

Questionnaire to be used in reviewing legislation and institutional capacities

in preparation of the ratification and implementation of the 2nd Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters (ETS No 182)

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LEGISLATION (including reservations or declarations to international treaty law)

In general

1. As regards the relationship between international convention law and domestic legislation, does your country adhere to either monism (self executing treaties or conventions that have been approved and ratified are deemed to be an integral part of the domestic legal order and to supersede over incompatible domestic legislation) or dualism (treaties or conventions, in order for them to have effect in the domestic legal order, do not only require approval and ratification but detailed implementing legislation, transposing its provisions into domestic legislation)?
2. Does the legal system of your country provide for (either civil, either administrative or criminal) corporate liability for criminal offences and, if so, only for specific offences or in general?
3. Are there punishable acts for which proceedings in your country may be brought by administrative authorities, provided its decisions may give rise to proceedings before a court having jurisdiction in particular in criminal matters?
4. May information obtained in the context of pending pre-trial investigations be disclosed to other parties than the defence or the *partie civile*, or are pre-trial investigations marked by confidentiality or secrecy?
5. To what extent is the pre-trial investigation stage adversarial, in particular with regard to the rights of the defence? (presence defence (counsel) admitted during hearing of witnesses or other investigative measures, disclosure of the dossier, ...)
6. Is prosecution in your country either mandatory or discretionary? In the latter case, is the discretion of the prosecuting authorities limited by a so called positive right of injunction for the minister of Justice or Interior?)
7. Which authorities are in charge of (i.e. responsible for) pre-trial investigation and the taking of pre-trial investigative or provisional measures? (public prosecutor, investigating or administering judge, police, ...)
8. Which pre-trial investigative or provisional measures (other than a person's arrest), to the extent they may be taken in domestic cases, require a judge or court decision, mandate or warrant? (hearing, (house) search, seizure, search and seizure of computer networks, freezing of evidence held by third parties, interception of telecommunications, other so called (international) special investigative techniques (see Q10/11), other intrusive or coercive measures or measures having a potential impact on a person's privacy, ...)
9. Is there an operable criterion for identifying which formalities or procedures (in criminal matters) are to be considered fundamental principles of your law or legal system or contrary to such principles?
- 10.

Regarding specific investigative measures (at domestic level or in international context)

11. Does your legislation provide for the domestic use of so called special investigative techniques (*please specify* whether in internal cases only or also on the request of foreign competent authorities), in particular:

- interceptions of telecommunications (*please specify*: fixed telephone/fax/modem lines, mobile/cellular telecommunications, satellite-based personal communication systems, ...; *please also specify*, if also on the request of foreign competent authorities: in real-time or not);
- direct interception of communications;
- monitoring of bank accounts and transactions (*please specify*: if also on the request of foreign competent authorities: in real-time or not);
- other observations (of persons, goods, vehicles, places, events), either or not through the use of technical means, such as video equipment or electronic or satellite monitoring (tracking);
- covert operations (infiltration);
- cooperation with and/or protection of informers and/or criminal witnesses?

12. Does your legislation provide for the use of the following international (so called special) investigative techniques (*please specify* whether only for specific (categories of) offences, and, if so, for which):

- cross-border observation;
- cross-border covert operations (infiltration);
- hot pursuit (*please specify*: over land, sea or through the air);
- controlled delivery (*please specify*: through and/or into your territory; *please also specify*: for goods, money, persons)
- joint investigation teams?

13. What role and margin of discretion is there for the police and/or the customs authorities:

- in the detection, investigation and prosecution of punishable acts in general;
- with regard to the deployment of the afore mentioned (so called special, either or not international) investigative techniques;
- with regard to autonomous international information exchange?

14. Does your legislation provide for video and/or telephone conference hearing in criminal matters? If yes:

- only during the pre-trial investigation or also during the trial;
- only for hearing witnesses and/or experts or also for hearing suspects or accused persons;
- if also for hearing accused persons during the trial stage, would a conviction based on such a trial be regarded as having been rendered *in absentia* or not;
- is it allowed to shield the identity or prevent the physical recognition of the person concerned, e.g. by distorting the video/audio signal;
- is there (already) provision for cross-border video/audio conference hearing?

Regarding mutual assistance in criminal matters in particular

15. Does your country have domestic legislation on mutual assistance in criminal matters?

16. Is a convention basis required for both requesting and granting mutual assistance in criminal matters?

17. Is mutual assistance in criminal matters granted only on the basis of reciprocity?

18. Is dual criminality a condition for granting mutual assistance (either or not as an indirect consequence of mutual assistance only being granted for extraditable offences):

- in general;
- only where the foreign request envisages the investigative or provisional measures having an intrusive or coercive character or a potential impact on a person's privacy (*please specify* for which of these measures: hearing, (house) search and seizure, search and seizure in computer networks, cross-border search and seizure in computer networks, freezing of evidence held by third parties, transfer of information or evidence, temporary transfer of persons for evidentiary purposes (either from or to your country), temporary transfer of persons having been transferred to your country in order to serve a sentence passed in the requesting state, for the purpose of review of the judgment in that state, interception of telecommunications, direct interception of communications, monitoring of bank accounts and transactions, other observations (see Q10, 4th indent), cross-border observation, covert operations (infiltration), cross-border covert operations (infiltration), cooperation with and/or protection of informers and/or criminal witnesses, hot pursuit (over land, sea or through the air), controlled delivery; joint investigation teams, other)?

19. Is an exequatur procedure required before granting mutual assistance requests envisaging one of the measures listed in question ..., 2nd indent or before being allowed to transfer the information or evidence obtained as a result of the taking of these measures? (*please specify* for which measures)

20. Does your legislation provide for (general) rules regarding foreign officials operating on or present in your territory (such as liaison officers of third states and bodies or foreign judicial, police or customs authorities present in or operating on your territory during or in the execution of investigative measures or techniques), in particular as regards:

- their (maximum) competencies;
- the use of (service) weapons;
- criminal and civil liability concerning their operation on or presence in your territory?

21. Does your country (usually) grant or refuse mutual assistance for political offences?

22. Does your country (usually) grant or refuse mutual assistance for fiscal offences?

23. To what extent does your country, when granting mutual assistance, require the requesting state to observe the specialty principle?

24. Does your country allow for the temporary transfer of detained persons (if yes, *please specify* whether their consent is required):

- for evidentiary purposes from your country, to the requesting state (please specify: for any such purposes or only for acting as a witness or of confrontation);
- for evidentiary purposes to your country, from the requesting state (please specify: for any such purposes or only for acting as a witness or of confrontation);

- having been transferred to your country in order to serve a sentence passed in the requesting state, for the purpose of review of the judgment in that state;
- in transit in your country (please specify whether the transfer of nationals is refused)?

25. Does your legislation allow for direct (i.e. by the locally competent (judicial) authorities) sending, receiving and/or execution of requests for mutual assistance other than involving the transfer of detained persons or the regular exchange of information from judicial records?

- if direct sending of requests is not allowed, *please specify* the (hierarchical and/or central) authority(ies) to which the locally competent (judicial) authorities have to send outgoing requests and for what reason(s) (overall hierarchical or centralized control/supervision, (mere) technical review, review as to the financial implications, statistical monitoring, ...);
- if direct sending is allowed, *please specify* whether this also includes the possibility of directly laying information in connection with proceedings (denunciation of the case);
- if direct receiving of requests is not allowed, *please specify* through which (hierarchical and/or central) authority(ies) incoming requests have to be channelled (either by the requesting state/authority or the locally competent (judicial) authorities to which the requesting state/authority has mistakenly sent the request) and what their role is (overall hierarchical or centralized control/supervision, (mere) technical review, review as to the financial implications, statistical monitoring, decision on (optional and/or mandatory) grounds for refusal, ...);
- if direct receiving of requests is allowed, *please specify* to what extent this also means that the receiving locally competent (judicial) authority has discretion in refusing and/or executing and/or directly answering the request.

26. To what extent does your legislation allow for sending and service of procedural documents and judicial decisions by post?

27. To what extent does your legislation allow for active spontaneous information exchange?

28. Does your legislation provide for a role for Interpol in the context of mutual assistance in criminal matters beyond the provisions concerned in multilateral or bilateral treaties on the matter?

29. To what extent have bilateral contacts been established vis-à-vis:

- Europol
- Eurojust;
- the EJN;
- Olaf;
- UNMIK;
- other third bodies?

30. To what extent are the provisions embedded in bilateral treaties in force deemed to be more flexible than the provisions embedded in CoE (and/or future EU) legal instruments on mutual assistance in criminal matters?

31. To what extent does your country (intend to) receive or second liaison officers (police and/or customs) or liaison magistrates, either on a bilateral basis or to/from third bodies?

32. Does your country require incoming mutual assistance requests to be translated into (an)other language(s) than English or French?

INSTITUTIONAL CAPACITIES

Please assess (insufficient – low – medium – high), *distinguishing* if need be between locally competent, hierarchical and/or central authorities, and/or between competent judicial, police or customs authorities), the:

33. availability of technically and linguistically (including foreign languages) qualified staff;
34. availability of both specialised and basic technical/legal and foreign language training;
35. availability of proper translation and interpretation facilities;
36. availability of proper ICT equipment (fixed telephone/fax/modem lines with authorisation for international dialling, hard/software, e-mail, fast internet connectivity, adequate security levels, mobile/cellular telecommunication means, ...);
37. availability of technical means required for video/telephone conference, including for taking measures of protection in such context (such as audio/video distortion);
38. availability and quality of technical means required for special investigative measures (interception, audio/video monitoring, electronic monitoring, satellite monitoring, ...);
39. availability of and access to travel budgets (for competent (judicial) authorities willing to assist in the execution of requests abroad, in joint investigation teams, ...);
40. availability and quality of off-line (paper and electronic) relevant legal documentation;
41. availability and quality of a domestic judicial atlas;
42. access to EJN information;
43. availability and quality of circulars, practical guidelines, best practice manuals, model forms, technical/legal and practical support (*please specify* whether issued/offered by the central or hierarchical authorities, the Ministry of Justice, Interior or External Affairs, other authorities);
44. priority level in answering or executing incoming requests (*please specify* whether it makes a difference that a request has been marked as urgent or not);
45. system for monitoring quality and speed in executing requests;
46. level and quality of record keeping and statistics (for work flow/load analysis in view of optimized management and allocation of financial, technical, human resources).