

## Spain

*1. Please give examples of criminal cases, without personal data, where public prosecutors in your country have experienced significant difficulties when working with public prosecutors or other judicial bodies in other European countries. In your opinion, what are the reasons of these difficulties (e.g. types of cases which raise special difficulties linked to domestic laws or foreign legislation or procedures, lack of knowledge of the steps to be taken, lack of direct contacts, insufficient knowledge of languages or legal instruments, or problems linked to translation, undue delay, gaps or inappropriate provisions of the relevant European Conventions and bilateral agreements or other texts, etc...).*

First and foremost, one recurrent problem arisen in the framework of mutual legal assistance is the short delay in which the assistance is usually asked to be performed. This probably responds to a lack of knowledge of the required State's legal provisions and the usually complex steps to be taken, in particular when measures affect human rights that require a judicial warrant.

To give a graphic example: recently we received a request to perform up to six simultaneous searches in different companies and private domiciles, placed in different towns. The request was sent to the Prosecutor's Office in Barcelona only one week before the suggested execution date. As a consequence, it resulted completely impossible to organize the necessary previous activities (by checking whether domiciles really exist and are occupied by the affected individuals and/or companies, determining the best time to perform the search, establishing police surveillance, etc.) and ask investigative judges in different territories to issue the required warrants, in only one week.

This will lead to the necessity of ensuring that mutual legal assistance requests are sent with the sufficient prior notice, being also advisable to establish previous direct contacts between requiring and required authorities in order to draft a realistic "roadmap" to properly execute the letter rogatory in accordance with the applicable formalities and procedures.

In connection with this issue, it has to be stressed that most rogatory letters are received without cover notes and without information as regards the contact details of the issuing authorities. Having at the disposal of the executing authority an email address or a phone number would facilitate enormously the task of the executing authorities, since very often only minor clarifications (that could be solved through email or telephone, without having to return the rogatory letter seeking clarification) are needed.

Some practical difficulties also arise when considerable computer data should be collected, especially when conducting searches affecting active companies' premises with, in principle, legal activities. In these cases, seizing all the computers is not proportional. Therefore, technical means should be provided to make a copy of big hard disks that would lead to the use of several expensive devices on which data will be stored. Since those devices will be definitively sent to the requiring authorities, any system to defray such expenditure has to be agreed.

As regards the EAW, the interpretation made by some UK authorities does not seem to fit well with the principle of mutual recognition, since they tend to request data and additional elements not corresponding with those included in the EAW. As executing authorities, the existence of an initial assessment about the admissibility of the EAW carried out by a police body (the Interpol SOCA Unit), can also be considered as a disturbing element. UK authorities often consider the time elapsed since the facts were committed as ground for refusal, and they request additional information on this issue (even though at the level of national legislation UK considers certain serious crimes such as homicide are not subject to limitation period or prescription). It is normally very difficult to get from UK authorities additional information considered necessary by the

Spanish authorities to carry out the requested assistance. Finally, it has been noted that some delays occur as regards the execution of EAWs.

Another cause for concern as regards UK authorities has been the attempt to directly carry out investigating activities in Spain by themselves, thus going beyond the accompanying role foreseen in the applicable legal instruments.

Another general problem that has been noted, particularly as regards requests for legal assistance issued by countries from Central and eastern Europe is the extremely low quality of the translations attached (possibly because of the use of automatic translators without further controls), sometimes being impossible to find out which facts are the base for the rogatory letter. A particular problem affecting Germany is the lack of translation of the attached documentation, thus preventing the Spanish executing authorities from knowing the substance of the facts and the relation with the requested assistance.

It has also been noted that some countries (The Netherlands, particularly) send request for legal assistance through various authorities at the same time, thus making it harder to keep track of the pending requests in the executing country, given that the institutions involved in the execution are not always aware of the existence of identical requests addressed to other institutions. We strongly recommend not to duplicate the requests for assistance.

Another interesting point is that, in the case of countries for which the Convention 2000 is applicable, the requests for assistance keep referring exclusively to the 1959 Convention, thus increasing confusion in the executing authorities as to what regulation should be applied.

*2. Please give examples of criminal cases, without personal data, where public prosecutors in your country were satisfied with the co-operation with public prosecutors or other judicial bodies in other European countries. In your opinion, what are the reasons for this successful co-operation (e.g. types of cases which can be dealt with without difficulty, national or foreign good practices, practical measures contained in the provisions of the relevant European Conventions and bilateral agreements or other texts, etc...).*

-----

*3. Please give details of any suggestions made by public prosecutors and other judicial bodies in your country concerning the steps which could be taken to improve co-operation between prosecutors in Council of Europe member states, including proposals for an improvement of the relevant European treaties.*

In practice, apart from executing the assistance in due time and the need to include email addresses or phone numbers for contacts, as mentioned above, one of the core issues in this framework is ensuring that the results of the assistance arrive as soon as possible to the requiring authorities in order to allow them to properly continue their procedures. Given that complying with formalities set up by Treaties is, indeed, a condition of validity of the obtained evidence, sometimes it is difficult to combine procedural efficacy with an effective investigation that demands a prompt communication of results.

In this context, we see no legal obstacle to proceed as follows: once the required assistance is executed, its results could be advanced in copy by e-mail or fax to the requiring authorities. This would provide them with the necessary information in order to continue their ongoing procedures and investigations, while formally sending the official response and original documents in entire accordance with Treaties' provisions. This way we ensure investigative efficacy, while at the same time fully respecting the procedural requirements and guarantees, as the original documents are also formally sent, in order to allow requesting authorities to properly incorporate evidences to the criminal procedure. The international mutual assistance service at the

Prosecutor's Office in Barcelona has executed letters rogatory by this system, which has been highly appreciated by the respective requiring authorities.

Finally, a proposal of good practice for the future would be to have the issuing authority sending to the executing authority a confirmation of reception of the executed rogatory letter, so that the executing authority could have the certainty that this specific case could be considered as executed.

**4. Any other comments.**