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English only

EUROPEAN COMMITTEE ON CRIME PROBLEMS

(CDPC)

COMMITTEE OF EXPERTS

ON THE OPERATION OF EUROPEAN CONVENTIONS

ON CO-OPERATION IN CRIMINAL MATTERS

(PC-OC)

Draft model request form
proposed by the PC-OC Mod

DRAFT MODEL REQUEST FORM FOR MUTUAL ASSISTANCE IN CRIMINAL MATTERS¹

TITLE OF THE REQUEST WITH MOST IMPORTANT ELEMENTS <i>Indication of Urgency</i>
1. Requesting authority <ul style="list-style-type: none">- Official Title- Address- Contact details: telephone numbers, e-mail addresses- Language
2. Requested authority <ul style="list-style-type: none">- Official Title- Address

¹ This model request form is intended as a guide and a reference only. The requirements may be modified as necessary to meet the requirements of domestic law and practice of Member States

3. Object and reason

- Type and purpose of request
- Legal basis of the request
- Offence
- Description of the stage of criminal proceedings,

Where applicable:

- *Justification of urgency*
 - *Indication of a requirement to be notified about the date/place of the execution of the request as well as on the presence of particular persons with their contact details*
 - *Information on previous communications*
- [- Indication how the requested measures / the evidence sought are linked to the proceedings conducted in the requesting state]

4. Persons concerned

- Name
- Gender
- Nationality
- Address
- Position in Legal Proceedings

Where applicable and available :

- *ID / Passport Number*
- *Alias (excluding experts)*
- *Date / place of birth (excluding experts)*

Information on a Legal person

- Name
- *Where applicable and available*
- *Registration number Address of the seat*
- *Addresses of different branches*
- *Contact details of the person authorised to act on behalf of the company*
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5. Measures requested**A. Letters rogatory*****i. Facts and legal information about the offence***

- Summary of the relevant facts indicating time, place and manner of commission of offence
- Legal qualification of the offence with relevant provisions including the range of penalties applicable
- Clear description of the links between the offence and the person and between the offence and the evidence sought

Where applicable

- *Damage caused by the offence*
- *Information on victims*
- *Where necessary, provisions on lapse of time*
- *Any other additional information which may assist the requested authority in carrying out the request*

ii. Types of measures

a. Hearing of witnesses, experts, suspects, accused persons and other persons : specific modalities

Hearing performed by the requested authority

- Indication of the competent authority which should perform the hearing
- Indication of the status of the person to be heard
- Information on rights and obligations (for instance-hearing under oath/affirmation or the right to be assisted by a lawyer/interpreter?) to be notified to the person to be heard
- List of questions to be asked

Where applicable

- *Indication whether the person to be heard requires protection (including details on possible existing agreements between both Parties on this issue)*

Alternative modalities for a hearing by the requesting authority

Hearing by video conference

- Indication of reasons why it is not desirable or possible to attend in person
- Name of the judicial authority or of the persons conducting the hearing
- Details concerning practical arrangements (technical information on available means, proposals concerning payment of costs, etc.)
- Notification of rights and obligations of the person to be heard

Where applicable

- *Indication of the necessity of an interpreter*
- *Indication of measures to protect the person to be heard*
- *Indication if the suspect or the accused person consents to the hearing*
- *List of questions to be asked*

Hearing by telephone conference

- Indication of the name of judicial authority or the persons who will be conducting the hearing
- Indication that the witness or expert is willing to take part in a hearing by telephone conference

b. Obtaining evidence

b1. General measures

- Identification of items to be provided

Search and seizure

- Type of search: body searches/ house searches/ other premises
- As far as possible, precise identification of the person, or premises to be searched (location, interest for property, bank accounts)
- Identification of documents, records, data, property to be seized

Where applicable

- *[Information relating to bank accounts in the requested State]*
- *Restitution: indication of articles obtained by criminal means which should be at the disposal of the requesting State to be returned to their rightful owners*
- *Give details on the links between the person, the foreign proceedings and the requested*

measures e.g. the place to be searched

b2. Specific measures:

• **Electronic data**

➤ **Preservation of data**

- Adequate information to identify the relevant data to be preserved including its location (custodian of the stored computer data; location of a computer system)
- Grounds to believe that risks of loss or modification
- Indication that MLA request will follow

➤ **Search or similar access, seizure or similar securing, or disclosure of data**

- Specific purpose
- Identification and location of data: time and place of communication in case of real time collection or interception, technical data necessary to perform such action
- As far as possible, precise identification of the person, or premises to be searched while giving details on the links between the person, data and place to be searched
- Contact point

Where applicable

- *Information on a request for the preservation of data*

• **Seizure and Confiscation of criminal assets**

- Reasons to believe that a property is located in the requested State
- Indication of the procedures the requesting State wishes to follow
- Indication that the measure sought or any other similar measures can be taken in the territory of the requesting State under its national law
- Attachments: true copy of confiscation order and statement of grounds for order; attestation that confiscation is enforceable;,

Where applicable

- *Where confiscation takes the form of a requirement to pay a sum of money corresponding to the value of the property, inform on the maximum value of the property to be seized*
- *Attachment of documents proving that third parties had the opportunity to claim rights*
- *Information on similar requests sent to other States*
- *Information on earlier requests for obtaining evidence / for restraining assets or seizing objects connected with the present request (name of the defendant / sentenced person)*

c. Obtaining information from financial institutions

- Details of the financial institution (name of the bank or financial institution, address of branch where the account is held),
- Account number,
- Indication of the period for which the information is requested
- [reasons to believe that the account is held in the requested State]

d. Obtaining telephone/IP data

Information concerning telephone data

- Indication of the telephone number
- Information concerning the holder of the telephone number
- Information on the period during which the telephone was used

[Information concerning IP data (computer, website, IP addresses)

- Indication of website address/ e-mail address/ any relevant information including the provider

Where applicable

- For traffic data, information on the period for which the IP address was used]

e. Conducting of Expertise

- Information on the expertise sought

Where applicable

- List of questions to be answered by the expert

f. Wire-tapping

- Any relevant information on the status of the person and on the link between the measure and the ongoing investigation relating to legal requirements of the requesting State

Where applicable

- Information on the time-frame

g. Special investigation techniques

- Cross-border observations
- Controlled delivery
- Covert investigations
- Joint investigation teams

iii. Specific modalities of execution

Where applicable

- Necessary formalities and procedures under the law of the requesting State and guidance
- Presence of officials and interested persons from the requesting State and name and title of such persons
- Timeframe for execution
- Co-ordination between relevant and competent authorities (contact persons)
- Costs
- Language to be used
- Indication of requirements to keep confidential the fact and substance of the request
- Indication of rules to ensure data protection

iv. Modalities for the transmission of evidence

- Indication whether originals are needed
- Preferred means of transmission to be used by the requested State (courier, liaison officer, diplomatic representative, etc.)

B. Service of judicial documents (writs and records; summons to appear as a witness/expert/accused person):

i. Information common to all requests of service

- Type of service required
- Specification of documents to be served

Where applicable:

- Information on witness protection
- Safe passage issues

- *Requirements for confirmation of service*
- *Requirements if service fails*
- *[Approval of assumption of costs]*

ii. Information required for summons to appear

- Date of appearance
- Time and place of hearing

Where applicable:

- *Alternative date of appearance, time and place of hearing*
- *Approximate allowances payable and the travelling and subsistence expenses refundable*

C. Temporary transfer of a person in custody

- Type of transfer: to the requesting or the requested State
- Proposed dates for transfer and return
- Place of transfer
- Purpose of transfer (e.g. witness, confrontation)

Where applicable:

- *Confirmation that the person concerned will remain in custody*
- *Statement of consent of the person concerned*
- *Indication whether transit is required*
- *Contact person(s) responsible for the transfer*

D. Extracts from judicial records

- Identification of the person whose judicial record is requested

Where applicable:

- *Indication in case the request is made in a non-criminal context*

6. Final information

- *Any other information which the requesting State considers important*
- *Contact person (name, contact details, language)*
- *Seal, name, function of the official, date and signature*

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