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NOTE

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from : General Secretariat of the Council

to : Multidisciplinary group on Organised Crime

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Subject: Draft questionnaire on delays in mutual legal assistance and the effectiveness of urgent requests for the tracing and restraint of property

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**DRAFT QUESTIONNAIRE ON**  
**DELAYS IN MUTUAL LEGAL ASSISTANCE AND THE EFFECTIVENESS OF URGENT REQUESTS**  
**FOR THE TRACING AND RESTRAINT OF PROPERTY**

**Introduction**

Delegations are reminded that answers to this questionnaire will, in accordance with the Joint Action on mutual evaluation adopted by the Council on 5 December 1997, be treated as confidential.

Please provide copies, in the original and, if possible, in English or in French, of relevant laws, guidance regulations or administrative decrees, preferably in their consolidated versions.

When completing the questionnaire you should describe procedures fully, providing as much background information as you can, taking care to include information, both positive and negative, which may assist the evaluation team with its work. Member States are not requested to provide information relating to individual cases but it would be helpful if specific examples were given where appropriate in relation to certain questions.

This questionnaire does not include references to extradition.

There are two parts to the questionnaire, firstly a general introduction, and secondly a section devoted to questions relating to the tracing and restraint of property.

It would greatly facilitate the task of the evaluation team if Member States could submit their answers in either English or French.

If, in relation to any of the following questions, your complete answers are already contained in responses which you have made to the Financial Action Task Force (FATF), you may wish, instead of answering these questions again, to send us those answers. For such cases, please indicate under the relevant question that the answer is found in the FATF material.

The first part of the questionnaire concerns mutual legal assistance between Member States within the framework of the 1959 European Convention on Mutual Assistance in Criminal Matters and its 1978 Protocol, the 1962 Benelux Treaty on Extradition and Mutual Assistance in Criminal Matters and its 1974 Protocol, the 1990 Convention applying the 1985 Schengen Agreement, and other relevant treaties or arrangements, such as the 1990 Convention on Laundering, Search, Seizure and the Confiscation of the Proceed from Crime.

*General*

**A. LEGAL STRUCTURE**

A.1. Describe the laws and/or legal regime which govern mutual legal assistance in your country.

Do you apply the international conventions or agreements directly, or has your country specific legislation?

What statutory provisions govern your use of mutual legal assistance? Please provide copies of your relevant legislation, if possible in English and French.

A.2. Does your country apply the principle of reciprocity in relation to requests for assistance from other Member States?

A.3. Is dual criminality required? For which types of assistance?

A.4. Do you have any domestic legislation which impacts on your country's ability to provide assistance (e.g. legislation on the circumstances in which searches may be permitted)?

A.5 Are there circumstances where you would be unable to offer mutual legal assistance in cases where you would be able to carry out the measure requested if it had been a national case? (e.g. interception of telecommunications may not be granted in the context of mutual legal assistance but can be carried out in a purely domestic case).

A.6. Are there circumstances in which your country would be unable to offer mutual legal assistance because of a public policy consideration? Describe them.

A.7. In what circumstances do your legal procedures oblige disclosure of the contents of a letter of request to an interested party?

## **B. PRACTICE**

### **B.1. Outgoing requests**

B.1.1. Who in your country is authorised to issue international letters of request?

B.1.2. Describe the entirety of the procedure in practice when each of the authorised persons sends a request for assistance.

B.1.3. What criteria do you use before you classify a request as urgent? Do you make clear to the requested state which urgent requests relate to organised crime?

### **B.2. Incoming requests**

B.2.1. Who in your country is authorised to execute international letters of request?

B.2.2. Describe the entirety of the procedure in practice when each of the authorised persons executes a request for assistance.

B.2.3. Do you automatically accept another state's classification of a request as urgent? What special procedures do you use in such cases? Is it possible that a case which is received as non urgent can be treated subsequently as urgent or vice versa?

B.2.4. Is there a difference between the way that you execute cases which are classified as urgent, and those which are non urgent? Are urgent cases which relate to organised crime treated differently? Please describe the differences. In particular, your answer should refer to the time taken to respond to urgent requests and those which are non urgent.

B.2.5. Have there been difficulties in agreeing when a request should be treated as urgent?

**C. CENTRAL AUTHORITY/ADMINISTRATION**

C.1. Which is the central point(s) or unit(s) in your country for the transmission and receipt of international requests?

C.2. What are its aims and objectives? If appropriate, send us a copy of its instruction manual, or the rules governing its creation, organisation and operation. Describe in detail its resources, both human and financial.

C.3 Describe in detail the role and authority of this central point or unit.

C.4 What is the relationship between the central point and those with responsibility for executing requests? Can this central point or unit influence the speed with which an international letter of request is dealt with? How? Can it issue instructions on handling? Please explain.

C.5 How are the functions of the central point(s) or unit(s) performed when requests are transmitted and received directly between judicial authorities? Describe in detail the resources, both human and financial, available to the judicial authorities for the purposes of transmitting and receiving requests directly. How can the speed with which an international letter of request is dealt with be influenced when it is handled directly by the judicial authorities? Can the central point or unit influence the speed? How can the central point or unit keep itself informed on requests which are dealt with directly?

## **D. STATISTICS**

D.1. What statistics does your country already have (including statistics held by individual authorities) relating to the issue, receipt and execution (or refusal to execute) of mutual legal assistance requests to and from other Member States?

D.2. Who is responsible for them?

D.3. Please supply details of all the categories which you have in these areas, e.g.

- from/to which country,
- how many issued/received,
- type of case,
- assistance requested,
- etc...

D.4. If you do not have statistics available, are you able to compile them?

If not, why not?

## **E. TRAINING**

E.1. Is training provided to those who issue or execute requests, to ensure compliance with all relevant legal instruments and practices?

E.2. Describe the training.

E.3 Can your country offer language training to such persons?

**F. GUIDANCE**

F.1. Is guidance available to those who issue or execute requests, to ensure compliance with all relevant legal instruments and practices?

F.2. Describe the guidance.

F.3. Who issues the guidance? Is it published?

**G. COMPLIANCE**

G.1. Does your country have arrangements for ensuring that incoming requests are executed to the satisfaction of the requesting state? Describe the arrangements.

G.2. Are those who execute requests expected to establish and keep in contact with the requesting authorities? Describe how this works. Has your country, when issuing requests, had any difficulty in establishing contact with requested authorities? Describe any difficulties.

G.3. Do you have arrangements for giving (1) incoming and (2) outgoing urgent requests priority over other requests? Describe the arrangements.

**H. RIGHTS OF APPEAL**

H.1. Do your legal procedures allow appeal by any person involved in or concerned with the request, at any stage of the proceedings? If so, please describe fully.

H.2. Are you able to say in how many cases there have been appeals, by whom, and at what stages?

H.3. Please provide details of the outcome of such appeals?

H.4. To what extent have appeals resulted in delays in the processing of requests for mutual legal assistance? Can you estimate in time the average delay?

## I. MONITORING

I.1. Does your country have a system of monitoring that the content of any outgoing request fulfils the minimum standard laid down in the relevant international instrument? To what extent is any such system computerised? Describe how the system works.

I.2 Does your country have a system of monitoring that not only is the minimum standard achieved but also that all additional information necessary for the requested state is included? Describe how the system works.

I.3 Does your country have a system of monitoring the time taken to process in your country outgoing requests from the time that they have been issued by the appropriate authority until the request is transmitted officially to the requested state? Describe how it works. Does your country have any system of monitoring whether outgoing requests, and in particular those described as urgent, have been issued as soon as the need for international assistance has been identified? Describe how the system works. Does your country monitor whether the assistance provided by the requested state is in conformity with the assistance requested?

I.4. Does your country have a system of checking on the progress of requests which have been sent to other Member States for execution? Describe how it works.

I.5. Does your country have a system of monitoring the time taken to process in your country incoming requests from the time of their arrival in your country until they are sent to the competent executing authority? Describe how it works.

I.6. Does your country have a system of monitoring the progress made by executing authorities with regard to incoming requests? Describe how it works.

I.7. What action do you take if you discover as a result of any of the above monitoring that appropriate progress is not being made within acceptable time scales?

I.8. Do you have internal time limits designed to minimise delays at any or all of the stages of the processing of letters of request? Describe them.

I.9. Do you monitor whether agreed deadlines for executing incoming and outgoing urgent requests are met? Describe this monitoring.

I.10 Describe any special procedures used for monitoring when dealing with either an outgoing or in incoming request if it is classified as urgent.

## **J. GENERAL /FINAL COMMENTS**

J.1. What is your overall assessment regarding the way that mutual legal assistance works generally?

J.2. Are you able to identify any particular weaknesses or reasons for delay in the system as it currently operates in respect of either incoming or outgoing requests?

J.3. If your country has experienced delays when it has acted as (1) a requesting state and (2) a requested state, has that been in any particular types of cases? Which types?

J.4. Has your country experienced difficulties in mutual legal assistance in relation to another Member State in special types of cases? Which ones?

J.5. Do any requirements to have translations made of requests into a language of the requested state cause significant delay in issuing requests? Is the quality of translation of requests received from Member States a problem?

J.6. If the request asks that a member of the requesting state's investigating team travel to your country to assist in execution, does this cause delays?

J.7. In issuing requests, do requests for members of your country's staff to travel to the requested state cause delays in the execution of requests? Why?

J.8 Are you aware of any cases where the delay in mutual legal assistance has been such that the assistance sought was no longer needed when it was given? Please give details. Does your country have arrangements for informing requested states when the assistance is no longer needed? Describe these arrangements.

J.9 Do you think that making direct contact with the (1) the requesting authorities and (2) the requested authorities can facilitate the effectiveness of assistance and shorten the delays in executing requests?

J.10 Has your country had any experience with mutual legal assistance in cases relating to fraud against the Communities' financial interests? How many cases? Have you experienced delays in such cases? What were the problems?

J.11 Can you identify specific types of cases where your country does not request mutual legal assistance because it knows in advance that the request will not be granted? For which offences, types of assistance or countries?

J.12. Do you wish to add any further comments?

*Property tracing and restraint*

**Introduction**

This section deals with questions relating to urgent requests from other Member States for the **tracing and restraint** of property. Restraint is in some jurisdictions described as seizure. Here, we are using the definition of the term found in the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988, which in Article 1, (Definitions) is as follows: "freezing or seizure means temporarily prohibiting the transfer, conversion, disposition or movement of property, or temporarily assuming custody or control of property on the basis of an order issued by a court or a competent authority."

**K. TRACING OF PROPERTY**

**GENERAL LEGAL STRUCTURE**

K.1. Please describe your system for property tracing and provide copies of relevant parts of your legislation, if possible in English or French.

K.2. Is dual criminality required?

K.3. At what stage can this assistance be provided to other Member States? In particular is it necessary to wait until someone has been charged with a criminal offence?

K.4. For what offences can assistance be given?

K.5. If the evidence or information is held within a bank, can the evidence or the information be obtained without alerting the account holder?

K.6. Is a court hearing ever needed in order to trace assets?

K.7. If a court hearing is necessary, does your legislation provide for it to be held in private?

K.8. Please explain briefly the rules relating to banking secrecy in relation to this type of request.

## **PRACTICE AND PROCEDURE**

K.9 Can you provide assistance to other Member States on a agency to agency basis e.g. through Interpol or customs channels?

K.10 Are requests handled by a central unit? If so, give details.

K.11 Describe briefly the assistance that can be given.

K.12 Is assistance with asset tracing confidential?

K.13 Is there any mechanism to prevent the person being investigated becoming aware of the request?

K.14 Can urgent requests be made by fax, e-mail or orally?

K.15 What difficulties have you encountered in responding to requests from other Member States for assistance with asset tracing?

## **L. RESTRAINT OF PROPERTY**

### **GENERAL LEGAL STRUCTURE**

L.1 Please describe your system for property restraint and provide copies of relevant parts of your legislation, if possible in French or in English.

L.2. For what offences can assistance be given?

L.3 Is dual criminality required?

L.4 At what stage in proceedings can this assistance be provided to other Member States? In particular, is it necessary to wait until someone has been charged with a criminal offence?

L.5 Is a court order needed for assets to be restrained? Who applies to the court for such an order? Alternatively, who makes the decision to restrain the assets?

L.6 Are such court hearings held in private? Can officers of the requesting state attend the hearing?

L.7 Can you restrain property in anticipation of an appropriate order being made against that property in another member state?

L.8 Do your judicial authorities treat a restraint order made by another member state as if it were an order made by your own court? Explain any differences.

L.9. Do the assets which are the subject of the request have to be directly linked to the criminal activity, or can property of corresponding value be restrained?

L.10 Do the assets which are the subject of the request have to belong to the person under investigation or can they belong to a third party?

L.11 Has your country made specific arrangements with any other Member States in relation to the restraint of property? Please provide details.

L.12 Is there a restriction on the types of offences for which this procedure can be invoked ?

#### **PRACTICE AND PROCEDURE**

L.13 Is there any mechanism to prevent the person being investigated becoming aware of the request?

L.14 To what extent is a request for restraint confidential?

L.15 At what stage does the person whose assets have been restrained become aware of the order?

L.16 For how long can assets be restrained in response to a request from another Member State? How is the requesting state informed that the time limit may expire?

L.17 What provision is made for the payment of legal or other expenses from restrained assets?

L.18 Is there a provision to manage restrained assets, such as a business pending a final order? What difficulties does this cause?

L.19 Can urgent requests be made by fax or e-mail or orally?

## **M. STATISTICS**

M.1 What statistics does your country already have relating to requests from other Member States in respect of tracing and restraint of property?

M.2 Can you indicate the total value of property traced and restrained following such requests over the last 3 years?

How many cases does this represent?

M.3 Please provide details of the types of property traced and restrained (e.g. real estate, money, cars, planes, etc).

M.4 Do any particular types of property pose particular problems for you? Please explain your answer.

## **N. MONITORING**

N.1 Do you wish to add anything on monitoring in relation to the tracing and restraining of property other than that contained in your answer to the question in the general section above? Do you apply the same procedures to such requests?

## **O. GUIDANCE**

O.1 Do you wish to add anything on guidance in relation to the tracing and restraining of property other than that contained in your answer to the question in the general section above? Do you apply the same procedures to such requests?

## **P. COMPLIANCE**

P.1 Do you wish to add anything on compliance in relation to the tracing and restraining of property other than that contained in your answer to the question in the general section above? Do you apply the same procedures to such requests?

## **Q. RIGHTS OF APPEAL**

Q.1 Do you wish to add anything on rights of appeal in relation to the tracing and restraining of property other than that contained in your answer to the question in the general section above? Do you apply the same procedures to such requests?

## **R. GENERAL /FINAL COMMENTS**

R.1 What difficulties have you encountered in responding to requests of other Member States for assistance with tracing and restraint of property?

R.2 What difficulties have you encountered when sending requests to other Member States?

R.3. Have you refused formally or informally any requests for tracing or restraint of property from other Member States? If so, explain why.

R.4 If you have to refuse a request (even after only an informal contact), do you explain to the requesting state why you are unable to assist them?

R.5. Do you wish to add anything in relation to the tracing and restraining of property other than that contained in your answers to the question in the general section above, in particular in relation to practices that might cause delays to requests?

R.6. If your country has experienced delays when it has acted as a requested state, has that been in any particular cases? Which ones?

R.7 If your country has experienced delays when it has acted as a requesting state, has that been in relation to any particular state, to particular cases, or particular types of offences? Which ones?

R.8 Are you aware of any cases where the delay in mutual legal assistance in relation specifically to a request for tracing or restraint has been such that the assistance sought was no longer needed when it was given? Please give details.

9 Do you consider your domestic legislation relating to restraint of property itself causes delays?  
Does it inhibit urgent requests?

R.10 Do you wish to make any further comments relating to reducing, where necessary, delays in mutual legal assistance?

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