

Better applying European Criminal Law

ERA Court staff training

Mutual Legal Assistance in Criminal Matters



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Content:

- The concept of Mutual Legal Assistance (MLA)
- Relationship between legal instruments for judicial cooperation in criminal matters
- Administrative details: transmission channels, forms
- Execution of the MLA - Time limits
- Special provisions for hearings by videoconference and telephone conference

The concept of Mutual Legal Assistance (MLA)

- The main instruments based on the **principle of mutual legal assistance** include the **1959 Convention** and its protocols, supplemented by the **Schengen Agreement** and the **2000 Convention** and its protocol
- The mutual assistance instruments and their protocols cover **mutual assistance in general** but also contain **rules on specific forms of mutual assistance** *such as the interception of telecommunications or the use of videoconferencing*
- Mechanism based on **mutual assistance** between the requesting and the requested competent authorities
- **Grounds for refusal** (article 2 of the 1959 Convention) - the request concerns an offence which the requested party considers a political offence, an offence connected with a political offence, or a fiscal offence **or** 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
- **Double criminality** normally requested when executing the LoR
- Different provisions on **locus regit actum** (*1959 Convention*) and **forum regit actum** (*2000 Convention*) regarding the execution of the LoR

Relationship between legal instruments for judicial cooperation in criminal matters

- **Identify the legal instrument applicable** to the two MS involved in the judicial cooperation process
- Pay particular attention to **the sequence of the legal instruments** and **their scope of application**, as they replace or supplement other legal instruments in relation to MS – *e.g. Directive 2014/41/EU regarding EIO is applicable as of 22.05.2017 for all MS with the exception of Denmark and Ireland (related only to taking on evidence)*
- The relationship with other legal instruments is usually mentioned at the beginning or in the final provisions of the legal instrument in question – *e.g. article 34 of the Directive 2014/41/EU regarding the EIO, article 1 of the 2000 Convention*
- Verify **the table of the ratifications** for each legal instruments (the legal instrument is **only** applicable if ratified by the two states involved). Of course, there are declarations and reservations made....verify them too because they are important to know how the MLA will be executed by the Requested State!!!
- The full list of the Conventions (signatures, ratifications, declarations and more) is available on the **Treaty office of the CoE's website** -> <https://www.coe.int/en/web/conventions/full-list>
- For the 2000 Convention and its protocol check the **EJN website** -> <https://www.ejn-crimjust.europa.eu/ejn/#>

Relationship with other legal instruments for judicial cooperation in criminal matters – cont.

WWW.COE.INT HUMAN RIGHTS DEMOCRACY RULE OF LAW EXPLORE English Connect Q

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Treaty Office

Home About **Full list** Signatures and Ratifications Searches Partial Agreements Translations Templates Notifications Contact

You are here: Conventions

Complete list of the Council of Europe's treaties

Status as of 09/09/2020

No.	Title	Opening of the treaty	Entry into Force	E.	N.	U.
223	Protocol amending the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data	10/10/2018		E.	N.	
222	Protocol amending the Additional Protocol to the Convention on the Transfer of Sentenced Persons	22/11/2017		E.	N.	
221	Council of Europe Convention on Offences relating to Cultural Property	19/05/2017		E.	N.	
220	Council of Europe Convention on Cinematographic Co-Production (revised)	30/01/2017	01/10/2017	E.	N.	U.
219	Protocol amending the European Landscape Convention	01/08/2016		E.		
218	Council of Europe Convention on an Integrated Safety, Security and Service Approach at Football Matches and Other Sports Events	03/07/2016	01/11/2017	E.	N.	

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European Judicial Network (EJN)
Réseau Judiciaire Européen (RJE)

Home

Info about national systems **EU Legal Instruments for Judicial Cooperation** Status of implementation in the Member States of EU legal instruments Cooperation with non-EU countries and judicial networks

Convention of 29 May 2000 on **Mutual Assistance in Criminal Matters** between the Member States of the European Union

Council Framework Decision 2002/465/JHA on 13 June 2002 on **joint investigation teams (JIT)**

Council Framework Decision 2002/584/JHA of 13 June 2002 on the **European Arrest Warrant** and the surrender procedures between Member States

Council Framework Decision 2009/299/JHA of 26 February 2009 amending Framework Decisions 2002/584/JHA, 2005/214/JHA, 2006/783/JHA, 2008/909/JHA and 2008/947/JHA, thereby enhancing the procedural rights of persons and fostering the application of the principle of mutual recognition to **decisions rendered in the absence** of the person concerned at the trial

Council Framework Decision 2003/577/JHA of 22 July 2003 on the execution in the European Union of **orders freezing property or evidence**

Council Framework Decision 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition to **financial penalties**

Council Framework Decision 2006/783/JHA of 6 October 2006 on the application of the principle of mutual recognition to **confiscation orders**

Council Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments in criminal matters imposing **custodial sentences or measures involving deprivation of liberty**

Council Framework Decision 2008/947/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of **probation measures and alternative sanctions**

Council Framework Decision 2009/315/JHA of 26 February 2009 on the organisation and content of **exchange of information extracted from the criminal record**

12/05/2020 - EJN
The EJN holds a **videoconference meeting ...**
On May 7th 2020, under the Croatian Pres...

Member states

AT	BE	BG
HR	CY	CZ
DK	EE	FI
FR	DE	GR
HU	IE	IT
LV	LT	LU
MT	NL	PL
PT	RO	SK
SI	ES	SE

Candidate countries

Administrative details: transmission channels, forms

Transmission channels

- Requests for mutual legal assistance shall, as a general rule, be transmitted **directly** between the competent judicial authorities of the Requesting and Requested State (article 6 para. 1 of the 2000 Convention).
- Exceptions – e.g. article 6 para. 3 of the 2000 Convention for UK and Ireland (Central Authority)
- Article 4 of the Second Additional protocol to the 1959 Convention (**MoJ to MoJ**) => exception para.2 which allows direct contact between judicial authorities
- By any means capable of producing a **written record**

Forms

- **No mandatory form to use for cooperation provided in the legal instruments for MLA**
- Minimum requirements for the content of the request
- An LoR form is provided on the EJN website (Compendium) in all EU languages

<https://www.ejn-crimjust.europa.eu/ejn/CompendiumChooseCountry/EN>

LoR form

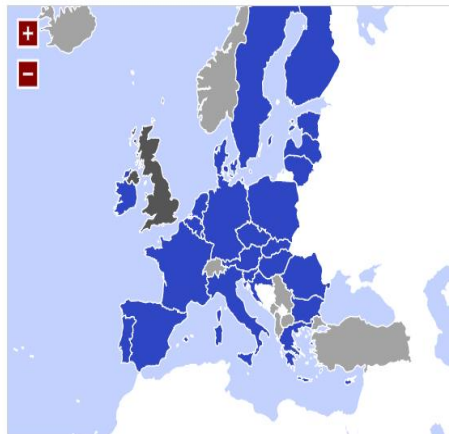


Compendium




























 Compendium User Manual

FOR THE EU MEMBER STATES:


Select on the map the requested/executing Member State or choose it from the list below and draft a mutual legal assistance request or a judicial decision giving effect to the principle of mutual recognition.



Member states

 AT	 BE	 BG
 HR	 CY	 CZ
 DK	 EE	 FI
 FR	 DE	 GR
 HU	 IE	 IT
 LV	 LT	 LU
 MT	 NL	 PL
 PT	 RO	 SK
 SI	 ES	 SE


Third Countries

 UK
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Or select from the list of countries:

The designations employed and the presentation of material on the map do not imply the expression of any opinion whatsoever on the part of the European Union concerning the legal status of any country, territory or area or of its authorities, or concerning the delimitation of its frontiers or boundaries.

Create an MLA request

Country: Denmark (DK)  (Select another country).

Measure: Witnesses, victims, suspects - Summoning and hearing
Hearing witnesses: by video conference (703) (Select another measure).

Select the matter of crime: All other matters (Select another option).

Legal instrument: Convention of 29 May 2000 on Mutual Assistance in Criminal Matters between the Member States of the European Union (Ratification details).

Actions:

Model request for mutual legal assistance

Requesting authority	<input type="button" value="Click to Show Content"/>
Requested authority <input type="button" value="Get Requested authority"/>	<input type="button" value="Click to Show Content"/>
Requested measure(s)	<input type="button" value="Click to Show Content"/>
Persons concerned	<input type="button" value="Click to Show Content"/>
Urgency / Confidentiality	<input type="button" value="Click to Show Content"/>
Legal basis of the request	<input type="button" value="Click to Show Content"/>
Facts and legal qualification	<input type="button" value="Click to Show Content"/>
Special formalities required under the law of the requesting state	<input type="button" value="Click to Show Content"/>
Other authorities involved	<input type="button" value="Click to Show Content"/>
Specific information needed in case of request for hearings by videoconference	<input type="button" value="Click to Show Content"/>
Annexes	<input type="button" value="Click to Show Content"/>
Signature / Official stamp	<input type="button" value="Click to Show Content"/>

Execution of the MLA – Time limits

- The requested party shall execute in the manner provided for by its law any letters rogatory relating to a criminal matter and addressed to it by the judicial authorities of the requesting party and to afford each other the widest measure of mutual assistance (articles 1 & 3 of the 1959 Convention) – **locus regit actum**
- The 2000 Convention shifted the balance, and so the authorities of the requested state shall comply with the formalities and procedures indicated by the authorities of the requesting state provided that they **are not contrary to fundamental principles of law in the requested state** or where **the Convention itself expressly states that the execution of requests is governed by the law of the requested Member State** (article 4 of the 2000 Convention) – **forum regit actum**
- As a general rule, the requests shall be executed **as soon as possible** and if possible, **within the deadlines indicated** by the requesting authority
- If it is foreseeable that the deadline set by the requesting state for executing its request cannot be met the authorities of the requested state *shall promptly indicate the estimated time needed for execution of the request*

Special provisions for hearings by videoconference and telephone conference

- *Hearing by videoconference => article 9 of the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters (08.11.2001)*
- *Hearing by telephone conference => article 10 of the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters*
- *Hearing by videoconference => article 10 of the 2000 Convention*
- *Hearing by telephone conference => article 11 of the 2000 Convention*

Special provisions for hearing by videoconference and telephone conference – cont.

- ✓ The person is in one Member State's territory and has to be heard by the judicial authorities of another Member State. It is not desirable or possible for the person to be heard or to appear in the territory of the requesting MS in person
- ✓ The requested Member State **shall agree** to the hearing by videoconference provided that the use of the videoconference **is not contrary to the fundamental principles of its law**
- ✓ **Measures for the protection of the person** to be heard shall be agreed, where necessary, between the competent authorities of the requesting and the requested Member States
- ✓ The hearing shall be conducted directly by, or under the direction of, the judicial authority of **the requesting party in accordance with its own laws**
- ✓ The judicial authority of the requested Member State **shall draw up minutes** indicating the date and place of the hearing, the identity of the person heard, the identities and functions of all other persons in the requested Member State participating in the hearing, any oaths taken and the technical conditions under which the hearing took place, and the document **shall be forwarded** by the competent authority of the requested Member State to the competent authority of the requesting Member State