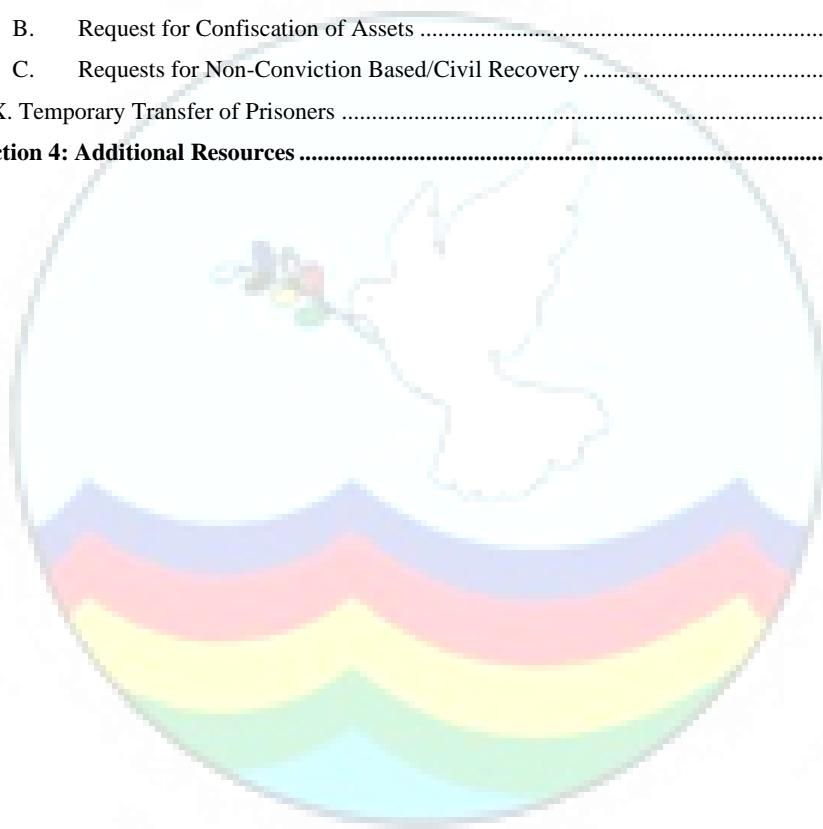


Guidelines for  
Requesting Mutual  
Legal Assistance in  
Criminal Matters from  
the Great Lakes Region  
– [COUNTRY]

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# Requesting Mutual Legal Assistance in Criminal Matters (MLA) from [COUNTRY]

**Commented [A1]:** All the information contained in brackets needs to be filled out by ICGLR Member States.

## SECTION 1: Introduction

Mutual legal assistance (MLA) is a method of cooperation between countries for obtaining evidence and assistance in the investigation or prosecution of criminal offences. MLA is generally used for obtaining evidentiary material that cannot be obtained informally on a law enforcement (police to police) basis, via a direct request to foreign-based internet service providers, and/or it is required by the requesting country to be obtained through MLA for evidential reasons.

Due to the increasingly global nature of crime, MLA is critical to criminal investigations, prosecutions and judicial proceedings both in [COUNTRY] and abroad. [COUNTRY] is committed to assisting investigative, prosecuting, and judicial authorities in combatting crime internationally and is able to provide a wide range of MLA.

These Guidelines provide an overview of how to request mutual legal assistance from [COUNTRY] and are intended to help ensure that requests for MLA received by [COUNTRY] can be executed quickly and efficiently. Whilst these Guidelines are complementary to the domestic legislation and all applicable bilateral and multilateral treaties, agreements or arrangements governing MLA in [COUNTRY], they do not replace nor give legal advice on the operation of said legislation.

**Commented [A2]:** Alternative wording for countries with no MLA Acts in place: "They provide an overview of the processes and procedures for MLA in [COUNTRY], but they do not replace nor give legal advice on existing national legal provisions on the matters".

### I. [COUNTRY] Central Authority – Contact Information

Central authorities have the function of receiving, reviewing, executing and/or arranging for the execution of incoming MLA requests. In [COUNTRY], all requests for MLA in criminal matters must be submitted by a foreign authority to the [COUNTRY] central authority. The contact information of the [COUNTRY] central authority is provided below:

**Commented [A3]:** Alternative wording for countries that require requests to be sent via diplomatic channels: "While in [COUNTRY] all requests for MLA in criminal matters must be submitted by foreign central authorities through diplomatic channels, a copy of the request (electronic or hard copy) should be shared with the [NAME OF THE CENTRAL AUTHORITY] – the [COUNTRY] central authority".

- [NAME OF THE CENTRAL AUTHORITY]
- [ADDRESS]
- [TELEPHONE]
- [FAX]
- [E-MAIL]
- [WEBSITE]

**Commented [A4]:** Suggestions on how to fill out the information needed for this section:

### II. Types of Assistance

[COUNTRY] is committed to providing a wide range of MLA in criminal matters provided request criteria have been met. Please refer to Section 3 of these Guidelines for information about the most common types of MLA that [COUNTRY] may provide and the criteria that must be met for making such requests. Should a requesting authority want to submit a request for a type of MLA not covered in these Guidelines, they are encouraged to contact [COUNTRY] central authority beforehand.

- Ensure that any e-mail address provided is a **generic address, not a personal address**. People move on, departments not.
- It is **advisable to set up a government domain e-mail if possible**. Gmail/Yahoo/Hotmail... not ideal for sending and/or receiving requests in a secure manner.
- Ensure the **relevant people have access to this e-mail address and can respond from it**. There is nothing wrong with an administrative member of staff having a role to monitor the e-mail box and to forward the e-mails on.

### III. Legal Bases for MLA

[COUNTRY] is party to bilateral and multilateral treaties, agreements or arrangements that provide for international cooperation in criminal matters, such as [MULTILATERAL TREATIES RATIFIED BY COUNTRY]. A link to the list of international treaties, agreements or arrangements that [COUNTRY] is party to can be found in Section 4.

Where a bilateral or a multilateral treaty, agreement or arrangement imposes specific obligations, conditions or procedures, [COUNTRY] expects all requests to adhere to them. These obligations take precedence over these Guidelines where in conflict.

In the absence of a bilateral or multilateral treaty, agreement or arrangement, [COUNTRY] can provide MLA on grounds of reciprocity. This will be considered on a case-by-case basis.

### IV. Confidentiality

Upon receipt of an MLA request, the [COUNTRY] central or executing/competent authorities will neither confirm nor deny its existence, nor disclose any of its content outside government departments and agencies, the courts or law enforcement agencies in [COUNTRY] involved in the execution of the request without the consent of the requesting authority.

In the event that confidentiality requirements make execution of a request difficult or impossible, the central authority will consult the requesting authorities. In cases where [COUNTRY] law requires that a request be disclosed, in whole or in part, before it is executed, [COUNTRY] will normally give the requesting authority the opportunity to withdraw the request before disclosure to third parties is made.

Where the requesting country makes a public statement about the assistance it is requesting from [COUNTRY], the central authority should be notified so that they may respond appropriately to any media or public enquiries.

### V. Collateral Use

When the requesting country receives evidence from [COUNTRY] in response to an MLA request, the requesting country may not use that evidence for any purpose other than that specified in the original request.

Where a requesting authority wishes to use evidence obtained from [COUNTRY] for a purpose other than that stated in the original MLA request, or to share the evidence with a third country, the original requesting country must make a formal request in writing to the [COUNTRY] central authority. The additional request must contain the following information:

#### Information to be included in a request to use evidence for other purposes

- ✓ The [COUNTRY] central authority's reference number for the original request to enable its identification.
- ✓ What evidence is to be used/shared.
- ✓ How this evidence will be used/shared.
- ✓ The new purpose for which the evidence is needed.

**Commented [A5]:** Ideally, this would include a link to the all the treaties or at least to a list mentioning them by name. If your country commits to providing a full list of treaties, it must also commit to a regular review of this document: it should be a living document that is updated regularly. You can see [here](#) how the UKCA presents their international agreements.

**Commented [A6]:** For countries that apply the principle of reciprocity restrictively, consider adding "in some circumstances".

## VI. Law Enforcement (Police) Cooperation

This entails police and other law enforcement officers in a requesting country asking for the assistance of law enforcement agencies in [COUNTRY] to gather information for an investigation. This can be an easier and quicker way to obtain intelligence and evidence, as it does not require an MLA request. Law enforcement cooperation can also better inform the drafting of an MLA request if one is later made.

In many countries' legal systems, information collected by [COUNTRY] law enforcement agencies is directly admissible as evidence in criminal trials abroad. For instance, countries which do not require evidence to be sworn by a witness in court can consider using law enforcement cooperation to request that a statement be taken from the witness voluntarily. It is for the requesting country to decide if information collected through this form of assistance would be admissible as evidence under their domestic legislation.

If direct contact between a foreign police force and a [COUNTRY] police force has not already been established, the [COUNTRY AGENCY] should be contacted with the request. The [COUNTRY AGENCY] acts as the Interpol gateway in [COUNTRY] for all incoming and outgoing police enquiries. The [COUNTRY AGENCY] will forward requests through the Interpol network to the relevant police force or other law enforcement agency who will then execute the request, subject to any data sharing agreement.

The following [COUNTRY] law enforcement agencies can receive enquiries directly from law enforcement officers in foreign jurisdictions (in some cases this will be subject to a data sharing agreement or memorandum of understanding):

[NAME OF THE COUNTRY AGENCY]  
[ADDRESS]  
[TELEPHONE]  
[FAX]  
[E-MAIL]  
[WEBSITE]

**Commented [A7]:** Please add information on which law enforcement agencies in your country can receive enquiries.

## **SECTION 2: How to Make an MLA Request**

### **I. Is MLA Appropriate?**

In some cases, an MLA request may not be necessary because:

- The material can be obtained **voluntarily** without any assistance from [COUNTRY] authorities.
- The material can be obtained via **law enforcement cooperation** because it is only required for intelligence purposes or material obtained in this way is admissible as evidence under the requesting country's domestic legislation.

As outlined in Section 1, Paragraph VI, it is often desirable for requesting authorities to obtain intelligence prior to making an MLA request. This can help improve the quality of the MLA request and makes it less likely that a request will be returned to the requesting authority for lack of information. Requesting authorities are encouraged to contact the [COUNTRY] central authority to obtain guidance on whether the type of assistance they are seeking requires a formal MLA request under [COUNTRY] law.

### **II. Who Can Send a Request?**

Any authority deemed competent under the law of the requesting country may issue a request to [COUNTRY]. This can include a court exercising criminal jurisdiction or a prosecuting authority outside [COUNTRY].

### **III. Format and Content of a Request**

All MLA requests should be made in writing.

In case of urgency, an advance copy of the request can be transmitted via e-mail or orally through e.g., phone discussions, as long as a formal request is subsequently sent through one of the methods of transmission mentioned in Paragraph IV of this Section.

It is recommended that the requesting authority contacts the [COUNTRY] central authority in advance of making an MLA request, particularly in the most serious and/or complex cases, to ensure that the assistance sought is available under [COUNTRY] law and the request will meet [COUNTRY]'s legal requirements. This includes the possibility of submitting a **preliminary draft request**. If the request sent is a draft, this should be clearly stated in its heading.

<b>Information to be included in all MLA requests</b>	
<b>Headed notepaper/Official letterhead and signed</b>	Please ensure your letter of request comes on the official letterhead of the requesting authority, is dated and is signed by an authorised official from a competent authority.
<b>Details of the authority</b>	Include the name of the authority and the person making the request, the contact address, telephone number and email address.
<b>[OFFICIAL LANGUAGE/S] translation</b>	For requests not made in [OFFICIAL LANGUAGE/S], please provide one signed version of the original request <b>and</b> one

**Commented [A8]:** If necessary in certain countries, also sealed and stamped.

	certified translation of the request into [OFFICIAL LANGUAGE/S]
<b>Basis of the request</b>	Please clearly indicate whether the request is made on the basis of a bilateral or multilateral treaty, convention or on grounds of reciprocity. If the request is made on the basis of a treaty/convention, please indicate which provisions of the treaty/convention are invoked.
<b>Copy of the legislation</b>	This should only be the relevant section(s) that details the offence and/or the criminal conduct under investigation, including the penalties associated with the offence(s) and the rights a person may be afforded.  If the death sentence is a possible sentence or penalty for the offence under investigation, please also add an assurance that, upon conviction, such a sentence will not be requested, and if imposed, will be commuted or otherwise not enforced.
<b>Specific types of assistance requested</b>	List the specific types of evidence or assistance you are seeking. This section should outline and justify what evidence or assistance you wish to obtain, from where/whom, how it is relevant to the offence under investigation (nexus of the offence) and why this can only be requested from [COUNTRY]. You should also specify any evidentiary or procedural requirements that should be followed. See Section 3 for more details.
<b>Suspect(s)/Person(s) of interest</b>	Full details of the suspect(s) under investigation and/or any person(s) of interest. Include details of their connection to [COUNTRY] and any contact or personal details, including, where available, address/location, date of birth and nationality ( <i>if confidential this can be sent separately to the request</i> ). Please indicate whether the person(s) named in the request are witnesses, suspects, persons of interest, defendants, or victims.
<b>Summary of facts</b>	Provide a summary of the facts of the case under investigation. Include when the investigation started, details of any intelligence received, details of the suspect's involvement and their criminal activity, where and when the criminal conduct occurred and details of the link of the investigation to [COUNTRY].  Please clearly show the connection between the evidence requested and the offence under investigation or proceedings (i.e., why the evidence is necessary). A clear <i>nexus</i> must be established. This goes further than just stating that the requested material is relevant to the case.
<b>Link to [COUNTRY]</b>	Provide details of the link of the investigation to [COUNTRY]. What part of the summary of facts shows that there is a link to [COUNTRY]? Are there assets, witnesses, suspects, persons of interest or anything else that is [COUNTRY]-based?
<b>Details of any pre-MLA enquiries</b>	If possible, include details of any informal enquiries made with [COUNTRY] law enforcement or other officials, including the telephone number and e-mail address if available. Please also



	include details of enquiries with other countries that have led to details of why information may be held in [COUNTRY] and if any preservation or freezing orders are in place in respect of the evidence/assistance you are seeking.
<b>Details of any previous requests</b>	Include reference numbers/case names of any previous requests sent to [COUNTRY] that are linked to the request being sent.
<b>Urgent cases</b>	<p>If applicable, please provide details about why the request is categorised as urgent.</p> <p>For example:</p> <ul style="list-style-type: none"> <li>• somebody is being detained in custody;</li> <li>• somebody is due to be released from custody;</li> <li>• pre-trial court appearances or trial dates;</li> <li>• there is an immediate risk to individuals; or</li> <li>• risk of dissipation of assets and/or evidence being destroyed.</li> </ul> <p>and provide the dates of any deadlines which need to be met.</p>
<b>High profile / Sensitive cases</b>	<p>If applicable, please give details of any media attention, sensitivities, or reasons for high profile interest in the case (e.g., is the case high profile due to the persons involved?)</p> <p>All information considered sensitive can be transmitted separately via secure channels and/or using methods that allow for that information to be protected (e.g., coded language, anonymisation). Please contact the [COUNTRY] central authority in advance to identify how best this is achieved. Classified information should never be included in a request.</p>
<b>Dates for evidence</b>	When seeking evidence, ensure that the date range requested is justified. The dates need to reflect the criminal activity of the investigation - no generic requests. If the dates fall outside the scope of the criminal activity, then this will need to be justified.
<b>Covering letter</b>	Relevant dates (e.g., date of court hearing), key point(s) of contact and/or reason for special urgency or attention should be included in the covering letter of request.
<b>Additional information</b>	Make sure to include all additional information required for the specific type of assistance requested (see Section 3).

The request should also, if needed, contain copies of all documents or detailed descriptions of exhibits which are relevant to ensuring the request made can be properly executed. These documents include court orders, warrants, and procedural rules, and should only be those that would reasonably be relied upon in order to give effect to a request.

In some circumstances, procedural and/or evidentiary rules of the requesting or receiving country may require that the documents be certified or authenticated as true copies of the original by a notary or judicial officer. See Section 3 for more information on what types of assistance require the documents to be authenticated.

Failure to provide the fullest information possible shall not necessarily be a reason for refusing the request but may result in delays or in a request not being executed in whole or in part.

#### IV. Transmission of a Request

The [COUNTRY] central authority is content to receive MLA requests directly pending transmission through diplomatic channels. Whenever possible, MLA requests should be sent electronically (e.g., in PDF format via e-mail). Alternatively, they can also be sent by post, courier or facsimile.

#### V. Receipt of and Queries about Requests

Once the [COUNTRY] central authority has received a request for MLA, they will become the direct point of contact for all correspondence relating to the request. The request will be logged and given a reference number. The central authority shall acknowledge receipt of the request and write directly to the requesting authority within 72 hours with the case reference number and the details of the person within the [COUNTRY] central authority dealing with the request.

**Commented [A9]:** Alternative wording: within five working days.

If the [COUNTRY] central authority is satisfied that all requirements have been met and the request has been formally accepted, it will notify the requesting country. The request will then either be transmitted to the relevant [COUNTRY] authority to execute (“executing/competent authority”) or executed by the central authority directly. The [COUNTRY] central authority will also inform the requesting country of the action taken.

If the request does not comply with [COUNTRY] legislation or is otherwise deficient, [COUNTRY] cannot honor the request in whole or in part, or circumstances make it likely that any response will be significantly delayed, the central authority will promptly inform the requesting country, giving reasons. If further information is deemed necessary in order to facilitate execution of the request, [COUNTRY] will inform the requesting country before a decision on the request is made.

Any subsequent correspondence relating to the MLA request should be sent to the designated caseworker and should always quote the reference numbers assigned by both the requesting country and the [COUNTRY] central authority.

Once the request has been executed, the [COUNTRY] central authority will write to the requesting authority transmitting the requested information or explaining why the information has not or cannot be provided.

#### VI. Timeframes

If all requirements have been met, the request will be accepted and will be referred to one of the [COUNTRY] executing/competent authorities. The central authority will aim for the consideration and execution of the request within 2 months. However, depending on the nature of the request, this may not always be possible. The central authority will take into account any reasons for urgency which are clearly stated in the request. The requesting country’s failure to follow the advice in these Guidelines may also delay the acceptance and execution of the request.

**Commented [A10]:** It can be earlier if possible (e.g., within 30 days in Uganda).

#### VII. Urgent Requests

**Do not mark a request as urgent unless it is truly urgent.** If a request is urgent, the central authority will try to deal with it as quickly as possible.

Details as to why the request is urgent shall be provided, for example: somebody is being detained in custody, somebody is due to be released from custody, there is an immediate risk to individuals, a risk of dissipation of assets, a risk the evidence will be otherwise destroyed, a risk of expiration of data retention or a risk that the prosecution would be jeopardised due to failure to meet domestic timeframes, etc.

Dates of any deadlines which need to be met must also be provided.

### **VIII. Cost of Executing Requests**

Ordinary costs of executing a request shall be borne by [COUNTRY], unless otherwise agreed in advance by [COUNTRY] and the requesting country.

If expenses to execute the request are substantial or extraordinary, [COUNTRY] will consult with the requesting country in advance to determine the terms and conditions under which the request shall be executed as well as the manner in which the costs shall be borne. The central authority may ask the requesting country to pay for expert witness fees and translation, interpretation and transcription costs, and will, at any rate, ask the requesting country to pay for the allowances and travel expenses of persons whose presence and/or witness statement has been sought in the requesting country.

### **IX. Updates on the Progress of the Criminal Investigation or Proceedings**

Should the requested assistance no longer be required or other circumstances alter the relevance of the evidence sought, the requesting country should inform the [COUNTRY] central authority immediately, quoting the reference numbers for the request assigned by both the requesting country and the [COUNTRY] central authority.

The [COUNTRY] central authority will provide the requesting authority with periodic updates on the execution of their request, or otherwise respond to reasonable enquiries on the status of the execution.

### **X. Linked Requests**

Requests which relate to a previous request can be sent to the [COUNTRY] central authority as a linked request.

#### **Information to be included in a linked request:**

- ✓ A statement that the request is linked to a previous one.
- ✓ The reference numbers for the previous request assigned by both the requesting country and the [COUNTRY] central authority.
- ✓ All the information relevant to an original MLA request, plus any further information relating to the specific type of additional request.

## XI. Postponement of Requests

The central authority may postpone the execution of a request if its immediate execution would interfere with an ongoing investigation or prosecution and/or the material to which the request relates is subject to an investigation or prosecution taking place in [COUNTRY].

Before any request is postponed, [COUNTRY] shall consult with the requesting country to consider whether such assistance may be granted subject to terms and conditions.

## XII. Refusal of Requests

There is a presumption that MLA will be provided in response to all requests that respect requirements outlined in these Guidelines and when the execution of the request would be in accordance with [COUNTRY] domestic legislation. However, the central authority retains discretion to refuse to accede to a request, including for the reasons outlined below.

### Possible grounds for refusal

- ✓ The request relates to an investigation or prosecution that is improperly politically motivated.
- ✓ The conduct which is the subject of the request is an offence only under military law or a law relating to military obligations of the requesting country.
- ✓ Compliance with the request would contravene the constitution or domestic laws of [COUNTRY] or would prejudice the sovereignty, national security, international relations, national interests, public order, or other essential public interests of [COUNTRY].
- ✓ Substantial grounds exist for believing that the request has been made for the purpose of investigating, prosecuting, or punishing a person on account of his/her race, ethnic origin, sex, religion, nationality, or political opinions or that compliance with the request would cause prejudice to that person's position for any of these reasons.
- ✓ [COUNTRY] law prohibits any of the steps required to comply with the request.
- ✓ The assistance requested would or is likely to jeopardise the safety of any person, whether in or outside [COUNTRY].
- ✓ The offence alleged in the request is so trivial or the statutory penalty so low (*de minimis*), that [COUNTRY] would not have made a similar request to another country in a similar criminal matter arising in its territory.
- ✓ If, in the absence of a bilateral or multilateral treaty applying, the requesting country fails to provide an assurance of reciprocity or providing assistance on grounds of reciprocity would not be compatible with [COUNTRY] domestic legislation.

Assistance shall not be refused solely on the ground of bank or other financial institution secrecy rules.

### **SECTION 3: Types of Assistance**

This section details the forms of assistance [COUNTRY] can provide and the specific information which should be included in a request for each type of information. This is not an exhaustive list but rather details the requirements for the most commonly sought assistance. Please consult with the [COUNTRY] central authority if you seek a type of assistance that is not listed in this section.

**This is in addition to the information required for all MLA requests as outlined in Section 2, Paragraph III.**

#### **I. Service of Documents**

Consistent with Section 2, Paragraph I, when a formal MLA request is not required, the request documents may be sent **directly** by the requesting authorities to the persons in [COUNTRY] to whom they relate. An MLA request may be necessary in the following circumstances:

- The address of the person as to whom the request relates is unknown or uncertain;
- The relevant law of the requesting country requires proof of service;
- Service via post is not possible, could not be made within reasonable time constraints, or would otherwise be ineffective or inappropriate.

Where a request to serve documents is made, it should be accompanied by the necessary documents to be served and, if a particular method of service is required, should state explicitly what method is required. The method of service proposed must not be contrary to [COUNTRY] law. If no method of service is explicitly stated, the service will be effected according to [COUNTRY] law. If the request relates to a pending matter as to which deadlines or hearing dates have been imposed, these hearing dates or other deadlines should also be stated clearly within the request, together with the address of the court where the proceedings are to take place.

The [COUNTRY] central authority will transmit to the requesting country a certificate or other proof that the documents have been served as requested. If the service was not possible, the central authority will communicate the reasons which prevented it.

#### **II. Requests for Documents, Records, Items or Other Material**

A request for documents, records, items, or other material must demonstrate how that material is related to a criminal matter in the requesting country.

Certain documents that are not publicly available, such as financial records and certain computer data can only be obtained and/or produced pursuant to a court order, which is typically only issued after a hearing, before which the person to whom the request relates is entitled to notice and has the opportunity to engage an attorney. If such a hearing might prejudice any confidentiality requirement in the requesting country, the risk of prejudice must be explicitly referred to in the request in order for an *ex parte* application to be considered. The requesting country will advise the requesting country of any further information required in order to apply for an *ex parte* hearing.

The central authority may postpone the transmission of the original material if that material is required for proceedings in [COUNTRY]. In this circumstance, certified copies of the documents or records will be provided pending transmission of the original. If the executing/competent authority requires all material returned to it once no longer required, the central authority should affirmatively state so.

Documents and other materials transmitted shall be duly authenticated under the laws of [COUNTRY]. If additional procedures are required for authentication, the requesting country should make that known in the initial request.

Below is an outline for some of the specific requirements for commonly sought documentary productions.

#### A. Banking Evidence

##### Information to be included in a request for banking evidence

- ✓ Name of the financial institution and the address of the branch where the account is held (if known).
- ✓ Name of the account holder.
- ✓ Number of the account (e.g., account number, sort code, IBAN number, credit card number).
- ✓ Grounds for believing that the named financial institution holds account(s).
- ✓ Specific documents required (e.g., account opening information, bank statements, etc.) and their relevance to the investigation.
- ✓ The time period over which the information is sought (an explanation must be given for any period that falls outside the time framework for the investigation).

Please be aware that bank policies typically require that account records be retained for five years.

#### B. Subscriber, Traffic and Content Data (“Computers Data”)

- **Subscriber Data** means any computer data, collected in the normal course of business by a service provider, pertaining to the name, date of birth, postal or geographic address, billing and payment data, device identifiers, telephone number or email address, which can serve to identify the subscriber or customer, as well as the type of service provided and the duration of the contract with the service provider.
- **Traffic Data** means any computer data collected in the normal course of business by a service provider, related to: a) the type of service provided and its duration where it concerns technical data and data identifying related technical measures or interfaces used by or provided to the subscriber or customer, and data related to the validation of the use of the service, excluding passwords or other authentication means used instead of a password, that are provided by a user, or created at the request of a user; b) the commencement and termination of a user access session to a service, such as the date and time of use, or the log on to, and log out from the service; and c) communications metadata as processed in an electronic communications network for the purposes of

transmitting, distributing or exchanging content data, including data used to trace and identify the source and destination of a communication, data on the location of the terminal equipment used in the context of providing communications services, and the date, time, duration and the type of communication.

- **Content Data** means any computer data relating to a communication by means of a computer system concerning the substance or purport of that communication, such as text, voice, images and sound. Requests for communication content require a court order in [COUNTRY].
- **Electronic Evidence** means any data or information generated, stored, transmitted or otherwise processed in electronic form that may be used to prove or disprove a fact in legal proceedings.

#### Information to be included in a request for stored computer data

- ✓ The type of data or content required (e.g., subscription details, incoming calls, outgoing calls, IP address, message content).
- ✓ An explanation as to why the time periods of the data requested are required.
- ✓ Why the data request is necessary to the investigation. This must include the offence under investigation, how the specific person is linked to the investigation and how the data requested links to the offence and the person specified, and the identity and reliability of the source of the information
- ✓ Why the request is proportionate to the investigation (e.g., what it is expected to show and how the data or content will be used).
- ✓ The exact date, time, and place of the incident under investigation.
- ✓ Full details of the individuals involved in the incident and the roles they played.
- ✓ Why the objectives of the investigation cannot be achieved by other means.
- ✓ Indication of whether the privacy of any individual not under investigation will be infringed and why the circumstances of the case justify such an intrusion.
- ✓ A statement that a request for production of the data will follow.

Service providers<sup>1</sup> in [COUNTRY] normally retain IP data for between XX days and XX months. Billing and communications data (cell site) is held for XX months for pay as you go phones and up to XX years for contract phones.

**Commented [A11]:** To be filled out based on each ICGLR Member State's regulations.

#### Preservation Request for Computer Data

In order to prevent computer data from being deleted or its format or condition changed, it is possible to request its immediate preservation pending the issuance and execution of an MLA request.

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<sup>1</sup> **Service providers** means any person, or public or private entity, that provides to users of its service the ability to communicate by means of a computer system, or otherwise facilitates communication over an electronic communications network; and any other person, or public or private entity, that stores or otherwise processes computer data on behalf of such service or users of such service.

The request for preservation deals simply with freezing the data in its current state and will not allow the immediate disclosure of information without the relevant information being sought through the formal MLA channels.

A request for preservation can be made in [COUNTRY] via:

- The service provider (direct).
- Law enforcement cooperation.
- MLA request.

Due to the time it often takes to draft and process MLA requests and thereby the risk that the data may have altered, deleted or destroyed by the time the MLA request has been processed, requesting authorities are encouraged to seek the preservation of data directly to the service provider or on a law enforcement cooperation basis.

#### Information to be included in a request for preservation of computer data

- ✓ Confirmation of the legal authority for making the request.
- ✓ A brief description of the conduct under investigation.
- ✓ Account identifier information.
- ✓ A description of the computer data to be preserved, including time periods of data required.
- ✓ An explication of why the preservation of data is necessary and proportionate to the investigation.
- ✓ An express request for notification of the expiry date of the preservation order and the reference number of the preservation request.
- ✓ An express statement that the user is not to be notified of the request.

#### C. Criminal or Judicial Records

Requests for criminal and judicial records can be obtained in [COUNTRY] on a law enforcement cooperation basis or via the formal MLA channels. Requests for court records can also be made directly to the relevant court.

#### Information to be included in a request for criminal or judicial records

- ✓ The defendant's personal details.
- ✓ Indication of whether or not the defendant was represented (if known).
- ✓ Specify records sought and why they are relevant to the investigation.
- ✓ The name and contact details of the person or authority designated to be responsible for and have custody of the record.
- ✓ Type of offence.
- ✓ Dates relevant to the case, including the date of the hearing, the date of conviction, and the date of sentence.



#### D. Company Records

It is recommended that, prior to asking [COUNTRY] for assistance in obtaining records relating to a corporation or other business entity, the requesting country consider conducting open-source Internet searches and also seeking assistance on a law enforcement cooperation basis.

#### III. Lending of Exhibits

In some circumstances, an exhibit which has been admitted into evidence before a court in [COUNTRY], may be lent to a requesting state. A request for this type of loan is assessed on a case-by-case basis, taking into account the [COUNTRY] domestic legislation and the type of exhibit requesting to be lent.

##### Information to be included in a request for lending of exhibits

- ✓ A description of the exhibit requested to be lent.
- ✓ A designated person or class of persons to whom the exhibit is sought to be given.
- ✓ Reasons for the request.
- ✓ A description of any tests to be performed on the exhibit and a statement of the location where the tests will be performed.
- ✓ The place or places to which the exhibit is sought to be moved.
- ✓ The period of time at or before the expiration of which the exhibit is to be returned.
- ✓ An express assurance that the exhibit will be returned in the same condition it was received.

Upon lending an exhibit, the central authority shall notify the requesting country of a description of the exhibit, the authorisation of any tests to be performed, as well as a statement of the place of testing and the period of time within which the exhibit must be returned.

#### IV. Examination of Witnesses, Suspects or Victims

The central authority can also provide assistance with taking a statement from a witness, suspect or victim (hereinafter “persons”) or obtaining evidence from persons in court/under oath.

If the requesting country’s legal system does not require the evidence to be taken in court/under oath, the request should ask for the evidence to be obtained from the person(s) as a statement. This can also be made on a law enforcement cooperation basis should the requesting country’s legal system allow this.

Under [COUNTRY] law, any individual from whom a statement is requested can be compelled to attend court but may exercise the right against self- incrimination and remain silent.

##### Information to be included in a request for examination of a person

- ✓ The name, address, or official designation of the person(s) to be examined. It helps to make reference to information in identification documents, such as passports.

- ✓ Basis of the examination, i.e., the nexus between the person(s) and the criminal matter alleged.
- ✓ The status of the person(s) in the investigation or proceedings in the requesting country.
- ✓ Desired method of examination (oral or in writing).
- ✓ Desired method of administration (under oath, voluntary police statement or upon solemn affirmation).
- ✓ If the evidence is required to be taken in court, explain why it is necessary and why it cannot be obtained as a statement.
- ✓ List of questions to be asked.
- ✓ Any law of the requesting country as to privilege or exemption from giving evidence which may be relevant to the request, including any caution or formal notification of rights which should be given to the person(s).
- ✓ Details of any special procedural requirements as to the manner of taking evidence relevant to its admissibility in the requesting country.
- ✓ Any language requirements of the person(s) in question, if any.
- ✓ Any other relevant information, including details of special needs for persons with disabilities.

If the request for the statement of another person relates to an investigation or court case in which a person has already been accused, the requesting country may seek permission, so far as [COUNTRY] law permits, for the accused person or his/her legal representative to attend the examination of a witness or victim and ask them questions.

#### V. Hearings Via Video Conference/Link (or Other Technological Means)

The [COUNTRY] central authority can make appropriate arrangements for persons to provide evidence via video link, telephone conference or other means of technology.

Such requests are considered on a case-by-case basis, taking into account [COUNTRY] domestic legislation, the seriousness of the offence, the required technical means available to carry out the hearing and the resources available to provide the assistance.

It is best practice to give a minimum of **eight weeks' notice** prior to the date the evidence should be heard.

#### Information to be included in a request for evidence via video conference/link (or other technological means)

- ✓ A proposed date and time that the evidence should be heard and the length of time that the person(s) is required.
- ✓ Details of who will be conducting the hearing in the requesting country.
- ✓ Details of a point of contact in the requesting authority who can be contacted at short notice to provide technical assistance if needed.

- ✓ Sufficient information to enable the central authority to identify and contact the person(s), such as name and physical address.
- ✓ Indication that the person(s) has already confirmed their willingness to cooperate.
- ✓ Language of the witness, if known.
- ✓ Details of any particular procedural requirements to be followed in taking the evidence, including any rules on privilege which a person may be entitled to claim.
- ✓ Any caution or formal notification of rights that should be given to the person(s) under the law of the requesting country.
- ✓ Details (if known at the time) of the technical requirements for establishing the link to ensure compatibility.
- ✓ A proposed time and date for a “test run” of the live link.

Requesting countries are encouraged to contact the [COUNTRY] central authority in advance to identify any costs that will be incurred in facilitating the live link.

#### **VI. Attendance of Witnesses in the Requesting Country**

Upon request, the [COUNTRY] central authority can make appropriate arrangements to facilitate the personal appearance of a willing witness in criminal proceedings or to assist in an investigation in a requesting country.

Such a request must typically be received by the central authority **at least 30 days prior to the scheduled date of appearance**. In case of justified urgency, a request may be accepted in less than 30 days.

#### **Information to be included in a request for attendance of a witness in the requesting country**

- ✓ Confirmation of the date when the appearance is required.
- ✓ Sufficient information to enable the central authority to identify and contact the witness(es), such as name and physical address.
- ✓ Confirmation of the purpose of the appearance and link between the witness(es) and the criminal proceedings or offence under investigation.
- ✓ An explanation of why personal appearance is required and confirmation that the witness(es) has expressed their willingness to attend.
- ✓ Express confirmation that the witness(es) shall not: a) be detained, prosecuted, or punished for any offence; b) be subjected to any civil suit; or c) be required to give evidence in any proceedings in the requesting country other than the proceedings to which the request relates.
- ✓ The details of travelling, subsistence and other expenses payable by the requesting country in respect of personal appearance of the witness(es).
- ✓ Where appropriate, details of arrangements that have been put in place to ensure the witness(es)' security travelling to and from the requesting country and while in the requesting country.

The central authority shall notify the witness(es) in accordance with [COUNTRY] law and the response of the witness(es) will be communicated to the requesting country. No witness shall be subject to penalty or measure of compulsion for refusal to appear or testify, whether required to attend under summons or not, and whether under [COUNTRY] law or the laws of the requesting country.

## VII. Search and Seizure

### A. Ordinary Search and Seizure

Requests for search and seizure require **dual criminality**. [COUNTRY] can execute a foreign search warrant on behalf of a requesting authority provided it otherwise meets the procedural and legal requirements under [COUNTRY] law. Full details and a certified copy of the search warrant must be provided for [COUNTRY] to respect and execute it.

NOTE that it is not sufficient for a request to be accompanied by a search warrant issued by an authority in the requesting country – this will require a [COUNTRY] court order. The [COUNTRY] central authority does not have the authority to issue warrants itself, so it must be in a position to request a [COUNTRY] court to issue a search warrant.

Requesting authorities are encouraged to communicate with the [COUNTRY] central authority and, if possible, to submit a draft request, **prior** to sending a request for search and seizure. Requesting authorities should also bear in mind that providing this type of assistance will probably require more time than other more common requests.

If a lesser measure can be used to obtain the same evidence, [COUNTRY] central authority will invite the requesting country to reconsider its position in writing. It is important that any revised requests/measures be made in writing

#### Information to be included in a request for search and seizure

- ✓ A full description of the criminal conduct concerned.
- ✓ The full address/addresses, or a precise description of any place to be searched.
- ✓ Where applicable, a copy of any search warrant(s) or other relevant court orders already issued in the requesting country, duly authenticated a judge, magistrate, or officer of the relevant court of the requesting country, or by an official of the requesting authority. If no court orders have been issued, this should be clearly stated.
- ✓ A full explanation as to the location from which the specific material or type of material is expected to be recovered, such as within the house, garage premises, etc.
- ✓ Details of how the place to be searched is connected with the case/suspected person.
- ✓ Full details of the specific material or type of material to be seized (it will not usually be sufficient to simply state “evidence relevant to the investigation”) and any information available which indicates that the material requested may be held on a computer.
- ✓ Why the material requested is considered both relevant and important to the investigation or proceedings.
- ✓ Why the evidence is thought to be on the particular premises or in the possession of the particular person concerned.

- ✓ Why the material would not be produced to a [COUNTRY] court if the natural or legal person holding the material were ordered to do so by means of a witness summons or court order.
- ✓ Appropriate arrangements for the safekeeping and return of any seized evidence.
- ✓ Whether it is anticipated that law enforcement officers may come across 'special procedure' or legally privileged material during the course of the search.
- ✓ Details of any officials from the requesting country who wish to participate in the search and why their presence is necessary (note – it is desirable that officers from the requesting country be involved in the search where possible).
- ✓ Any other information which would be of operational use to the executing/competent authority in connection with the execution of the request.

The executing/competent authority (usually the police) will certify the result of any search, the place and circumstances of any seizure, the custody of any item seized and other relevant information.

#### **B. Search and Seizure of Computer Systems**

- **Computer system** means any device or group of interconnected or related devices, one or more of which, pursuant to a programme or other software, stores, transmits or otherwise processes computer data.

Under [COUNTRY] law, computer systems located in [COUNTRY], or images of them will not normally be provided directly to a requesting country. This includes smartphones and other storage media, as such devices will always contain material which was not covered by the original warrant. Upon seizure, these devices are examined by [COUNTRY] police officers, who will ensure that the material was included in the original warrant and does not contain material which is legally privileged. Following a search of the material by the [COUNTRY] police, it may be necessary for officers from the requesting country to visit [COUNTRY] to be involved in the examination.

#### **VIII. Interception of Communications**

[COUNTRY] can in certain circumstances provide MLA in the **interception of communications or postal items**. A request for interception of communications may comprise assistance to: a) intercept and immediately transmit to the requesting country the content of the communication or b) intercept, record, and subsequently transmit to the requesting country the content of the communication.

International requests for assistance in the interception of communications or postal items can **only** be made where: a) the crime is of a serious nature; and b) it appears to [COUNTRY] that there are grounds to suspect that the information obtained will contain information relevant to the commission of a criminal offence in [COUNTRY].

Notwithstanding the general grounds for refusal listed in Section 2, Paragraph XII, [COUNTRY] may refuse a request for assistance for interception of communications or postal items and shall be under no obligation to inform the requesting country of the reasons for such refusal.

### A. Interception of Telecommunications

A request may be made in relation to the use of means of telecommunications by the subject of the interception if:

1. The subject is present in [COUNTRY] and the requesting country needs technical assistance from [COUNTRY] to intercept communication;
2. The subject is in [COUNTRY] and the requesting country's communication is capable of being intercepted; and/or
3. The subject is in a third country and the requesting country needs technical assistance from [COUNTRY] to intercept. In such cases, the request must include proof of the subject's presence in a third country and proof that the third country has been informed accordingly.

#### Information to be included in a request for interception of telecommunications

- ✓ The name and contact details of the authority making the request.
- ✓ Confirmation that a lawful interception order or warrant has been issued in connection with a criminal investigation in the requesting country, if such an order or warrant is required by law.
- ✓ Information for the purpose of identifying the subject of the requested interception.
- ✓ Information as to the location of the subject.
- ✓ The desired duration of the interception.
- ✓ If possible, the provision of sufficient technical data, in particular the relevant network connection number, telecommunications address or service identifier, to ensure that the request can be executed.
- ✓ The type of telecommunications proposed to be intercepted.
- ✓ Assurance that the intercept produced will be handled in accordance with any restrictions imposed.
- ✓ The requesting country's preference as to the form of assistance to be provided by [COUNTRY], being either: a) the interception and immediate transmission to the requesting country of telecommunications, or b) the interception, recording and subsequent transmission to the requesting country of telecommunications.

### B. Interception of Postal Items

A request may be made to [COUNTRY] for the interception of a postal item during the course of its carriage by a postal service and subsequent transmission to the requesting country of the postal item or where appropriate a copy or record thereof.

#### Information to be included in a request for interception of postal items

- ✓ Sufficient information to allow [COUNTRY] to identify the item, the course of transit, anticipated delivery time, and the courier (if applicable).
- ✓ Any explanation of how the item is linked to a criminal investigation in the requesting country.

## IX. Requests for Restraint or Confiscation of Proceeds of Crime

All requests for the restraint (also referred to as “freezing” or “seizure”) and confiscation (also referred to as “forfeiture”) of assets require **dual criminality**.

Before making a request under this Section, the following should be completed so that the relevant information is included in your letter of request.

### *Before making a request for restraint or confiscation of assets*

- ✓ Use law enforcement cooperation through the [COUNTRY AGENCY/IES] to **identify and trace assets** in [COUNTRY]; and
- ✓ Use, as necessary, MLA to **obtain evidence** of assets in [COUNTRY].

Once this information has been obtained a request for restraint or confiscation can be made.

#### **A. Request for Restraint of Assets**

The purpose of a request to restrain assets is to preserve the value of the asset located in [COUNTRY] for later confiscation/forfeiture.

An order restraining deals with the property in respect of which there is reasonable grounds to believe that it has been derived or obtained, directly or indirectly from, or used in, or in connection with, the commission of a serious offence.

### **Information to be included in a request to restrain assets**

- ✓ Details of the ongoing criminal investigation or proceedings into a serious offence in the requesting country and confirmation that a charging decision has been made
- ✓ Where applicable, details of any court orders already made in the requesting country against the suspect in respect of their property and a duly authenticated copy of that order certified by a person in their capacity as a judge, magistrate, or officer of the relevant court of the requesting country, or by an official of the requesting authority. If no court orders have been made, this should be clearly stated.
- ✓ The material facts of the case – including any defence or explanation put forward by the defendant/suspect.
- ✓ If known, details on the source of funding, direct and indirect acquisition, and chain of handling of the property.
- ✓ If known, details of third-party interest, how it was acquired and the extent of third-party interest.
- ✓ Why there is reasonable cause to believe that the defendant/accused named in the request has benefited (by obtaining money or other property) from his/her criminal conduct.
- ✓ Why there are reasonable grounds to believe that the property may be needed to satisfy an external order which has been, or which may be made.
- ✓ Why the order is necessary. Include an explanation that will enable the court to consider whether there is a real risk that the identified property will be dissipated if no order is made.

- ✓ The name, address, nationality, date and place of birth and present location of the suspect(s) or defendant(s) whose criminal conduct has given rise to anticipated confiscation proceedings.
- ✓ Details of the property to be restrained in [COUNTRY], the persons holding it and the link between the suspect and the property. This is important if the property to be frozen is held in the name of a third party, such as a company or another person.
- ✓ Whether prior assistance in the case (including asset tracing assistance) has been provided and, if so, details of the [COUNTRY AGENCY/IES] involved, and details of the assistance already received. If assistance has not previously been sought or provided, this should be clearly stated.
- ✓ If possible, brief details of all known property held by the suspect(s)/defendant(s) outside [COUNTRY].
- ✓ State clearly that property in [COUNTRY] must be restrained because there are insufficient property/assets elsewhere. If there are property/assets located elsewhere but these cannot be restrained, this must be clearly stated by the requesting authority.

Without the above information, a court will be unable to grant an order to effectively restrain assets or register an order to confiscate assets to allow it to be enforced.

**It is not essential that an order is made domestically before you can ask [COUNTRY] to restrain assets.**

#### **B. Request for Confiscation of Assets**

**Confiscation** is the registering and enforcing of the requesting country's order against assets in [COUNTRY].

An order to confiscate deals with property derived or obtained directly or indirectly from or used in or in connection with the commission of a serious offence.

#### **Information to be included in a request to confiscate assets**

- ✓ Confirmation that the person named in the order is convicted and no appeal is outstanding in respect of that conviction.
- ✓ Confirmation that a confiscation order is in force and is not subject to appeal.
- ✓ The original or duly authenticated copy of the order must be provided with the request.
- ✓ All or a certain amount of the sum payable under the order remains unpaid in the territory of the requesting country or that other property recoverable under the order remains unrecovered there.
- ✓ The order has the purpose of recovering property, or the value of property, received in connection with the commission of a crime.
- ✓ The order made can be enforced outside the jurisdiction of the requesting country.
- ✓ The material facts of the case, including any defence or explanation put forward by the defendant/suspect. Including, if applicable, any facts that have come to light after the restraint order was made.



- ✓ The name, address, nationality, date and place of birth and present location of the suspect(s) or defendant(s) whose criminal conduct has given rise to the confiscation proceedings.
- ✓ Details of the property to be confiscated/seized in [COUNTRY], the persons holding it and the link between the suspect and the property. This is important if the property to be confiscated is held in the name of a third party, such as a company or another person.
- ✓ Whether prior assistance in the case (including asset tracing assistance) has been provided and, if so, details of the [COUNTRY] authorities involved, and details of the assistance already received. If assistance has not previously been sought or provided, this should be clearly stated.
- ✓ Details of all court orders already made in the requesting country against the suspect in respect of their property and a duly authenticated copy of that order certified by a person in their capacity as a judge, magistrate, or officer of the relevant court of the requesting country, or by an official of the requesting authority. If possible, brief details of all known property held by the suspect(s)/defendant(s) outside [COUNTRY].

### C. Requests for Non-Conviction Based/Civil Recovery

Where a conviction is not possible, [COUNTRY] is able to provide assistance in restraining and recovering assets on a non-conviction basis. Although there does not have to be a criminal investigation or conviction, the criminal conduct underlying the recovery of the property must have constituted/would constitute an offence in [COUNTRY].

This must be done via the formal mutual legal assistance and cannot be done via the law enforcement channels. The requesting authority is strongly encouraged to contact the [COUNTRY] central authority where such a request requires to be made.

### X. Temporary Transfer of Prisoners

A [COUNTRY] prisoner can be *temporarily* transferred abroad for the purpose of assisting with a foreign criminal investigation or to appear as a witness before a court exercising jurisdiction in the requesting country. Prisoners cannot be transferred from [COUNTRY] without their consent in writing and shall not be liable to any penalty or measure of compulsion if they do not consent to the transfer.

#### Information to be included in a request for the temporary transfer of prisoners

- ✓ Sufficient information to enable the central authority to identify the person in custody, such as name and place of confinement.
- ✓ The place to which the person in custody is sought to be transferred.
- ✓ The subject matter relevant to the person's attendance.
- ✓ The reasons why the person is required.
- ✓ Dates on which the presence abroad of the prisoner is required, including the dates on which the court or other proceedings for which the prisoner is required will commence and are likely to be concluded.

- ✓ Where appropriate, confirmation that arrangements have been made to ensure the person's security whilst travelling to and from the requesting country and while the person is in the requesting country.
- ✓ Where appropriate, details of travelling and other expenses payable by the requesting country in respect of the person's attendance.
- ✓ Confirmation that the prisoner has consented to temporary transfer.
- ✓ Details of the type of secure accommodation in which the prisoner will be held in the requesting country.
- ✓ Details of the escort available in the requesting country to and from the secure accommodation.
- ✓ Assurance that the transfer is temporary and that [COUNTRY] will not be required to seek the extradition of the person to have them returned to [COUNTRY].

Notwithstanding the consent of the person in custody, [COUNTRY] may refuse to accept a request for that person's transfer and shall be under no obligation to inform the requesting country of the reasons for such refusal.

The transfer of a prisoner in [COUNTRY] to the requesting country is temporary. The obligation to return the person to [COUNTRY] continues even if the person is a national of the requesting country, unless there is prior agreement between [COUNTRY], the requesting country and the person.

We encourage requesting countries to contact the [COUNTRY] central authority in advance to identify any costs associated with escorting and accommodating prisoners from their point of departure from [COUNTRY] to their point of return to [COUNTRY].

#### **Section 4: Additional Resources**

- National Mutual Legal Assistance Act
- Template on How to Draft a Mutual Legal Assistance Request for [COUNTRY]
- Any other relevant national or international legislation.
- List of [COUNTRY] Focal Points in regional/international networks for judicial co-operation.
- Flowchart(s) on the lifecycle of incoming MLA requests that can also explain the distribution of tasks and responsibilities between all the different national agencies involved.

**Commented [A12]:** Resources to be added to the website of the central authority and/or Ministry of Justice.

