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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
Procedure n°
<i>Indication of Urgency</i>
1. Requesting authority - Official Title - Address - Contact details: telephone numbers, e-mail addresses - Language
2. Requested authority

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

<ul style="list-style-type: none"> - Official Title - Address
<p>3. Object and reason</p> <ul style="list-style-type: none"> - Type and purpose of request - Legal basis of the request - Type of offence - Description of the stage of criminal proceedings - Indication how the requested measures / the evidence sought are linked to the proceedings conducted in the requesting state <p><i>Where applicable:</i></p> <ul style="list-style-type: none"> - 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
<p>4. Persons concerned</p> <ul style="list-style-type: none"> - Name - Gender - Nationality - Address - Position in Legal Proceedings <p><i>Where applicable and available :</i></p> <ul style="list-style-type: none"> - ID / Passport Number - Alias (excluding experts) - Date / place of birth (excluding experts) <p>Information on a Legal person</p> <ul style="list-style-type: none"> - Name <p><i>-Where applicable and available</i></p> <ul style="list-style-type: none"> - Registration number Address of the seat -Addresses of different branches -Contact details of the person authorised to act on behalf of the company -
<p>5. Measures requested</p> <p>A. <u>Letters rogatory</u></p> <p><i>i. Facts and legal information about the offence</i></p> <ul style="list-style-type: none"> - 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 <p><i>Where applicable</i></p> <ul style="list-style-type: none"> - 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/questioning of witnesses, experts, suspects, accused persons and other persons: specific modalities

Hearing/questioning 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)*

Hearing/questioning 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/questioning
- Details concerning practical arrangements (technical information on available means, proposals concerning payment of costs, contact details for technical contact person, etc.)
- Notification of rights and obligations of the person to be heard/questioned
- Dates/time proposed

Where applicable

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

Hearing/questioning by telephone conference

- Indication of the name of judicial authority or the persons who will be conducting the hearing/questioning
- Indication that the witness or expert is willing to take part in the hearing/ questioning 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 there are 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
- Indication of the period for which the telephone data are required

[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

In the event that this is a controlled delivery in the traditional sense, of a deal:

1. Please note that if delivery is to a destination other than the Requesting state, in which case more than one request is likely necessary:

2. Flight details (if it's an indirect flight, then details of both flights)

3. Identification of the courier (whether it be a police informant or undercover police officer) accompanying the drug

4. Materials requested: Chain of evidence report for the drug

In the event this is a "controlled delivery" of a drug seized abroad, the Requesting state may request:

1. Does the country require the drug be accompanied by a police officer, or can it be sent directly? If so, details of the police officer handling the drug
2. Chain of custody report for the drug
3. Laboratory report of the drug sample of the drug (once it is seized)

- Covert investigations
- Joint investigation teams
- description of the crime(s) and connection with the requested country
- purpose of establishing JIT
- who could participate in the JIT (names and official positions)
- proposal for a coordination meeting (place and date)
- NB: Agreement for a JIT will be drafted after all parties agreed on the establishing of the JIT. The agreement will specify the details of the investigation process and also the financing of the JIT.

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
- request to conduct the hearing/questioning by officials....
- 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)*
- *List of enclosures*
- *Seal, name, function of the official, date, and signature*

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