dual criminality (e.g., UNCAC art. 43.2). A treaty also may incorporate an assumption that dual criminality is not required by not including it in the list of reasons for rejecting requests for assistance (e.g., COE MLA Convention art. 2), although it also may allow for a reservation to this provision (e.g., COE MLA Convention art. 5(a)). By way of example, as discussed in box 21, Kazakhstan does not require dual criminality for offences covered by certain treaties it has ratified.

Nonetheless, some states take exception to this assumption and have indicated their adherence to the principle of dual criminality in the context of ratification. For example, although Armenian law does not expressly require dual criminality as a precondition to MLA (except in cases of extradition), Armenia has made a reservation to the COE MLA Convention that maintains the right to refuse assistance “if the offence, in respect of which legal assistance is requested, is not qualified as a ‘crime’ and is not punishable

⁷¹ See Tables A and C in parts 2.2.1 and 2.3.1 of this report, respectively.

⁷² OECD, *Typology on Mutual Legal Assistance in Foreign Bribery Cases*, at 20, 42 (Paris: OECD 2012).

⁷³ See UNODC, “Latest Developments,” *supra*, at 9.

under the legislation of the Republic of Armenia.”⁷⁴ Similarly, Bulgaria has made a reservation to the Additional Protocol to the COE MLA Convention of 1978 in which it accepts chapter I relating to MLA for fiscal offences only with respect to acts that are punishable under Bulgarian law.

Box 21. The importance of treaties in whether dual criminality and dual punishability apply

Kazakhstan always requires dual criminality (as well as dual punishability, which is discussed in part 3.1.2 below) when assistance is based on *reciprocity* and coercive measures are requested. Dual criminality may not be required if assistance is provided under a treaty, however. Kazakhstan has ratified UNCAC, which (as discussed above) takes a broad approach to dual criminality. In addition, Kazakhstan’s international treaties with Italy, Czechia, and Monaco hold that legal assistance can be rendered in the event the act in regard to which it is requested does not constitute an offence for the requested Party.

Application of this principle varies among ACN states. Three states (Kyrgyzstan, Montenegro, and Serbia) indicated that dual criminality would be required in connection with any MLA request in *any* corruption case and could never be waived (except when an overriding multilateral instrument applies, as discussed in box 21 above). Six other states (Albania, Armenia, Georgia, Latvia, Romania, and Ukraine) would only require dual criminality for certain types of requests involving coercive measures (such as search and seizure or extradition; see example from Latvia in box 22 below).⁷⁵ In Lithuania dual criminality is only applied by discretion in a corruption case and in consultation with the requesting state; an executing authority may take any procedural actions that do not contravene the country’s laws, constitution, and fundamental principles of criminal procedure—including those not expressly set out in the Code of Criminal Procedure. Similarly, Moldovan legislation does not prohibit providing assistance, even in cases where the general requirement of dual criminality is not met; rather the decision to provide assistance is discretionary in the absence of dual criminality.

Box 22. Dual criminality requirement for special investigative measures in Latvia

Latvia’s CPL (§ 852) provides that Latvia *may* decline the execution of a compulsory measure relating to an offence that is not criminally punishable in Latvia if (i) Latvia does not have an MLA treaty with the requesting state or (ii) Latvia has an MLA treaty with that state, but the foreign state only applies compulsory measures relating to offences that are criminally punishable in such state. However, a *de facto* requirement of dual criminality exists for requests for special investigative measures, as these may only be undertaken if they would lead to evidence that would be admissible in criminal proceedings in Latvia regarding the same offense (§ 853 CPL).

Finally, three states indicated that they would apply the requirement of dual criminality to cases involving legal persons (Kyrgyzstan, Serbia, and Slovenia). How this principle would play out in practice remains to be seen, however. For example, if the party requesting assistance allowed for criminal liability of a legal person, but the party receiving the request prescribed only administrative or quasi-criminal liability, would the requirement of dual criminality be viewed as fulfilled? Only further practice will answer this question, although the hope is that states would provide assistance, so long as the underlying conduct was viewed as a corruption offence under both countries’ laws.

3.1.2 Dual punishability

An issue closely related to dual criminality is “dual punishability.” This term refers to a requirement that the offence relating to a request for assistance must be punishable in the state that receives an MLA request, for example, that the statute of limitations has not expired in that state. Only four countries indicated that dual punishability can be required in corruption cases, and then sometimes only in certain instances.

⁷⁴ See COE MLA Convention, Reservation of Armenia contained in the instrument of ratification deposited on 25 Jan. 2002.

⁷⁵ See, e.g., Albania CC art. 11; Georgia LEC Law art. 2(3); Georgia MLA Law art. 12(2)(a); Latvia CPL § 852; Romania MLA Law art. 206; see also UNODC’s 2015 review of Armenia, cited in Annex 2.

For example, Serbia’s MLA Law (art. 7) provides as a general condition to international cooperation that the offence for which assistance is requested not be excluded from criminal prosecution or sanctions due to expiration of the statute of limitations, amnesty, or an ordinary pardon. Bulgaria’s reservation to the COE MLA Convention indicates that it will not provide international assistance under that treaty if criminal responsibility would be precluded by Bulgaria’s statute of limitations. Two other countries indicated in their responses to the questionnaire that dual punishability only applies to certain types of requests—in Azerbaijan, to requests involving extradition, and in Georgia, to cases involving search, seizure, and freezing of property.⁷⁶

Box 23. Dual criminality in Georgia

Georgia requires both dual criminality and dual punishability as prerequisites for MLA requests involving coercive measures, such as search, seizure and freezing of property (Georgia MLA Law art. 12(2)(a)). This requirement cannot be waived in cases to which it applies. In addition, dual criminality is required when providing direct law enforcement assistance if the use of intelligence measures is requested (see Georgia LEC Law art. 2(3)).

Georgian authorities have explained that, in practice, they try to apply a broad approach to fulfilling these requirements. Dual criminality will be deemed fulfilled irrespective of whether Georgian law places the offence within the same category of offense or denominates the offense using the same terminology as the requesting state, so long as the conduct underlying the offense for which assistance is sought is a criminal offence under Georgia’s criminal code. In cases when dual punishability is required, Georgia does not refuse the execution of requests when they relate to an offence that was subject to amnesty in Georgia.

3.2 Double jeopardy

Double jeopardy, or *ne bis in idem*, is the principle that a person should not be tried or punished twice for the same offence. Although this principle is internationally recognised under numerous international treaties, there has been some uncertainty as to how the principle applies in cross-border cases. For example, the European Convention on Human Rights provides, “No one shall be liable to be tried or punished again in criminal proceedings under the jurisdiction of the *same State* for an offence for which he has already been finally acquitted or convicted in accordance with the law and penal procedure of that State.”⁷⁷ On the other hand, other regional agreements, such as the EU Charter or the Schengen Agreement, apply the double jeopardy principle throughout the entire region.⁷⁸ Notably, this principle applies to being “tried and punished,” that is, its primary relevance is *after* the investigation stage. However, even at the trial stage it would seem inappropriate to bar assistance on the basis of double jeopardy, when (for example) the assistance may lead to exculpatory evidence. Application of the principle in the sphere of MLA beyond extradition and enforcement of a criminal sentence is less clear.

⁷⁶ See Law of Azerbaijan Republic “On legal assistance in criminal matters,” art. 3.1.4.

⁷⁷ Art. 4.1 of Protocol No. 7 to the Convention for the Protection of Human Rights and Fundamental Freedoms, ETS no. 117, Strasbourg, 22 Nov. 1984, <http://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/117>; see also Art. 14.7 of the International Covenant on Civil and Political Rights, adopted by the General Assembly of the United Nations, no. 14688, 19 Dec. 1966, <https://treaties.un.org/doc/Publication/UNTS/Volume%20999/volume-999-I-14668-English.pdf>.

⁷⁸ Article 50 of the Charter of Fundamental Rights of the European Union provides, “No one shall be liable to be tried or punished again in criminal proceedings for an offence for which he or she has already been finally acquitted or convicted within the Union in accordance with the law.” 2000/C 364/01, 18 Dec. 2000, http://www.europarl.europa.eu/charter/pdf/text_en.pdf. Article 54 of the Schengen Acquis provides, “A person whose trial has been finally disposed of in one Contracting Party may not be prosecuted in another Contracting Party for the same acts provided that, if a penalty has been imposed, it has been enforced, is actually in the process of being enforced or can no longer be enforced under the laws of the sentencing Contracting Party” (although the following article does contain a few exceptions to this mandate). Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders, *Official Journal L*. 239, 22/09/2000, p. 19–62, [http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:42000A0922\(02\):en:HTML](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:42000A0922(02):en:HTML).

Nonetheless, all of the countries that submitted responses to the questionnaire indicated that they would apply double jeopardy in a corruption case, and the ground is mandatory in a number of countries (Georgia, Kyrgyzstan, Lithuania, Moldova and Romania).⁷⁹ In two countries, this ground would apply to extradition only (Albania and Azerbaijan), while in other countries it would apply to any type of MLA request (Bulgaria, Georgia, Kyrgyzstan, Romania, and Serbia). One country (Bulgaria) expressly applies the principle of double jeopardy only in relation to requests falling under the COE MLA Convention of 1959. Slovenia applies the principle in several instances: in the context of extradition, transfer of proceedings, transfer of sentenced persons, European Arrest Warrants, as well as in connection with requests under certain other EU framework decisions. Kazakhstan and Montenegro look to their agreements with other countries to determine whether the principle applies. Armenia applies double jeopardy in line with a reservation made to article 2 of the COE MLA Convention.

Box 24. Double jeopardy under Latvian law

Latvian courts may not try a person for a crime if that person has already been convicted or acquitted for the same offence in a foreign state with which Latvia has an agreement on mutual recognition of criminal judgements or *ne bis in idem*. Double jeopardy is enshrined in the first section of Latvia's Criminal Law:

Nobody shall be tried or punished again for an offence, for which he or she has already been acquitted or punished by an adjudication rendered in accordance with the procedures laid down in law and in effect in a criminal case or a case of administrative violation. The abovementioned shall not exclude re-examination of a case in accordance with the law if new circumstances have been established or if significant violation of material or procedural norms, which could affect the outcome of the case, has been made in the previous proceedings.

Latvia's CPL (§ 25) sets forth a number of exceptions, however. For example, a new adjudication may occur in relation to newly disclosed evidence or other circumstances, revocation of the previous order, or if retrying the case could result in "improvement of the condition of the convicted person" (among other things).

3.3 Nature and severity of punishment; human rights

Many countries will also refuse a request for assistance that could subject an individual to particularly severe punishment or to other types of "persecution or discrimination due to race, religion, sex, citizenship, language, political belief, personal or social state or cruel, inhuman or degrading punishment or treatment or acts which constitute violation of fundamental human rights."⁸⁰ In particular, refugees, temporary asylum seekers, and other individuals requiring protection comprise a particularly vulnerable group that is excepted from extradition under some international and domestic laws if extradition will place them in a situation where their health, life, or freedom will be in danger due to race, religion, ethnicity, nationality, affiliation to a social group, or political opinion.⁸¹

Box 25. The death penalty, human rights, and MLA requests to Moldova

Moldova's Code of Criminal Procedure (art. 534) provides that Moldova may reject an MLA request if "the requesting jurisdiction's law provides for death penalty for the respective act" and "the requesting state has failed to give any guarantee of non-application or non-execution thereof."

Furthermore, Moldova may deny MLA if "there are good reasons to suggest that the suspect has been prosecuted or received a criminal penalty due to racial, religious profiling, as well as citizenry profiling, attribution to a certain group or due to sharing some political position, or his/her situation can be aggravated by any of the above reasons" or if "it has been proven that the person would be denied a fair court trial in the requesting jurisdiction" (ibid.).

Fourteen countries under review in this report indicated that they would allow an MLA request to be rejected based on such factors, although nine of these countries would only assert this ground in cases of extradition or (in the case of Armenia) if provided for by international treaty (Albania, Armenia, BIH,

⁷⁹ See, e.g., Albania CPC art. 491; Georgia MLA Law arts. 12(1)(f), 26; Constitution of the Republic of Lithuania; Romania MLA Law art. 8; Serbia MLA Law art. 7; Ukraine CCP art. 557.

⁸⁰ Albanian CPC arts. 491(1)(b), 505(2); see also, e.g., Albanian CC art. 11; Georgia LEC Law art. 21(1.e).

⁸¹ See, e.g., Ukrainian CCP art. 589.

Kazakhstan, Montenegro, Romania, Serbia, Slovenia, and Ukraine).⁸² The countries that would apply this ground to *all* MLA requests are Azerbaijan, Georgia, Kyrgyzstan, Lithuania, and Moldova. In fact, Latvia was the only country that responded to the questionnaire that would not automatically reject an MLA request based on this ground, based on the fact that it would be willing to collect and provide exculpatory evidence. Latvian authorities explained that such decisions are made on a case-by-case basis following consultations with the requesting state and would take into account the possible that exculpatory evidence could be collected.

A case-by-case analysis of the circumstances is essential when considering a request for MLA that may lead to unduly severe punishment or human rights violations. Clearly, it would not make sense to withhold exculpatory evidence or information that could spare the severe punishment. Accordingly, a good practice is to carefully examine whether the assistance at issue would itself contribute to a situation that would violate individual rights. Consider Georgia's application of its MLA Law in these circumstances:

Box 26. Denial of MLA based on the nature of punishment or human rights issues in Georgia

Georgia's MLA Law (art. 12) establishes that international assistance may be declined if providing the assistance would cause a violation of an individual's human rights or freedoms or (in the case of a prisoner transfer) would prolong an individual's prison term. In addition, the law explicitly prohibits extradition of an individual if there is reason to believe the individual will be subjected to torture, cruel, inhuman, or degrading treatment in the requesting country (art. 29(3)).

Georgia applies strict scrutiny when evaluating cases where the right to life and freedom from torture, inhumane or degrading treatment or punishment are at stake. Even so, Georgia would deny cooperation if the assistance itself would contribute to a violation of fundamental rights. In addition, Georgia *will* provide assistance if doing so could ameliorate the conditions of persons subject to criminal or civil proceedings.

Georgia's Law on International Law Enforcement Cooperation (art. 21(1.e)) contains similar provisions.

3.4 Essential and public interests

All 16 states that responded to the questionnaire would deny assistance to another country in connection with a corruption case if providing the assistance would prejudice "essential interests" or "public order."⁸³ This basis for rejection may be part of the country's domestic laws or incorporated by treaty. For example, Armenia's law allows for rejection if fulfilling a request "can damage independence, constitutional order, government or security of the Republic of Armenia or conflicts with legislation of the Republic of Armenia."⁸⁴ Azerbaijan adheres to article 2(b) of COE MLA Convention, which allow a state to reject a request "if the requested Party considers that execution of the request is likely to prejudice the sovereignty, security, *ordre public* or other essential interests of its country." Law enforcement bodies may also rely on this ground for rejecting direct cooperation requests.⁸⁵

3.5 Political offences

Similarly, most states would deny cooperation for political offences. Generally, such provisions are thought to cover offenses such as espionage and treason, rather than corruption, but it is unclear how states would apply these provisions in practice in a corruption case.⁸⁶ Bulgaria was the only country to respond to

⁸² See, e.g., Albania CPC art. 491; Armenia CPC arts. 477, 484; Georgia MLA Law arts. 12, 29(3); Serbia MLA Law arts. 7, 16, 63; Ukraine CCP arts. 557, 589.

⁸³ See, e.g., Armenia CPC art. 484; Azerbaijan MLA Law art. 3.1.1; Georgia MLA Law art. 12(1); Georgia LEC Law art. 21(1.b); Kazakhstan CPC art. 569; Kyrgyzstan CPC art. 428; Latvia CPL § 850; Moldova CCP art. 534; Serbia MLA Law art. 7; Ukraine CCP art. 557.

⁸⁴ Armenia CPC art. 484; see also, e.g., Bulgaria PPC art. 472; Georgia MLA Law art. 12(1); Latvia CPL § 850(2); Romania MLA Law art. 3.

⁸⁵ See, e.g., Georgia LEC Law art. 21.

⁸⁶ See, e.g., Latvia CPL § 850; Serbia MLA Law art. 7.

the questionnaire that affirmatively indicated that international cooperation in a corruption case would *not* be refused on this ground.⁸⁷

In some cases, this refusal ground is based upon an international convention, such as Article 2(a) of the COE MLA Convention, which provides that a state party may reject a request for international cooperation “if the request concerns an offence which the requested Party considers a political offence, an offence connected with a political offence, or a fiscal offence.” In other cases, this ground for refusal may be included in a bilateral MLA agreement, as, for example, in Romania’s 1999 MLA agreement with a WGB country (which regards all criminal cases, not just corruption offenses). Many states also include provisions dealing with political offences in their domestic MLA laws.⁸⁸ In the case of Albania, this ground for refusal only applies in extradition cases.⁸⁹

In practice, however, a state receiving a request will likely consider the circumstances of the case before denying assistance on the ground that the case involves a political offence. Georgian authorities explained that, in practice, they would balance the criminal aspect of an incident against its political nature.⁹⁰ Based on such an assessment, for instance, Georgia rendered assistance in a case involving terrorism (as defined under the COE Convention on the Prevention of Terrorism of 2005).⁹¹ Similarly, Latvia’s CPL expressly provides that the ground of refusal based on requests related to political offences does not apply “when a request applies to terrorism or financing of terrorism.”⁹²

As with the essential and public interests basis of rejection, the political offence basis of rejection may also apply to direct cooperation between law enforcement bodies.⁹³ In the case of Georgia, if law enforcement authorities have doubts about whether to utilise this ground to reject cooperation, the agency is to inform the Prosecutor’s Office of Georgia, which in turn will direct the question to the MOJ for a final determination.⁹⁴

Given the obligation undertaken by ACN members that have ratified UNCAC to criminalise corruption offenses, no authentic corruption offense should fall into the category of “political offenses.”⁹⁵ Therefore, ACN members are advised to review their laws (if needed) and practices to ensure that this is not utilised as a refusal ground in a corruption case or even to define the ground to exclude corruption cases (as Latvia has done for the case of terrorism offences).

3.6 Offence committed wholly or partly in the requested state

The idea behind refusing legal assistance in a case because the offence occurred in the requested state is based on the idea that a country has the right to govern actions occurring in its territory. For example, Montenegro’s Law on Ratification of the European Convention on Extradition (art. 7) provides that Montenegro may refuse extradition if the offense has been committed in whole or in part in its territory or in a place treated as its territory.

⁸⁷ Armenia indicated that it would base rejection on the same ground as rejection for essential and public interests, although the CPC provision regarding essential and public interests does not expressly address political offences. See Armenia CPC art. 477 and 484.

⁸⁸ See, e.g., Albania CC art. 11; Albania CPC art. 491; Azerbaijan MLA Law art. 3.1.2; Moldova CCP art. 534.

⁸⁹ Albania CPC art. 491.

⁹⁰ Georgia MLA Law art. 12(1).

⁹¹ ETS no. 196, Warsaw, 16 May 2005, <https://rm.coe.int/168008371c>.

⁹² Latvia CPL § 850.

⁹³ See, e.g., Georgia LEC Law art. 21(1.d).

⁹⁴ Ibid. 21(2).

⁹⁵ In fact, in dealing with extradition, UNCAC specifically provides that the state parties “shall not consider any of the offences established in accordance with this Convention to be a political offence” (art. 44.4).

This ground of refusal presents a challenge in the context of corruption cases because such cases frequently involve cross-border activities, for example, the bribery of an official in a different country or the illicit movement of funds through offshore companies and accounts. This may mean that no one country can claim that the entire corruption “offence” occurred in its territory. Furthermore, different countries may have access to varying financial, technical, and personnel resources for investigating and prosecuting such cases. The complexity of cross-border corruption cases highlights the need for coordination between the affected states. Not only can such coordination help solve problems of jurisdictional conflicts, but it also may help effectuate a meaningful investigation and prosecution of the underlying offences.

It also is often prudent for one state to provide international assistance to another state, even if an offence also occurred in the first state. Accordingly, a few ACN states indicated that the offence occurring in their territory would *not* be a basis for declining assistance (Azerbaijan, Bulgaria, Georgia, and Latvia). Several other states indicated that they would consult with the requesting state about who is in the best position to handle an investigation or prosecution, rather than denying assistance based solely on this ground. Consider Lithuania’s experience:

Box 27. Lithuania’s assessment of whether to pursue a case

Lithuania’s Criminal Code (art. 4) provides that any person who has committed a criminal act within Lithuania’s territory shall be held liable under Lithuania’s Criminal Code. An act that was committed in Lithuania as well as in another state is considered to have been committed in Lithuania if it was commenced, completed, or discontinued there. While this would suggest that Lithuania might reject an MLA request for an offence committed wholly or partly in Lithuania, Lithuanian authorities have explained that the cooperation would not be declined without further consultation and clarification. Lithuania would attempt to organise a coordination meeting through a network such as Eurojust, in order to decide which country is in the best position to carry on the initiated investigation of the offence.⁹⁶

The states that would apply this ground of refusal would consider the nature of the request. For example, Albania (like Montenegro) would deny a request for extradition based on this ground, but would not assert it for other types of requests.⁹⁷ In Kazakhstan, denial would be based upon whether the suspect had already been tried (see discussion of double jeopardy above).

3.7 Interference with an on-going investigation

Eleven of the 16 countries that responded to the questionnaire would allow the response to an MLA request to be postponed or declined if executing the request would interfere with an on-going investigation (Armenia, Azerbaijan, BIH, Bulgaria, Georgia, Kazakhstan, Lithuania, Moldova, Romania, Serbia, and Ukraine).⁹⁸ In one state (Kyrgyzstan), no special rules apply.⁹⁹ Latvia’s legislation does not provide such a basis for rejecting or postponing a response. Regardless, the decision to postpone or reject a request must be based on the particular circumstances of the case.

Romanian law allows delay in handing over any property, records, or documents that are needed in connection with pending criminal proceedings.¹⁰⁰ The Romanian case prosecutor makes the decision. If both Romania and another state are carrying out parallel investigations (e.g., one regarding bribe taking by a public official and the other regarding bribe giving by a foreign company), coordination is required

⁹⁶ See also Azerbaijan CPC art. 11.

⁹⁷ Albania CPC art. 491.

⁹⁸ See, e.g., Armenia CPC arts. 477, 484; Azerbaijan MLA Law arts. 3.1.6, 3.3; Georgia MLA Law art. 12(4); Kazakhstan CPC art. 566; Romania MLA Law art. 177; Ukraine CCP arts. 557, 559; Moldova MLA Law art. 4.

⁹⁹ Kyrgyzstan explained that it would provide the assistance if doing so would not affect the objectivity of its investigation.

¹⁰⁰ Romania MLA Law art. 177.

between the requesting and the requested authorities with regards to the execution of investigative measures (such as searches and hearings of suspects).

Similarly, Georgia's MLA law provides that MLA may be postponed if it may prejudice or hinder ongoing criminal proceedings in Georgia.¹⁰¹ With respect to law enforcement cooperation, a request may be partially or totally refused if providing the cooperation may obstruct another criminal case investigation or criminal intelligence activities being conducted by Georgian law enforcement authorities.¹⁰² This suggests the importance of consulting with the other state in such an instance, in order to determine which state is in the best position to carry the investigation or prosecution forward. Additionally, if one country decides to defer to another state's investigation or prosecution, it may want to consider options for "suspending" (instead of "closing") the transferred case (making appropriate arrangements to toll the statute of limitations, where possible), so that it can potentially reopen the case if other country ultimately declines to prosecute.

Some states (e.g., Bulgaria) would allow for the requested evidence or persons to be temporarily submitted to the requesting state, under conditions of return.

3.8 Evidentiary content of requests

Most MLA requests must meet standards set by the treaty upon which the assistance is based or the domestic laws of the country receiving the request. Eleven of the 16 countries that responded to the questionnaire indicated that they do not require evidence to be submitted with a "normal" request for MLA (that is, one not involving special actions such as extradition), although most of them would still need to describe the circumstances necessitating the request (Albania, Armenia, Azerbaijan, BIH, Bulgaria, Kazakhstan, Kyrgyzstan, Moldova, Montenegro, Serbia, and Slovenia).¹⁰³ Rather, as box 28 below shows, the types of information that must be included with a request for MLA usually include the elements of the crime alleged and a description of the causal events leading to the crime. A description of the evidentiary background might also sometimes be relevant to support certain investigative actions, such as searches and seizure or special investigative procedures.

¹⁰¹ Georgia MLA Law art. 12(4).

¹⁰² Georgia LEC Law art. 21(1.a).

¹⁰³ See, e.g., Azerbaijan MLA Law art. 4; Romania MLA Law art. 172; Serbia MLA Law art. 5. Lithuania indicated that it would look to the provisions of the governing treaty to determine whether special evidence was required. Montenegro indicated that it generally does not require evidentiary content when handling the cases, except in cases where a special form of international legal assistance is requested (for example, extradition).

Box 28. Information required to accompany MLA requests involving Kazakhstan

Kazakhstan explained that it does not require any special evidence in relation to an MLA request; the request should simply contain a rationale for the necessity of the requested measures and information sufficient for its execution. Nonetheless, a request for certain compulsory measures (e.g., search, seizure, arrest, confiscation) must contain as an attachment certified copies of relevant decisions by an appropriate institution in the requesting state (e.g., a court).

Kazakhstan indicated that bilateral MLA agreements may contain additional requirements. For example, Kazakhstan's MLA treaty with Canada (adopted in 2003), provides that an MLA request must include the following:

- For requests to collect evidence, to conduct a search or seizure, or to confiscate criminal proceeds, the request must include information proving that the evidence or criminal proceeds can be found in the requested party's territory;
- For requests to take testimonies, the request must (i) indicate whether the testimonies must occur under oath, be confirmed by a solemn statement, or be taken in some other legal way; and (ii) include a description of the subject of the requested testimonies or statements;
- For requests for the temporary transfer of material evidence, the request must include information about the actual location of the evidence in the requested party's territory, the person who will store the evidence after its collection, where the evidence will be delivered, any examinations that will be conducted on it, and the date by which it will be returned.

Only one respondent (Romania) indicated that evidentiary requirements are a challenge when requesting international cooperation.

3.9 Other grounds for refusal

Although the grounds for refusal discussed above are often the most cited, the laws of ACN states provide for a number of other bases for refusal, including the following:

- **No legal base or promise of reciprocity.** There is no treaty upon which assistance can be based, and the requesting state does not make a return promise of reciprocity.¹⁰⁴
- **Non-compliance with domestic laws.** Providing the requested assistance would contravene the country's constitution, laws, or fundamental principles of criminal procedure.¹⁰⁵
- **Insufficient information.** The requesting party has not submitted sufficient information to fulfil the request and acquiring additional information is not possible.¹⁰⁶
- **Prisoner transfer.** The request involves the transfer of a prisoner who does not agree with the transfer or who needs to remain in the country where he or she is for completion of criminal procedures against him or her.¹⁰⁷
- **Amnesty.** The alleged offender may not be held responsible if he or she is subject to amnesty.¹⁰⁸

¹⁰⁴ See, e.g., Albania CPC art. 505(4); Kazakhstan CPC art. 569; Latvia CPL § 852; Serbia MLA Law art. 8; Ukraine CCP art. 557.

¹⁰⁵ See, e.g., Georgia MLA Law art. 12(7); Kyrgyzstan CPC art. 428.

¹⁰⁶ See., e.g., Latvian CPL § 850(3).

¹⁰⁷ See., e.g., Georgian MLA Law art. 12(3).

¹⁰⁸ See, e.g., COE MLA Convention, Reservation of Bulgaria made at the time of signature, on 30 Sept. 1993, confirmed at the time of deposit of the instrument of ratification, on 17 June 1994, and partially withdrawn by a Note verbale from the Permanent Representation of Bulgaria, dated 5 Jan. 2004, registered at the Secretariat General on 6 Jan. 2004.

- **Mental incompetence.** The alleged offender is mentally incompetent.¹⁰⁹
- **The absence of diplomatic relations between the states.** For example, Armenia and Azerbaijan currently do not have diplomatic relations with each other (for this reason, there is no possibility of MLA between these states).
- Other grounds set forth in the treaty upon which the request is based.

This list is not comprehensive. A good practice is to consult relevant laws and treaties in connection with preparing requests, as well as to reach out to counterparts in other countries for guidance on applicable law when questions arise.

3.10 Challenges and good practices arising from prerequisites of cooperation and grounds for refusal

As a practical matter, very few requests for MLA (either to or from ACN member countries) are outright refused based on the grounds discussed in this section (see Tables A and C in parts 2.2.1 and 2.3.1 above, respectively). Although challenges can arise from a country's substantive legal framework, that is, whether its law requires refusal based on one of these grounds, the real challenges tend to relate to a need for communication between a requesting and receiving state. For example, a requirement of dual criminality may, in theory, present an obstacle to providing international assistance. However, through consultation two states may come to see that their laws criminalise the same conduct, even if the conduct is termed differently under each state's laws. At the same time, if the country in question has not fully criminalised corruption, the dual criminality requirement may prevent it from providing assistance, for example, in relation to the "offer," "promise," or acceptance of an offer or promise of a bribe, which is not consistently criminalised in ACN countries.¹¹⁰

This highlights the need for states to consult with each other before denying a request for legal assistance, and to provide a sufficient explanation when a request is denied. Often such consultations can lead to more positive outcomes, whether in an on-going case or in the future. Consultation in connection with the denial of MLA requests is discussed below in part 5.2.2.

3.11 Recommendations related to prerequisites of cooperation

- **Ensure that assistance can be provided in corruption cases to the fullest extent possible, including by deeming any dual criminality or dual punishability requirement fulfilled if the "conduct underlying the offence for which assistance is sought is a criminal offence under the laws of both" countries or (UNCAC art. 43.2), if possible, by eliminating the requirement of dual criminality altogether in corruption cases;**
- **Allow for a careful review of the facts and circumstances in any request where double jeopardy, unduly severe punishment, or human rights violations may be at issue, in order to ensure that potentially exculpatory evidence or information is not withheld;**
- **Ensure that corruption offences cannot be classified as political offences for which MLA can be withheld; and**
- **Ensure that cases transferred to another country for investigation can be held open until the foreign investigation is resolved.**

¹⁰⁹ Ibid.

¹¹⁰ For an overview of the status of the criminalisation of corruption offences in the ACN countries see OECD/ACN, *Anti-Corruption Reforms in Eastern Europe and Central Asia: Progress and Challenges, 2013-2015*, ch. 3 (Paris: OECD 2016).

4 TOOLS FOR EFFICIENT INTERNATIONAL COOPERATION

This section discusses tools and mechanism that may be used for efficient international cooperation, including the spontaneous transmission of information between authorities, the use of tele- and video-conferencing, special investigative techniques, and joint investigative teams.

4.1 Spontaneous transmission of information

A number of multilateral instruments allow for the spontaneous transmission of information to counterparts in other countries, as do the domestic laws of some individual countries.¹¹¹ For example, Article 11 of the Second Additional Protocol to the COE MLA Convention provides,

Without prejudice to their own investigations or proceedings, the competent authorities of a Party may, without prior request, forward to the competent authorities of another Party information obtained within the framework of their own investigations, when they consider that the disclosure of such information might assist the receiving Party in initiating or carrying out investigations or proceedings, or might lead to a request by that Party under the Convention or its Protocols.¹¹²

Similarly, UNCAC article 46 declares,

4. Without prejudice to domestic law, the competent authorities of a State Party may, without prior request, transmit information relating to criminal matters to a competent authority in another State Party where they believe that such information could assist the authority in undertaking or successfully concluding inquiries and criminal proceedings or could result in a request formulated by the latter State Party pursuant to this Convention.

5. The transmission of information pursuant to paragraph 4 of this article shall be without prejudice to inquiries and criminal proceedings in the State of the competent authorities providing the information. The competent authorities receiving the information shall comply with a request that said information remain confidential, even temporarily, or with restrictions on its use. . . .

Annex 3 contains a list of the ACN countries that have ratified these conventions. In addition, countries may sign bilateral agreements or MOUs with other countries to allow for the spontaneous transmission of information.

The provision of spontaneous information in relation to corruption cases can prove invaluable in corruption cases, since the nature of corruption makes information difficult to find.¹¹³ Law enforcement authorities and international networks (such as the Egmont Group) can play a key role in such exchanges.¹¹⁴ Consider the following examples of the successful use of this tool:

¹¹¹ See., e.g., Serbia MLA Law art. 98.

¹¹² ETS. no. 182, Strasbourg, 8 Nov. 2001, <http://www.coe.int/en/web/conventions/full-list/-/conventions/rms/090000168008155e>; see also Convention on Mutual Administrative Assistance in Tax Matters as amended by the 2010 Protocol, ETS no. 127, 25 Jan. 1988, <http://www.coe.int/en/web/conventions/full-list/-/conventions/rms/090000168007a84b>; Egmont Group, *Principles for Information Exchange*, supra.

¹¹³ OECD, *Mutual Legal Assistance and Other Forms of Cooperation between Law Enforcement Agencies*, at 27 (Paris: OECD 2013).

¹¹⁴ ADB & OECD, *Mutual Legal Assistance*, supra, at 34–37

Box 29. Three examples of the successful use of spontaneous information in a corruption case

Information provided to Romania. Romania's Anti-Corruption Directorate (DNA) sent a request for MLA to a WGB country to obtain bank information relating to a particular case. However, because DNA did not have a bank account number, the request was rejected. Later, the WGB country's authorities came across information related to suspicious bank transactions and relayed the information to DNA. Based on this information, the case prosecutor was able to obtain the information needed to submit a new, comprehensive MLA request that was fulfilled.

Information provided by Latvia. In 2010, KNAB commenced criminal proceedings relating to the tender of busses to a local municipality owned company from 2002 to 2006. During its investigation, KNAB discovered information relating to possible tax evasion in a WGB country, and in 2011 KNAB sent this information spontaneously to the Latvian central authority to be forwarded to that country's competent authorities. Those authorities opened their own investigation and commenced separate criminal proceedings on tax fraud charges. The perpetrator was found guilty of tax crimes in the WGB country. The court proceedings are still ongoing in Latvia.

Information provided to Azerbaijan. Another European state spontaneously provided Azerbaijan's FIU with information about significant financial resources being held in European bank accounts by individuals who were suspects in multiple corruption cases in Azerbaijan. As a result of these communications, Azerbaijani authorities were able to request that the other states temporarily freeze the funds in question until the court issued its decision.

Azerbaijan, Bulgaria, Latvia, Lithuania, and Romania have all received spontaneous information relating to corruption offences. Latvia and Lithuania have also provided spontaneous information. Georgia, Kazakhstan, Kyrgyzstan, Moldova, Montenegro have neither never provided nor received spontaneous information in relation to a corruption case.¹¹⁵

The primary challenge in providing spontaneous information is whether a country is *allowed* to provide such information. Only a few countries' laws or regulations appear to allow for spontaneous information exchanges (e.g., Estonia, FYRM, and Georgia).¹¹⁶ This means that law enforcement officials might hesitate to share information that could be of value to another country for fear of breaking the law. A good practice would, therefore, be to expressly provide for such transmissions in domestic legislation, so that enforcement officials feel confident in their ability to share such information.¹¹⁷

In addition, even if the party that provides spontaneous information may generally impose conditions on its use, a receiving state may not adhere to these conditions if it has made a reservation to that effect to the relevant international treaty providing for the spontaneous information. For example, the Second Additional Protocol to the COE MLA Convention provides that a state providing spontaneous information may impose conditions; however, a state party can reserve the right not to be bound by such conditions, in which case it would only be required to respect the conditions if the providing state gave it prior notice concerning the limitations on the use of the information to be provided *and* the receiving state nonetheless agreed to receive it under those conditions. Ukraine is one ACN country that has utilised this reservation.

4.2 Tele- and video-conferencing

Several countries indicated that they use teleconference and/or videoconference technologies to facilitate effective communication with counterparts in foreign countries. Tele- and video-conference may effectively be used to coordinate international assistance; however, even greater value comes when video-conference facilities can be used to obtain testimony of witnesses or experts who would otherwise not be able to appear at trial. Countries that reported the use of tele- and/or video-conferencing include Armenia, BIH, Kyrgyzstan, Latvia, Lithuania, Romania, Serbia, and Ukraine. Georgia has used this tool in a number of instances but not in any corruption cases. A number of other countries' laws also allow for the use of tele- and video-conferencing.¹¹⁸

¹¹⁵ Montenegro indicated that such exchanges are permissible under its law, however.

¹¹⁶ See UNODC's 2012 review of Estonia and 2015 review of FYRM, cited in Annex 2.

¹¹⁷ For example, UNODC made this recommendation to Azerbaijan as part of its 2012 review of UNCAC implementation (see citation in Annex 2).

¹¹⁸ See, e.g., UNODC's 2012 review of Estonia and 2015 review of FYRM, cited in Annex 2.

Box 30. Kazakh law regarding videoconferencing

Kazakhstan's Criminal Procedure Code (art. 576) provides that videoconferencing may be used in relation to a request for international assistance in the following cases:

- It is impossible for a summoned person to travel to the foreign state;
- Videoconferencing ensures a summoned person's security; or
- An international treaty provides for videoconferencing.

Domestic law usually regulates the use of videoconferencing in criminal cases.¹¹⁹ However, some countries' laws (e.g., Azerbaijan's) may not provide for the use of such technologies.¹²⁰ Accordingly, countries should ensure that they have a viable legislative basis for such activities.

Even if a legal framework for tele- or video-conferencing is in place, however, authorities often do not have practical access to the technology needed for such communications. For example, one respondent (Serbia) indicated that it only has one set of video-conferencing equipment; thus, it is not always available when needed for MLA. Another respondent indicated that central authorities have access to the technology for engaging in such communications, but local offices (where those executing requests are likely to be located) do not. Countries would be well-advised to target resources to improving technology where possible, so that such conferencing is available. In the long run, investments in such technology would likely pay off, since law enforcement officials and witnesses would not be required to travel as often.

4.3 Special investigative techniques

Given the secretive nature of corruption cases, the use of special investigative techniques—such as undercover operations, interception of electronic communications, surveillance, and cross-border pursuit—can often contribute greatly to the ability of authorities to obtain information needed to investigate or try a case. Domestic law usually regulates the use of special investigative techniques.¹²¹ In some countries (e.g., Croatia, Georgia, Montenegro, and Ukraine), the use of these methods at the international level is decided on a case-by-case basis, while in others (e.g., Moldova) it is regulated by international agreement.¹²²

Only a few countries (Latvia, Lithuania, Romania, and Ukraine) indicated in their response to the questionnaire that they have used such investigative techniques, however.¹²³

¹¹⁹ See PC-OC, "Replies to Questionnaire on legal and technical aspects of the use of video conferences in mutual legal assistance in criminal matters," PC-OC\Docs 2012\PC-OC (2012) 1Rev2, Strasbourg, 2 July 2012.

¹²⁰ See, e.g., Slovenia CPA art. 244a; Ukraine CCP art. 567.

¹²¹ See, e.g., the UNODC country review reports of BIH, Croatia, Estonia, FYRM, Georgia, Kazakhstan, Latvia, Lithuania, Moldova, Mongolia, Montenegro, Russia, Serbia, Slovenia, and Ukraine, cited in Annex 2.

¹²² See, e.g., the UNODC country review reports of Croatia, Georgia, Moldova, Montenegro, and Ukraine cited in Annex 2.

¹²³ Montenegro indicated that its CPC would allow for the use of such techniques, but it has never been asked for this type of assistance from other countries.

Box 31. Various international cooperation tools under Serbian law

As an example, Serbia's MLA Law (art. 83) provides the following forms of international cooperation relevant to this section:

- implementation of measures such as surveillance and tapping of telephone and other conversations or communication as well as photographing or videotaping of persons, controlled delivery, provision of simulated business services, conclusion of simulated legal business, engagement of under-cover investigators, computer search and data processing; and
- exchange of information and delivery of writs and objects related to criminal proceeding pending at the requesting party, delivery of data without the letter rogatory, use of audio and video-conference calls, forming of joint investigation teams.

Differences in the domestic laws of the requesting and executing state can present challenges in using such measures as part of international assistance. For example, under Latvian law, special investigative techniques are only allowed in response to an MLA request if the measure in question would be admissible in criminal proceedings in Latvia for the same offence.¹²⁴ Another challenge is resources. Such measures often require personnel and technological resources that some countries may not have. This is an area where the involvement of the requesting state in carrying out the requested action may be helpful. For example, the requesting state might suggest that its law enforcement officers participate in executing the request to provide assistance (see part 5.4 below).

Box 32. Dealing with an urgent request through direct communication and special law enforcement operations

In 2015, the Prosecutor General of Latvia learned that an Estonian citizen (C) had likely provided a bribe of EUR 500 000 to the now former head (H) of Latvian Railway, a state-owned enterprise. The bribe was allegedly made in connection with a Latvian Railway subsidiary's decision to buy four diesel locomotives. As a result of the bribe, C's company won the tender.

In relation to this investigation, KNAB requested that Estonian authorities undertake special investigative activities on its behalf. KNAB engaged in preliminary exchanges of information before sending a formal request for MLA that was submitted through the Prosecutor General's Office of Latvia to the Prosecutor General's Office of Estonia. Estonia's professionalism and speedy response enabled success in the case.

4.4 Joint investigative teams

The Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union of 2000 provides a legal basis by which EU member states may set up joint investigative teams (JITs) to facilitate efficient cooperation in criminal cases.¹²⁵ UNCAC article 49 also envisages joint investigations. The central authorities of the involved states set up a JIT by mutual agreement. A 2012 OECD report defines a JIT as follows:

A JIT is made up of investigators, prosecutors and sometimes judges and other individuals from the countries party to the JIT agreement. The JIT, established by mutual agreement between the designated national central authorities, allows for the sharing of information and evidence between its party countries without the need for further formal MLA requests.¹²⁶

That report continues by explaining how JITs enhance the MLA framework:

Compared with the traditional MLA framework, JIT agreements tend to make closer and more direct transnational cooperation and coordination between law enforcement authorities the functional norm, rather than the exception. Moreover, JIT matters are typically given higher

¹²⁴ Latvian CPL § 853.

¹²⁵ See OECD, *Typology on Mutual Legal Assistance in Foreign Bribery Cases* (Paris: OECD 2012), at 51–55, for a discussion of JITs and recommendations for making successful use of JITs in corruption cases.

¹²⁶ Ibid. 51.

priority and, therefore, may be given access to greater resources and handled more expediently. JITs can provide law enforcement officials with the type of rapid-response mechanism that is necessary to combat modern transnational crimes such as foreign bribery. Once the framework for entering into a JIT is in place domestically, it may be possible to establish a JIT quickly and get cross-jurisdictional cooperation promptly in effect, which increases the chances of successfully locating offenders and evidence and tracing and seizing proceeds. . . . Additionally, JIT agreements are flexible. As long as they do not contradict the laws of the member and participant countries, the agreements may be tailored in any number of ways to meet the needs of the members and participants and to fit the circumstances of a particular investigation.¹²⁷

Initially, JITs were primarily available only in Europe. However, more and more countries have adopted domestic laws providing for the possibility of JITs under certain conditions.¹²⁸

In 2015, UNODC reported that only 12 countries that are UNCAC parties have formed a JIT in relation to a crime covered by that treaty (UNODC 2016, 8). Given that statistic, it is remarkable that at least nine countries in the ACN region—Bulgaria, Estonia, Lithuania, Moldova, Mongolia, Romania, Serbia, Slovenia, and Ukraine—have used JITs in relation to criminal cases (although not necessarily corruption cases), and a number of these countries have used them repeatedly.¹²⁹ JITs are provided for under the laws of other ACN countries (including Armenia, Georgia, BIH, FYRM, Latvia, Kazakhstan, and Montenegro), although they have as yet not been utilised in corruption cases.¹³⁰ Two countries (Bulgaria and Croatia) have indicated in United Nations reviews that JITs are available on a “case-by-case basis.”¹³¹ In the case of Bulgaria, this determination is based on “careful examination of the circumstances and the need for establishing the team.”¹³²

JITs nonetheless present some challenges. First, JITs are not available in all countries in the region. Friction may also develop if the countries coming together to form a JIT are at differing stages of the investigation or simply cannot communicate effectively because of language issues. Data privacy and disclosure issues can also become problematic if they are not discussed in depth at the front end. For example, the JIT agreement itself may be discoverable in later litigation or may establish discovery obligations with regard to another state party’s case files.¹³³

To avoid some of these challenges, countries are advised to develop domestic legislation making clear how a JIT may be formed and under what circumstances. A country that wishes to set up or become involved in a JIT would be prudent to work through international networks such as Eurojust to develop contacts with other nations as well as to leverage resources for facilitating the cooperation (including language resources, as needed). Placing personnel who are well-versed in international negotiation and expectation management at the helm of a JIT will help ensure its effectiveness.

¹²⁷ Ibid. 53.

¹²⁸ See, e.g., the UNODC reviews of Romania, Russia, Serbia, and Slovenia cited in Annex 2.

¹²⁹ See UNODC reviews of Estonia, Lithuania, Moldova, Mongolia, and Slovenia, cited in Annex 2. Bulgaria and Serbia indicated that they have used JITs in corruption cases in their responses to the questionnaire.

¹³⁰ See, e.g., Armenia Law on Operative Investigative Activities art. 11; Georgia MLA Law art. 12¹ and LEC Law art. 13; Kazakhstan CPC art. 578; Latvia CPL ch. 84; Montenegro MLA Law art. 42; see also the UNODC reviews of BIH and FYRM cited in Annex 2.

¹³¹ See UNODC reviews of Bulgaria and Croatia, cited in Annex 2.

¹³² UNODC review of Bulgaria, at 11, cited in Annex 2.

¹³³ OECD, *Typology*, supra, at 55.

Box 33. Successful use of a JIT and other special investigative measures

A citizen reported to the Internal Security Directorate of Bulgaria's MOI (ISD) that he had been systematically extorted for bribes by Bulgarian and Romanian border police when he attempted to cross the border between those two countries. The bribes ranged from EUR 4.5 to 18, depending on the transported cargo. ISD took immediate actions to verify whether the crime had been committed. During surveillance of the border officials at the crossing point (including through two controlled crossings), ISD discovered that border officers had indeed been extorted transiting foreign citizens, primarily Turkish, Iraqi, and Russian drivers.

The Bulgarian Supreme Cassation Prosecutor's Office (SCPO) was informed of the gathered information, and the Sofia city prosecutor's office initiated pre-trial proceedings. To clarify the facts under investigation, the Sofia City prosecutor's office also prepared a proposal to SCPO to request international legal assistance from Romania. Specifically, the prosecutor's office asked for the following:

- the use of special investigative measures by Bulgarian and Romanian border officers at the border crossing point;
- the setting up of a JIT consisting of Romanian police officers and officials of ISD under the supervision of the Sofia city prosecutor's office to carry out detention, search, and seizure activities on Bulgarian border police officers;
- cross-border surveillance; and
- unrestricted access through the border crossing by ISD officers investigating the case.

Two months later, the Sofia prosecutor's office received an order granting the request from a prosecutor at Romania's Supreme Court of Cassation and Justice. In the course of implementing the request, 10 passages through the border control point were made from both sides, which resulted in gathering evidence for crimes committed by 14 Bulgarian border police officers and six Romanian border police officers. Criminal proceedings against the Bulgarian border police officers were initiated, and the Bulgarian border police officers were dismissed from service. The case involving the Romanian border officers has been submitted to the court, and the trial is ongoing.

4.5 Recommendations related to tools for efficient cooperation

- **Create a viable legislative basis for (i) the spontaneous transmission of information to foreign law enforcement officials, (ii) tele- and videoconferencing, (iii) special operative measures and (iv) the establishment of JITs, as well as guidelines that encourage law enforcement officials to utilise these measures.**
- **Provide appropriate resources (equipment and personnel) to law enforcement entities, including those not located in the capital, to enable them to engage in tele- and video-conferencing as part of international cooperation efforts.**
- **Amend domestic legislation to allow evidence collected through special investigative measures to be used in court without needing to be accompanied by other supporting evidence.**

5. PROACTIVE MEASURES TO FACILITATE INTERNATIONAL COOPERATION

5.1 Training to build staff capacity

A 2015 Global Network Initiative report described training as the “lowest-hanging fruit” in terms of making real changes to an existing MLA regime.¹³⁴ Providing proper training on preparing, submitting, and executing MLA requests can help remedy the challenges that arise due to unclear or insufficient requests for international assistance, requests that are misdirected to improper authorities (and consequently delayed or lost), and requests that become overlooked because of a lack of appropriate follow up.¹³⁵ When staff understand how to create strong requests for assistance, where to submit them, and whom to contact when they need help, this leads to more efficient investigations and prosecutions.¹³⁶

Nonetheless, even though most ACN countries provide training to investigators, prosecutors, judges, and/or officials of central authorities on general corruption issues, only a few countries reported that they provide training specifically related to international cooperation. And even in those cases, the training relates to international cooperation generally, rather than to the more specific topic of international cooperation in corruption cases. This is an important gap. Even though a number of procedures for MLA in criminal cases likely overlap, corruption cases often involve unique issues, such as (i) using shell companies to hide corrupt transactions and (ii) the availability of specialised anti-corruption bureaus to assist with investigations, prosecutions, and (in some cases) MLA itself. Understanding complex issues such as these is critical to effective international cooperation.

Training can take a variety of forms and is generally most effective when it involves “real life” experiences rather than simply classroom learning. For example, officials of Armenia’s Foreign Jurisdictional Relations Department and prosecutors (both in the Serious Crime Prosecution Office and in district prosecution offices) have engaged in study visits to EU countries to discuss specialised methods of law enforcement cooperation with counterparts in those countries. These visits facilitate not only substantive learning but also the development of professional contacts that can prove useful when later needs for assistance arise with respect to the country visited. Nearly all countries that responded to the questionnaire highlighted the use of study visits to other countries as a way of building capacity and promoting working relationships between foreign counterparts.

International organisations are also an excellent resource in the learning process. For example, since 2013, Kyrgyzstan has actively cooperated with the StAR Initiative and Basel Institute on Governance’s International Centre for Asset Recovery (ICAR) on asset recovery issues. With the assistance of these partners and colleagues, several special training sessions for law enforcement officials (investigators and prosecutors) were carried out in 2013 and 2014. These seminars aimed to strengthen understanding of the mechanisms of applying international instruments, in particular, UNCAC. In addition, the experts provided participants with handouts and recommendations for preparing MLA requests.

Even when an international event does not directly focus on international cooperation, any situation that brings a country’s prosecutors, judges, investigators, and other law enforcement bodies into contact with their counterparts in other states can help build relationships of trust and enable the exchange of information about pending cases. ACN LEN provides an opportunity for experience sharing and peer learning through its annual meetings and seminars.¹³⁷

¹³⁴ Woods, *Data Beyond Borders*, *supra*, at 9.

¹³⁵ See *ibid.*

¹³⁶ See *ibid.*

¹³⁷ Information about the ACN LEN and related resources is at <https://www.oecd.org/corruption/acn/lawenforcement/>.

Building personnel capacity in the area of international cooperation, particularly in corruption cases, could also involve obtaining the help of international experts. Countries that desire to improve staff capacity should seek to develop contacts with other countries that may be able to share skills and knowledge, especially concerning bribery of foreign officials, whistleblower protection, the return of assets, and money laundering. They also may want to consider working together with other countries in their region to facilitate training events, such as conferences and programs on the topic of international cooperation. By doing this, they can leverage the abilities of others and engage in cost-spreading between countries.

5.2 Consultations with counterparts in other countries

5.2.1 In relation to submitting an MLA request

Engaging in preliminary contacts with another country's central authority, investigators, prosecutors, or courts prior to submitting a formal MLA request enhances the likelihood that the request will comply with the requirements of the receiving state, be sufficiently detailed to permit execution, and will be promptly handled. In addition, such direct communications—whether by phone, by email, or as part of bilateral meetings—can strengthen relationships of trust among foreign counterparts dealing with MLA issues.¹³⁸ UNCAC article 48 provides for such cooperation and encourages state parties to “closely cooperate with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat” corruption offences.

Eleven of the 16 countries that responded to the questionnaire indicated that in a corruption case they will regularly engage in discussions with a receiving authority prior to sending a request for MLA (Azerbaijan, Bulgaria, Georgia, Kyrgyzstan, Latvia, Lithuania, Montenegro, Romania, Serbia, Slovenia, and Ukraine).¹³⁹ The other five countries do not regularly engage in this practice (Albania, Armenia, BIH, Kazakhstan, and Moldova). Two countries (Albania and Armenia) left open the possibility of consulting prior to submitting a request. Only two countries (BIH and Moldova) affirmatively said that they would *not* consult.

For those countries that regularly engage in consultations prior to submitting a request for MLA, the consultations usually take place on an “as needed” basis. Only one country (Ukraine) indicated that liaising with counterparts prior to sending a request is part of its GPO's general practice when it prepares requests for MLA.

As Romanian authorities noted in their response to the questionnaire, such informal consultations are most effective when a relationship of trust and mutual support is already in place between the requesting and executing countries. Accordingly, a challenge relating to this measure is establishing appropriate contacts for consultation in other countries.

¹³⁸ ADB & OECD, *Mutual Legal Assistance*, supra.

¹³⁹ See also the UNODC review of Azerbaijan, cited in Annex 2.

Box 34. Serbia's attempts to consult prior to submitting requests

Serbian authorities explained that, whenever possible, prosecutors and judges engage in informal contacts with their foreign counterparts prior to submitting a formal letter rogatory. They use these discussions to find out the competent authority to accept the request and to learn about requirements for requests (e.g., form, deadlines for execution). In many cases, such informal cooperation is rendered possible because of MOUs between prosecutorial authorities. In others, it is based upon participation in Eurojust or other bodies such as SEEPAG or CCPE. Serbian authorities have found that engaging in such contacts prior to seeking formal legal assistance helps avoid delays in executing formal requests.

5.2.2 *In relation to receiving (or denying) an MLA request*

Eight of the 14 countries that responded to a question regarding the matter indicated that they would informally consult with a requesting party prior to denying a request for cooperation (Azerbaijan, Bulgaria, Georgia, Kyrgyzstan, Latvia, Romania, Slovenia and Serbia).¹⁴⁰ However, such consultations only appear to be mandatory in Georgia (see below).

Box 35. Mandatory consultation under Georgian law

Georgia's MLA Law (art. 12(7)) requires the central authority (ICU) to consult the requesting state before it invokes a ground for denying cooperation. However, in the past 3 years, Georgia has not refused any request for MLA; thus, these consultations have not been required.

In regards to direct law enforcement cooperation, Georgia's International Criminal Cooperation Center (ICCC) consults with a requesting state before invoking a ground for denying assistance (although such consultations are not required).

Three countries—Latvia, Romania, and Serbia—explained that they “always” request additional information before denying cooperation. On the other hand, in Bulgaria consultation “usually” occurs.¹⁴¹ Azerbaijan indicated that informal consultations are held before refusal. Kyrgyzstan engages in consultation even before the request gets to the point of denial: it has a practice of informally reviewing and approving requests from other countries before they are formally submitted (see below). Only BIH, and Moldova indicated that they never engage in consultations prior to denying a request.

Box 36. Kyrgyzstan's attempts to consult prior to submitting requests

Kyrgyzstan engages in a practice of providing preliminary approval of draft requests from requesting states. Kyrgyzstan bases this practice on recommendations provided by the StAR initiative, Interpol, and other international counterparts and partners. Using this practice, the state has had successful experiences of cooperation with Canada, Liechtenstein, Switzerland, the United Kingdom, and the United States. Kyrgyzstan also explained that it closely cooperates with the Prosecutor General's Offices of CIS and Shanghai Cooperation Organisation countries in the framework of the Coordinating Council of Prosecutors General of CIS member states.

The benefit of consulting with the requesting state at an early stage cannot be overemphasised. In particular, engaging in such a consultative process allows both parties to identify and resolve challenges at an early stage. Consider the following example:

¹⁴⁰ One country (Albania) did not respond to this question

¹⁴¹ Importantly, though, Bulgaria also indicated that cases of refusal are extremely rare.

Box 37. Using consultation to resolve potential problems arising in relation to an MLA request

In June 2015 after initiating criminal proceedings, KNAB (Latvia) detained two senior officials. They were charged with abuse of function. In order to assemble the necessary evidence for prosecuting the alleged crimes under Latvian law, a voice analysis (phonoscopy) of the suspects was required. However, the only institution in Latvia that could carry out such an analysis was the State Police's Forensic Department. Since one of the detained senior officials held a management position in this department, KNAB decided to seek assistance from Estonia's Forensic Science Institute (EFSI).

The investigator contacted EFSI to find out the prerequisites for obtaining such assistance, after which the investigator sent a formal MLA request through Latvia's PGO to Estonia's PGO. Estonia's PGO initially rejected the request, after which the Latvian authorities contacted the Estonian authorities directly to explain the circumstances. The Latvian PGO then submitted an updated MLA request that included necessary additional information that helped clarify the situation. In the end, Estonia's PGO agreed to provide the assistance requested.

It should be noted that denials of MLA appear to be fairly infrequent among ACN countries. In fact, two countries (Kazakhstan, and Ukraine) have had no experience with such consultations because, as a practical matter, they have never denied MLA in relation to a corruption offence. Kazakhstan noted that its law allows for the possibility of such consultations, however.

5.3 Bilateral meetings

With the exception of Moldova and Slovenia, all of the countries that submitted responses to the questionnaire indicated that they have engaged in bilateral meetings with foreign counterparts to discuss corruption cases. In several instances, countries engage in such meetings at regular intervals with countries with which they have on-going cases (e.g., the US, the UK, or counterparts in neighbouring countries). Two countries may organise these meetings on their own accord, or they may utilise international networks. For example, Eurojust often organises case-based coordination meetings for judicial cooperation within the EU.

Box 38. Bilateral and tripartite meetings organised by Lithuanian authorities

Lithuanian authorities organise periodical meetings with the countries with which Lithuania has bilateral or tripartite international treaties (e.g., Estonia, Latvia, Poland, and the US) as well as with other neighbouring countries. Lithuanian authorities also actively participate in local and international training sessions organised by groups such as the National Court Administration, EJM, EJTJ, Eurojust, and the Academy of European Law.

The primary challenge in engaging in bilateral meetings is identifying the relevant foreign contact. Networks such as Eurojust can assist in this process. Another challenge may be the resource capacity of the two states to meet, whether in person or via tele- or video conferencing.

5.4 Representatives during execution of requests

Ten countries that responded to the questionnaire have requested that a representative of their country be present during the execution of an MLA request related to a corruption case (Albania, Azerbaijan, BIH, Bulgaria, Latvia, Lithuania, Moldova, Romania, Serbia, and Ukraine). Three countries have hosted representatives from other countries when executing incoming MLA requests (BIH, Bulgaria, and Georgia). In another country (Kyrgyzstan), the law provides for this, although the provision has not yet been utilised.¹⁴² Countries that have engaged in such activities agreed that involving representatives of the requesting state in the execution of a request is beneficial for both parties.

The primary benefit of having a representative present when a request is being processed is that the representative knows the case and the requesting country's laws and procedures. This means that the representative can help ensure that the evidence collected will be relevant to the case and useable in court (if needed). This also helps ensure expeditious execution of requests, since the representative can immediately answer any questions that may arise in the course of executing the request. Furthermore, when the request involves questioning of a witness or suspect, having a representative of the requesting state

¹⁴² Kyrgyzstan CPC art. 428(3).

present creates the possibility that the questions can be modified as needed, based on the answers given. Finally, working together to execute such requests helps build relationships of trust between authorities of the requesting country and executing country.

Box 39. Latvian law on participation in procedural actions

According to the CPL (sec. 847), a representative of a foreign state may participate in the performance of a procedural action, or personally perform such operation in the presence of a representative of the institution executing the request. If a person directing the proceeding participates in the procedural actions, it is highly appreciated because additional information can be provided and more detailed questions asked immediately.

Including parties from other states in the execution of an MLA request can present a number of practical challenges, such as language barriers or difficulties with coordinating agendas. These are issues that can be sorted out with patience and the appropriate allocation of resources. When needed, translators should be hired who are familiar with local culture and can facilitate effective communication.

Box 40. Using the MLA process to achieve convictions in two countries

In early 2012, the police of a WGB country were conducting an investigation into the allegedly fraudulent worldwide supply of equipment, money laundering, and corruption. A national (N) of that country had developed equipment that purportedly could detect illegal substances, such as narcotics and explosives, but the equipment was completely ineffective. N offered EUR 7 000 to a Georgian Ministry of Internal Affairs (MOIA) official (O) in exchange for his support of the sale of this equipment, which O accepted. O recommended and even urged MOIA to buy the ineffective equipment, which it did at a cost of EUR 37 000.

In relation to its investigation, the WGB country's authorities sent an MLA request to Georgia, asking for assistance in interrogating several MOIA officials and in seizing the ineffective equipment. In July 2012, two foreign police officers attended the interrogation of the requested officials, and Georgian authorities seized the device and handed it over to the WGB country. The WGB country's central authority later summoned Georgian witnesses to testify in the foreign court. One national of the WGB country was subsequently convicted, and the other official was declared to be a wanted person.

Later in 2012, Georgia sent its own MLA request to the WGB country's authorities in relation to the same scheme. Based on the information received, Georgia charged and later convicted O of bribe-taking.

5.5 International and regional organisations

As has been discussed throughout this report, communication is the essence of international cooperation and is an essential ingredient, both as a formal matter (for example, in the drafting of high-quality requests for assistance) and on an informal, consultative basis. As Lithuania explained in its response, "The assistance provided by . . . networks and the tools they employ are very valuable, as it helps to collect important evidence in a much shorter time period."

Some networks have been built up specifically to assist in corruption cases. The ACN itself provides an opportunity for members to come together to address challenges and share good practices, as well as to share information about specific cases (see box 41 below). Other networks such as the OECD's Global Law Enforcement Network (GLEN) and Working Group on Bribery (WGB) provide a similar role in a broader international context.

Box 41. The Law Enforcement Network of the ACN

The ACN supports the exchange of experience and information among law enforcement practitioners within the framework of an informal Anti-Corruption Law Enforcement Network (ACN LEN) launched in 2010 in Bucharest. ACN LEN operates as an informal group of practitioners, modelled after the experience of the OECD Working Group on Bribery's informal network of the law enforcement officials. Annual meetings provide capacity building and networking opportunities for practitioners in the region. During these meetings, practitioners share good practices, learn new enforcement techniques, and build relationships with counterparts in other countries. LEN has also provided a framework for the development of a number of thematic studies, including this report.

Other networks are geared towards broader law enforcement issues, but may also be valuable tools for facilitating international cooperation—both formal MLA and more informal law enforcement exchanges.

For example, the Committee of Experts on the Operation of European Conventions on Co-Operation in Criminal Matters (PC-OC) is a forum through which member countries can follow up on the execution of urgent requests and obtain and exchange information on good practices for judicial cooperation.¹⁴³ PC-OC also has a dedicated website with content to assist practitioners in their daily activities, a permanent peer-to-peer forum, and templates for request forms. Similarly, the Schengen Information System (SIS) supports law enforcement cooperation among the Schengen states.¹⁴⁴ Through SIS, law enforcement officials can set up and track alerts regarding wanted and/or missing persons and/or objects. Each state in the system also has a national Supplementary Information Request at the National Entries (SIRENE) Bureau, which facilitates information exchanges and coordination of activities related to SIS alerts.¹⁴⁵ The bureaus are open 24/7, and communication occurs using standardised forms via a secure network.

Box 42. Eurojust

Eurojust was cited as one of the most used networks by ACN countries and is widely regarded as extremely helpful when it comes to cooperation among EU member states.¹⁴⁶ As Lithuania explained in its response to the questionnaire, Eurojust brings “great added value to judicial cooperation.”

Eurojust is able to assist in organising coordination meetings between two or more countries. For example, in May 2015 a coordination meeting for the investigation of a transnational money laundering case was carried out at Eurojust headquarters in The Hague. Investigative authorities from France, Georgia, Latvia, Spain, and the United Kingdom attended, along with representatives of Eurojust and Europol. According to Georgian respondents, this meeting provided a great opportunity for participants to exchange information on state of the play of domestic investigations into transnational money laundering.

Eurojust helps facilitate the execution of MLA requests among EU member states. For example, in 2015, Eurojust facilitated and expedited the execution of 31 requests for assistance involving Serbia. Serbian prosecutors also participated in five coordination meetings organised by this network. Finally, networking via Eurojust also strengthens contacts with networks outside of Europe, such as IberRed.¹⁴⁷

Still other networks are geared primarily towards informal law enforcement cooperation (discussed above in part 2.4). For example, Europol and Interpol have electronic platforms for very quick exchanges of information between law enforcement bodies. In addition, through these networks, members can place liaison police officers in other countries to help facilitate cooperation with law enforcement on an as-needed basis.¹⁴⁸ The use of liaison officers also helps build trust among the countries’ law enforcement sectors, which can trickle over to other judicial officers.

Finally, some networks exist primarily as repositories for contact information for counterparts in other countries. For example, the European Partners against Corruption and European contact point network against corruption work together to host annual conferences (the next to be held in Riga in November 2016) and create a platform for anti-corruption practitioners and law enforcement officials to share experiences and cooperation across national borders.¹⁴⁹ Similarly, the European Judicial Network (EJN) contains national contact points for judicial cooperation in criminal matters. Its website includes information about the MLA requirements of its members.¹⁵⁰

¹⁴³ See http://www.coe.int/t/DGHL/STANDARDSETTING/PC-OC/default_en.asp.

¹⁴⁴ See http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/borders-and-visas/schengen-information-system/index_en.htm.

¹⁴⁵ See http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/borders-and-visas/schengen-information-system/sirene-cooperation/index_en.htm.

¹⁴⁶ See <http://www.eurojust.europa.eu/Pages/home.aspx>.

¹⁴⁷ The Ibero-American Network for International Legal Cooperation (IberRed) facilitates international cooperation among the 22 countries of the Ibero-American Community of Nations. For more information, visit <https://www.iberred.org> (in Spanish).

¹⁴⁸ See the UNODC review of Estonia cited in Annex 2.

¹⁴⁹ See <http://www.epac-eacn.org>.

¹⁵⁰ See <http://www.ejn-crimjust.europa.eu/ejn/>.

Regardless of their particular focus, networks such as these are essential tools for international cooperation, and most respondents to the questionnaire spoke highly of their use. For example, in its response to the questionnaire, Romania related that when challenges occur in relation to international cooperation in a particular case, Romanian authorities generally try to activate contacts in its various networks to clarify the nature of the problems and to find out how a response can be effectuated as soon as possible. In the case of recurrent challenges, the usual policy is to try to engage into bilateral consultations to identify solutions.

In short, networks can be an invaluable tool for developing relationships of trust with other jurisdictions and for following up on requests for international assistance. As Slovenian authorities explained in their response to the questionnaire,

. . . EJN [European Judicial Network] meetings and PC-OC [Committee of Experts on the Operation of European Conventions on Co-Operation in Criminal Matters] plenary meeting are a great opportunity to meet colleagues from other countries and that these contacts really are of a great benefit for our work. The challenges we have encountered so far do not lie so much in the existing networks, but in lack of the contacts and networks with some third countries that we do not have frequent cases and much experience yet, for example like UAE, Egypt, Dominican Republic, Indonesia.

ACN member states are well-advised to utilise the networks of which they are members to the fullest extent possible, as well as to engage in additional networks whenever appropriate.

5.6 Recommendations related to proactive measures

- **Develop a list of good practices and lessons learned in the area of international cooperation that can be used in trainings with investigators, prosecutors, judges, and other law enforcement personnel. Among these include (i) the possibility of engaging in consultations prior to submitting MLA requests and (ii) requesting to have representatives on site during the execution of requests.**
- **Work together with other jurisdictions to develop and present workshops dedicated to the topic of international cooperation in corruption cases.**
- **Engage with other jurisdictions through networks such as Eurojust, Europol, Interpol, and others as a way of developing stronger relationships with foreign counterparts and facilitating more effective international cooperation.**
- **Consider whether your jurisdiction should engage in additional international networks in order to better facilitate international cooperation and, if so, undertake outreach efforts to those networks.**

RECOMMENDATIONS

1. The legal framework of international cooperation

The international legal framework:

- Explore the possibility of ratifying multilateral instruments to which your country may not be a party.
- Encourage jurisdictions with which you engage in regular MLA to become state parties to relevant multilateral instruments to which they are not already members. If this is not possible, explore the option of negotiating additional bilateral MLA and/or law enforcement agreements, placing priority on (i) agreements with countries not party to key multilateral instruments and (ii) agreements with neighbouring and other countries where assistance is most likely to be sought.
- Explore the possibility of negotiating executive agreements, letters of exchange, or other types of agreements in instances where negotiating a bilateral treaty may be difficult.
- Commit to fully adhering to international agreements your jurisdiction has ratified, including the requirement under UNCAC and other agreements that an assurance of reciprocity is not required prior to providing international assistance to another state party.

The national legal framework:

- Review and adopt legislation to ensure that legal assistance can be provided to other countries to the fullest extent possible.
- Adopt guidance for authorities (both domestic and foreign) to help those seeking or providing international cooperation in connection with corruption cases to understand the laws and procedures that apply to such cooperation.
- Devote the necessary resources to keeping up with current developments in the area of international assistance and, in accordance with these developments, update relevant domestic legal and regulatory structures.

2. The procedural framework of international cooperation

The central authority:

- If not already in place, designate a central authority for acceptance of requests for international cooperation in cases where an international instruments (e.g., Eurojust or UNCAC) does not apply.
- Consider developing a publicly available internet website for each central authority that contains (i) information on the MLA process in a universal language (e.g., English); (ii) contact information for individuals who are available to respond to questions about requests and the preparation of requests; (iii) an overview of laws and other guidance for submitting requests; and (iv), where possible, sample templates for use when submitting MLA requests.
- Provide necessary guidance, including on the legislation of the requesting state, and support to executing authorities to facilitate execution of request.
- Consider whether additional resources could be provided to central authorities and other bodies involved in international cooperation, including technology, personnel, and language assistance.

Procedures for outgoing requests:

- Consider allowing requests from states based on reciprocity (rather than on the basis of a treaty) to be submitted directly to the central authority rather than through diplomatic channels or, when that is not possible, provide such requesting states with confirmation of receipt and contact information for the executing authority.
- Review and/or adopt procedures for prioritising incoming MLA requests based on importance and urgency.

- Adopt guidelines for the submission of urgent requests, including criteria for submitting urgent requests and procedures for submitted requests after business hours, on weekends, and during holidays; make these guidelines publicly available.
- Review or adopt guidelines requiring central authorities to consult with requesting authorities prior to denying a request for international cooperation.

Informal, direct law enforcement cooperation:

- Fully utilise existing and (where possible) explore the possibility of creating additional channels for direct communication and exchanges of information between law enforcement authorities, including financial intelligence units, securities regulators, tax authorities, customs authorities, international aid organisations, and others.
- Explore the possibility of allowing for information obtained through informal, direct law enforcement cooperation to be used to support court proceedings.

Case management:

- Review and/or adopt a case management system that:
 - Monitors incoming and outgoing requests for international cooperation to help ensure timely execution;
 - Allows for classification of requests and the use of statistics in order to analyse good practices.
- If your jurisdiction's case management is electronic, review and or implement appropriate cyber-security measures, including those that protect the names of individuals and other sensitive information.
- Develop guidelines for central and executing authorities on good practices for monitoring incoming and outgoing requests for MLA, as well as other types of international assistance, including timelines for execution.

3. Prerequisites of cooperation; grounds of refusal

- Ensure that assistance can be provided in corruption cases to the fullest extent possible, including by deeming any dual criminality or dual punishability requirement fulfilled if the "conduct underlying the offence for which assistance is sought is a criminal offence under the laws of both" countries or (UNCAC art. 43.2), if possible, by eliminating the requirement of dual criminality altogether in corruption cases;
- Allow for a careful review of the facts and circumstances in any request where double jeopardy, unduly severe punishment, or human rights violations may be at issue, in order to ensure that potentially exculpatory evidence or information is not withheld;
- Ensure that corruption offences cannot be classified as political offences for which MLA can be withheld; and
- Ensure that cases transferred to another country for investigation can be held open until the foreign investigation is resolved.

4. Tools for efficient international cooperation

- Create a viable legislative basis for (i) the spontaneous transmission of information to foreign law enforcement officials, (ii) tele- and videoconferencing, (iii) special operative measures and (iv) the establishment of JITs, as well as guidelines that encourage law enforcement officials to utilise these measures.
- Provide appropriate resources (equipment and personnel) to law enforcement entities, including those not located in the capital, to enable them to engage in tele- and video-conferencing as part of international cooperation efforts.
- Amend domestic legislation to allow evidence collected through special investigative measures to be used in court without needing to be accompanied by other supporting evidence.

5. Proactive measures to facilitate international cooperation

- **Develop a list of good practices and lessons learned in the area of international cooperation that can be used in trainings with investigators, prosecutors, judges, and other law enforcement personnel. Among these include (i) the possibility of engaging in consultations prior to submitting MLA requests and (ii) requesting to have representatives on site during the execution of requests.**
- **Work together with other jurisdictions to develop and present workshops dedicated to the topic of international cooperation in corruption cases.**
- **Engage with other jurisdictions through networks such as Eurojust, Europol, Interpol, and others as a way of developing stronger relationships with foreign counterparts and facilitating more effective international cooperation.**
- **Consider whether your jurisdiction should engage in additional international networks in order to better facilitate international cooperation and, if so, undertake outreach efforts to those networks.**

ANNEX 1. CHECKLISTS FOR REQUESTING MUTUAL LEGAL ASSISTANCE IN A CORRUPTION CASE

The following checklist is intended to provide general guidance for requesting mutual legal assistance (MLA) in connection with a corruption case.¹⁵¹ It can be adapted to the requirements of your jurisdiction's particular laws and regulations.

Checklist for Requesting MLA in a Corruption Case

1. Prior to preparing a request for MLA

- Gather all available information regarding the information, evidence, or assistance to be requested. This should include, for example, (a) full names of individuals or organisations, (b) location of evidence or individuals, (c) identifying information needed to locate information (such as bank account numbers or transaction dates), and (d) any other information that would assist someone in the other jurisdiction to execute the request.
- Contact any liaison officer your jurisdiction may have posted in the jurisdiction from which you are seeking assistance in order to identify (a) any law enforcement counterpart that may be able to provide guidance regarding obtaining the information, evidence, or assistance sought and (b) any other sources or situations you should consider as you prepare the MLA request.
- If permissible under applicable law, reach out to your law enforcement counterpart in the foreign jurisdiction to determine (a) whether the information, evidence, or assistance sought can be obtained through informal law enforcement channels and, if not, (b) the appropriate authority to receive your request. Also request information about (c) the form and manner in which a request for MLA must be submitted. (The Anti-Corruption Network for Eastern Europe and Central Asia and the Global Law Enforcement Network are good resources for identifying relevant counterparts in other jurisdictions.)
- If permissible under applicable law, submit a request for the information, evidence, or assistance through the appropriate law enforcement channel. Even if you submit a formal request for assistance at a later date, obtaining this assistance informally may help you to craft a request for MLA with the necessary level of specificity to be executed in a timely manner.

2. Preparing the MLA request

- Contact your jurisdiction's central authority prior to preparing the MLA request, in order to (a) alert it that the draft request will be submitted to it for review and (b) obtain guidance regarding the resources available for drafting a request that complies with the foreign jurisdiction's laws.
- Consult the United Nations MLA Writer Tool (at <https://www.unodc.org/mla/en/index.html>) as a resource when preparing the draft request.
- If appropriate, consult with other relevant international networks, such as the European Judicial Network, when preparing the draft request.
- Whenever possible under applicable law, reach out to the receiving authority (usually the central authority) of the other jurisdiction to (a) verify foreign law requirements (such as evidentiary requirements), (b) verify procedural requirements (such as language requirements), and (c) obtain review of the draft request in order to identify potential shortfalls early on.
- If the request is urgent, include information supporting this assertion, such as the seriousness of the crime, the complexity of the crime, the expiration of a limitations period, and the possibility that evidence may be lost if action is not taken immediately.

3. Submitting and following up on the MLA request

- Submit the request to the correct receiving authority (generally the central authority of the

¹⁵¹ Recommendations to the report *International Co-operation in Corruption Cases in Asia and the Pacific* (ADB & OECD 2017) provide similar guidance.

foreign jurisdiction). If the request is urgent, submit in accordance with the requirements of the receiving jurisdiction, making sure to preserve authenticity (e.g., by signature and seal of the competent officer).

- Provide contact details of the person(s) who will be available to provide further explanation and answers to question that may arise during execution of the request. Preferably, this person should have knowledge of a commonly used language (such as Russian or English).
- If permissible under applicable law, provide a courtesy copy of the submitted request to the authority that is likely to execute the request in the foreign jurisdiction. It may be prudent to also let the jurisdiction's receiving authority know you have done this.
- If appropriate, request that a member of your law enforcement be present when the request for MLA is executed in the foreign country.
- Record the request for MLA using your jurisdiction's record-keeping system.
- Use your jurisdiction's record-keeping system to monitor the progress of execution of the request. If necessary, follow up with the foreign jurisdiction on progress on execution. Remain available to answer questions as needed.

ANNEX 2. REFERENCE LIST AND ADDITIONAL RESOURCES

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ANNEX 3. ACN COUNTRY ADHERENCE TO SELECTED MULTILATERAL INTERNATIONAL ASSISTANCE INSTRUMENTS

	Albania	Armenia	Azerbaijan	Belarus	BIH	Bulgaria	Croatia	Estonia	FYRM	Georgia	Kazakhstan	Kyrgyzstan	Latvia	Lithuania	Moldova	Mongolia	Montenegro	Romania	Russia	Serbia	Slovenia	Tajikistan	Turkmenistan	Ukraine	Uzbekistan
European regional agreements																									
European Convention on Extradition (1957)	X	X	X	-	X	X	X	X	X	X	-	-	X	X	X	-	X	X	X	X	X	-	-	X	-
Additional Protocol (1975)	X	X	X	-	X	X	X	X	X	X	-	-	X	X	X	-	X	X	X	X	X	-	-	X	-
Second Additional Protocol (1978)	X	X	X	-	X	X	X	X	X	X	-	-	X	X	X	-	X	X	X	X	X	-	-	X	-
Third Additional Protocol (2010)	X	-	X	-	X	X*	X*	-	X	X*	-	-	X	X	X*	-	-	X*	-	X	X	-	-	X*	-
Fourth Additional Protocol (2012)	X	X*	-	-	-	-	-	-	-	-	-	-	X	-	-	-	-	X*	X	X	X	-	-	X*	-
European Convention on Mutual Assistance in Criminal Matters (1959)	X	X	X	-	X	X	X	X	X	X	-	-	X	X	X	-	X	X	X	X	X	-	-	X	-
Additional Protocol (1978)	X	X	X	-	-	X	X	X	X	X	-	-	X	X	X	-	X	X	X	X	X	-	-	X	-
Second Additional Protocol (2001)	X	X	-	-	X	X	X	X	X	X	-	-	X	X	X	-	X	X	-	X	X	-	-	X	-
European Convention on the Transfer of Proceedings in Criminal Matters (1972)	X	X	X*	-	X	X	X*	X	X	-	-	-	X	X	X	-	X	X	X	X	X*	-	-	X	-
Convention on the Transfer of Sentenced Persons (1983)	X	X	X	-	X	X	X	X	X	X	-	-	X	X	X	X	X	X	X	X	X	-	-	X	-
Additional Protocol (1997)	-	X*	-	-	-	X	X	X	X	X	-	-	X	X	X	-	X	X	X	X	X	-	-	X	-
Convention on Mutual Administrative Assistance in Tax Matters (1988)	X	-	X	-	-	X	X	X	-	X	X	-	X	X	X	-	-	X	X	-	X	-	-	X	-
Protocol (2001)	X	-	X	-	-	X	X	X	-	X	-	-	X	X	X	-	-	X	X	-	X	-	-	X	-
Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (1990)	X	X	X	-	X	X	X	X	X	X	X	-	X	X	X	-	X	X	X	X	X	-	-	X	-
Council of Europe Criminal Law Convention on Corruption (1999)	X	X	X	-	X	X	X	X	X	X	-	-	X	X	X	-	X	X	X	X	X	-	-	X	-
Council of Europe Convention on Laundering, Search, Seizure and Confiscation of Proceeds from Crime and on the Financing of Terrorism (2005)	X	X	X*	-	X	X	X	X	X	X	-	-	X	X*	X	-	X	X	X*	X	X	-	-	X	-

	Albania	Armenia	Azerbaijan	Belarus	BIH	Bulgaria	Croatia	Estonia	FYRM	Georgia	Kazakhstan	Kyrgyzstan	Latvia	Lithuania	Moldova	Mongolia	Montenegro	Romania	Russia	Serbia	Slovenia	Tajikistan	Turkmenistan	Ukraine	Uzbekistan
Commonwealth of Independent States (CIS)																									
Convention on Legal Assistance and Legal Arrangements in Civil, Family and Criminal Matters (Minsk Convention, 1993)	-	X	X	X	-	-	-	-	-	X	X	X	-	-	X	-	-	-	X	-	-	X	X	X	X
Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Cases (Chisinau Convention, 2002)	-	X	X	X	-	-	-	-	-	X*	X	X	-	-	X*	-	-	-	X*	-	-	X	X	X*	X
Black Sea Economic Cooperation (BSEC)																									
Agreement among the Governments of BSEC Participating States on Cooperation in Combating Crime, in Particular in its Organized Forms (1998)	X	X	X	-	-	X	-	-	-	X	-	-	-	-	X	-	-	X	X	X*	-	-	-	X	-
Additional Protocol (2000)	X	X	X	-	-	X	-	-	-	X	-	-	-	-	X	-	-	X	X	X	-	-	-	X	-
Organization for Democracy and Economic Development (GUAM)																									
Agreement on cooperation among the Governments of GUAM Participating States in the field of combat against terrorism, organized crime and other dangerous types of crimes (2002)	-	-	X	-	-	-	-	-	-	X	-	-	-	-	X	-	-	-	-	-	-	-	-	X	-
Protocol (2004)	-	-	X	-	-	-	-	-	-	X	-	-	-	-	X	-	-	-	-	-	-	-	-	X	-
Other international agreements																									
OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (1997)	-	-	-	-	-	X	-	X	-	-	-	-	X	-	-	-	-	-	X	-	X	-	-	-	-
UN Convention against Transnational Organized Crime (2000)	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
UN Convention against Corruption (2003)	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X

* State has signed agreement, but has not ratified it.

ANNEX 4. BILATERAL MLA AND OTHER INTERNATIONAL ASSISTANCE AGREEMENTS AMONG ACN COUNTRIES (KNOWN)

Country	MLA treaties	Law enforcement and other agreements	Tripartite agreements
Albania	BIH, Czechia, Egypt, FYRM, Germany, Greece, Hungary, Italy, Moldova, Romania, Slovenia, Turkey, UK, Ukraine, US	Law enforcement: Ukraine	None known
Armenia	Bulgaria, China (PR), Egypt, Georgia, Greece, Iran, Lithuania, Kuwait, Moldova, Romania, Syria, UAE	Law enforcement: Belarus, China (PR), Cyprus, Czechia, Georgia, Hungary, Iran, Kazakhstan, Latvia, Lithuania, Moldova, Montenegro, Romania, Russia, Slovakia, Ukraine FIU: Australia, Belarus, Bermuda, Canada, China (PR), Croatia, Cyprus, FYRM, Georgia, Iran, Israel, Japan, Kazakhstan, Kyrgyzstan, Liechtenstein, Moldova, Montenegro, Panama, Poland, Romania, Russia, San Marino, Saudi Arabia, Serbia, South Africa, Taiwan, Tajikistan, Thailand, UAE, UK, Ukraine	None known
Azerbaijan	Bulgaria, China (PR), Georgia, India, Iran, Jordan, Kazakhstan, Kyrgyzstan, Latvia, Lithuania, Moldova, Morocco, Russia, UAE, Uzbekistan	Law enforcement: Austria, China (PR), Georgia, Kazakhstan, Lithuania, Malaysia, Moldova, Russia, Thailand, Turkmenistan, Ukraine, Uzbekistan FIU: Lithuania	None known
Belarus	BIH, Bulgaria, Georgia, Latvia, Lithuania, Moldova	Law enforcement: Armenia, Ukraine FIU: Armenia, Lithuania	None known
BIH	Albania, Algeria, Austria, Belarus, Belgium, Bulgaria, China (PR), Croatia, Cyprus, Czechia, Denmark, France, FYRM, Germany, Greece, Hungary, India, Iraq, Iran, Italy, Kuwait, Moldova, Montenegro, Morocco, Netherlands, Norway, Poland, Romania, Russia, Serbia, Slovakia, Slovenia, Spain, Switzerland, Turkey, UK, Ukraine, USA	Law enforcement: Bulgaria, Ukraine	None known
Bulgaria	Algeria, Armenia, Azerbaijan, Belarus, BIH, China (PR), Cuba, Cyprus, Czechia, Georgia, Greece, Hungary, India, Kazakhstan, Korea, Korea (DPR), Kuwait, Lebanon, Libya, Moldova, Mongolia, Morocco, Poland, Romania, Russia, Slovakia, Slovenia, Spain, Syria, Tunisia, Turkey, US, Uzbekistan, Vietnam, Yemen	Law enforcement: Albania, Armenia, Austria, Belgium, BIH, China (PR), Croatia, Cyprus, Czechia, Egypt, Estonia, France, FYRM, Germany, Greece, Hungary, India, Ireland, Italy, Jordan, Kazakhstan, Lebanon, Malta, Moldova, Morocco, Netherlands, Norway, Poland, Portugal, Romania, Russia, Serbia, Slovakia, Slovenia, South Africa, Spain, Switzerland, Syria, Turkey, UK, US, Uzbekistan, Venezuela FIU: Lithuania	Romania/Serbia

Country	MLA treaties	Law enforcement and other agreements	Tripartite agreements
Croatia	BIH, Bulgaria, FYRM, Kosovo, Montenegro, Romania, Russia, Slovenia, Serbia	Law enforcement: Austria, BIH, Bulgaria, France, Germany, Hungary, Israel, Malta, Moldova, Montenegro, Serbia, Slovakia, Russia, Ukraine, USA FIU: Armenia, Lithuania	None known
Estonia	Finland, Georgia, Kazakhstan, Latvia, Lithuania, Moldova, Poland, Russia, Ukraine, US	Law enforcement: Ukraine FIU: Lithuania	Latvia/Lithuania
FYRM	Albania, BIH, Croatia, Montenegro, Serbia, Slovenia, Turkey	Law enforcement: Bulgaria, Ukraine FIU: Armenia, Lithuania	None known
Georgia	Armenia, Austria, Azerbaijan, Belarus, Bulgaria, Egypt, Estonia, France, Germany, Hungary, Israel, Italy, Kazakhstan, Kyrgyzstan, Latvia, Malta, Moldova, Poland, Romania, Slovakia, Spain, Turkey, Ukraine, Ukraine, Uzbekistan	Law enforcement: Armenia, Azerbaijan, Ukraine FIU: Armenia, Lithuania Memorandum of understanding: UK, US Agreement on exchange and mutual protection of classified information: Armenia, Austria, Azerbaijan, Bulgaria, Czechia, Estonia, France, Latvia, Lithuania, Luxembourg, Norway, Poland, Romania, Slovakia, Spain, Sweden, Ukraine	None known
Kazakhstan	Azerbaijan, Bulgaria, Croatia, Egypt, Estonia, France, Georgia, India, Italy, Kyrgyzstan, Lithuania, Moldova, Poland, Romania, Saudi Arabia, Slovakia, UAE	Law enforcement: Armenia, Azerbaijan, Bulgaria, Ukraine FIU: Armenia, Lithuania	None known
Kyrgyzstan	Azerbaijan, China (PR), Czechia (legal successor), India, Iran, Kazakhstan, Latvia, Moldova, Mongolia, Russia, Tajikistan, Turkey, UAE, Uzbekistan	Law enforcement: Ukraine FIU: Armenia	None known
Latvia	Azerbaijan, Belarus, China (PR), Georgia, Kyrgyzstan, Lithuania, Moldova, Poland, Russia, Ukraine, US, Uzbekistan	Law enforcement: Armenia, Estonia, Lithuania, Poland, Ukraine	Estonia/Lithuania
Lithuania	Armenia, Azerbaijan, Belarus, China (PR), Estonia, Kazakhstan, Latvia, Moldova, Poland, Russia, Ukraine, Uzbekistan	Law enforcement: Armenia, Azerbaijan, Belarus, Finland, Germany, Hungary, Kazakhstan, Latvia, Moldova, Poland, Slovakia, Spain, Turkey, Ukraine, US, Uzbekistan FIU: Austria, Azerbaijan, Belarus, Belgium, Bulgaria, Croatia, Czechia, Estonia, Finland, FYRM, Georgia, Germany, Hungary, Italy, Kazakhstan, Latvia, Moldova, Poland, Portugal, Russia, Serbia, Slovakia, Slovenia, Spain, Turkey, Ukraine, Uzbekistan	Latvia/Estonia, Japan/US
Moldova	Albania, Armenia, Azerbaijan, Bahamas, Belarus, Belgium, BIH, Bulgaria, Croatia, Cyprus, Czechia, Estonia, Finland, France, FYRM, Georgia, Indonesia, Israel, Kazakhstan, Korea, Kyrgyzstan, Latvia, Lebanon, Lithuania, Mexico, Monaco, Mongolia, Montenegro, Netherlands, Nigeria, Poland, Portugal, Romania, Russia, Serbia, Slovakia, Slovenia, South Africa, Turkey, Turkmenistan, UK, Ukraine, US	Law enforcement: Armenia, Azerbaijan, Bulgaria, Lithuania, Ukraine FIU: Armenia, Lithuania	None known
Mongolia	Bulgaria, India, Kyrgyzstan, Moldova, Slovenia, Ukraine	Law enforcement: Ukraine	None known
Montenegro	BIH, Croatia, FYRM, Italy, Moldova, Romania, Serbia	Law enforcement: Armenia, Bulgaria, Croatia, Hungary, Italy, Kosovo, Serbia	None known

Country	MLA treaties	Law enforcement and other agreements	Tripartite agreements
Romania	Albania, Algeria, Armenia, Belgium, BIH, Bulgaria, Canada, China (PR), Croatia, Cuba, Czechia, Egypt, France, Georgia, Greece, Hungary, Italy, Kazakhstan, Korea (DPR), Moldova, Montenegro, Morocco, Poland, Russia, Serbia, Slovakia, Slovenia, Syria, Tunisia, US	Law enforcement: Armenia, Bulgaria, Ukraine FIU: Armenia	Bulgaria/Serbia
Russia	Azerbaijan, BIH, Bulgaria, Canada, Estonia, India, Kyrgyzstan, Latvia, Lithuania, Moldova, Romania, Slovenia, US	Law enforcement: Armenia, Azerbaijan, Bulgaria, Ukraine FIU: Armenia, Lithuania	None known
Serbia	BIH, Moldova, Montenegro, Romania, Slovenia	Law enforcement: Armenia, Montenegro, Ukraine FIU: Armenia, Lithuania	Romania/Bulgaria
Slovenia	Albania, Algeria, Australia, Austria, Belgium, BIH, Bulgaria, Canada, Croatia, Cyprus, Czechia, Denmark, France, FYRM, Germany, Greece, Iraq, Iran, Italy, Hungary, Moldova, Mongolia, Poland, Romania, Russia, Serbia, Slovakia, Spain, Turkey, UK, US	Law enforcement: Bulgaria FIU: Lithuania	None known
Tajikistan	India, Kyrgyzstan	Law enforcement: Armenia	None known
Turkmenistan	Moldova	Law enforcement: Azerbaijan, Ukraine	None known
Ukraine	Albania (legal successor), Algeria (legal successor), BIH, Canada, China (Hong Kong), China (PR), Cuba (legal successor), Egypt, Estonia, Finland (legal successor), Georgia, Germany (legal successor), Greece (legal successor), Hungary (legal successor), Iran, Iraq (legal successor), Korea (DPR), Latvia, Libya, Lithuania, Moldova, Mongolia, Panama, Poland, Syria, Tunisia (legal successor), UAE, US, Uzbekistan, Vietnam, Yemen (legal successor)	Law enforcement: Albania, Armenia, Australia, Azerbaijan, Belarus, Belgium, BIH, Brazil, Canada, Chile, China (PR), Croatia, Cyprus, Estonia, FYRM, Georgia, Germany, Guatemala, Hungary, Kazakhstan, Korea, Kyrgyzstan, Latvia, Lithuania, Moldova, Mongolia, Netherlands, Poland, Portugal, Romania, Russia, Serbia, South Africa, Switzerland, Turkmenistan, UK, US, Vietnam FIU: Armenia	None known
Uzbekistan	Azerbaijan, Bulgaria, Georgia, India, Kyrgyzstan, Latvia, Lithuania, Ukraine	Law enforcement: Azerbaijan, Bulgaria FIU: Lithuania	None known

Sources: ACN country responses to questionnaires and feedback on draft report; UNCAC monitoring reports, <https://www.unodc.org/unodc/en/treaties/CAC/country-profile/index.html>; ACN monitoring reports, <https://www.oecd.org/corruption/acn/istanbulactionplancountryreports.htm>; Mutual Legal Assistance Treaty World Map, <https://mlat.info>.

ANNEX 5. AVAILABLE GROUNDS FOR REFUSING MLA IN ACN STATES

Please note that the fact that the ground of refusal is available in a given country does not mean it is mandatory. Please consult the laws of individual countries for more specific details about the applicability of these grounds of refusal.

	Albania	Armenia	Azerbaijan	BIH	Bulgaria	Croatia	Estonia	FYRM	Georgia	Kazakhstan	Kyrgyzstan	Latvia	Lithuania	Moldova	Mongolia	Montenegro	Romania	Russia	Serbia	Slovenia	Tajikistan	Turkmenistan	Ukraine	Uzbekistan
Lack of dual criminality/punishability	For extradition	For extradition	For extradition	No	No	No	No	No	For coercive measures	Yes	Yes	For coercive measures	For restrictions of human rights	Yes	No	Yes	For coercive measures	Not clear	Yes	No	Not clear	Not clear	Yes	Not clear
Offence committed wholly or partly in state receiving request	No	Depends on treaty	No	Yes	No	No	Not clear	Not clear	No	Yes	Yes	No	Yes	Not clear	Not clear	Yes	Yes	Not clear	Yes	No	Not clear	Not clear	No	Not clear
Double jeopardy	For extradition	No	For extradition	Yes	Yes	Yes	Not clear	Not clear	Yes	Yes	Yes	Yes	Yes	Not clear	Not clear	Yes	Yes	Not clear	Yes	For extradition	Not clear	Not clear	Yes	Not clear

	Albania	Armenia	Azerbaijan	BIH	Bulgaria	Croatia	Estonia	FYRM	Georgia	Kazakhstan	Kyrgyzstan	Latvia	Lithuania	Moldova	Mongolia	Montenegro	Romania	Russia	Serbia	Slovenia	Tajikistan	Turkmenistan	Ukraine	Uzbekistan
Nature or severity of punishment, including prejudice to human rights and/or fundamental freedoms	Yes	For extradition	Yes	Yes	Yes ¹⁵²	Yes	Yes	Yes	Yes ¹⁵³	Yes	Yes	Yes	Yes	Yes	Not clear	Yes	For extradition	Not clear	Yes	For extradition	Not clear	Not clear	Yes	Not clear
Evidentiary requirements	Not clear	No	No	No	No	No	Not clear	Not clear	No	No	No ¹⁵⁴	No	No	No	Not clear	Not clear	No ¹⁵⁵	Not clear	For extradition	No	Not clear	Not clear	No	Not clear
Interference with on-going investigation	For extradition	Yes	Yes	Yes	Yes	Yes	Not clear	Not clear	Yes	Yes	Not clear	Not clear	Yes	Not clear	Not clear	Not clear	Yes	Not clear	Yes	Not clear	Not clear	Not clear	Yes	Not clear
Essential interests and/or public order	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Not clear	Not clear	Yes	Not clear	Yes	Yes	Not clear	Not clear	Yes	Not clear
Political offence	Yes	No	Yes	Yes	No	Yes	Not clear	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Not clear	Not clear	No	Not clear	Yes	Yes	Not clear	Not clear	No	Not clear
Request in conflict with principles of domestic law	Not clear	Yes	Yes	Not clear	Not clear	Yes	Yes	Not clear	Yes	Yes	Yes	Not clear	Yes	Not clear	Not clear	Not clear	Yes	Not clear	Yes	Yes	Not clear	Not clear	Yes	Not clear

¹⁵² For amnesty only (not generally because of nature or severity of punishment).

¹⁵³ Only if Georgia's assistance would contribute to the violations.

¹⁵⁴ A description of the elements of the case and the cause and effect relationship of the actions to the crime are required, however.

¹⁵⁵ However, supporting documents may be required under certain circumstances. Romania Law 302 art. 172.

	Albania	Armenia	Azerbaijan	BIH	Bulgaria	Croatia	Estonia	FYRM	Georgia	Kazakhstan	Kyrgyzstan	Latvia	Lithuania	Moldova	Mongolia	Montenegro	Romania	Russia	Serbia	Slovenia	Tajikistan	Turkmenistan	Ukraine	Uzbekistan
Other grounds for refusal	Not clear	Not clear	No	Yes ¹⁵⁶	Yes ¹⁵⁷	Yes	Not clear	Yes	Yes ¹⁵⁸	Yes ¹⁵⁹	Not clear	Yes ¹⁶⁰	Yes ¹⁶¹	Yes ¹⁶²	Not clear	Not clear	No	Not clear	Yes ¹⁶³	No	Not clear	Not clear	Yes ¹⁶⁴	Not clear

¹⁵⁶ Military crimes, criminal responsibility barred by statute of limitations, or judicial ruling already rendered in the matter.

¹⁵⁷ Criminal responsibility barred by statute of limitations, criminal responsibility precluded by offender's mental state.

¹⁵⁸ Military crimes, individual does not agree to transfer or presence in Georgia is necessary for completion of criminal procedures against him or her.

¹⁵⁹ Based on requirements of a particular international treaty, requesting state does not ensure reciprocity (in the absence of a treaty).

¹⁶⁰ Sufficient information has not been submitted, and the acquisition of additional information is not possible. Latvia CPL § 850.

¹⁶¹ Grounds specified in an international treaty.

¹⁶² Military crimes.

¹⁶³ Requesting state does not ensure reciprocity. Serbia MLA Law art. 8.

¹⁶⁴ Requesting state does not ensure reciprocity. Ukraine CCP art. 557.

ANNEX 6. COUNTRY PROFILES

The information provided below is meant to provide a contextual overview of the myriad frameworks for enabling international cooperation in ACN countries. These overviews are based on country responses to the questionnaires circulated in preparation of this study, as well as a review of local statutes (where available) and the country monitoring reports referenced in Annex 2 above. Because of the changing nature of legal and procedural requirements, the accuracy of these overviews cannot be assured. Please contact the relevant central authority or consult the relevant laws and regulations if you wish to confirm the international cooperation framework of any country.

Please also note that the summaries below include only information that was either publicly available or that the countries themselves provided. Because of the limits of available information, summaries have not been included for four ACN countries: Belarus, Russia, Tajikistan and Turkmenistan.

Albania

Central authority

Ministry of Justice of Albania

General Prosecutor's Office of Albania

Website: <http://www.pp.gov.al/> (in Albanian and English)

Relevant laws and documentation

Albania's Code of Criminal Procedure regulates MLA.

Procedures for incoming requests

Albania's central authority, MOJ, receives incoming requests through diplomatic channels. All requests for MLA must be in writing; electronic submissions are usually not accepted. However, in urgent cases, GPO may receive requests via facsimile, via email, or through Interpol. GPO's website has information about MLA in both Albanian and English.

MOJ sends incoming requests to the GPO's Foreign Jurisdictional Relations Department (FJRD), which then forwards the request to the competent district prosecution office for execution. When a request is sent directly to GPO, FJRD transmits it simultaneously to the executing authority and MOJ.

Incoming requests in Albania are prioritised if the requesting authority explains a need for urgency in execution. The average time for executing incoming requests is three months.

GPO's Department for the Foreign Jurisdictional Relations is the central authority for urgent requests. Urgent requests may be made in any type of case. There are no special procedures.

There is no de minimus policy for MLA requests.

If a court order is needed, the prosecutor executing the request will obtain it. The execution of a request cannot be challenged by interested third parties.

Albania will keep a request confidential if the requesting authority has asked for this. Information related to an investigation are kept confidential under Albanian law.

Whether Albanian authorities would share information received from a third country with a requesting state would depend on whether the third country had imposed conditions on its use.

Albania does not have a case management system for incoming requests.

Procedures for outgoing requests

The prosecutor handling the case decides to issue a request for MLA. He or she drafts the request. MLA requests are Albanian and then translated by the MOJ after approval. GPO utilises standard templates when drafting requests.

The head of the appropriate district prosecution office approves and signs any MLA request. There is no case management system for outgoing requests.

Direct cooperation

Information obtained through direct cooperation may not be used as evidence in court.

Armenia

Central authority

During pre-trial:

General Prosecutor's Office

Website: www.prosecutor.am (in Armenian only)

During trial and execution of court judgments:

Ministry of Justice

Department of Mutual Legal Assistance

Resources

Armenia's MOJ initiated structural reform of its MLA processes in July 2016. MOJ now has a separate Department of Mutual Legal Assistance (DMLA) with seven staff members. This Department implements the MOJ's activities as a central authority in criminal and civil matters. Staff members speak key foreign languages.

Armenia's FIU (the Financial Monitoring Center, or FMC) has 30 staff members, including composed nine analysts, seven legal advisers/methodologists, six international relations experts, five IT security experts, one administrative assistant, and two managers (FMC's head and deputy head). Its main working languages are Armenian, English and Russian. FMC also utilises the translation services of the Central Bank of Armenia.

Legal authority

Under the country's constitution, any ratified treaty automatically becomes the law of the land. Chapter 54 of Armenia's Criminal Procedure Code (CPC) provides further guidance on cooperation under international treaties such as UNCAC. Chapter 54.1 of the CPC governs international cooperation in the absence of a treaty.

Procedures for incoming requests

Armenia's GPO is the central authority for requests during pre-trial, and MOJ (through DMLA) is the central authority for requests during trial. If provided for by a relevant treaty, a request may also be submitted through diplomatic channels, including to missions and consular offices in the foreign state; in that case, that mission or office would forward the request to either GPO or MOJ.

International treaties and domestic law prescribe the form, content, necessary data, and documentation needed for a request. If relevant law does not permit execution, the relevant central authority must notify the foreign authority of the reasons for rejecting the request.

MLA requests are generally executed in the order in which they are received. Armenian authorities look to provisions of international treaties or reciprocity rules to determine the timeframe for executing requests. In practice, requests relating to pre-trial proceedings are generally executed within one to two months, unless the content of the request asks for a shorter period of time. In relation to a UNCAC review, Armenia indicated "it would take as full account as possible of any deadlines suggested by the requested State party in accordance with the Convention against Corruption."¹⁶⁵ However, it may postpone a request that may "interfere[] with an ongoing investigation, prosecution or judicial proceeding."¹⁶⁶

Urgent requests for MLA are prepared and received in the same manner as other requests for MLA, except that the request itself must substantiate the urgency of the request, including the consequences of not executing or delaying the response. Urgent requests may be made in "immediate and pressing" cases.

¹⁶⁵ UNODC's 2015 review of Armenia, cited in Annex 2, at 12.

¹⁶⁶ Ibid.

There is no de minimus policy for MLA requests.

Any investigative activity pursuant to an MLA request must be based on court order. The individual executing the request applies for the order and must show both the request and order when undertaking the activity.

Armenian law does not envisage third party challenges to the execution of a request.

Preliminary investigation data and witness testimonies are confidential under Armenia's CPC (arts. 201, 342). It is not clear what confidentiality applies to other types of data.

Armenia has no special procedures when a request for information relates to information received from a third country.

Armenia does not have any laws or other regulations for prioritising requests or for receiving and handling urgent requests. However, requests received should be dealt with in as short a period as possible. In practice, requests relating to pre-trial proceedings are generally carried out within one to two months, if the content of the request does not specify a shorter time period. A country making a request may specify that a request is urgent; Armenian authorities will also treat the request as urgent if they can tell from the context that the request is time-sensitive.

The MOJ has adopted a management system for incoming requests, which includes information on the country making the request, the content of the request, the crime involved, the legal basis for implementing the request (including the international treaty), the executing authorities, and an execution timeframe. GPO presents reports of MLA requests executed on a semi-annual basis.

Procedures for outgoing requests

The investigator conducting the criminal proceedings decides to request international assistance and prepares the request, usually in Armenian. Armenia does not employ templates for requests, although in some instances common templates (e.g., motions, applications, requests) may be developed in the course of a specific case involving international cooperation; the forms relate only to the particular case, however. Unless a relevant treaty specifies the contents of a request, the drafter will follow articles 482 and 483 of the CPC.

The MOJ has adopted a management system for outgoing requests, which includes information on the country making the request, the content of the request, the crime involved, the legal basis for implementing the request (including the international treaty), the executing authorities, and an execution timeframe.

Direct cooperation

Chapter 54 of Armenia's CPC provides for direct police force cooperation through the MOJ and the GPO. Direct cooperation can be provided spontaneously or upon request. If a relevant treaty allows, a foreign court, prosecutor, investigator, or inquest body of a foreign state may also directly communicate with its counterpart in Armenia. However, the Armenian executing authority must also communicate the request to the GPO or MOJ.

Armenia's FIU is the Financial Monitoring Center (FMC). FMC may cooperate directly with other FIUs in other countries, either within the framework of international treaties or based on principles of reciprocity. Even though a bilateral agreement is not required, FMC has entered MOUs with 31 foreign FIUs. FMC also may cooperate with non-FIUs within the framework of diagonal cooperation. FMC requests are reviewed and approved by the head of FMC's Analysis Division before being entered into FMC's case management system and then submitted to the foreign state through the ESW.

On average, it takes FMC 15 days to respond to a request from a foreign counterpart. For the purpose of international exchange of information, FMC may request information from any reporting entity, irrespective of whether the particular reporting entity has previously filed an STR.

FMC uses ESW for transmission to Egmont Group members, and alternative protected channels for transmissions to other FIUs.

Information obtained through direct law enforcement channels is considered intelligence data and may not be used as evidence in courts.

Information provided by the FMC is considered to be intelligence data and may not be used as evidence in courts.

FMC's internal procedures provide that any correspondence must be maintained electronically and in hard copy for five years.

Azerbaijan

Central authority

Requests under the Minsk Convention, Chisinau Convention, UNCAC, and COE Conventions on Corruption:

Prosecutor General's Office of the Republic of Azerbaijan
Head of the International Legal Department
7, Nigar Rafibeyli St., 370001 Baku
Tel: +(99) 412 4926 198
Fax: +(99) 412 4930 020
Email: e.alikhanov@prosecutor.gov.az
Website: <http://www.genprosecutor.gov.az> (in Azerbaijani and English)

Requests under 1957 COE Convention on Extradition, 1959 COE MLA Convention, 1990 European Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and others:

Ministry of Justice of the Republic of Azerbaijan
International Cooperation Department
1, Insaaripar Prospect, 370073 Baku
Tel: (+99412) 430 01 67
Fax: (+99412) 510 29 40
E-mail: contact@justice.gov.az; international@justice.gov.az
Website: <http://justice.gov.az> (in Azerbaijani and English)

Resources

PGO's International Relations Office is staffed with nine prosecutors and four technical workers. MOJ's International Department has staff of 15 operational officers and three technical workers, including two staff translators. Although MOJ staff work in Azerbaijani, the majority also know English, Russian, and Turkish. As well, some staff speak Arabic, French, German, and Spanish.

Legal authority

The Law of the Azerbaijan Republic on Legal Assistance in Criminal Cases of 2001 is the main law regulating MLA, but the Criminal Procedure Code also contains a number of relevant provisions.

Procedures for incoming requests

PGO is the central authority for requests governed by the Minsk Convention or the Chisinau Convention. MOJ is the central authority for requests under UNCAC. Requests under the European Convention on Legal Assistance in Criminal Matters may be submitted to PGO, MOJ, or directly to the courts.

The PGO and MOJ's websites include samples of requests and contact information for inquiries. Although this information is not currently in English, both agencies are in the process of developing English language websites. PGO and MOJ accept requests for assistance via facsimile, but the original must be received before a response can be sent.

If a request arrives at the PGO, it is forwarded to the Central Office for Combating Corruption for execution.

Usually requests are executed in the order of their arrival. PGO has set a 10-day period for executing requests, but if this is not possible the deputy general prosecutor may extend the period up to one month.

The same process applies to urgent requests. Urgency is based on whether the case has wide public resonance or involves a grave crime.

There is no de minimus policy for MLA requests.

If a court order is needed, it is first requested from the requesting state. This order is then used to obtain an order from a local court in Azerbaijan.

Confidentiality of requests is provided by Azerbaijan's criminal law.

Information received from a third party can be provided to the requesting state, but a reference would be included that the information was obtained from a third party.

The respective central authority keeps a record of incoming requests.

Procedures for outgoing requests

The appropriate investigator or prosecutor prepares the draft request in Azerbaijani. The Research and Training Centre of Azerbaijan's PGO is currently working to create samples of requests for MLA. Models and recommendations from other countries and international organisations are being used in the development of these samples.

After it is drafted, a more senior prosecutor reviews the request before forwarding it to PGO. PGO's International Relations Office checks compliance of the request with the requirements of international agreements and then submits it to the foreign state for execution.

PGO keeps a record of outgoing requests.

Direct cooperation

Azerbaijan's PGO and Ministry of Internal Affairs (MOIA) have concluded bilateral agreements on direct cooperation with counterparts in a number of countries, and the MOIA has liaison officers in several foreign states.¹⁶⁷

In addition, Azerbaijan's Law on Combating ML/FT (art. 20) allows for informal direct cooperation between relevant state bodies with their counterparts in foreign states in cases regarding money laundering, terrorist financing, and other crimes related to the improper acquisition of monetary resources and other property, as well as on matters of prosecution and execution of court decisions. The law does not restrict the form of cooperation or the stage of the case at which cooperation may be requested or provided.

Azerbaijan's FIU uses the Egmont Group as a channel for cooperation. When working with countries that are not members of the Egmont Group, Azerbaijan's FIU utilises diplomatic channels.

Information received by Azerbaijan without a formal query cannot be used as evidence in court.

Azerbaijan's FIU keeps a register of direct communications with the FIUs in other countries. The register includes the country's name, the type of information exchanged, the number of physical persons and legal entities referred to in queries, and the amount of suspected criminal proceeds.

Bosnia and Herzegovina (BIH)

Central authority

For most requests:

Ministry of Justice of Bosnia and Herzegovina
Sarajevo, BiH

Tel: + 387 33 281 525

Fax: + 387 33 201 989

Email: info@mpr.gov.ba (in Bosnian and English)

Website: <http://www.mpr.gov.ba>

As provided by international treaty and domestic law:

State Investigation and Protection Agency (SIPA)

Nikole Tesle 59, East Sarajevo

Tel: + 387 32 61 00

Fax: + 387 32 61 05

Email: sipa@sipa.gov.ba

Website: <http://www.sipa.gov.ba> (in Bosnian and English)

Law enforcement contacts:

BIH Border Police (BIH BP)

Office for Cooperation with Interpol (NCB–Sarajevo)

Resources

Staff at the central authorities are versed in the three official languages of BIH—Bosnian, Croatian, and Serbian. Translation services are available for other languages.

Legal authority

¹⁶⁷ See UNODC's 2012 review of Azerbaijan, cited in Annex 2.

BIH's Law on Mutual Legal Assistance in Criminal Matters (MLA Law), amended in 2013, governs MLA.¹⁶⁸ Assistance is based on international treaties or, in the absence of a treaty, on condition of reciprocity.

Procedures for incoming requests

Except where provided otherwise by international treaty, the MOJ is the central authority. Upon receipt, the MOJ transmits the request to the appropriate prosecutor's office, court, police authority, or other agency for execution. BIH only accepts requests in writing, although a request may be submitted electronically if the originals are also provided.

Requests marked as urgent are given priority. Urgent requests may be submitted through Interpol.¹⁶⁹ The length of time for executing a request depends on its complexity, although deadlines are sometimes set by international treaties or the MLA Law. There is no de minimis policy for incoming requests.

Third parties may challenge the execution of an MLA request if the challenge desired is provided for in BIH law.

A request is treated as confidential if so marked by the requesting state. Evidence BIH has received from another country can only be shared with a third country if the country that provided the evidence has approved it. BIH noted in response to the questionnaire that it has never received a request for information received from another country, however.

The MOJ keeps a record of all received and sent requests for MLA via DMS (an electronic case management system) and OWIS (the statistical data processing system of DMS). BIH has developed standard forms and manuals to help prepare outgoing requests.

Procedures for outgoing requests

The agency or authority needing MLA drafts any request for outgoing MLA (e.g., prosecutor's office, police authority, court). The request is drafted in Bosnian, Croatian, or Serbian and is then translated into the appropriate foreign language. Requests are reviewed to ensure that they comply with applicable law.

The MOJ keeps a record of all received and sent requests for MLA via DMS and OWIS.

Direct cooperation

Direct cooperation between law enforcement authorities is regulated by domestic law and international instruments.¹⁷⁰ SIPA, BIH Border Police, and NCB–Sarajevo are all authorised to engage in direct communications with their counterparts in other countries.

Information obtained through direct communication can be used in court so long as the information was obtained in compliance with BIH's legal requirements.

Notes or minutes are made of all direct communications.

Bulgaria

Central authority

Ministry of Justice of the Republic of Bulgaria
International Legal Cooperation and European Affairs Directorate
Website: <http://www.justice.government.bg/> (only in Bulgarian)

Please note that other central authorities may be designated by treaty (see procedures on incoming requests below).

Resources

Five staff members within the MOJ work with MLA requests, including two technical assistants and three experts. Their working languages are Bulgarian, English, French, and Russian.

¹⁶⁸ See UNODC's 2015 review of BIH, cited in Annex 2, at 12.

¹⁶⁹ Ibid. 13.

¹⁷⁰ Ibid.

Legal authority

Chapter 36 of Bulgaria's Penal Procedure Code, "Proceedings in Relation to International Cooperation in Criminal Matters," regulates MLA. However, other forms of international outside of the purview of this code can be provided under international treaty or based on reciprocity.¹⁷¹ Bulgaria's constitution provides that international treaties have direct application. In the absence of a bilateral international treaty with a particular country, Bulgaria relies on UNCAC's provisions in providing MLA.

Procedures for incoming requests

In most cases, Bulgaria's MOJ is the central authority competent to receive incoming MLA requests. However, in certain instances another central authority has been designated. For example, requests under the European Convention on Mutual Assistance in Criminal Matters are submitted to the relevant prosecutor's office (if coming from an EU member) or to the Supreme Prosecutor's Office of Cassation (if coming from another country). Bulgaria's PPC (art. 35 *et seq.*) contains general rules for determining the responsible authority.

MOJ's website is only in Bulgarian and does not provide any information about preparing requests to Bulgaria. However, information is available on the websites of various international organisations (e.g., OECD WGB, UNODC). MLA requests may be sent via facsimile and/or email, so long as the requesting party is willing to verify their authenticity upon request. Any request for MLA needs to be accompanied by a translation into Bulgarian or English.¹⁷²

Requests are checked for compliance with relevant laws before being sent to the executing authority by post or facsimile/e-mail, depending on their urgency.

There are no official rules for prioritising incoming MLA requests. Requests are generally forwarded to the executing authorities 24-48 hours after the MOJ receives them. Executing an incoming MLA request takes between one and four months, depending on the requested action. Bulgaria makes every attempt to meet deadlines indicated by requesting states. In 2012, Bulgaria reported to the UN that it generally takes an average of four to six months to execute an incoming request.¹⁷³

Bulgaria's PPC does not contain any special provisions regarding urgent MLA requests, but a requesting state may ask for urgency in the request. Bulgaria does not require special evidence for urgency, but looks at the circumstances of the request. Execution is based on mutual trust.

There is no de minimus policy for MLA requests.

If court authorisation is needed to execute a request, the prosecutor seeks this in accordance with the Bulgarian laws that apply to domestic investigations.

The execution of a request cannot be challenged by third parties.

MLA requests and related materials are treated as investigation secret and their confidence is strictly respected. Violation of investigation secret is a criminal offence.

Bulgarian authorities may only share information received from a third country with a requesting state if the third country gives permission for Bulgaria to do so.

There is no automated system to monitor incoming requests, but they are registered in a database maintained by the MOJ.¹⁷⁴

Procedures for outgoing requests

The supervising prosecutor drafts requests at the pre-trial phase, while the court drafts requests during the trial phase. Requests are drafted in Bulgarian and then translated by an external company. In drafting requests, Bulgarian authorities consult the PPC (art. 475(1)), relevant international treaties, and information on the websites of international organisations (such as COE, UN, EJM, and Eurojust). The International Department of the Supreme Prosecutor's Office of Cassation (part of the MOJ) also has drawn up guidelines for requests that have been disseminated to all prosecutors and to some

¹⁷¹ See UNODC's 2012 review of Bulgaria, cited in Annex 2, at 10.

¹⁷² Ibid. 10.

¹⁷³ Ibid.

¹⁷⁴ This system – the Unified Information System – was established in 2008 and, accordingly, contains information only after this time, according to UNODC's 2012 review of Bulgaria (cited in Annex 2).

judges. In addition, an internal prosecutors' network on international legal cooperation has been set up to assist prosecutors in drafting and executing MLA requests.

Although there is no formal procedure for the review and approval of outgoing requests, MOJ regularly reviews requests to verify that they comply with relevant international treaties and may advise the person who drafted the request to make amendments or submit additional information, if needed.

There is no system to monitor outgoing requests.

Direct cooperation

The Ministry of the Interior's International Operational Cooperation Directorate is the national contact point for law enforcement cooperation through Interpol, Europol, the Schengen Information System (SIS), and the Swedish Initiative. It has put in place standard forms to facilitate informal exchanges through these networks. National level law enforcement agencies may communicate directly with counterparts in EU member states or with non-EU countries through Bulgaria's police attachés abroad, police attachés of other countries accredited to Bulgaria, international networks (such as Europol or Interpol), or by request. MOI has police attachés in Austria, Belgium, Czechia, France, FYRM, Germany Greece, Hungary, Italy, Luxemburg, Montenegro, the Netherlands, Romania, the Russian Federation, Serbia, Spain, Turkey, the UK (including Northern Ireland), and the US, as well as in Interpol, Europol, and the Southeast European Cooperative Initiative.

In addition, MOI's Internal Security Directorate may communicate directly about organisational and administrative matters with counterparts in FYRM, Romania, and Serbia (under cooperation agreements) as well as in other countries that are members of EPAC or EACN.

Bulgaria's FIU is the Financial Intelligence Directorate of the State Agency for National Security (FID-SANS). It directly exchanges information through ESW and FIU.net.

Information gathered informally cannot be used as evidence in court.

MOI does not maintain records of informal exchanges between law enforcement. FID-SANS maintains statistics on regarding the overall numbers of sent and received requests.

Croatia

Central authority

Cases governed by international treaty:

Ministry of Justice of the Republic of Croatia
Service for Mutual Legal Assistance and Judicial Cooperation in Criminal Matters
Ulica grada Vukovara 49, 10 000 Zagreb, Croatia
Tel : +38513714558
Fax: ++38513714559
Email: europska.unija@pravosudje.hr
Website: www.pravosudje.gov.hr (in Croatian only)

Cases not governed by international treaty:

Ministry of Foreign Affairs

Law enforcement contact

Ministry of Interior of the Republic of Croatia
General Police Directorate
Criminal Police Directorate
National Police Office for Suppression of Corruption and Organized Crime
Ilica 335, 10000 Zagreb, Croatia
Tel: +38513788109
Email: ukp@mup.hr
Website: www.mup.hr; (in Croatian and English) www.policija.hr (in Croatian only)

Resources

The service for Mutual Legal Assistance and Judicial Cooperation in Criminal Matters within MOJ consists of nine staff members, including three technical assistants.

Legal authority

MLA is provided in accordance with the country's Act on Mutual Legal Assistance (MLA Law) as well as its Criminal Procedure Code.¹⁷⁵

Procedures for incoming requests

Requests governed by an international treaty may be submitted directly to Croatia's MOJ. Requests not governed by a treaty are submitted to MOFA, which then transmits them to MOJ. Urgent requests may be submitted through Interpol.

MOJ uses the International Legal Assistance (ILA) IT System, which is part of the IPA 2010 Project, to collect statistical data on MLA and judicial cooperation.

Procedures for outgoing requests

Domestic judicial authorities transmit requests for MLA to foreign competent authorities through the Croatian MOJ. As an exception to this, domestic judicial authorities may directly address a request to a foreign judicial authority (i) when so explicitly provided by the MLA Law and subject to condition of reciprocity or (ii) when such direct communication is allowed under an applicable international treaty. In cases of direct communication, a Croatian judicial authority must send a copy of the MLA request to MOJ.

In urgent cases (and subject to reciprocity), MOJ may transmit a request through Interpol. In addition, in cases of direct communication judicial authorities may transmit requests through Interpol.

If a foreign state does not have an international treaty with Croatia dealing with international cooperation, MOJ transmits the request through MOFA. This is also the case when an international treaty requires the use of special diplomatic channels.

MOJ uses the (ILA) IT System to collect statistical data on MLA and judicial cooperation.

Direct cooperation

Direct cooperation is governed by domestic law as well as by bilateral treaties. In addition, Croatia cooperates through Eurojust, Europol, and Interpol.¹⁷⁶

Estonia

Central authority

Mutual legal assistance:

Ms. Astrid Laurentt-Hanioja, Head of Division

Ministry of Justice

Criminal Policy Department

Tõnismägi 5a, 15191 Tallinn, Estonia

Tel: +372 620 8190

Email: astrid.laurentt@just.ee

Website: www.just.ee (in Estonian, English, and Russian)

Law enforcement contact:

Ms Laura Feldmanis, State Prosecutor

Office of Prosecutor General

Wismari 7, 15188 Tallinn, Estonia

Phone: +372 6 139 409

Email: laura.feldmanis@prokuratuur.ee

Website: www.prokuratuur.ee (in Estonian and English)

Procedures for incoming requests

Estonia accepts requests in English and Estonian. The Public Prosecutor's Office handles the execution of incoming requests, including determining which authority should execute the request.¹⁷⁷

¹⁷⁵ See UNODC's 2012 review of Croatia, cited in Annex 2, at 10.

¹⁷⁶ Ibid. 12.

¹⁷⁷ See UNODC's 2012 review of Estonia, cited in Annex 2, at 8.

Any incoming request must include the following information: the requesting authority, the assistance needed, the name of the person with regard to the request has been submitted, any other relevant information about the person, a description of the facts of the case, and any other information. In relation to a 2012 review, the UN explained, “Noteworthy, Estonia has granted assistance on several occasions where a small but sufficient amount of information was submitted. If necessary, Estonia may ask the requesting State to provide additional information.”¹⁷⁸

Information obtained via MLA may only be used in relation to the investigation or proceeding for which it was requested.¹⁷⁹

Former Yugoslav Republic of Macedonia (FYRM)

Central authority

Ministry of Justice
Department for International Legal Assistance
Dimitrie Cupovski 9, 1000 Skopje, Republic of Macedonia
Tel: +389 2 3116648, ext: 219
Fax: +389 2 3226 975
Email: vcvetanovska@mjustice.gov.mk
Website: www.pravda.gov.mk (in Macedonian and English)

Resources

The Department for International Assistance has 2 units: (i) a unit for extradition and transfer and (ii) a unit for acting upon requests for criminal and civil matters.

Legal authority

FYRM’s Law on International Cooperation in Criminal Matters (LICCM) regulates international cooperation in corruption cases.¹⁸⁰ MOJ’s Department for International Legal Assistance is the central authority authorised to receive MLA requests and to either to execute them or transmit them to competent authorities for execution.

FYRM may provide international assistance irrespective of the existence of a treaty. Furthermore, dual criminality is not a precondition to render assistance. MLA requests regarding physical and legal persons are treated equally.

Procedures for incoming requests

The LICCM provides for a wide range of mutual legal assistance measures. An MLA request should be sent in writing, although it may be submitted electronically if an original is also sent through regular mail.

FYRM will honour a request for confidentiality, and if this is not possible will immediately notify the requesting state.¹⁸¹

Article 17 of the LICCM stipulates the urgency of acting upon receiving a letter rogatory from a competent foreign authority. The LICCM also clearly provides for the delivery of spontaneous information.

FYRM does not have a data management system for incoming requests.

Procedures for outgoing requests

The competent authority in FYRM drafts the letter rogatory or request and submits it directly to the foreign competent authority, under conditions of reciprocity or where provided for by international agreement. The authority also sends a copy of the request to FYRM’s MOJ. In cases of urgency, the request is submitted through international law enforcement cooperation channels.

¹⁷⁸ Ibid. 9.

¹⁷⁹ Ibid.

¹⁸⁰ See UNODC’s 2015 review of FYRM, cited in Annex 2.

¹⁸¹ Ibid.

If no international treaty governs the request, or an international treaty provides for cooperation through diplomatic channels of communication, MOJ submits the request to the Ministry of Foreign Affairs, which then submits it to the recipient country through diplomatic channels.

FYRM does not have a data management system for outgoing requests.

Direct cooperation

FYRM has entered into several bilateral agreements that provide for direct exchanges of information between law enforcement authorities. In addition, law enforcement authorities are members of Interpol and Europol. FYRM's FIU is a member of the Egmont Group.

Georgia

Central authority

Ministry of Justice of Georgia
Office of the Chief Prosecutor of Georgia (OCP)
International Cooperation Unit (ICU)
24, Gorgasali St., 0114 Tbilisi
Tel: + 995 322 405034

Email: international@pog.gov.ge

Website: www.pog.gov.ge (in Georgian and English)

Resources

ICU's staff includes the unit head, three prosecutors, two legal advisors, at least one trainee prosecutor, and four paralegals. The working language of the staff is Georgian. However, all members of the staff speak at least one foreign language with professional working proficiency, and two have bilingual proficiency. English is spoken by seven, Russian by six, French by one, and German by one. MOIA personnel who are responsible for international law enforcement cooperation are fluent in English and Russian. Some are fluent in German and/or French as well.

Legal authority

The Law of Georgia on International Cooperation in Criminal Matters of 2010 (MLA Law) governs MLA. MLA is possible under international treaties (which are self-executing in Georgia), by ad hoc agreement with the MOJ, or on the basis of reciprocity.¹⁸² The Law of Georgia on International Law Enforcement Cooperation of 2013 (LEC Law) governs law enforcement cooperation.

Procedures for incoming requests

MOJ is the central authority for receiving MLA requests on criminal matters, through ICU, which is part of OCP.

OCP's website is available in Georgian and English, and includes Georgia's national procedures on judicial cooperation in criminal cases. Basic requirements for drafting MLA requests are provided in specific bilateral international agreements and MOUs and under Georgia's MLA Law. Requests may be submitted in Georgian or English.¹⁸³ ICU may receive a request orally, but Georgian authorities may only engage in preparatory measures prior to receiving the formal written request.

Upon receiving any request, the ICU case officer assigned to it uploads the request and any related documents into an electronic document flow system, and checks national law enforcement databases to try to ascertain whether the request can be executed as a practical matter (e.g., verifying that the witness sought is alive and in the country); if not, ICU immediately returns the request to the requesting country. Then, the case officer examines the request's compliance with the relevant legal framework. If there is reasonable doubt to believe that executing the request might prejudice national security, the request is referred to the National Security Agency for consideration before ICU proceeds further. If the request may involve political issues, ICU refers it to supervising authorities in

¹⁸² See UNODC's 2012 review of Georgia, cited in Annex 2.

¹⁸³ Ibid.

the MOJ for further review. Simultaneous to this review process, translators from the central authority translate the request, if needed.

The case officer then assigns the request to a prosecution service or police authority; this decision is made location and/or subject matter. A request may also be sent to a local court for execution if the requesting state so desires. Upon execution, the materials collected are sent back to ICU, unless ICU has instructed the executing authority to send the documents directly to the requesting foreign authority. The ICU case manager then composes a final letter to accompany the materials sent to the requestor. To date, Georgia has never refused an MLA request in a corruption case.

Georgian authorities prioritise incoming requests based on the timeframe requested by the requesting country and/or the seriousness of offenses involved. Georgia's MLA Law does not establish explicit timeframes for executing foreign MLA requests. An internal MOJ policy recommends a time limit of one to two months for prioritised requests and three to four months for other requests (this includes time for the entire procedure). These time limits are respected in about 80% of cases.¹⁸⁴

Any request for urgency from a foreign state must be adequately substantiated; otherwise, it will be processed within the usual timeframe. Urgent requests generally make up less than 5% of all requests received. In urgent cases, a foreign judicial authority also may send a request for assistance directly to a Georgian judicial authority, so long as a copy of the request is simultaneously transmitted to the central authority. Any kind of assistance is available on an urgent basis.

Georgia executes *de minimis* requests, but does not carry them out within the same time frame as regular and prioritised requests. Requests related to offences of a relatively minor nature, such as pickpocketing or minor theft (of goods valued at less than 1 000 GEL, or about 370 EUR) are considered *de minimis*. However, according to ICU's internal policy, corruption is regarded as a serious offence and, accordingly, all requests related to corruption are granted prioritisation.

When requested assistance involves coercive measures or the restriction of constitutional rights or personal freedoms (e.g., search, seizure), the assistance may only be provided if it has already been authorised by a relevant court or authority of the requesting state (MLA Law art. 11(4)). The Georgian prosecutor then files a motion before the local Georgian court regarding authorisation of the requested action (*ibid.* art. 54(10)).

Only MLA requests related to coercive measure can be challenged, and then only to the extent of application of those measures. When a challenge is allowed, it is governed by the CPC.

The MLA Law (art. 10(2)) provides that MLA requests should be kept confidential. When this is not possible, the requesting country must immediately be informed.

Under Georgia's rule of speciality, in order to provide another country with evidence or information received from a third country through the MLA process, Georgian authorities must obtain permission from the third country.

ICU's electronic document flow system helps monitor all MLA requests. The data maintained in this system is also reviewed annually as per emerging needs.

Procedures for outgoing requests

Investigators, prosecutors, and judges are all authorised to draft requests (MLA Law art. 5(1)). For simplicity and economy, requests are usually written directly in a language accepted by the foreign state. Georgia uses a template for drafting MLA requests. This template was developed based on national and international best practices, including the compilation and analysis of recommended forms of MLA requests by competent international organisations and foreign requests submitted to Georgia.

OCP's ICU reviews all requests for compliance with respective laws and treaties. ICU will ask the initiator of the request to remedy any deficiencies (if needed) before approving the request, arranging for its translation (if needed) and transmitting it to the foreign state. If the request is to be sent on the basis of national legislation (i.e., there is no international agreement in place with a country) to a country that is not on Georgia's "white list" of countries that assure adequate standards of personal data protection, the request must be reviewed and approved by the Personal Data Protection Inspector

¹⁸⁴ In 2012, UNODC reported that the average time for executing an MLA request in Georgia was two to three months (see 2012 report cited in Annex 2). In 2013, the average time was reported as two to three months (see UNODC's 2013 report cited in Annex 2).

before it may be submitted to the foreign state. After ICU receives the executed materials, it forwards them to the initiator of the request.

Direct cooperation

Several law enforcement units in the Ministry of Internal Affairs are responsible for international law enforcement cooperation, are all part of MOIA: (i) the International Criminal Cooperation Center (ICCC) of the Central Criminal Police Department (operative international law enforcement cooperation); (ii) the National Central Bureau of Interpol at Georgia (NCB–Georgia) (cooperation within Interpol); (iii) the Cybercrime Division of the Central Criminal Police Department (24/7 contact point under article 35 of the Budapest Convention, operative law enforcement cooperation on cybercrime-related issues); and the International Relations Department (non-operative international law enforcement cooperation). Officers of other Georgian law enforcement agencies can initiate requests through the foregoing agencies.

ICCC is particularly active in informal communications and regularly communicates with foreign law enforcement agencies directly, through police attachés, and through secure regional cooperation channels established within GUAM. However, to date, ICCC has not been involved in any informal exchanges involving a corruption case. Currently, Georgia has police attachés deployed in Armenia, Austria, Azerbaijan, Belarus, France, Germany, Greece, Poland, Spain, Turkey, and Ukraine. In 2016 and 2017, Georgia plans to deploy additional attachés to Italy and Kazakhstan, as well as a Georgian liaison officer to Europol. After Georgia concludes an operative and strategic cooperation agreement with Europol at the end of 2016, ICCC will act as Georgia’s national contact point for cooperation within Europol.

Basic requirements for drawing up law enforcement requests are provided in specific bilateral international agreements/MoUs as well as in the LEC Law (art. 7). Requests are issued based on bilateral or multilateral international agreements/MOUs or on the basis of reciprocity. Although requests at the investigation (pre-trial) stage may be sent through informal law enforcement channels, requests at the trial stage must generally be sent through formal MLA channels.

If the request does not indicate a timeframe, it must be executed within a “reasonable” time. The average time for responding to a request is three to four days. Georgian law enforcement agencies must generally receive a written request before a response can be provided. In cases of “absolute urgency,” however, a response may be provided verbally, although it must then be confirmed in writing within a reasonable time. ICCC has received or sent 78 urgent requests in the past five years.

Requests received by NCB Interpol–Georgia are prioritised based on whether they are marked “flash/very urgent” (executed within 24 hours), “urgent” (within three days), or “normal/non-urgent” (within 10 days). Urgent requests may pertain to (among other things) (i) preventing, investigating, or prosecuting a crime; (ii) searching a person with a view towards arrest; (iii) obtaining information about a person who has committed or is going to commit a crime; (iv) establishing the whereabouts of a missing person; (v) identifying a dead body; or (vi) establishing the whereabouts of the subject of a crime. During the past three years, NCB–Georgia has issued, received, or executed 12,152 flash, very urgent, or urgent requests, which have accounted for nearly half of the total requests.

When requests are made directly between law enforcement agencies, personal data is kept confidential in accordance with relevant international agreements and domestic personal data protection laws. If a request is marked with a certain level of classification, Georgia provides the same level of protection that would be provided to domestic information marked with a corresponding level of classification.

Information received through informal channels is not admissible as evidence. For the time being, there are only two options to obtain evidence abroad: (i) the MLA process or (ii) directly seeking subscriber information from foreign internet service providers (ISPs) that offer services in Georgia (under article 18.1(b) of the Budapest Convention on Cybercrime). However, a new draft law is intended to enable admission of foreign evidence obtained outside of the MLA process where the country of the evidence’s origin explicitly allows the evidence to be used in court. For example, this would allow witness evidence obtained informally from the UK to be used in court, so long as the witness voluntarily agrees, since UK law allows this use. The law (if passed) would also allow non-content data from foreign ISPs to be shared directly with Georgian authorities when allowed under the foreign country’s laws (for example, this is allowed under the laws of the US and Ireland).

Georgia's LEC Law (art. 20(1)(h)) requires the maintenance of records on international communication of personal data. In practice, ICCC keeps personal data as well as a variety of other information about each sent or received informal request. All data received through Interpol channels (whether containing personal data or not) is recorded at the NCB Interpol–Georgia.

Kazakhstan

Central authority

Requests relating to pre-trial investigation, criminal prosecution, extradition, transfer of sentenced persons, enforcement of judgments:

Prosecutor General's Office of the Republic of Kazakhstan

Website: <http://prokuror.gov.kz/kaz> (in Kazakh, English, and Russian)

Requests from courts:

Supreme Court of the Republic of Kazakhstan

Requests relating to matters falling under the National Bureau's jurisdiction:

National Bureau on the Fight against Corruption

Ministry for Civil Service Affairs

Website: <http://anticorruption.gov.kz> (in Kazakh, English, and Russian)

Direct interactions with law enforcement agencies in Interpol member states:

National Central Bureau of Interpol

Ministry of Internal Affairs of the Republic of Kazakhstan

Website: <http://mvd.gov.kz/portal/page/portal/mvd/MVD> (in Kazakh, English, and Russian)

Direct law enforcement interactions in investigating economic offences:

Economic Investigative Service (EIS)

Internal Security Division

Committee for Public Revenues of the Ministry of Finance

Resources

The working languages for all agencies are Kazakh and Russian. Translation services are available for other languages.

Legal authority

Legal assistance may be provided based on international treaties (which are self-executing) or reciprocity. Chapter 12 of the CPC, "International cooperation in the field of criminal justice," governs international assistance.

Procedures for incoming requests

PGO is usually the central authority, but the Supreme Court acts is the central authority in cases originating from courts, and the National Bureau on the Fight against Corruption is the central authority for offences falling under its authority.

Electronic and oral submissions are allowed, but execution cannot occur until Kazakhstan receives the original. Requests are accepted in Kazakh and in Russian.

The central authority or another authorised agency forwards any incoming requests to the executing authority. The central authority also decides whether a representative of the requesting state may be present during execution.

Internal guidelines provide that PGO has 15 days to review a request after its receipt. When the submitted materials are voluminous or there is other need, the timeframe for review can be extended to 30 days. However, this timeframe refers to *review* of an incoming request, not of execution. There is no set time limit for executing MLA requests.

A requesting state may ask for urgency in any kind of request. The requesting state must indicate the reason for urgency. Urgent requests may also be submitted via Interpol.

There is no de minimis policy for MLA requests.

If a court order is needed to carry out a request, the individual executing the request obtains it from a Kazakh court.

If the requesting party asks, Kazakhstan will take “additional” measures to ensure the confidentiality of an MLA request.

Information received from a third country may only be provided in accordance with the applicable treaty. In the absence of such a treaty, the third party needs to provide permission before the information can be shared with another state.

The CPC (arts. 105 and 106) regulate appeals against the actions of prosecutors and/or persons carrying out pre-trial investigations.

All incoming requests recorded for statistical purposes. Data is recorded monthly, quarterly, and yearly on the total number of incoming MLA requests relating to criminal prosecutions and extradition. The statistical recording also enables follow-up on unexecuted requests. In addition, PGO has a Single Information and Analytical System (SIAS) that enables daily monitoring of dispatching, receipt, and execution of international requests for MLA that are executed by that office.

Procedures for outgoing requests

Any competent agency may draft an MLA request. The request is then translated and submitted to the appropriate central authority. PGO is usually the central authority, but the Supreme Court acts as the central authority in cases originating from courts, and the National Bureau on the Fight against Corruption is the central authority for offences falling under its authority.

The central authority transmits any MLA request to the foreign state. It is sent by post, except in urgent cases when it is sent electronically and the original is then sent by post within three days. If there is no treaty specifying the communication channels with the foreign state, the request is sent through diplomatic channels. If the request is rejected, the central authority returns the case materials to the agency that submitted the request. If possible, the central authority includes a statement of deficiencies that should be rectified or of reasons the request could not be executed.

All outgoing requests are recorded for statistical purposes. Data is recorded monthly, quarterly, and yearly on the total number of outgoing MLA requests relating to criminal prosecutions and extradition. The statistical recording also enables follow-up on unexecuted requests. PGO also uses SAIS for monitoring outgoing requests.

Direct cooperation

Kazakhstan’s FIU is the Ministry of Finance’s Financial Monitoring Committee (FMC). It directly interacts with foreign states to exchange information in the area of AML/CFT. FMC has been a member of the Egmont Group since 2001 and exchanges information through ESW.

Information received in the course of such direct cooperation may only be used to counter ML and FT.

FSW keeps a register of incoming and outgoing requests.

Kyrgyzstan

Central authority

Assistance governed by treaty:

General Prosecutor's Office of the Kyrgyz Republic
International Legal Cooperation Department (ILCD)

Tel. / fax: +996 312 54 28 75

Mob.: +996 558 11 20 30

Email: procuror.kg@gmail.com

Website: www.prokuror.kg (in Kyrgyz only)

Assistance not governed by treaty:

Ministry of Foreign Affairs

Resources

GPO’s ILCD has a chief and five prosecutors. The working languages are Russian and Kyrgyz. Each staff member speaks at least one foreign language.

Legal authority

Chapters 47 and 48 of Kyrgyzstan's Criminal Procedure Code, the Law on Prosecution Service of Kyrgyzstan, and international treaties to which Kyrgyzstan is a party all regulate international assistance.

Procedures for incoming requests

Kyrgyzstan's central authority is GPO's ILCD. If no international agreement provides for MLA between Kyrgyzstan and the requesting state, the request must be sent to MOFA through diplomatic channels.

ILCD reviews each request for compliance with relevant law before forwarding it to the appropriate executing authority, such as a local prosecutor's office or the Ministry of Interior's State Service for Combating Economic Crimes. If a Kyrgyz local prosecutor's office directly receives a request for MLA in violation of the established order of relations, that local office informs a higher-ranking prosecutor's office via a special report, and GPO is informed within 24 hours.

ILCD will consider any request to continue a criminal prosecution in Kyrgyzstan within 15 days, although the timeframe may be extended up to 30 days if the decision involves the review of a significant amount of materials (more than 500 pages). If the request is to be denied, the department head prepares a report, and the criminal case materials are returned to the authority that sent them, along with an explanation of why the request could not be granted.

During execution of an MLA request in Kyrgyzstan, the executing official will provide a higher-ranking prosecutor's office with monthly updates about (i) the actions taken at the request of the foreign state and (ii) any tracking of a person carried out at the request of the foreign state. This information is submitted on a monthly basis by the regional prosecutor or his or her delegate.

Kyrgyzstan has not received any urgent requests for MLA to date. However, Kyrgyzstan has indicated that if a request were marked as urgent, it would immediately be reported to ILCD's head, who would make a decision on its further execution.

There is no de minimis policy for MLA requests.

The execution of a request cannot be challenged by interested third parties.

ILCD maintains a database of all incoming and outgoing requests. A responsible officer monitors these requests and their adherence to deadlines on a regular basis. If a response is delayed, the officer follows up with the executing agency in Kyrgyzstan.

Procedures for outgoing requests

The investigator handling the case makes the decision to submit a request for legal assistance. The request is prepared in either Kyrgyz or Russian and sent to the GPO's ILCD. There are no standard templates for MLA requests. Requests are prepared in accordance with the requirements of Kyrgyzstan's CPL and relevant international treaties.

ILCD reviews all outgoing MLA requests appropriateness and compliance with international treaties.

ILCD maintains a database of all incoming and outgoing requests. A responsible officer monitors these requests and their adherence to deadlines on a regular basis. If a response is delayed, the officer will notify authorities of the foreign state.

Direct cooperation

Although the GPO is the central authority for MLA requests, other Kyrgyz authorities may have their own channels for interacting with foreign counterparts to exchange experience, legislation, good practice, or other information. These channels are governed by interagency agreements or memorandums. For example, Kyrgyzstan's FIU interacts directly with foreign counterparts through the channels of the Egmont Group, EAG, and FATF.

Information obtained through informal direct channels is not admissible in court.

All law enforcement agencies have a database and a register.

Latvia

Central authority

During pre-trial stage and in relation to corruption cases under COE instruments:

Prosecutor's General Office of the Republic of Latvia

International Cooperation Division (ICU)

Website: <http://www.prokuratura.gov.lv> (in Latvian, English and Russian)

During trial stage and for requests based on UNCAC:
Ministry of Justice
Website: www.tm.gov.lv (in Latvian and English)

Resources

PGO has 442 prosecutors, 50 chief prosecutors, eight deputy chief prosecutors, three department chief prosecutors, one general prosecutor, and 239 support staff. Working languages are Latvian, English, and Russian. In addition, PGO employs English, German and Russian translators to assist with urgent issues (e.g., extradition). Other necessary translations are outsourced. ICU includes prosecutors who are contact persons for international networks (e.g., PC-OC, EJN).

MOJ has 191 staff, including 46 support staff. Working languages are Latvian, English, and Russian.

Legal authority

Chapter 64 of Latvia's Criminal Procedure Law regulates international cooperation in relation to criminal offences generally. Chapter 82 regulates international cooperation in the performance of procedural actions.

Procedures for incoming requests

Requests based on COE instruments are submitted to PGO, while requests based on UNCAC are submitted to MOJ. The country submitting the request indicates the ground upon which the request is based. The receiving authority forwards requests involving corruption cases to Latvia's Corruption Prevention and Combating Bureau (KNAB).

There is neither a system for prioritising incoming requests nor a mandatory timeline for execution. However, the decision on whether to provide the assistance must be taken within 10 days. In practice, Latvian authorities determine the timeframe, based on the circumstances of particular case. The average time for execution is two months.

Latvia has no special regulations for urgent requests. A requesting state can ask for urgent execution of MLA if substantial circumstances exist.

There is no de minimus policy for MLA requests.

An executing official may undertake special investigative actions only if evidence obtained through the action would be admissible in criminal proceedings in Latvia regarding the same offence.

The execution of a request cannot be challenged by interested third parties.

Documentation that is part of a criminal case (including that shared through MLA) is kept confidential.

If a requesting state asks for information that was received from a third country as part of a separate MLA request, the person who directed that other proceeding can decide whether the information shall be forwarded to any other side.

Since 2014, Latvia has monitored incoming requests through the United System of Mutual Legal Assistance Requests (USMLAR). For incoming requests, MOJ, PGO, and the State Police input the following data concerning incoming requests: (i) country and the title of the institution sending the request, (ii) registration data of the received document (date, number, etc.), (iii) type of request, (iv) legal basis, (v) case number for the foreign criminal proceeding, (vi) details regarding the person to whom the request relates, (vii) criminal elements, and (viii) details about the request's execution. Additionally, if the request relates to an investigation, information regarding the foreign representative's participation in the request's execution is included.

Procedures for outgoing requests

The person who decides whether to issue a request for international assistance depends on the stage of the proceeding: the investigator makes the decision during investigative stage (pre-trial), the prosecutor during the prosecution stage, and the court during judicial proceeding (trial stage). The request is drafted in Latvian and then translated before it is sent to the foreign authority. Latvia does not have standard templates for MLA requests, but the CPL (§ 678) sets forth clear requirements as to form and content.

Requests based on COE instruments are submitted through PGO, while requests based on UNCAC are submitted through MOJ.

Since 2014, Latvia has monitored incoming and outgoing requests through USMLAR. For outgoing requests, MOJ, PGO, and State Police input the following data: (i) state and institution to which the

request has been sent, (ii) registration data of the document (date, number, etc.), (iii) case number for the criminal proceeding, (iv) initiator of the request, (v) type of request, (vi) details regarding the person to whom the request relates, (vii) legal basis, (viii) elements of the crime, and (ix) details about the request's execution. Additionally, if the request regards the investigation stage, information concerning the Latvian representative's participation in the execution is included.

Direct cooperation

Latvia's Law on the Exchange of Information for the Prevention, Detection and Investigation of Criminal Offences of 2009 governs exchanges between Latvian law enforcement bodies and their counterparts in other EU and Schengen area states. However, the law only provides for the exchange of information regarding national procedures and contacts; no facts or evidence can be communicated directly between law enforcement institutions. Law enforcement communications occur through networks such as Europol, Interpol, the Schengen Information System (SIS), and SIENA.

Latvia's FIU may provide information about suspicious transactions to foreign counterparts via ESW. Latvia also has implemented EU Council Decision 2007/845/JHA (6 Dec. 2007) on the establishment by EU member states of asset recovery offices for the exchange of information concerning assets owned by persons under investigation. Furthermore, Latvia is a member of the Camden Assets Recovery Interagency Network (CARIN).

Information obtained through such direct communications is not admissible in court.

Latvian agencies do not keep records of informal cooperation.

Lithuania

Central authority

During pre-trial:

Prosecutor General's Office of the Republic of Lithuania

Website: www.prokuraturos.lt (in Lithuanian and English)

During trial:

Ministry of Justice of the Republic of Lithuania

Legal Cooperation Division (LCD)

Website: www.tm.lt (in Lithuanian and English)

Resources

LCD employs six staff members. Working languages are Lithuanian, English, and Russian. Translations services are available to all staff members.

PGO has six prosecutors (including the deputy chief prosecutor) and seven assistants/specialists working on legal assistance in criminal matters. Working languages are Lithuanian, English, French, German, Russian, Polish, and Spanish. PGO's translation division has certified translators of English, German, Polish, and Russian. Translations for other languages are outsourced.

Procedures for incoming requests

Lithuania's central authority for incoming requests is either PGO for requests during pre-trial or MOJ for requests during trial. PGO has specialised prosecutors who only deal with requests for MLA and other forms of international cooperation

MOJ's website contains information on the MLA process, including sample forms and a list of the instruments that apply to international cooperation (such as EU laws and international agreements). PGO's website includes contact information. Both websites are in English as well as Lithuanian. Any MLA request must meet the content and form requirements set forth in the treaty upon which the assistance is based. MLA requests can be submitted by post or diplomatic channels (if the relevant treaty allows). The central authority reviews any incoming request and then sends it to the appropriate regional prosecution offices, pre-trial investigation unit, or court for execution.

Incoming requests are prioritised on a case-by-case basis, taking into account the nature of the requested actions, the severity of the crime, and the complexity of the case. The recommended time period for fulfilling requests is four months, although response time depends on the request's nature. Requests received in Lithuanian can be fulfilled more quickly.

An urgent request follows the same procedures as any other request, which the addition of justification of urgency. Urgent requests may be made in any type of case and may be submitted by mail, by facsimile, or through channels such as Europol, Interpol, Eurojust, or EJM. Requests may only be submitted via email if authenticity is preserved (i.e., by signature and seal of the competent officer).

There is no de minimus policy for MLA requests.

If court authorisation is required, the executing prosecutor will request it in accordance with the CCP.

A party may lodge an appeal or challenge to a request in accordance with the CCP.

Incoming requests are treated as pre-trial investigation material, which is confidential under domestic law.

MLA materials received from third countries may be used only for the purposes of the criminal case for which the assistance was requested. An executing authority in Lithuania must obtain permission from that third country before providing it to a requesting state.

All incoming requests are registered in PGO's electronic case management system.

Procedures for outgoing requests

Either the court, prosecutor, or pre-trial investigation officer may draft a letter rogatory asking for procedural actions in another state. When an outgoing request relates to the trial phase, the court prepares the request and it is signed by the competent judge. MOJ is available for assistance with the drafting process, and MOJ's website includes templates, explanatory reports, and other documents to help the drafter. Requests are usually drafted in Lithuanian and then translated.

The drafter then submits the letter rogatory to the central authority (PGO), which assesses it in terms of its form, content, and compliance with relevant treaties and laws. PGO will ask the drafter to correct any deficiencies. The PGO then drafts a formal letter of request in accordance with the relevant international treaty.

All outgoing requests are registered in PGO's electronic case management system.

Direct cooperation

The CCP regulates informal exchanges of information between Lithuanian courts and prosecutors and their foreign counterparts and international organisations (art. 66). Lithuanian courts, public prosecutors and pre-trial investigation institutions may send requests directly to authorities of foreign states and international organisations, if provided for by international agreement. The CCP provides the procedures for information exchanges and direct consultations with other EU member states (art. 681(5)).

In addition, the Financial Crime Investigation Service (FCIS, Lithuania's FIU), the Special Investigations Service (STT), and the State Tax Inspectorate under the Ministry of Finance (STI) may communicate directly with their counterparts in other countries under interdepartmental agreements.

The judge in charge of the case determines the admissibility of information obtained through direct cooperation. Any evidence presented must be obtained through lawful means and validated by procedures set forth in the CCP.

Lithuanian agencies do not keep records of informal cooperation.

Moldova

Central authority

During pre-trial:

Prosecutor General's Office of the Republic of Moldova

Bureau for International Legal Assistance and European Integration (BILA)

26 Benulesku-Bodini street, Chisinau,

Tell: (+373 22) 22-50-75

Fax: (+373 22) 21-20-32

Email: proc-gen@gov.md

Website: www.procuratura.md (in Moldovan only)

During trial:

Ministry of Justice of the Republic of Moldova

International Legal Department
82, 31 August 1989 St., MD-2012, Chisinau
Tel. + 373(22) 234 795
Fax + 373(22) 234 797
Email: secretariat@justice.gov.md
Website: <http://www.justice.gov.md> (in Moldovan only)

Cases under its jurisdiction:

Prosecutor's Office for Combating Corruption (POCC)
Website: www.procuratura.md/md/adr/ (in Moldovan, English and Russian)

The National Anti-Corruption Centre works with POCC to execute incoming requests and prepare proposals to other states. Its website is www.cna.md.

Resources

BILA has six prosecutors and four administrative staff. The working languages are Romanian, Russian, English, and French. BILA utilises an outside service to translate outgoing requests.

Legal authority

MLA may be provided on the basis of an international treaty or on principles of reciprocity. Law no. 371/2006 on International Legal Assistance in Criminal Matters governs MLA, supplemented by sections 531–540 of the Criminal Procedure Code.

Procedures for incoming requests

PGO is the central authority at the pre-trial stage, and MOJ is the central authority at the trial stage. POCC is the central authority for cases under its jurisdiction.

The executing agency decides how to prioritise incoming requests. On average, requests are executed within two to six months, depending on the actions requested. There are no special procedures for urgent requests. There also is no de minimis policy for MLA requests.

If judicial action is needed, the executing prosecutor will obtain it.

The law does not envision private party challenges to international MLA requests. MLA requests are considered prosecution secret and their confidentiality is required under domestic law and international treaties.

No information can be provided to a requesting state without permission of the third country that originally provided it. Moldova may forward a request to the third party at its discretion.

There is no case management system.

Procedures for outgoing requests

The appropriate prosecutor drafts and submits an outgoing MLA request. PGO then reviews the request before submitting it to the foreign state. The request is drafted in Moldovan and then translated. There is no case management system.

Direct cooperation

Moldova does not have any channels for direct communication. All MLA requests must be communicated through PGO or MOJ.

Mongolia

Central authority

Ministry of Justice and Homeland Affairs
Foreign Affairs Officer, Legal and Foreign Cooperation Department
Address: 5th Government building, Hudaldaanii gudamj 6/1, Chingeltei district, Ulaanbaatar
Tel: +976-51-263932
Fax: +976-51-267533
E-mail: undralsaikhan@mojha.gov.mn
Website: www.mojha.gov.mn (in Mongolian and English)

General Prosecutor's Office
Assistant prosecutor, Foreign cooperation and mutual assistance department
Baga toiruu 15/1, Chingeltei district, Ulaanbaatar
Tel: +976-51-260855
Fax: +976-51-263739
E-mail: gganzorig@gmail.com
Website: www.prokuror.mn (in Mongolian only)

Law enforcement contact:

Independent Authority Against Corruption (IAAC)
Director of Administration Department
Seoul street 41, Sukhbaatar district, Ulaanbaatar
Tel: +976-70112488
Fax: +976-70110251
E-mail: international@iaac.mn
Website: www.iaac.mn (in Mongolian only)

Resources

GPO's unit responsible for international cooperation has four staff members, including the unit head, two prosecutors, and an administrative assistant.¹⁸⁵

Legal authority

Mongolia's Criminal Procedure Law regulates MLA, along with bilateral international agreements.¹⁸⁶ IAAC is the sole authority responsible for investigating corruption related crimes.

Procedures for incoming requests

Mongolia places great importance on whether an MLA regulates international assistance in a given case. If a treaty establishes MOJ as the central authority, MOJ will receive and handle MLA requests. If not, GPO will receive and handle MLA requests.

Procedures for outgoing requests

An investigator drafts an MLA request and presents it to his or her manager, who then submits the request either to GPO or MOJ. GPO has developed a manual to assist in drafting requests.¹⁸⁷

Direct cooperation

In 2015, the OECD reported that "direct channels have been increasingly used between competent authorities, agencies and services in order to facilitate the secure and rapid exchange of information concerning all aspects of the criminal offences."¹⁸⁸

Montenegro

Central authority

Most cases:

Ministry of Justice
Directorate for International Cooperation and European Integration (DICEI)
Vuka Karadzica 2, 81000 Podgorica, Montenegro
Tel: +382 20 407-503, +382 20 407-501
Fax: +382 20 407-515
Website: www.mpa.gov.me (in Montenegrin, Serbian, and English)

When allowed by international standards:

Supreme State Prosecutor's Office

¹⁸⁵ See OECD's 2015 review of Mongolia, cited in Annex 2.

¹⁸⁶ See UNODC's 2011 review of Mongolia, cited in Annex 2.

¹⁸⁷ OECD's 2015 review of Mongolia, cited in Annex 2, at 54.

¹⁸⁸ Ibid.

Ulica Slobode 20, 81000 Podgorica, Montenegro
Tel: +382 (20) 230 624
Fax: +382 (20) 230 624
Email: vdtcg@tuzilastvo.me
Website: www.tuzilastvocg.me (in Montenegrin and English)

Resources

Four DICEI staff members deal with cases of MLA in criminal matters. The working language of the staff is Montenegrin, and translation services are available.

Relevant laws and documentation

Montenegro's Law on Mutual Legal Assistance in Criminal Matters (nos. 04/2008 and 36/2013, MLA Law) regulates international assistance. In the absence of a bilateral agreement, UNCAC may be used to govern international assistance.¹⁸⁹

Procedures for incoming requests

MOJ is the central authority that receives MLA requests; it then forwards requests to the appropriate executing authority. A request also may be submitted directly to a state prosecutor's office if it involves actions that prosecutor is competent to undertake (e.g., hearing of suspects, questioning of witnesses). If a state prosecutor's office receives a request, it must notify MOJ. Requests that are not governed by an international agreement must be sent through diplomatic channels.

There are no special procedures for urgent requests, although they may be sent via Interpol, so long as reciprocity is honoured. There also is no de minimis policy for MLA requests.

The electronic system LURIS allows electronic recording and monitoring of MLA, the immediate control of processed cases and control of retention of cases by the processor, from the moment of admission until the finalisation of the document by a responsible person with verification of outgoing documents.

Procedures for outgoing requests

The appropriate prosecutor drafts outgoing MLA requests. The request is drafted in Montenegrin and then translated.

MOJ is the central authority that forwards letters rogatory for MLA in criminal matters to foreign states. However, since Montenegrin prosecutors and courts are also allowed to communicate directly with foreign authorities, in practice, only some MLA requests go through MOJ.

MOJ has an electronic system for recording and monitoring MLA cases, called LURIS. However, this system does not capture requests directly exchanged between prosecutors and courts.

Direct cooperation

State prosecutors may directly cooperate with foreign prosecutors' offices, and the State Prosecutor's Office has signed memorandums of cooperation (MOCs) with prosecutor's offices in Bulgaria, Croatia, Hungary, Italy, Kosovo, and Serbia. This type of cooperation is more often used in organised crime cases than in corruption cases, due to the nature of those crimes.

So long as the direct cooperation is permissible under international law, the information obtained through such means may be used as evidence in court. The LURIS system was installed in the State Prosecutor's Office in 2016 and contains data starting from 2016.

Romania

Central authority

For (i) the trial stage; (ii) during entire criminal proceedings when provided by Romania's MLA Law, a treaty, or in cases of reciprocity; and (iii) in cases involving extradition, European arrest warrants, the transfer of sentenced persons, freezing, confiscation, or the recognition or execution of judgments:

Ministry of Justice
Directorate for Judicial Cooperation and International Law
17 Apolodor Str., 5th Sector – Bucharest, Romania

¹⁸⁹ See UNODC's 2013 review of Montenegro, cited in Annex 2.

Tel: 0040 37 204 1077
Email: dreptinternational@just.ro
Websites: www.just.ro; <http://www.just.ro/despre/cooperare-judiciara-internationala-in-materie-penala/> (in Romanian and English)

At the investigative stage for high-level corruption cases:
Prosecutor's Office attached to the High Court of Cassation and Justice (POHCCJ)
National Anticorruption Directorate Section for International Cooperation and Programmes (SICP)

Directorate for Judicial Cooperation and International Law (JCIL)
Councillor of the Chief Prosecutor of DNA
Bucharest, 79-81, Știrbei Vodă Str., postal code 010106, Romania
Email: ajurma@pna.ro; relint.dga@mai.gov.ro
Tel : 0040 372 193 400 ; 0040 21 33 21 996
Fax : 0040 21 312 43 57
Website: www.pna.ro (in Romanian and English)

At the investigative stage for all other crimes:
Section for International Judicial Cooperation, International Relations, and Programmes (SJC)
Chief Prosecutor
12 Libertății Blvd., 5th Sector – Bucharest
postal code: 050706, Romania.
Tel: 0040 21 319 38 77
Fax: 0040 21 319 39 33
Email: coop@mpublic.ro
Website: <http://www.mpublic.ro> (in Romanian and English)

Resources

ILJC currently has 11 staff members. Their working languages are English, French, Italian, and Romanian. For other languages, translation services are available.

SJC employs eight staff members, four prosecutors and four other staff members. Their working languages are English, French, German, Greek, Hebrew, Italian, Spanish, and Romanian. Translation services are also available.

SICP employs 13 staff members, including two prosecutors, three police officers, three translators, and one administrative assistant who focus on international cooperation activity. Their working languages are English, French, German, Italian, and Romanian. Translation services are available for other languages.

Legal authority

Law 302/2004 on International Judicial Cooperation in Criminal Matters governs MLA in Romania.

Procedures for incoming requests

MOJ, through its Directorate for Judicial Cooperation and International Law (JCIL), is the central authority for all cases (i) at the trial stage or (ii) involving extradition, European arrest warrants, the transfer of sentenced persons, freezing and/or confiscation, or the recognition and/or execution of judgments. The MOJ is also the central authority when so provided by Law 302, when a request is based on reciprocity, or when required by international treaty or convention.

POHCCJ is the central authority for other MLA requests relating to the investigation stage. Under POHCCJ's umbrella, DNA's Section for International Cooperation and Programmes (SICP) handles all requests relating to medium and high-level corruption. POHCCJ's Section for International Judicial Cooperation, International Relations, and Programmes (SJC) handles all other requests, including requests relating to petty corruption.

MOIA is the central authority for requests relating to judicial records.

MOJ, POHCCJ, and DNA each have their own websites with information in English and Romanian. MOJ's website has a section dedicated to international cooperation that includes basic explanations, the legal framework, best practice guidelines, and models for requests. Information about submitting

requests to Romania is also available in the EJN's Judicial Atlas. Romania accepts requests for MLA in Romanian, English, and French.¹⁹⁰

When the MOJ acts as the central authority, it sends the request to the High Court of Cassation and Justice (POHCCJ), the National Anti-Corruption Directorate (DNA), or directly to the competent court for execution. POHCCJ or DNA send the request to the competent prosecutor's office or court by secured post or via a secure email channel. SCIP effectively cooperates with the prosecutors and police officers in the execution of requests.

Prioritisation of incoming MLA requests depends on the needs or special circumstances highlighted by the requesting state. Internal rules in Romania provide that judges and prosecutors must resolve cases within a reasonable time, and Romanian authorities have explained that they are given the same attention as domestic cases. DNA executes requests, on average, within three to four months.

Urgent requests are available for all types of assistance, and no special prerequisites apply. As a practical matter, the requesting state will generally indicate the circumstances requiring urgency in the request itself (e.g., that an arrest warrant or preventive measures have been issued or that a limitations period is about to be reached). There is no *de minimis* policy for MLA requests.

For intrusive investigative measures (e.g., intercepting communications or searching premises), the requesting state must attach a court order to the MLA request. In other instances where a court order is needed, the prosecutor executing the request does not need a copy of the foreign court order.

Romanian authorities will maintain confidentiality, as far as possible, at the request of the requesting authority and will notify the requesting authority in advance if this is not possible. Information received from a third country can only be provided to a requesting state with the prior consent of the third country.

The Regulation on Administration in the Public Prosecution provides for a special registry for MLA requests. If needed, SICP is able to assist in seeking clarifications or supplementary information from the foreign state. In addition, SICP tracks incoming requests via an electronic monitoring system that also allows DNA to generate statistical data.

Procedures for outgoing requests

MOJ is the central authority for all international judicial cooperation requests related to extradition, European arrest warrants, the transfer of sentenced persons, freezing and/or confiscation, and the recognition and/or execution of judgments, as well as *all* MLA requests at the trial and execution stage. MOJ is the central authority also in relation to the entire criminal proceedings if the international treaty in question provides so. If a request falls under MOJ's competence, either the prosecutor (during the investigation phase) or judge (during the trial phase) will decide to issue a request and will draft it before forwarding it to MOJ. Requests are usually drafted in Romania and later translated. In some cases, MOJ itself draft a request, based on information provided by the appropriate prosecutor or judge.

POHCCJ is the central authority for other MLA requests relating to the investigation stage. Under POHCCJ's umbrella, the National Anticorruption Directorate's (DNA's) Section for International Cooperation and Programmes (SICP) handles all requests relating to medium and high-level corruption. POHCCJ's Section for International Judicial Cooperation, International Relations, and Programmes (SJC) handles all other requests, including requests relating to petty corruption.

If a request falls under the competence of DNA, DNA's SICP can draft the request at the request of a prosecutor or the prosecutor can draft the request with assistance from SICP. SICP can, for example, provide translation services, contact information for the executing authority, information on legal requirements of the executing state, or draft templates for a request or other guidance necessary for execution of the request. The process for requests initiated by SJC is, in essence, the same as the process for requests initiated by DNA.

Within the EU, standard forms are used for MLA requests. There are no compulsory forms for MLA requests outside the EU, but each central authority drafts its own standard forms for outgoing requests. MOJ's website also contains best practice guidelines that were drafted during programs financed with EU funds and have been disseminated among prosecutors and judges.

¹⁹⁰ See UNODC's 2013 review of Romania, cited in Annex 2.

MOJ reviews requests from its office, and the director of MOJ's Directorate for Judicial Cooperation and International Law has the right to sign off on any request. Cases arising out of POHCCJ are reviewed by either SICP or SJC's chief prosecutor, depending on the nature of the crime. All requests are reviewed for completeness and compliance with applicable law; supplementary information is requested, if needed.

SICP maintains paper and electronic records of all outgoing and incoming MLA requests. SICP also monitors their execution, either through direct contact with the foreign state's receiving authority or through direct contact with legal attachés, liaison magistrates, law enforcement attachés, or international networks such as Eurojust and EJN.

Direct cooperation

Whether Romanian authorities can directly exchange information with other countries depends on the legal instrument that applies and/or the practice that has developed in relation to a country so far. Direct communication between judicial authorities is allowed (and used in practice) between of EU member states. As well, Romania widely uses the Eurojust and EJN channels within the EU.

Romania's central authority for direct international police cooperation is the Centre for International Police Cooperation (CCPI). Urgent requests for data or intelligence may be addressed directly to a Romanian or foreign law enforcement authority, but CCPI must be informed within 24 hours. Romania also uses networks such as Interpol, Europol, SELEC, EPAC/EACN, and CARIN.

DNA has signed protocols of cooperation with counterparts in Bulgaria, Hungary, Moldova, and Serbia to exchange data and information through CCPI or through MOIA attachés, when it relates to the investigation of corruption acts by MOIA employees in these countries.

Romania's FIU is the National Office for the Prevention and Control of Money Laundering (ONPCSB). ONPCSB may exchange information regarding money laundering and terrorist financing with foreign FIUs based on reciprocity; no MOU is required. However, ONPCSB may only respond to requests relating to the pre-trial stage of a proceeding.

Romania's Asset Recovery Office (ARO) may also respond to informal requests for information relating to asset recovery within EU states. Requests from other EU states that relate to offences under Law 302 (art. 96) are handled within eight hours (if urgent) and within a week otherwise. Responses related to other offences are generally sent within 14 days. Requests from non-EU states are answered via CARIN or similar networks, and there is no binding timeline for responses to such requests.

Romania prefers using facsimile or email to transmit *informal* requests in Europe or to countries with which it has an agreement allowing for informal contacts. Formal transmissions occur via the central authority, the prosecutor, or diplomatic channels, depending on the applicable treaty. ONPCSB is connected to the ESW, as well as FIU.net. ONPCSB is a member of the Advisory Group of FIU.net/Europol, along with FIUs from Belgium, Finland, France, Italy, Luxembourg, Poland, Spain, and UK.

Information obtained through direct cooperation is not admissible in trial and can only be shared further with prior consent of the authority that provided it.

Serbia

Central authority

Mutual legal assistance:

Ministry of Justice of the Republic of Serbia

Nemanjina 22–26

11000 Belgrade

Tel: +381 11/7-858-000

SMS: +381 65/9-858-000

Email: kontakt@mpravde.gov.rs

Republic Public Prosecutor's Office (RPPO)

Website: www.rjt.gov.rs (in Serbian and English)

Law enforcement contact:

Administration for the Prevention of Money Laundering (APML, Serbia's FIU)

Website: www.apml.org.rs (in Serbian, with some sections in English)

Resources

Serbia has 681 prosecutors nationwide, including 61 public prosecutors and 600 deputies. There are also 1 251 prosecutorial assistants. ICLA employs six people whose working languages are Serbian and English. The translation services are available for the staff members.

APML has 28 administrative staff members. In addition, APML's Group for International Cooperation has three employees dedicated to international cooperation work. APML's working language is Serbian.

Legal authority

The 2009 Law on Mutual Legal Assistance in Criminal Matters (MLA Law) governs MLA.

Procedures for incoming requests

Serbia's MLA Law provides that any judicial authority—whether a national court or public prosecutor's office—is competent to provide international legal assistance. The responsible authority in a given case depends on the legal grounds of the request. If there is no applicable international agreement, the request should be transmitted to MOJ. They may only be transmitted directly to the judicial authority or through Interpol upon conditions of reciprocity.

Serbia acts electronic submissions *only* from states party to the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters (art. 4.9).

MOJ is the most frequent recipient of international requests. It forwards any incoming request to the competent judicial authority via post. In cases where urgency is needed, it may first forward the request via email and then send the original in a formal manner.

Prioritisation depends on the nature of the request and the applicable law. The average time for execution depends on the nature of the request and assistance sought; it can range from one week to three months.

The MLA Law only specifically addresses one type of urgent request—a request for detention prior to submission of a letter rogatory (art. 48). The request may be addressed directly to the public prosecutor or police, through the MOJ, or through Interpol. Subject to reciprocity, an issued international arrest warrant shall be deemed a request. The request must include (i) information required for to establish the individual's identity, (ii) a factual description and legal basis for the detention, (iii) a statement of the foreign judicial authority that a court decision or indictment exists (in accordance with MLA Law art. 15(3)), and (iv) a statement indicating that a letter rogatory will be submitted.

There are no laws expressly relating to other types of urgent requests, but the MLA Law provides that, In the absence of an international agreement, a request may be submitted (on conditions of reciprocity) directly to the relevant court or prosecutor or through Interpol. From a practical standpoint, if the requesting authority requests priority as a matter of urgency, the executing prosecutor will try to deal with the request efficiently.

There is no de minimus policy for MLA requests.

If the requested assistance requires a court order, the executing prosecutor submits such a request to the competent court, in accordance with the Criminal Procedure Code, prior to executing the request.

There is no provision for challenges to a request by a third party.

The MLA Law (art. 9) charges state authorities with safeguarding the confidentiality of any information obtained during the execution of a request for MLA. Personal data may be used solely in criminal or administrative proceedings in respect of which letters rogatory have been submitted.

Article 9 of the MLA Law regulating the confidentiality could impede the disclosure of information received from the third country. If the request seeks evidence or information that our country has itself received from a third country, an approval of this third country has to be received before relevant information is passed on to the requesting country.

The Regulation on Administration in the Public Prosecution provides for a special registry for MLA requests. MOJ's case management system, Luris, was modelled after the Dutch case management system with the same name. Requests for international assistance in civil and criminal matters are

registered in Luris. The system provides quick access to information about requests, including their status. However, MOJ has not yet made Luris accessible to prosecutors and courts.

Procedures for outgoing requests

The judicial authorities (courts and public prosecution offices) draft any request for MLA. The Department for International Cooperation and Legal Assistance (DICLA) of the Republic Public Prosecutor's Office (RPPO) provides any assistance needed to prepare the letter rogatory. This includes providing legal advice, language translation services, and helping to facilitate informal contacts prior to issuance of the request).

All letters must comply with article 5 of the MLA Law. Under that law, unless an international agreement provides otherwise, all requests are drafted in Serbian and signed and stamped by the competent authority. The and any other supporting documents are submitted accompanied by translations into the language of the requested state or translations into English. All translations are certified by a sworn in court translator.

Although any competent court or public prosecution office may submit a request for MLA, many find it difficult to locate the competent foreign authority to which a request should be addressed. For this reason, many practitioners prefer to communicate through the MOJ instead of opting for direct communication.

The Regulation on Administration in the Public Prosecution provides for a special registry for MLA requests. MOJ's case management system, Luris, was modelled after the Dutch case management system with the same name. Requests for international assistance in civil and criminal matters are registered in Luris. The system provides quick access to information about requests, including their status. However, the MOJ has not yet made Luris accessible to prosecutors and courts.

Direct cooperation

Direct cooperation between law enforcement agencies is allowed whenever provided for by a ratified international agreement or, in the absence of an agreement, under conditions of reciprocity. Serbia's prosecutor's offices may engage in all the types of direct communication provided by the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters. They also cooperate through networks, such as Eurojust, SEEPAG, and EJM, as well as through foreign judicial liaison magistrates. Such direct cooperation may occur at the pre-trial or trial stage; the only difference is who is competent to engage in the cooperation (prosecutors at the pre-trial stage and judges at the trial stage).

In addition, Serbia's FIU (APML), can directly communicate with other FIUs regarding beneficial ownership, financial transactions, and bank accounts, whether at the pre-trial or trial stage. Its website contains the relevant laws, bylaws, and guidelines, as well as information about suspicious transaction reports (STRs), including forms. The case analysis drafts outgoing requests based on templates, and it is approved by the head of APML's Analytical Department. Requests are always drafted in Serbian and then translated into English if needed. Requests for Croatia, Montenegro, and BIH are submitted in Serbian. APML communicates with other FIUs through ESW.

Information obtained through direct cooperation may be used in court, so long as procedures prescribed by law have been respected. If APML, after analysing collected information, decides to disseminate materials to the RPPO, MOI, or another law enforcement body, it must ask the FIU that provided the information for permission to use it as evidence.

Serbia's central authority maintains a record of direct communication between judicial authorities. APML prioritises incoming requests based on internal procedures. For outgoing requests, APML will send a reminder if a response has not been received within one month.

Slovenia

Central authority

Requests under UNCAC or European Conventions:

Ministry of Justice of the Republic of Slovenia

Division for Mutual Legal Assistance

Directorate for Legislation on the Justice System

Zupančičeva 3, Si-1000 Ljubljana

Tel: +386 1 369 52 44; +386 1 369 53 68
Fax: +386 1 369 52 33; + 386 1 369 57 83
Email: gp.mp@gov.si
Website: <http://www.mp.gov.si/> (in Slovenian only)

Law enforcement contact:

General Police Directorate, Ministry of Interior
Sector for International Police Co-operation (SIPC)
Criminal Police Directorate
Štefanova 2, Si-1501 Ljubljana
Tel: +386 1 428 40 00
Fax: +386 1 251 43 30
Email: gp.policija@policija.si
Website: <http://www.policija.si/index.php/mednarodno-sodelovanje> (in Slovenian and English)

Resources

MOJ employs 200–249 staff members, and the Division for Mutual Legal Assistance has eight staff members, including three lawyers specialising in criminal law and one administrator. The working languages are Slovenian and English, but some staff members also can work in Croatian, French, German, Hungarian, Italian, and Serbian. Translation services are also available.

All employees of SIPC speak English. SIPC employs two translators with a command of English, French, and German, and translation services for other languages are available.

Relevant laws and documentation

Slovenia's Criminal Procedure Act (CPA) and the Act on Cooperation in Criminal Matters with the European Union Member States (ACCMEUMS-1) regulate MLA.

Procedures for incoming requests

MOJ is the central authority under UNCAC and in other instances where direct communication is not possible. MOJ forwards all incoming requests to the appropriate executing authorities. In urgent cases, Interpol—Slovenia or (in cases governed by EU treaties) the relevant prosecutor's office or district court may directly receive requests.

Information about legal requirements for MLA requests is available on the EJN and PC-OC webpages. In addition, Interpol's information system includes information concerning the Slovenian National Police. Requests are only accepted in writing. They may be submitted in Slovenian, English, French, and (in practice only) German.¹⁹¹

Either MOJ, the court, or a prosecutor's office assigns the case to an executing authority.

Although there are no deadlines specifically relating to MLA requests, there is a 90-day time limit for prosecutors to deal with any case. MLA requests are generally forwarded to the competent executing authority within one day of receipt.

There are no special rules for urgent requests, but a requesting state can ask for urgency if needed. MOJ's Division for Mutual Legal Assistance includes contact information that can be used in call cases, including urgent ones.

There is no de minimus policy for MLA requests.

If a foreign state requests an act that interferes with one's human rights, the preferable action is to include a foreign judicial order with the MLA request, if such an order is required by the requesting state's national laws. Otherwise, the request must be accompanied by evidence that creates a sufficient basis for issuing the order.

Defendants and suspects have the same rights they would have if they were Slovene citizens in Slovenia.

A document received as part of an MLA request keeps the same confidential status that the requesting country put on the document.

There are no limits on handing over information received from a third country, unless the third country provided the information under the condition that it would only be used in certain ways.

¹⁹¹ See UNODC's 2015 review of Slovenia, cited in Annex 2.

MOJ electronically records all incoming and outgoing documents, including MLA requests. Since January 2016, MOJ's recording system has also allowed for the generation of statistical data regarding MLA based on criteria such as the number of requests made, received, processed, granted, or refused; the type of assistance requested; the requesting state; the relevant criminal offence; and the time required for a response. The prosecutor's offices do not have a system for tracking MLA requests.

Procedures for outgoing requests

Requests originating from the courts are drafted in Slovenian and then translated. Requests originating in state prosecutor's offices may be drafted in Slovenian or in another language, depending on the prosecutor's language skills. Complex requests are also usually drafted in Slovenian.

Requests by state prosecutors are not reviewed, but a prosecutor reviews and approves any request drafted by a legal advisor. Requests are generally sent directly by courts or prosecutors, although they also may be sent through the European Judicial Network or Eurojust. However, the Office for Money Laundering Prevention usually issues requests that involve the seizure of proceeds of crime.

MOJ electronically records all incoming and outgoing documents, including MLA requests. Since January 2016, MOJ's recording system has also allowed for the generation of statistical data regarding MLA based on criteria such as the number of requests made, received, processed, granted, or refused; the type of assistance requested; the requesting state; the relevant criminal offence; and the time required for a response. The prosecutor's offices do not have a system for tracking MLA requests.

Direct cooperation

The Slovenia National Police (SNP) cooperates regularly with its counterparts in other countries. The SNP's Criminal Police Directorate has a SIPC, which is the central service for operational international police cooperation through organisations such as Europol, Interpol, and SIRENE. SIPC is active 24/7.

SIPC acts through two departments, (i) the International Operations Section, which is responsible for operational exchanges of information, and (ii) the SIRENE section, which is responsible for locating objects and persons. In addition, SIPC contains the Europol National Unit, which is the national contact point between Europol and Slovenia's customs and money laundering agencies. The Europol National Unit uses the SIENA secure channel for communications.

In addition, individual units can also bilaterally communicate with counterparts in Austria, Croatia, Hungary, and Italy, so long as SIPC is informed.

The information obtained through direct cooperation may be used as evidence in court, if obtained legally. If there is a question of its admissibility, the court will assess the case individually.

SIPC maintains a registry of direct communication with foreign security authorities.

Ukraine

Central authority

During pre-trial:

Office of the Prosecutor-General of Ukraine (OPG)

13/15, Riznytska St., 01011, Kiev

Tel.: +38(044) 2007 438

Fax: +38(044) 2802 851

Email: indep@gp.gov.ua

Website: <http://www.gp.gov.ua> (in Ukrainian and English)

During trial:

Ministry of Justice

International Legal Assistance Section

Email: korz@minjust.gov.ua

Website: www.minjust.gov.ua (in Ukrainian and English)

Matters under its jurisdiction (pre-trial only):
National Anti-Corruption Bureau of Ukraine (NABU)
3 Surikova str., Kyiv
Email: info@nabu.gov.ua
Website: nabu.gov.ua (in Ukrainian and English)

Resources

OPG employs 905 prosecutors and 196 investigators. Ukrainian is the working language; English, Russian, and other languages are used when needed. A Language Services Unit provides in-house translation and interpretation services.

MOJ has 865 staff, including a team of eight personnel with international legal expertise in the International Legal Assistance Section—Criminal, which provides international legal assistance in criminal matters and is part of International Legal Assistance Division. Ukrainian is the staff's working language; Russian, English, and other languages are used when needed. MOJ has limited in-house translation resources.

Legal authority

MLA is provided based on treaty or reciprocity. The Code of Criminal Procedure governs most MLA matters, although Law 3206 of 26 April 2015, "On Principles of Preventing and Counteracting Corruption in Ukraine," could also be used as a legal basis in corruption cases.

Procedures for incoming requests

OPG receives requests at the pre-trial, except for those falling under NABU's purview. MOJ receives MLA requests at the trial stage (art. 545 CCP).

Substantive requirements for MLA requests are set forth in the CCP (art 552(2)). Ukraine's central authorities may accept request via electronic, facsimile, and similar channels only if the original is also sent to the central authority. Ukraine will only transfer the material gathered in the process of executing a request after it has received the original request, which must be posted within three days of the electronic request. Some of Ukraine's international treaties also provide for the submission of requests via Interpol.

Once a request is received, the Ukrainian central authority reviews it for its relevance and compliance with the legislation and international treaties of Ukraine. If the central authority decides to fulfil the request, it forwards it to the appropriate executing agency within 10 days. This is done either directly or through diplomatic channels. The decision regarding which agency executes the request is based on location.

Incoming requests are prioritised based on their contents and the nature of activities requested. Ukraine's CCP (art. 558) sets forth deadlines for responding to MLA requests (usually one month). Nonetheless, the average time for executing an MLA request is three months because most requests involve complex and extensive procedural activities or requires a court order. In these cases, the central authority or another authority responsible for liaising with the foreign authority may grant an extension of time for completing the request.

There are no special procedures for urgent requests. In accordance with the COE MLA Convention on and its Second Additional Protocol, urgent requests from parties to that convention may be transmitted directly to the appropriate Ukrainian court or via Interpol.

There is no de minimis policy for MLA requests.

If fulfilling a request requires a court order or warrant, the activity may only be undertaken if allowed and in accordance with Ukraine's CCP (art. 562). A Ukrainian court makes the decision to grant the procedure based on supporting materials submitted by the foreign authority.

A person who feels his or her rights, liberties, or interests were harmed in the process of executing an MLA request may challenge the action and seek damages from the state.

The requesting state may ask for confidentiality of the request and related information. In addition, Ukraine respects UNCAC article 46.20, which provides that a requesting state party may require a receiving state party to keep a request confidential, except to the extent necessary for fulfilling the request itself.

Evidence and information Ukraine receives from another state may only be used in the criminal proceedings related to that request, unless it has been otherwise agreed with the requested party.

OPG's International Cooperation Division maintains a computer database of all incoming MLA requests. This database can track pending requests as well as analyse datasets for a variety of variables.

Procedures for outgoing requests

OPG submits requests at the pre-trial stage, except for those falling under NABU's purview. MOJ issues MLA requests at the trial stage. Any court, prosecutor, or investigator may draft and submit a request for assistance to the appropriate central authority (CCP art. 551). Ukraine uses standard request forms developed by the COE. In addition, OPG's International Legal Cooperation Division has developed standard templates and drafting manuals, which are included in its methodological guidance.

If an investigator drafts the request, the prosecutor supervising the pre-trial investigation reviews and approves the request before it is submitted to the central authority (CCP art. 36). Otherwise, the request is sent directly to the authority for review with relevant laws and treaties (CCP arts. 545, 551). The central authority has 10 days to submit it to the other state's central authority, either directly or through diplomatic channels. If Ukraine's central authority decides not to submit the request, it is returned to the drafter within 10 days, along with an explanation of flaws that need to be addressed or reasons that make the request impracticable.

The request and all enclosures must be prepared in writing and signed and sealed by proper authority (CCP art. 548). It also must be accompanied by a certified translation.

OPG's International Cooperation Division maintains a computer database of all outgoing MLA requests. This database can track pending requests as well as analyse datasets for a variety of variables.

Direct cooperation

Ukrainian law does not place any restrictions on direct communication between police, financial intelligence, tax, and other authorities and their counterparts abroad, and the involvement of a central authority is not required.

The court decides whether information obtained through direct cooperation is admissible in court. The safest strategy is, therefore, to use such information as intelligence for an investigation and then request the evidence needed through formal MLA procedures.

OPG maintains a log of direct communications related to bilateral or multilateral meetings and foreign visits by staff only. It does not include information about exchanges related to specific cases, due to the sheer volume of such dealings.

Uzbekistan

Central Authority

Trial stage:

Supreme Court of Uzbekistan

Division on International Legal Assistance on Criminal Cases

In relation to requests not requiring a court order or the sanction of a prosecutor:

Ministry of Internal Affairs of Uzbekistan

National Security Service of Uzbekistan (NSS)

In all other cases:

Prosecutor General's Office of Uzbekistan

66 Guliamova street, Tashkent

Tel: +998712339228; +998712338903

Fax: +998712339228

Email: mpo@prokuratura.uz

Website: prokuratura.uz (in Uzbek and Russian)

Legal authority

International cooperation with Uzbekistan is regulated by the Criminal Procedure Code of Uzbekistan (CPC) and international agreements to which Uzbekistan is a party. The CPC envisages the principle of reciprocity.

Procedures for incoming requests

The central authorities for international cooperation in Uzbekistan are the Supreme Court, NSS, and PGO, as set forth in article 592 of the CPC. If a request is sent directly to a court, prosecutor, or law enforcement authority, it can only be executed in coordination with one of the three central authorities. Although any request for MLA must be executed according to the laws of Uzbekistan, the procedural laws of the requesting state may be applied, upon the request of the requesting state and if applying these laws does not contravene the laws of Uzbekistan. In addition, representatives from the requesting state may take part in executing a request in Uzbekistan.

If a request cannot be executed, it is returned to the requesting state with an explanation as to why it could not be executed. Uzbekistan's CPC provides that a request will not be executed if its execution could damage the sovereignty and security of Uzbekistan.

Procedures for outgoing requests

A judge, prosecutor, investigator, or law enforcement official in charge of an inquiry prepares the MLA request and sends it through one of the three central authorities mentioned above. Diplomatic channels may also be used if needed.

The CPC provides a list of elements that must be included in any outgoing request, including the name of the authority sending the request, the name and address of the recipient authority, the name of the case, the nature of the request, data about any natural person involved in the request (including date and place of birth, citizenship, occupation, place of residence, or whereabouts, procedural status), the name and the address of any legal person involved in the request, a description of the facts of the case that need to be determined, a list of requested documents and evidence, a description of the alleged offence and relevant article of Uzbek law, and information about damages in the case (if any). The requesting authority signs the request. Requests are prepared in Uzbek and then translated into the language of the recipient country or the language provided for by a relevant international agreement.

Evidence received through MLA (whether based on an international agreement or on reciprocity) can be used in court, so long as the legislative requirements governing the MLA are met.

Direct cooperation

Uzbekistan's CPC does not regulate direct law enforcement cooperation that does not involve one of the country's three central authorities. Thus, the information received through such informal cooperation can only be used as operative information to form a basis for a formal MLA request. Only information obtained through MLA can be used in criminal proceedings in Uzbekistan.

ANNEX 7. LIST OF INTERNATIONAL AND REGIONAL NETWORKS TO FACILITATE INTERNATIONAL COOPERATION IN RELATION TO THE INVESTIGATION AND PROSECUTION OF CORRUPTION CASES

- **BSEC (Black Sea Economic Cooperation)**¹⁹²: Albania, Armenia, Azerbaijan, Bulgaria, Georgia, Moldova, Romania, Russia, Serbia, Ukraine
- **CARIN (Camden Assets Recovery Interagency Network)**¹⁹³: Bulgaria, Estonia, Latvia, Lithuania, Romania, Slovenia¹⁹⁴
- **CCPE (Consultative Council of European Prosecutors)**¹⁹⁵: Albania, Armenia, Azerbaijan, BIH, Bulgaria, Croatia, Estonia, FYRM, Georgia, Latvia, Lithuania, Moldova, Montenegro, Romania, Russia, Serbia, Slovenia, Ukraine¹⁹⁶
- **CIS (Commonwealth of Independent States)**: Armenia, Azerbaijan, Belarus, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan, Turkmenistan, Ukraine, Uzbekistan¹⁹⁷
- **EAG (Eurasian Group on Combating Money Laundering and Financing of Terrorism)**¹⁹⁸: Belarus, Kazakhstan, Kyrgyzstan, Russia, Tajikistan, Turkmenistan, Uzbekistan¹⁹⁹
- **Egmont Group**²⁰⁰: Albania, Armenia, Azerbaijan, Belarus, BIH, Bulgaria, Croatia, Estonia, FYRM, Georgia, Kazakhstan, Kyrgyzstan, Latvia, Lithuania, Moldova, Mongolia, Montenegro, Romania, Russia, Serbia, Slovenia, Tajikistan, Ukraine, Uzbekistan
- **EJN (European Judicial Network)**²⁰¹: Albania, Bulgaria, Croatia, Estonia, Latvia, Lithuania, Montenegro, Romania, Serbia, Slovenia
- **EJTN (European Judicial Training Network)**²⁰²: Bulgaria, Croatia, Estonia, FYRM, Latvia, Lithuania, Montenegro, Romania, Serbia, Slovenia²⁰³

¹⁹² See <http://www.bsec-organization.org>.

¹⁹³ See <http://carin-network.org>.

¹⁹⁴ Albania, Croatia, FYRM, Georgia, Kosovo, Moldova, Montenegro, Russia, Serbia, and Ukraine are observers.

¹⁹⁵ See http://www.coe.int/t/DGHL/cooperation/ccpe/default_en.asp.

¹⁹⁶ Kazakhstan has observer status.

¹⁹⁷ Turkmenistan and Ukraine are associate members.

¹⁹⁸ See <http://www.eurasiangroup.org>.

¹⁹⁹ Observers include Armenia, Lithuania, Moldova, Montenegro, Serbia, and Ukraine.

²⁰⁰ See <http://www.egmontgroup.org>.

²⁰¹ See <http://www.ejn-crimjust.europa.eu/ejn/>.

²⁰² See <http://www.ejtn.eu/en/>.

²⁰³ Observers include BIH, FYRM, Montenegro, and Serbia.

- **EPAC/EACN (European Partners against Corruption/European contact point network against corruption)**²⁰⁴: Albania, Azerbaijan, Bulgaria, Croatia, Estonia, FYRM, Latvia, Lithuania, Moldova, Montenegro, Romania, Serbia, Slovenia, Ukraine
- **Eurojust**²⁰⁵: Albania, BiH, Bulgaria, Croatia, Georgia, Latvia, Lithuania, Moldova, Montenegro, Romania, Serbia, Slovenia²⁰⁶
- **Europol**²⁰⁷: Bulgaria, Croatia, Estonia, FYRM, Georgia, Lithuania, Moldova, Montenegro, Romania, Slovenia
- **GUAM**: Azerbaijan, Georgia, Moldova, Ukraine
- **IICCC (International Intergovernmental Council on Combating Corruption)**: Armenia, Azerbaijan, Belarus, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan, Turkmenistan, Ukraine, Uzbekistan
- **International Organisation of Prosecutors**²⁰⁸: Azerbaijan, Romania
- **Interpol**: Albania, Armenia, Azerbaijan, Belarus, BiH, Bulgaria, Croatia, Estonia, FYRM, Georgia, Kazakhstan, Kyrgyzstan, Latvia, Lithuania, Moldova, Montenegro, Mongolia, Romania, Russia, Serbia, Slovenia, Tajikistan, Turkmenistan, Ukraine, Uzbekistan (all ACN countries).
- **Moneyval (Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism)**: Albania, Armenia, Azerbaijan, BiH, Bulgaria, Croatia, Estonia, Georgia, FYRM, Latvia, Lithuania, Republic of Moldova, Montenegro, Romania, Russia, Serbia, Slovenia, Ukraine.
- **OECD Working Group on Bribery**: Bulgaria, Estonia, Lithuania, Latvia, Russia
- **PC-OC (Committee of Experts on the Operation of European Conventions on Co-Operation in Criminal Matters)**²⁰⁹: Albania, Armenia, Azerbaijan, BiH, Bulgaria, Croatia, Estonia, FYRM, Georgia, Latvia, Lithuania, Montenegro, Republic of Moldova, Romania, Serbia, Ukraine.
- **RAI (Regional Anti-Corruption Initiative for South Eastern Europe)**²¹⁰: Albania, BiH, Bulgaria, Croatia, FYRM, Moldova, Montenegro, Romania, Serbia
- **SCO (Shanghai Cooperation Organisation)**²¹¹: Kazakhstan, Kyrgyzstan, Russia, Tajikistan, Uzbekistan
- **SEEPAG (Southeast European Prosecutors Advisory Group)**²¹²: Albania, BiH, Bulgaria, Croatia, FYRM, Moldova, Montenegro, Romania, Serbia

²⁰⁴ See <http://www.epac-eacn.org>.

²⁰⁵ See <http://www.eurojust.europa.eu/Pages/home.aspx>.

²⁰⁶ Ukraine noted that, even though it is not a member of Eurojust, it regularly receives invitations to attend coordination meetings that address issues of timely information sharing, the operation of JITs, and other issues. It also recently signed an agreement on cooperation with Eurojust. See <http://www.eurojust.europa.eu/press/PressReleases/Pages/2016/2016-06-28.aspx>.

²⁰⁷ See <https://www.europol.europa.eu>.

²⁰⁸ See <http://www.iap-association.org>.

²⁰⁹ See http://www.coe.int/t/DGHL/STANDARDSETTING/PC-OC/default_en.asp.

²¹⁰ See <http://rai-see.org/about-us/>.

²¹¹ See <https://aric.adb.org/initiative/shanghai-cooperation-organization>.

- **SELEC (Southeast European Law Enforcement Centre)**²¹³: Albania, BIH, Bulgaria, Croatia, FYRM, Moldova, Montenegro, Romania, Serbia
- **SIS (Schengen Information Center)**²¹⁴: Bulgaria, Lithuania, Romania, Slovenia

²¹² See <http://www.seepag.info>.

²¹³ See <http://www.selec.org>.

²¹⁴ See http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/borders-and-visas/schengen-information-system/index_en.htm.

www.oecd.org/corruption/acn

