

ITALY
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Answers to the Questionnaire on

**“WAYS TO IMPROVE INTERNATIONAL CO-OPERATION
IN THE CRIMINAL FIELD”**

The following indications are not aimed to be exhaustive, but can represent significant examples for the purposes of the survey.

The Public Prosecution Office of Torino reported the following results of direct requests of cooperation related to criminal investigations:

- France: 6 request for documents and examination of witnesses, addressed to different Offices throughout France – all positively dealt with in few months.
- Germany: request for transmission of documents – one case – positive answer in 1 month; in two other cases: refusal justified on the basis of German Legislation.
- The Netherlands: 2 requests of documents and examination of a witness – positively dealt with in few months; no answer to a third request.
- Portugal: 1 request for transmission of documents – no answer.
- Romania: very positive cooperation in 2 recent cases concerning traffic in women and children.
- Spain: requests of documents and examination of a witness – positive answer with reasonable delay.
- Switzerland: request for transmission of documents – two cases – positively dealt with in few months; examination of a witness: 2 years.
- UK: 1 request of documents and examination of a witness – the sent documents were not the ones requested – no witness examination. Total lack of response in some cases of cyber-criminality; better results in cases of crimes related to the production and commerce of pharmaceutical and chemical products for sport activities.
- Russia (through Diplomatic Authorities): a request for the notification of an act sent in 2006: no answer up to now.
- USA (through Diplomatic Authorities): requests aimed at taking documents and identifying persons possibly responsible for crimes – the response arrived after years.

The PP Office of Milano gave separate responses concerning on the one hand investigations on terrorism and, on the other hand, different kinds of crimes.

The investigations related to Terrorist Groups that allegedly had committed crimes in more than one Country implied not only need of cooperation as for “Commissions rogatoires” or extradition, but also questions of jurisdiction between different Countries.

Examples of lack of cooperation or delayed cooperation:

- France (requests all addressed to the same Office):

a) an Egyptian citizen was supposed to be one of the responsible of the Madrid attack of 11th March 2004; there were investigations in Belgium, Spain and Italy, with continuous “in real time” contacts among the competent Authorities, mainly related to wiretapping or electronic eavesdropping; it allowed simultaneous searching and arrests in the three Countries. There had been an endeavour to actively implicate in these contacts the French Authority, too, in relationship with another Egyptian citizen resident in France. Notwithstanding the efforts aimed at receiving updated information, only after several months the Italian Prosecutors happened to learn that the concerned person had disappeared from France without leaving any tracks;

b) in a similar case, the “Commission rogatoire” was implemented only with months of delay. It dealt with the interview of some “collaborators”, able to give relevant

information on some citizens from Morocco, allegedly responsible for the creation of a "Terrorist Group".

- UK: in 2002 a Libyan citizen was arrested in UK on the basis of information transmitted by the Italian Police. The PP of Milano sent a double request of cooperation for the extradition and the gathering of evidence, but all that wasn't even taken into account by the UK Authorities.

Examples of good practices:

- Belgium and Spain: see the positive aspects mentioned with reference to the case above indicated in point a).
- Germany: during the investigation related to an Islamist Terrorist Group there was a full cooperation by the PP of Munich and Karlsruhe, with quick exchanges of information and documents, meetings in Germany and Italy, that allowed the immediate interview of accused persons and witnesses.
- Italy: in 2005 it took only 50 days for the Italian Authorities to deliver to the UK a person who had confessed his participation in the attacks in London of 21st July 2005.

As far as other kinds of crimes are concerned, the PP Office of Milan referred the following contacts:

- Belgium: unsatisfying cooperation in one case (2006) concerning drug crimes.
- France: very quick action in identifying the persons under investigation and in wiretapping for a drug crime (2004).
- Germany: good results (quick answer) in a 2006 case concerning drug crimes. In another case (2003) the requested video-conference with detainees was not allowed due to the lack of specific law provisions in the interested *Lander*.
- Liechtenstein: one case (2001-02) of money laundering: very quick delivery of bank documents and identification of the beneficiaries of the deposits.
- Luxembourg: very good cooperation and results in 2 cases (2001-02 and 2006) concerning money laundering, aggravated by mafia purposes. Fruitful help by Eurojust, in one case, for the seizure of the profits of the crime. Request of cooperation not carried out in another case (2005).
- Monaco: good cooperation in one case (2004), with location and seizure of the profits of the crime.
- The Netherlands: unsatisfying cooperation in one case (2006) concerning money laundering.
- Spain: very good cooperation in 4 cases (2005-2006) concerning drug crimes. Quick responses, fostered by similar legal rules in the two countries. Not good results in other 2 cases; in one of them (2003), concerning a criminal organization for drug crimes and money laundering, the Italian request was not forwarded by the Spanish PP Office to the *Guardia Civil*; the problem is most likely related to the lack of direct control of investigations by the Spanish Prosecution Office. In another case (2002) a fugitive offender, convicted for drug crimes, although arrested was not searched; relevant documents were probably lost, which could have been helpful for further investigations.
- Switzerland: good results (quick answers) in 2 recent cases (2006) concerning bankruptcy offences.
- UK: very good and quick cooperation in a case (2003) concerning money laundering. Delay of 7 months in another case (2005).

Themes and proposals for the improvement of international judicial cooperation in criminal matters are hereinafter presented (the indications concerning investigation on terrorism come mostly from the Milan PP Office).

a) juridical issues:

1. uniform rules would be useful with reference to:

- trials *in absentia*, according to the jurisprudence of the ECHR;
- validity of evidence gathered abroad;
- the principle of *ne bis in idem* at international level;

2. tardy cooperation is detrimental for investigations related to many kind of crimes; among them, cyber-crimes and connected matters (like child pornography through the internet) would request the establishment of supranational bodies for effective and timely actions of contrast;

3. better results almost always come from direct contacts with the foreign PP Offices or Judges;

4. difficulties in enforcement of judgements come from the inconsistency of national legislations;

b) possible organizational measures, related to the matter of terrorism:

b.a) concerning the EU Countries:

1. creation of a database entrusted to Eurojust, with all possible guarantees for the insertion of data and for accesses;

2. give Eurojust competencies as a “service structure”, for the knowledge both of the phenomena and of the national legal systems;

3. strengthen – after the indispensable controls on issues and practices - the recourse to the European Arrest Warrant;

4. better employment of Europol.

b.b) concerning all the European Countries:

i. prepare a Manual containing an updating of the relevant Treaties of Judicial Assistance as well as the National norms, the latter related to (*) antiterrorism structures, (**) special investigative measures, (***) relevant databases, (****) procedural norms on use of evidence gathered abroad, (*****) national jurisprudence on these issues;

ii. elaborate uniform rules and practices on the procedural treatment and protection measures of witnesses and “collaborators”, as well as on the issues related to their “transfer” to different Countries for justice purposes;

iii. uniform national laws on wiretapping and electronic eavesdropping;

iv. support the creation and improvement of Investigative Common Teams;

v. better employment of Interpol;

vi. improve cooperation and assistance relationships among judicial and police authorities, even out of the European area;

vii. counter the financing of terrorism, even by enhancing the freezing of goods;

viii. mutual exchange of advanced means and technologies;

ix. recruitment and professional training of interpreters and translators.

A final mention must be made not only to Eurojust, but to the “liaison magistrates” too, whose action has been appreciated in recent years. Their function can play an increasing key-role in all matters of cooperation, mainly thank to their knowledge of the laws of the respective countries of assignment as well as to their personal knowledge of local colleagues.

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