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**EUROPEAN COMMITTEE ON CRIME PROBLEMS**  
**(CDPC)**

**COMMITTEE OF EXPERTS**  
**ON THE OPERATION OF EUROPEAN CONVENTIONS**  
**ON CO-OPERATION IN CRIMINAL MATTERS**  
**(PC-OC)**

**"STANDARD MODEL REQUEST FORM ON LAYING OF INFORMATION"**

**LAYING OF INFORMATION**  
**ARTICLE 21 MLA CONVENTION (1959)**  
**GUIDELINES**

**1. Introduction: purpose and reasons for the laying of information**

The laying of information is a type of mutual legal assistance as found in Article 21 of the MLA Convention.

Contrary to the 'classic' form of MLA, the purpose of the laying of information is *not to obtain evidence* from the requested State. In fact, by laying information to the requested State, the requesting State actually sends the statement of a victim to request for carrying out of criminal proceedings or the domestically collected evidence to request the prosecution of the suspect(s) in the requested State. In essence, it is one party which transmits a case file (dossier) to another party in order to *allow* carrying out the criminal proceedings or the prosecution of a suspect in the latter party.

The laying of information can be compared to a pre-emptive and totally *voluntary* form of transfer of proceedings under the 1972 Convention on the Transfer of Proceedings. It is essential to underline that the laying of information does not create any obligation on the requested party to prosecute. Where the 1972 Convention creates reciprocal obligations to transmit a proper request for the transfer of proceedings and the actual 'acceptance' to proceed if all conventional conditions are met, the laying of information relies merely on the 'goodwill' of the requested party. Its voluntary nature means that the laying of information does not even require a treaty basis. Article 21 of the MLA Convention just mentions this possibility, without regulating this type of MLA to any further extent. From the context of the 1959 MLA Convention it can be devised that all other general principles for MLA apply *mutatis mutandis* to a request for the laying of information. In that respect the model request aims at sending a request for the laying of information that contains a maximum of information and thus enhances the chances to obtain proper prosecution in the requested party. The latter will receive a file that is as complete as possible.

One of the reason for laying information could be the lack of (extra-)territorial jurisdiction over the offence in order to – if possible – 'incite' the prosecution in the requested State to prosecute. Another reason may be that the suspect, who stays in the requested State, is a national of the requested State and the requested State does not extradite its nationals (see below). Yet another reason may be that the requesting State has no *interest* in prosecuting rather minor offences. Policy concerns may influence the decision to prosecute or not. In the interest of the suspect and / or the victims, such prosecution will be better conducted in the requested party.

A crucial motive to lay information to the requested State is the location of the suspect and / or the victim(s) on its territory. In that respect, the laying of information is the logical follow up to the application of the 'aut dedere, aut judicare' principle as laid down in Article 6(2) of the 1957 Extradition Convention.

Most parties to the 1957 Extradition Convention have declared that they would not extradite their nationals. As a general rule, only Common Law countries extradite their nationals without any condition. The Netherlands is one exception amongst Civil Law countries which extradite their nationals, albeit solely for prosecution purposes and under the condition that the extradited national will be returned upon eventual final conviction to a prison sentence in order to serve that prison term in the Netherlands. Since the nationality exception to extradition applies in most CoE member States, to compensate the non-extradition clause, the requested party should assess the possibility of prosecuting the person sought itself.

The laying of information is indeed the most appropriate tool to implement the 'aut judicare' principle since it enables the transmission of evidence which is normally only partially included in the extradition request. Physical evidence such as expert reports, police reports, and others are normally not attached to the extradition request. Where the requested party is able (i.e. competent

– has jurisdiction) to prosecute the person sought, additional evidence is highly important to ensure a successful case.

Common Law countries often have no possibility to ‘transfer’ criminal proceedings (as both requesting or requested State). However, if there is a case in which such a State could prosecute on the basis of the territoriality principle, the requesting State can lay information to such States as ‘spontaneous information’ (Article 11 of the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters).

The requested State requires (extra-)territorial jurisdiction to be able to prosecute the suspect on the basis of laid information. Not just *in abstracto*, but *in concreto* which means that the case would have been prosecuted if its facts had been committed on the territory or within the jurisdiction of the requested State. Mitigating circumstances should be taken into account or this may well lead to a decision not to prosecute in the requested State. Applying the double criminality principle in *concreto* to the facts of the case may lead to the re-qualification of the offence as of lesser nature which would thus become barred from prosecution because of the application of a much shorter period of time related to “lapse of time”.

## **2. Specific guidance relating to items of the request form for the laying of information**

As a general rule, practical examples of requests for the laying of information confirm that filling such requests as precisely and completely as possible, will enhance the chances of obtaining its effective and adequate execution. The term ‘executed’ is relatively appropriate for laying of information requests since the requested party is not obliged to follow suit. However, a request for the laying of information that contains a proper identification and localisation of the suspects and the victims (if any), a clear outline of the facts of the matter, the applicable legal qualifications (the offences), a good evidentiary basis and a clear explanation why the requested State is in a better position to prosecute than the requesting State, will more likely lead to the prosecution of the suspect.

One major difficulty with such requests concerns translation. If the case file in the requesting State concerns complex issues (e.g. elaborated or organised fraud / money laundering cases) and has reached an advanced state, it will take a considerable amount of effort, means and time to translate the collected evidence into the official language of the requested State.

When set goals are high and the ‘information’ to be laid is very substantial, it is of the utmost importance to prepare the request together with to-be-requested State. In such cases, the laying of information should never be done before consulting the-to-be requested State. Only when the latter is legally competent and willing to prosecute the suspect(s), the actual request should be sent. In those cases, a formal request to transfer the proceedings is actually much more effective. The above mentioned advice is thus addressed to member States which have not (yet) ratified or accessed the 1972 Transfer of Proceeds Convention.

### **Title – Request for laying of information**

The name of the request is important in order to qualify the request at first sight. It is important to apply a correct ‘label’ to the request.

#### **1. Requesting authority**

The requesting judicial authority should be fully identified. The official title of the requesting authority, its address and contact details (telephone, fax numbers, e-mail address) should be indicated. Such details are essential for any kind of consultation on the matter. Requests for clarification or additional information should be exchanged directly between the relevant authorities.

#### **2. Requested authority**

The official title and address, as well as contact details of the requested authority should be indicated. This information is necessary for preparation. If the matter was discussed between central authorities and the to-be-requested party at a preliminary stage, before the request was officially sent, and where the latter gave its 'green light' to proceed, the judicial authority of the requested party should be identified and notified. This authority should be then clearly and precisely identified in the request. Again, this will allow direct contacts for the purpose of follow-up.

### 3. Person(s) and offence(s) concerned

- Personal information on the person concerned (identity, date of birth, nationality, address, ID number etc.)
- Offence(s)

Suspects who may also be a legal persons and victims should be identified as precisely as possible. Where available, fingerprints, photos and / or DNA profiles of possible suspects should be included. In addition, such means of identification may be also useful where victims are missing or if the specific concerns violent and/or sexual crime. Special attention should be paid to the question of the suspect's nationality, particularly if the jurisdiction of the requested State would be based only on the active personality principle.

### 4. Indication of attachment (copies of documents/files)

An inventory of the information and/or evidence available is crucial to carry out a first preliminary assessment of the facts of the case. If it appears that there are other issues which should be examined or if evidence seem to be lacking in order to properly proceed, such items should then be clearly identified and indicated. A good inventory list itemises all available case file documents and physical pieces of evidence. A short description of each item prevents lengthy searches and the need to actually dig into the evidence. This particular type of request should always solely concern offences. The term 'information' not only refers to any 'information' but rather to evidence from a case file which may either still be at an early stage of proceedings, or which may have already reached a well advanced phase. It is very helpful to make a distinction in the request between documents that could be used as evidence before a court (in trial) in the requesting State and records that have no evidentiary value.

A complete and detailed inventory is probably the most important element of any preparatory bilateral consultation for a request for laying information (and a request for the transfer of proceedings for that matter) which involves very serious or complicated facts.

### 5. Offence

- Legal qualification must be indicated
- Legal provisions concerning the offence and maximum penalty applicable should be indicated
- Legal provisions concerning lapse of time (statutes of limitations)
- Legal provisions of other than criminal law (if necessary)

The legal basis or qualification of the offence should be given in the form, which includes the exact wording of the criminal law provisions applying in the requesting State. If the case concerns an offence in the area that is regulated by a specific law other than criminal law (e.g. traffic laws), it is necessary to provide also this specific law. This item should also provide clear indications on the statutes of limitation (lapse of time). In 'older' cases, in particular, procedural acts or further activities of the suspect (e.g. committing other offences or absconding) which might have interrupted or suspended the application of statutes of limitations should also be listed in detail.

### 6. Summary of facts

Outlining the facts of the case is essential to asses the seriousness of the matter and in addition, to perform the double criminality test on the side of the requested party. The first step to verify

procedural grounds for prosecution concerns the (re)qualification of the alleged criminal acts and omissions.

The facts should clearly and precisely indicate the existing link(s) with the requested State, such as the nationality or location of the suspect and / or the victim(s).

Specifying the place and time of the offence(s) is the minimum type of information which should be provided which further helps establishing (extra)territorial jurisdiction in concreto.

## 7. Evidence

- Indication of the evidence to prove the offence (i.e. witness statements, documents)

This item follows logically from the previous item. The request should also indicate how, where and when the targeted facts came to the attention of the prosecuting authorities of the requesting State and means employed to reveal the truth and eventually to prosecute. This item immediately refers back to the inventory of attached evidentiary documents and items. Cross-references are very important, especially when the matter is a complicated one and contains a lot of evidence.

## 8. Reason for the request

- Impossibility or ineffectiveness to carry out or continue in criminal proceedings in the requesting State
- Existence of proceedings pending in the requesting State
- Motivation for the request shall be indicated (i.e. suspect is national of and living in the requested State)
- The legal basis for the request

The request has to be justified. The very essence of the request concern the reason for which these proceedings cannot be carried out or continued in the requesting State and should be 'taken over' by the requested State.

One of the reasons could also be that the requested State carries out parallel criminal proceedings (for the same offence or concerning the same person) in the criminal matter and is in better position to prosecute than the requesting State.

Where the laying of information follows from the impossibility or the refusal to extradite a national, a reference should be made to the initial extradition request or at least the SIS (EU) or Interpol red notice or request for provisional arrest that was used to initiate the extradition process (if such process had been initiated).

In such cases, the treaty basis is a combination of article 6, para. 2 of the 1957 Extradition Convention and article 21 of the MLA Convention.

## 9. Measure requested

Initiation of proceedings in the requested State and feedback.

The request itself is basically straightforward. Its purpose is that the requested party evaluates the matter and the evidence included in the request and informs the requesting party about its intentions.

Where the request was duly prepared in cooperation with the to-be-requested State at a preliminary stage before the request was officially sent, the outcome concerning the prosecution by the requested State should already be known and the request itself therefore stands as a mere formality. Despite of that, the requested State has to officially inform the requesting State about its further steps and about the result of criminal proceedings – see Article 21(2) of the 1959 Convention.

**10. Additional information**

- Contact person of the requesting authority
- Seal and signature

Finally specific contact points, including at the level of police authorities which deal or dealt with the case and / or expert witnesses or defence lawyers, as well as contact details of victim(s) should be included. The latter are more specific contact persons which are of particular importance for future proceedings within the requested State.

**STANDARD REQUEST FORM FOR THE LAYING OF INFORMATION**

<b>Title – Request for the laying of information</b>
<b>1. Requesting authority</b>
<b>2. Requested authority</b>
<b>3. Person(s) and offence(s) concerned</b> <ul style="list-style-type: none"> <li>- Personal information on the person concerned (identity, nationality, etc.)</li> <li>- Offence(s)</li> </ul>
<b>4. Indication of attachments (copies of documents/files)</b>
<b>5. Offence</b> <ul style="list-style-type: none"> <li>- Legal qualification must be indicated</li> <li>- Legal provisions concerning the offence and maximum penalty applicable should be indicated</li> <li>- Legal provisions concerning lapse of time (statutes of limitations)</li> <li>- Legal provisions of other than criminal law (if necessary)</li> </ul>
<b>6. Summary of facts</b>
<b>7. Evidence</b> <ul style="list-style-type: none"> <li>- Indication of the evidence to prove the offence (i.e. witness statements, documents)</li> <li>- Indications of the procedural aspects of the collection of the evidence (a statement that the evidence was obtained in accordance with the law).</li> </ul>
<b>8. Reason for the request</b> <ul style="list-style-type: none"> <li>- Impossibility to carry out or continue in criminal proceedings in the requesting State</li> <li>- Existence of proceedings pending in the requested State</li> <li>- Motivation for the request shall be indicated (i.e. suspect is national of and living in the requested State)</li> <li>- The legal basis for the request</li> </ul>
<b>10. Measure requested</b> <ul style="list-style-type: none"> <li>- Initiation of proceedings in the requested State and feedback.</li> </ul>
<b>11. Additional information</b> <ul style="list-style-type: none"> <li>- Contact person of the requesting authority</li> <li>- Request for information on initiation of proceedings and result of proceedings</li> <li>- Seal and signature</li> </ul>