

INTRODUCTION

Mutual legal assistance (MLA) consists in assisting other jurisdictions (that are limited by national borders) in making justice. MLA is usually established on a legal basis (international instruments), but goodwill in co-operating and assisting is crucial as well. Hence, two main guiding principles are to be taken into account, i.e.

1. (*from the side of the requested State*): to treat the foreign request with the same efficiency and promptness with which you would expect others to execute one of your requests;
2. (*from the side of the requesting State*): do not expect a specific measure you would put in place at national level to be executed abroad, but rather focus on the result you want to obtain (for instance: if at home you would issue a seizure warrant for bank documents, the requested jurisdiction might reach the same result with a *subpoena duces tecum*, i.e. a court summons ordering a person to produce in court certain designated documents or evidence).

Where the case is urgent, reasons for urgency should be clearly stated (e.g. the suspect is in custody, there is a danger that the evidence will be destroyed or tempered, etc.).

When seeking assistance from another jurisdiction, the first step to take is to identify the appropriate and relevant convention. In this regard, it is of interest to know that:

1. The PC-OC committee was of the opinion that while the requesting State should indicate the relevant convention to be applied, the requested State should not consider itself bound to such a formal reference as it should be bound to any convention in force between the two States (the matter was examined in relation to the 1957 extradition convention: once the request mentioning the said convention only is received, the requested State is entitled to examine it under the terrorism convention as well; and therefore apply one or the other convention). However, the 1959 Convention on Mutual Assistance in Criminal Matters contains the obligation for Parties “to afford each other the widest measure of mutual assistance”.
2. Sometimes the assistance sought is based on a combination of different conventions, for example, the European Convention on Mutual Assistance in Criminal Matters (ETS No. 30), the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (ETS No. 141) , the Convention on Cybercrime (ETS No.185) the Council of Europe Convention on Action against Trafficking in Human Beings (CETS No. 197), the Council of Europe Convention on the counterfeiting of medical products and similar crimes involving threats to public health (CETS No. 211), the Council of Europe Convention on the Manipulation of Sports Competitions (CETS No. 215). For instance, when obtaining digital information or evidence, including the search of websites and freezing of electronic data or obtaining information on the user of an IP address or on traffic data, reference to the Cybercrime Convention is crucial, although MLA should not be excluded. In the case of an investigation concerning banks, finances etc. recourse to the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (ETS No. 141) or to the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (CETS No. 198) in addition to the European Convention on Mutual Assistance in Criminal Matters might be advisable (see Mutual Legal Assistance in COE treaties [PC-OC \(2015\)03](#)).
3. The text of a given convention might not be exhaustive so it is crucial to check reservations and declarations made by Parties to the convention. Often reservations have the effect of limiting obligations arising from the legal instrument (for instance, double criminality in the case of search and seizure). By means of declarations Parties indicate, for example, which bodies are regarded as the competent judicial authorities.
4. It is also very important to review the signatures and ratifications of the relevant conventions (some conventions do not enter into force before a certain number of States have ratified them).
5. A look at the CoE’s recommendations and resolutions might be useful. The reading of the explanatory report to a given convention is always useful.

6. On the PC-OC website you will find essential country information on the procedure applicable in each State Party: [Country information](#)
7. Last but not least: knowledge of the ECHR case law is also crucial: [Case law of the European Court of Human Rights](#).
8. For general information on the law of the requested State please note the following convention: the European Convention on Information on Foreign Law (ETS No. 62) and its Additional Protocol (ETS No. 97) which extended the provisions of the latter to criminal law. It should be borne in mind that the more you know about the legal system of the other State the greater the possibility of having your request executed.
9. For further information it might be useful to contact your national PC-OC representative. Sometimes preliminary contact with liaison magistrates (where they exist) is crucial in order to formulate a request in a proper manner and to have it successfully executed. This can avoid a scenario where evidence is obtained abroad in a manner which may render it inadmissible in the requesting State. In this regard specific formalities may be indicated in the request (taking a statement under oath, the serving of a summons personally to the individual concerned, the presence of officers from the requesting State during the execution, etc.).
10. Please note that some States might be bound to obligations arising from bilateral or multilateral instruments or acts having the same effect (for example, instruments from the European Union or the Community of Independent States).
11. Keeping in mind the aforementioned need to obtain evidence in a manner that is admissible at trial, it may sometimes be more effective to go through police to police co-operation, at least before a formal request for MLA is made (for instance in order to check whether a certain person or a certain object is in a given country).
12. An increasing number of States have delays in replying to MLA requests because, *inter alia*, they are overburdened with requests. This is a consequence of the increasingly transnational character of crime. In light of the above, it may be useful for States to bear in mind proportionality.
Proportionality requires consideration by the requesting or issuing state, primarily by its judicial authorities, of the balance between the purpose and need of the measure requested and the seriousness of the offence, the length of the penalty and the degree to which human rights of the concerned person are affected.
13. Due to the very specific nature of the investigative measures requested under Articles 17 to 20 of the Second Additional Protocol of the Convention on Mutual Assistance in Criminal Matters, it is crucial to look at reservations and declarations, in particular in order to check to which competent authority the request is to be addressed.
14. Finally, the PC-OC website contains “useful links” to other websites of relevance when preparing a request for MLA: www.coe.int/tcj