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Recommendations on the draft Law on International Cooperation of Armenia

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Disclaimer

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1 Introduction

The purpose of the Cybercrime@EAP II Project is to support criminal justice institutions in the Eastern Partnership states to strengthen their capacities in relation to cybercrime and the obtaining of electronic evidence. In this context, the Ministry of Justice of Armenia asked the project to support the development of new national legislation on international cooperation incorporating mutual legal assistance and other forms of cooperation. To facilitate this request, a workshop was held in Yerevan on 19th and 20th September 2017 which allowed Council of Europe experts Catherine Smith, Rajka Vlahovic and Zahid Jamil to discuss the details of the draft with Cybercrime Programme Office representatives, the Armenian country project team and other stakeholders representing relevant Armenian authorities. Details of these discussions follow below under parts 2 and 3.

The work carried out during this mission complements earlier work, done under Cybercrime@EAP projects in Armenia, specifically "*Suggestions for draft amendments to procedural legislation of Armenia concerning cybercrime and electronic evidence*" (report of 28 May 2017)".

2 Preliminary observations by Armenian counterparts and Council of Europe experts

On the first day of the workshop, experts presented on various aspects of international cooperation both under the Budapest Convention and other formal and informal processes. These presentations set the scene for discussions on the draft Law of the Republic of Armenia on Legal Assistance in Criminal Matters. Armenian counterparts opened discussions by confirming that the draft Criminal Procedure Code (CPC) is currently being revised to address the proposals referred to above and that that these amendments are in the final stages of drafting with relevant text in the process of being agreed.

It is proposed that the amendments to the draft Legal Assistance in Criminal Matters Bill (Legal Assistance Bill) be presented for government approval on 2nd October 2017, with submission to parliament to follow thereafter. The Ministry of Justice advised that regardless of timing of passage of the Bills, it was the intention that both Bills would commence at the same time. This is specifically addressed in the Article 80 Transitional provisions of the Legal Assistance Bill.

The Legal Assistance law is intended to cover all forms of international cooperation, including not only mutual legal assistance but also extradition and other form of cooperation such as transfer of prisoners and transfer of proceedings which are included within international treaties to which Armenia is party but have never been regulated in Armenian national legislation. The Ministry of Justice advised that it is proposed to have all procedural powers within the draft CPC rather than splitting domestic and international powers across both draft laws.

The experts confirmed that comments would be confined to Chapters 1 (general provisions) and 2 (execution of requests for legal assistance in criminal matters), being Articles 1 to 19 of the draft Legal Assistance law in respect of which the following general observations were made:

- It was noted by the Experts that the draft law lacks procedural measures required to implement requests for assistance from foreign states and specifically the procedural powers under Articles 29 – 31 and 33 of the Budapest Convention,

- the draft law's definitions did not address some significant definitions, specifically definitions of electronic evidence, stored computer data or data types defined in the Budapest Convention (Article 1 Budapest Convention)
- the draft definitions and procedures relating to incoming and outgoing requests for mutual assistance were combined within the same sections and subsections. As a matter of good drafting practice, it is preferable for these to be in separate subparagraphs, in addition foreign states will seek to review the specific provisions relevant to their applications.
- the draft law lacks a specific structure for expedited preservation which is required by Articles 29 and 31 of the Budapest Convention,
- the significance of consultation between requested and requesting states to achieve the "widest extent possible" cooperation required by the Budapest Convention and other treaties is not reflected in the draft law,
- some language used in the draft law for example requiring that foreign states "shall" carry out certain actions should be softened.
- the draft law does not clearly address the confidentiality of information disclosed under the mutual assistance processes, nor is it clear that Armenia may place limitations on the use of information disclosed to a foreign state.
- If it is proposed that all mutual assistance procedural powers will be undertaken pursuant to the draft CPC, the draft legal assistance law requires an enabling provision to ensure that the Competent Authority may require the Central body or other appropriate authority to seek approval for and undertake procedural or coercive powers in support of a request of a foreign state.
- The grounds for refusal of an application from a foreign state are unclear and lack aspects of dual criminality, political offence or connected with a political offence (Article 27(4) Budapest Convention)

3 Discussions, comments and recommendations proposed by the experts per Article

3.1 Article 1 - Relations regulated by the law

Article 1 (1) states that this law "*regulates procedure and conditions for international cooperation in the case of international agreements ratified by the Republic of Armenia or in case of lack thereof or in case of issues not regulated in international agreements ..*".

- The paragraph lacks a full explanation of what is intended to be achieved by the law.
- As noted above and despite the reference to the regulation of procedure, the law does not contain procedural powers necessary to give effect to requests for assistance pursuant to the Budapest Convention; these aspects are further discussed in relation to Article 2 below.
- The Experts specifically questioned whether it was proposed to cover the Budapest Convention in Article 1, or whether there would be a reliance of Article 27 of the Budapest Convention, where there was an absence of a specific treaty. The Experts raised this concern as it appeared that Articles 18 and 19 of the draft law could be conceived to be inconsistent with Article 27 of the Budapest Convention which obliges parties to apply certain mutual legal assistance procedures and conditions where there is no applicable treaty or arrangement in force. Armenian counterparts confirmed that the, Budapest Convention is understood to constitute an *international agreement* within the meaning of Article 1(1) and as such the law would implement the requirements of that Convention as well as other international treaties. ,.

Recommendation

The inclusion of an objects clause to replace or enhance Article 1(1) is recommended. An objects clause will provide clarity to the reader of the purpose of the draft law. Such a clause may state:

The objects of this Act are:

- (a) to regulate the provision by the Republic of Armenia of international assistance in criminal matters when a foreign state makes a request pursuant to an international agreement ratified by the Republic of Armenia, and
- (b) to facilitate the provision by the Republic of Armenia of international assistance in criminal matters as determined by international agreements ratified by the Republic of Armenia, and
- (c) In the absence of an international agreement or in the case of matters not regulated under agreements to regulate the provision by the Republic of Armenia of international assistance in criminal matters, and
- (c) to facilitate the obtaining by the Republic of Armenia of international assistance in criminal matters, and

Article 1 (2) provides a list of actions (ending with the word etc.) which constitute legal assistance for the purposes of the law, however,

- the paragraph does not refer to definitions of electronic evidence or other data types such as traffic data or procedural measures such as preservation, seizure of computer data or production order,
- the use of *etc.* at the end of the list of actions is understood to be included to make the list non-exhaustive.

Recommendation

It is recommended that this paragraph be redrafted to make is clear that it is not technically specific and implements the requirements of the Budapest Convention in relation to electronic evidence.

If it is preferable to have a comprehensive list in the law (and this is understood to be the case) then the list must reflect proposed amendments to the Code for Criminal Procedure made by Council of Europe experts in respect of definitions of evidence to include electronic evidence, categories of data and procedural measures, detailed in the Council of Europe report of 28th May 2017 and referred to under paragraph 1 above.

And in addition:

if it is intended that the list should be non- exhaustive beyond the current list and amendments referred to in the above paragraph concerning electronic evidence, data types and procedural measures based on the Budapest Convention then the word *etc.* should be replaced by an amendment to the first line of paragraph 1 (2) stating that legal assistance in criminal matters within the scope of the law *includes but is not limited to*

In the alternative, a better approach may be to remove the exhaustive list and have a much-shortened paragraph that may state:

2 Legal Assistance in criminal matters within the scope of this law covers:

- (a) requests for legal assistance which provide the taking of physical and electronic evidence, or the production of any document or other article, for the purposes of an investigation or proceeding concerning criminal offences in the foreign country;
- (b) the issue of procedural powers and the seizure of a thing relevant to a proceeding or investigation in the foreign country. e

- (c) Extradition, including temporary extradition;
- (d) Other forms of cooperation etc (*as currently drafted*)

Article 1 (3) limits the scope of application of the law to criminal matters by stating that legal assistance is implemented with respect to (a) crimes which are (b) criminally punishable at the time of the sending of the request in the requesting and requested states consider the exceptions specified in international agreements.

Armenian counterparts confirmed that this paragraph was intended to deal with the scope of the law as well as the related question of dual criminality (a detailed examination of the elements of the offence(s) being the subject of cooperation as a condition of providing cooperation). Experts noted that the reference to exceptions in paragraph 1 (3) appeared to cover the requirements of the Budapest convention to restrict application of dual criminality with respect to preservation requests (Article 29 (4)).

Recommendation

If not already done so and in the interests of transparency towards other states, the Armenian authorities could clarify within their online resource on the Octopus section of the Council of Europe Cybercrime website how dual criminality is applied and assessed in international cooperation more generally, by referring to existing declarations in this respect, for example made to other Council of Europe Conventions.

Article 1 (4) states that data sharing between Armenia and other states is conducted based on "the scope of international agreements".

- It was noted that there is no reference in this paragraph to national law.

Recommendation

In the interests of transparency, it would be desirable if relevant national laws dealing with data sharing/protection could also be specifically referenced in this paragraph. If not already done so, it would be relevant to refer to relevant agreements and national laws within the online resource as above.

Article 1 (5) provides for the exchange of certain categories of information between the competent bodies of Armenia and foreign states in the context of legal assistance.

- It was established that this paragraph deals with information rather than evidence and that the use of "*classified information*" was a reference to the secret information as defined in national law.
- It is noted that the paragraph may be read down as only applying to the specific legislation references, rather than more broadly all classified information in national law
- The paragraph does not make clear the limitations on the exchange of information.

Recommendation

It is recommended that the paragraph be reviewed to satisfy the drafters that all relevant laws are covered, for example is Armenia's State Secrets legislation included in this provision? In addition, consideration may be given to the limitations on the use of information provided as part of any request for classified information.

3.2 Article 2 - Legislation regulating legal assistance in criminal matters

Article 2(1) states that in addition to the Constitution of the Republic of Armenia and international agreements ratified by Armenia, legal assistance in criminal matters is *regulated* by the Criminal Procedure Code, and the (draft) law on legal assistance in criminal matters. In this provision, there is an absence of a reference to covering assistance where there is no agreement.

- As stated above the draft law does not include procedural powers necessary to implement requests for legal assistance.
- Based on discussions, advice is that relevant procedural powers will be in the draft CPC
- Experts pointed out that there was a choice here either to provide a specific link to the relevant powers in the draft CPC through an appropriate enabling provision or to reproduce an international equivalent of the powers appearing in the Code within this law.
- Working methods and requirements for judges and other authorities responsible for implementing requests for legal assistance should be considered when making the decision to either link this law to the Criminal Procedure Code, or alternatively to include the powers in this law. For example, judges may prefer the convenience of one piece of legislation namely the CPC rather than two laws. On the other hand, it may assist transparency towards authorities from foreign states seeking legal assistance from Armenia, if all relevant procedural powers were included in one law on international cooperation.

Recommendation

If the procedural powers in the CPC are to be relied upon then the following enabling provision should be used to link to the two pieces of legislation. An example of a provision is:

If a request from a foreign State is made for assistance under mutual legal assistance, the Competent Authority may, if satisfied the request relates to a criminal investigation or proceeding involving an offence which, if it had occurred in the Republic of Armenia, would have constituted a serious offence, may grant the request in the for:

- a. procedural powers under the Criminal Procedures Code;
- b. seize anything found during a search under paragraph (a);
- c. have evidence taken, or documents or other articles produced in evidence in the foreign State;
- d. provide any other form of assistance in any investigation commenced or proceeding instituted in the Republic of Armenia, that involves or is likely to involve the exercise of a coercive power over a person or property to which the request relates.

Details of the relevant requirements of procedural requirement of both the draft CPC and international assistance law should be included in the online resource (as referred to above) in the interests of transparency towards bodies of foreign states considering requesting assistance from Armenia.

3.3 Article 3 - The objectives of this law

This provision is an object clause to explain that the law will cover the investigation of serious and organised crime in cooperation with foreign states. As the provision does not serve a purpose for interpreting the law it would be useful to combine with Article 1.1 above.

Recommendation

The objectives stated in Article 3 should be moved to the beginning of the law and combined with Article 1. It should also be confirmed that the drafter is satisfied that the current wording addresses all serious transnational and domestic crime.

3.4 Article 4 - Fundamental principles of legal assistance in criminal matters

This provision states that legal assistance in criminal matters *is based on the principles of international law* including *voluntary cooperation*.

- Discussions clarified that the term voluntary cooperation included provision of spontaneous information for the purposes of the Budapest Convention.

Recommendation

Discretionary provisions on providing spontaneous information appear in the Budapest Convention (Article 26) as well in other Council of Europe and UN instruments. As this is an important provision and aids international cooperation, any guidance or commentary on this law should clarify that provision of spontaneous information is envisaged here. It is important to also ensure the provision allows for Armenia to seek to apply confidentiality and limitations of use to any spontaneous information provided to a foreign state.

3.5 Article 5 - The language of legal assistance

This provision covers acceptable language for requests.

- Discussions here confirmed that Armenia accepts English language requests. The Experts explained the work currently being undertaken by the working group who are considering issues as part of the drafting of a second additional protocol to the Budapest Convention, including consideration of requests being in English. It was noted that there is no binding decision on the use of language but it is appropriate to consider what language is appropriate in Armenia's circumstances. Armenia noted that they prefer many requests in English but do of course accept other languages from neighbouring countries.
- The wording of this article is directed towards the submission of the request by the foreign state; "*The request for legal assistance shall be submitted*"

Recommendation

If English language requests are acceptable it would be helpful if this could be stated here. In addition, rather than referring to the *submission* of the request, this paragraph could focus on the *acceptance* of the request by amending the first sentence of Article 5 to read "*The competent bodies of the Republic of Armenia accept requests for legal assistance in criminal matters in the official language of the state issuing the request or in the English language, unless otherwise stipulated in international agreements ratified by the republic of Armenia*"

If it is considered inappropriate to refer to acceptance of English language requests here, then this fact should be clear (if not already done so) on the online resource for the sake of transparency and for the benefit of foreign states.

3.6 Article 6 - Basic notions used in this law

This provision covers a range of basic concepts underlying the law.

- Paragraphs (a) – (e) were discussed as these had the most bearing on mutual legal assistance as opposed to other forms of legal assistance covered in the law.

- It was noted that these notions were definitional in part
- (b) and (c) It was explained to the Experts that *central body* was the body with the overall coordinating role to facilitate of legal assistance requests and that *competent bodies* either execute or issue requests for legal assistance. Further, central bodies may also become competent bodies where they also execute and/or issue requests which themselves are defined as applications made by these bodies and by corresponding bodies of foreign states.
- (d) the Experts raised concerns with the definition of 'request' as it covered both incoming and outgoing requests for mutual legal assistance
- (e) and (g) Proceedings are referred to *as procedural and other actions for the purpose of legal assistance ...* as well those stipulated in an instruments identified in paragraph (e). Proceedings has a specific meaning in the Budapest convention and is discussed with investigations concerning criminal offences related to computer systems and data.

Recommendation

As a matter of good drafting practice and to provide clarity to foreign states reviewing Armenia's legislation, paragraph (d) which defines two forms of *request* must be divided into two parts to distinguish between requests made by the foreign state and those issued by Armenian central or competent bodies.

The paragraph may be divided as follows:

- (e) A request is:
 - a. an application of the competent body of the foreign state forwarded to central bodies of the Republic of Armenia, or
 - b. the application of the central or competent bodies of the Republic of Armenia forwarded to the competent body of the foreign state for the purpose of providing relevant legal assistance or other activities as specified in this law;

Proceedings should be more widely defined to ensure that they do not exclude the proceedings and investigations envisaged by the Budapest Convention. It is important to note that in some jurisdictions the request for assistance will relate to an investigation as well. Alternatively, it would be worthwhile to include a definition of criminal proceedings to avoid confusion.

As Article 6 provides several important definitions it is worth including other definitions here including but not limited to: electronic evidence, procedural powers, offence or grave crime, preservation, subscriber data and computer data.

3.7 Article 7 - Central bodies coordinating cooperation in legal assistance in criminal matters

This provision identifies the central bodies and discusses how communication with them should be conducted.

- In paragraph 7 (1) it was confirmed by the Armenian counterparts that "*cases in pre-trial procedure*" included cases at investigation stage; it was explained by the experts that the *pre-trial* stage has a specific connotation in common law countries covering cases in which there is a charge, the case is already before the courts and specific pre-trial proceedings are in progress, however, requests are likely to be issued at what may be referred to as the investigation stage in common law countries. The Armenian counterparts confirmed that such cases would be covered in this provision.
- Paragraph 7 (3) covers the situation where a request is transmitted directly to judicial authorities based on Council of Europe instruments which allow direct

transmission, transmission via the Interpol channel in urgent cases and in the situation envisaged by Article 27 (9) which allows for direct transmission on a discretionary basis. Requests transmitted in this way are immediately transferred to the central body for execution (see also discussion on direct transmission under point 4).

Recommendation

There would be a benefit in amending 7(1) (1) to make it beyond doubt that the law applies to investigations as well as pre-trial procedure. In many cases assistance to gain information like expedited disclosure of preserved traffic data will be the first point of the investigation.

Article 7 (3) could benefit in being moved to (2) to follow (1) as these 2 paragraphs are related.

Article 7(2) would benefit from being moved to its own article as it relates to assistance matters that sit beyond specific mutual legal assistance as it envisages assistance like from Interpol.

All relevant transmission requirements are to be made clear within the online resource, if not already done so, to facilitate transparency towards foreign state bodies considering making a request for legal assistance to Armenia.

3.8 Article 8 – Legal assistance in criminal matters by procedure specified in more than international agreement

This provision covers the procedure in event of conflict between applicable international treaties.

- Council of Europe experts queried the level of detail in this Article and questioned whether it could be shortened by referring to the law applicable for resolution of conflicts envisaged. Armenian counterparts agreed that Article 8 included a substantial amount of detail but indicated that this was necessary because different pieces of legislation and activities were relevant in the circumstances enumerated in Article 8. Also, the current level of detail needed to be maintained also to ensure that exceptions in international treaties – rather than the standard requirements of the Criminal Procedure Code - could be applied where relevant.

Recommendation

Consideration should be given to reviewing the provision to ensure that it meets the various requirements and whether instead the provision could be refined to be a jurisdictional provision that is higher level.

3.9 Article 9 – Procedure for execution of requests for legal assistance

This provision covers the procedure *applied* in the execution of requests.

- Discussions concerned the use of the individual terms *judge*, *prosecutor*, and *investigator* in paragraphs 9 (3) and 9 (4) rather than competent bodies referred to in Article 6 (1) (c) of the law which includes the collective term applied to those responsible for the execution of requests. Armenian counterparts indicated that this

was necessary to enable the appropriate procedure to be applied including any exceptions.

- A provision is needed here on expedited cooperation as required by the Budapest Convention in Articles 29 and 31.

Recommendation

The title of Articles 9 and 13, at least in translation is exactly the same although the two articles cover completely different issues. It should therefore be ensured that Article 9 is entitled *Procedure **applied** to execution of requests for legal assistance* meaning the actual procedures deployed on the basis of national law (Code for Criminal Procedure) to implement the request.

In terms of expedited cooperation, a specific sub-paragraph should be added to Article 9 to enable the use of specific powers in the Criminal Procedure Code concerning to preservation, disclosure of traffic data and search and seizure in expedited measure.

3.10 Article 10 – Procedure for establishing communication with respect to legal assistance in criminal matters

This provision covers transmission arrangements in respect of requests for legal assistance.

- Discussions concerned paragraph 10(2) in which there was a translation error. The Armenian counterparts confirmed that the paragraph should read that "*documents obtained by the foreign state shall be delivered to the competent body by the central body*" rather than the other way around.
- In paragraph 10(3) there was no reference to the actual authorities and decision makers concerned in the execution of the request.
- Armenian counterparts confirmed that paragraph 10 (5) concerns requests that are impossible to execute for example where the information concerned does not exist in which case the competent authority would inform the central body who would then be responsible for communicating this fact to the relevant central bodies in the requesting state.
- Armenian counterparts confirmed that in cases where there was a deficiency in the request for example the wrong international instrument was quoted, a consultation would be encouraged with a view to rectifying the deficiency.

Recommendation

It was viewed that Article 10 (1) may sit better in Article 9.

For transparency Article 10 (3) may benefit with identifying the decision maker.

Article 10(4) may benefit from revision to ensure that the information to be forwarded to a foreign state is not limited to a physical document and includes all forms of electronic evidence.

Article 10(5) may benefit from revision to allow for communication prior to a decision to reject the application being made.

With a view to transparency towards authorities of foreign states who may be requesting assistance from Armenia and if not already done so the actual bodies responsible for facilitating the legal assistance process should be identified in the online resource as above.

3.11 Article 11 – Dismissal of requests arising from international agreements

This provision covers requests which are “dismissed” due to the existence of refusal grounds stipulated in international treaties or where the execution of the request is detrimental to the constitutional order, sovereignty, and national security of the republic of Armenia. The Budapest convention provides grounds for refusal of a request. For transparency purposes, there is a benefit in a foreign state who is applying for assistance to understand on what basis that assistance may be refused.

Recommendation

The current Article 11 relies its international agreements for reasons to refuse an application for mutual assistance, there may be value in providing further guidance in the Article on the grounds for refusal. This will avoid any misunderstanding by applicants for assistance and ensure that the grounds of refusal are transparent.

3.12 Article 12 – Summoning a person as a witness, victim, defendant in property disputes, as legal representatives thereof and as an expert to the Republic of Armenia

- Discussions concerned the reference to property disputes in the title to this article; Armenian counterparts confirmed that this is a reference to disputes which are ancillary to criminal matters to which the Code for Criminal Procedure is applicable. It is assumed that the scope of the law set out in Article 1 (3) referred to above “*with respect to cases concerning crimes*” is sufficient to include disputes of this nature.

3.13 Article 13 – Procedure for execution of the request for legal assistance

This provision sets out requirements applicable to execution of legal assistance requests, these are that incoming requests must contain information required by Article 14 subject to exceptions in international treaties 13 (1), that foreign state bodies are contacted to explain if a request is impossible to execute 13 (2), that the procedure of the requesting state may be applied if so requested 13 (3) otherwise the Criminal Procedure Code is applicable in the execution of the request 13 (4), that documents submitted by foreign states are returned pursuant to agreement 13 (5).

- Discussions concerned the use of the word “*shall*” with respect to requests filed by foreign state bodies in 13 (1); the word “*shall*” is often used in treaties to create binding obligations and the use of the word here could be understood as seeking to regulate activities in foreign state bodies when in fact the purpose of the paragraph is to ensure that a request contains the information required in Article 14.
- Attempts should be made to resolve issues arising in respect of requests received rather than just returning them 13 (2).
- It was confirmed that the application of the Criminal Procedure Code in 13 (4) to material provided by the foreign state refers to the treatment of the material during the execution of the request rather than collateral use of the material.

Recommendation

The language in Article 13 would benefit from softening.

Article 13(1) would benefit from the use of the word "should" rather than the word "shall" as it reflects that the requirement here is inclusion of certain information is necessary to ensure the acceptance execution of the request. In addition, there is a benefit in addition the words 'to the extent possible', this provides for situations where the information is not available. Article 13(2) should provide for a level of consultation to facilitate the process

In paragraph 13(4) the words "*for the purpose of executing the request*" should be added to exclude misunderstandings regarding possible collateral use of material. Thus, the paragraph should read "*The competent body of the Republic of Armenia, when executing the request filed by the foreign state's competent body, uses documents, items, materials and evidence for the purpose of executing the request in compliance with the provisions of the Criminal Procedure Code of Armenia.*"

It is acknowledged that Article 13(5) is a safeguard but it may be better to have clear articles to deal specifically with limitations of use and nondisclosure and remove this Article.

3.14 Article 14 – Requirements to the format and content of the request for legal assistance

This provision covers the form and content of a request.

- Comments from the Experts confirmed that it was not unusual to set these requirements although use of precise words and requirements within this Article may make it difficult for foreign state bodies to comply. In finalising Article 14, Armenian counterparts were advised to consider their own position and any difficulties experienced in meeting requirements of other states when making their own requests.

Recommendation

Although the title of the paragraph refers to the *form* of the request, the fact that a request must be in writing is missing from this Article; consider adding the requirement that the request must be in writing in paragraph 14 (1) *the request of the foreign states competent body for legal assistance in the republic of Armenia are to **be in writing and must contain the following*** The word *shall* has been replaced by the word *should* as suggested in Article 13 above.

Paragraph 1 (2) would benefit from redrafting as follows:

(2) description of the offence or nature of the criminal matter for which the request for proceeding or investigation is made.

In relation to 14 (1) (3) it is very difficult to determine a date and place for specific investigation as it may be at the early stages of the investigation but the elements necessary is online.

With regard to paragraphs 14 (1) items 5 and 6 should be requested subject to *availability*. In addition, there would be benefit in adding a provision at the end of 14(1) which provides: (#) any information that may assist to give effect to a request.

Article 14(3) may be possible in many cases but not in others, as a result it may be appropriate to replace 'shall' with 'should'.

Article 15 – Transfer of items

- The experts observed the lack of reference in the Article to electronic evidence, technical devices and material and computers.
- Article 15 (3) refers to the protection of third party rights but does not contain any detail on this.

Recommendation

Article 15 must include electronic and technical material as mentioned above. If Armenia is to provide technical assistance in the real-time collection of traffic data it will be important to ensure that this provision allows for such a transfer without any delay.

More detail on the procedure protecting third party rights is required explaining which procedure is applicable and how it is applied.

NOTE: Articles 16 and 17 were not considered as they are not relevant to the scope of discussions involving compliance with the Budapest Convention.

3.15 Article 18 – Execution of requests for legal assistance in the absence of international agreements

- Armenian counterparts confirmed that this Article is designed to cover the situation where there is no existing treaty in force and the legal basis for any cooperation is to be based on the principle of reciprocity. This Article is not intended to cover the situation envisaged by Article 27 of the Budapest Convention which obliges the parties to apply certain mutual legal assistance procedures and conditions where there is no existing mutual legal assistance treaty or arrangement in force. This is because Article 27 is considered part of an international agreement although it applies in the absence of an existing agreement or arrangement.

3.16 Article 19 - The content of the request for legal assistance based on reciprocity in the absence of an international agreement

- Discussions concerned the need for the requirements set out in paragraph 19 (1) concerning the *seal bearing the coat of arms* however Armenian counterparts maintained that this information is necessary to ensure the legitimacy of a request from an unknown quarter.
- Again, the word *shall* be repeated throughout this Article, it would be preferable if it was replaced by the word *should* for reasons already explained.

Recommendation

Consideration should be given for alternative ways to authenticate the veracity of a country's application in the absence of an international agreement.

4 Additional issues discussed

4.1 Direct transmission

- Armenian counterparts were asked why direct transmission had not been implemented for mutual legal assistance given that Armenia was party to the 2nd Protocol of the 1959 Convention which provides for direct transmission on a

discretionary basis and that it had also been recommended by the Council of Europe to improve the mutual legal assistance process. Armenian counterparts maintained that the role played by central bodies ensures that Armenia 's international obligations are implemented efficiently, fully and comprehensively.

- Further, the central body functions as a repository of expertise and performs a quality assurance role with respect to requests for legal assistance. It was felt that relinquishing this role would damage the quality of requests and efficiency in mutual legal assistance as a whole.
- Finally, the provision in Article 7 (3) of the draft law was given as an example to show that the central authority is aware of the need to act speedily and with immediacy with respect to any directly transmitted requests; Article 7 (3) puts in place a process that requires that such requests are to be forwarded to the central body immediately upon receipt for execution.
- For all these reasons, there are no plans to implement direct transmission in mutual legal assistance.

4.2 Joint investigation teams

- Armenian counterparts noticed during presentations on the subject during the workshop that this form of cooperation was missing from the current draft and that provision to cover this was needed in the draft law.
- It was confirmed that such a provision will be included in Chapter 2 of the law, it will not be a detailed provision but it will allow the creation of these teams.
- It was suggested that that further details be incorporated in the Criminal Procedure Code amendments.

4.3 Consultation

The Experts raised communication as an essential element in supporting the formal mutual legal assistance processes. Communication can take many forms and Armenia should consider what resources they can make available to foreign states to ensure they have an awareness of Armenia's processes. In addition, having procedures in place that allows for preliminary discussions before an application is made or refused is important. The additional processes of 24/7 and Police to Police also complement open communication.