

The operation of Mutual Legal Assistance in Ireland

Ireland is a relative newcomer to the formal arrangements for international mutual legal co-operation in criminal matters.

At the end of 1996 Ireland ratified three international conventions in the area of mutual legal assistance in criminal matters.

- The Council of Europe Convention on Mutual Assistance in Criminal Matters and its Protocol (1959)
- The United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (The Vienna Convention) (1988)
- The Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (1990)

The enabling legislation to give effect to the Conventions, Part V11 of the Criminal Justice Act 1994, came into force in November 1996. Subsequent to the enactment of the legislation a number of designation orders and regulations, came into force.

In more recent times Ireland has become party to other international conventions in the area of mutual legal assistance these are:

The European Union Convention on Mutual Assistance in Criminal Matters between the Member States of the European union (2000)

The OECD Convention on combating bribery of Foreign Public officials in international business transactions (2003)

The Council of Europe Criminal Law Convention on Corruption (2003).

Ireland will make declarations, reservations and notifications relating to some of the conventions.

Ireland is also a party to various multi and bi-lateral agreements. The most relevant to the operation of mutual assistance in Ireland is the bi-lateral agreement with our near neighbour the United Kingdom of Great Britain and Northern Ireland. Ireland has signed a bi-lateral agreement with the United States of America.

The Conventions, Agreements and Framework Decisions which do not currently come within the scope of the Mutual Assistance provisions of the Criminal Justice Act 1994 will be given effect pursuant to the enactment of the Criminal Justice (Mutual Assistance) Bill 2005 Act.

It is important to mention that Ireland's capacity to give mutual assistance is not necessarily limited to countries which are parties to Convention or Agreements. Any requests falling outside Conventions or Agreements will be considered on an individual basis.

Central Authority for Mutual Assistance in Criminal Matters

The Department of Justice Equality and Law Reform carries out the designated functions of the Central Authority for Mutual Assistance in Ireland.

The Criminal Justice Act of 1994 and associated Regulations confer various powers on the Minister to apply to the Irish Courts on behalf of foreign authorities and to direct domestic agencies to assist their foreign counterparts to investigate and prosecute criminal activities. Because the Minister and the Department do not provide these services directly the Central Authority draws on a number of key agencies which can provide the investigative expertise and legal support necessary to implement requests for assistance.

The primary objective of the Central Authority is to enhance the effectiveness and efficiency of the State's involvement in mutual assistance through the development of the legislative framework and appropriate administrative systems at the domestic level and on bilateral and multilateral bases

On a practical level the Central Authority's aim is the efficient transmission of requests between requesting and executing authorities and the delivery of a quality mutual assistance service to both legal and foreign agencies. The day to day work of the Central authority involves managing and co-ordinating the processing of incoming and outgoing requests for mutual assistance. In fulfilling its responsibilities the Central Authority relies in the area of investigations primarily on the police force (An Garda Síochána) and to a lesser extent the Investigation Bureau of the Irish Customs and Excise authority. On the legal support side the Central Authority relies on the Office of the Attorney General and the Chief State Solicitor's Office. The Office of the Director of Public Prosecutions, particularly in regard to outgoing requests, is also a key player in mutual assistance.

In addition to these official agencies the Central authority has built up an informal but a close and good working relationship with those institutions, which are most often called upon to provide assistance, such as banks and telecommunications companies.

Although the direct transmission of requests, in urgent cases, is possible under the 1959 Convention and encouraged in all cases and not just urgent cases under the terms of Article 53 of the Schengen Implementation convention direct transmission is not generally favoured in Ireland. This is primarily because judicial authorities in Ireland do not have the authority to execute requests. This is perhaps one of the most important distinctions between the operation of mutual assistance under the Common Law traditions of Ireland and the UK and the Civil Law Tradition of most of the rest of Europe. For this reason the Central Authority plays a crucial role in the process of executing requests in Ireland. Ultimately, the exercise of the coercive powers available under the Criminal Justice Act fall to the Minister for Justice, Equality and Law Reform and it is the Central Authority which assists the Minister to discharge these functions.

As the responsibility for the processing of all mutual assistance requests rests with the Central Authority, this in my opinion, has provided a level of efficiency that could not be attained if it was a shared responsibility. The system works well in Ireland

because of the expertise of those working within the Central Authority, with the full co-operation of the small group of centralised agencies involved in the processing of requests.

The Central Authority published a guide to Irish Law and Procedures on Mutual Assistance. The guide has been translated into a number of European languages and is available from the Central Authority directly or from the Department's web site - www.irlgov.ie/justice. The guide, which is aimed at practitioners, attempts to explain in straightforward language the legislative framework and general procedures relating to Mutual Assistance. The guide also sets out the contact details for the Central Authority and how to go about making a request to Ireland.

Scope of Irish Law on Mutual Assistance.

The law enabling Ireland to provide mutual legal assistance to and to seek mutual assistance from, other countries is contained in Part VII of the Criminal Justice Act 1994. In brief, the law includes provisions –

- (i) Allows for the taking of evidence for use in another jurisdiction (S.51)
- (ii) Allows for an application to the District Court for a warrant to search and seize of material (S.55)
- (iii) Allows for an application to the District Court for Order to produce material (S.63)
- (iv) Allows for an application to the High Court for the enforcement of confiscation and forfeiture orders made in another jurisdiction (S.46,47 &48)
- (v) Allows for any summons or other process issued by a court in another jurisdiction to be served on a person in Ireland to appear as defendant or a witness in that jurisdiction (S.49)
- (vi) Allows for the Minister for Foreign Affairs to make arrangements to cause any process issued in Ireland to be served outside Ireland – the arrangements put in place allows that the process to be served is transmitted through the Central authority ((S.50)
- (vii) Allows for the transfer of a prisoner to another jurisdiction and from another jurisdiction to give evidence to give at criminal proceedings or to assist in such proceedings in that state (S.53 & S54)
- (viii) Allows for the issue of letters of requests for the taking of evidence outside Ireland for use in Ireland (S.52)

Investigative Powers Available Under the Act

Before going on to go to talk to you in greater detail in relation to the powers available to Irish investigating authorities to assist foreign authorities in their investigations and prosecutions I should mention that requests for assistance relate to a wide variety of crimes, for example, murder, tax evasion, money laundering, drug trafficking, people trafficking and different types of fraud.

Taking of Evidence

The most used provision of the Criminal Justice Act 1994 is section 51 which provides for the taking of evidence, for example, details of a bank account, by a judge of the District Court nominated by the Minister for Justice, Equality and Law Reform. The taking of evidence includes documents and other articles which might be relevant to an investigation. However, before exercising his powers to nominate

a judge under the Act the Minister must be satisfied that an offence has been committed under the law of the requesting country or that there are reasonable grounds for believing that such an offence has been committed and that proceedings have been initiated in relation to the offence or that an investigation is being carried out there. The Minister must also be in possession from the requesting country of an undertaking that any evidence forwarded in response to the request will not be used for a purpose not specified in the request without his consent. This can be provided for in the law of the requesting country. Arising from the views expressed in a recent Supreme Court decision the Minister also requires an assurance that a defendant will be given the opportunity at his or her trial to challenge any evidence provided by the Irish Authorities on foot of the section 51 provisions.

If the Minister is satisfied that the legal requirements are met, arrangements are made to nominate the Judge to receive the evidence. The witness is summoned to attend before the Judge. The evidence is taken under oath, and handed to a representative of the Minister for transmission to the requesting country.

Attendance at the Hearing.

Witnesses appearing before the court have the usual privileges which they would have in criminal proceedings under Irish Law (such as privilege against self-incrimination).

Police officers, judges, magistrates, public prosecutors and defence lawyers of the requesting State will normally be permitted to be present when the evidence is being taken, and may be allowed to suggest additional questions which they wish to have put by the Minister's legal representative to the witness giving the evidence. It is at the discretion of the Judge the level of participation afforded to the visiting practitioners but generally they are not allowed to actively participate at the hearing.

Search and Seizure

The Act allows for the issue of search warrants authorising entry, search and seizure to obtain evidence for use in criminal investigations abroad. The warrant will be issued by the District Court provided that the Court is satisfied -

- (a) there are reasonable grounds for believing that an offence under the law of the requesting country has been committed,
- (b) the conduct constituting that offence would, if it occurred in Ireland, constitute an offence under Irish Law in respect of which the judge would have power under any enactment to issue a search warrant. This is a requirement of dual criminality.
- (c) There are reasonable grounds for suspecting that the material to which the application relates is likely to be of substantial value to the investigation and does not consist of or include items subject to legal privilege

If the Minister is satisfied that the requesting State has authority to make the request he will give a direction to the Garda Síochána to make application for a search warrant. Unlike the provisions in respect of the uplifting of evidence the Act requires that a request in respect of search and seizure must come from the Government of

the requesting State. The Central Authority regards a request received from an Authority attached to the Ministry of Justice as meeting Irish statutory requirements. In addition, the country making the request must be a designated country under the relevant provisions of the Act. Similarly to the taking of evidence provisions, it is also necessary for the requesting State to provide an undertaking either in law or by arrangement regarding the use of evidence. The undertaking here must also ensure that the Minister be satisfied that the evidence provided will be returned unless he indicates that it need not be returned. The views of the Supreme Court, as applicable in regard to uplifting of evidence, that a defendant has the right to challenge at his or her trial any evidence provided by the Irish authorities on foot of the search and seizure provisions must also be furnished.

The Act requires that the seized evidence be provided to the Minister for onward transmission to the requesting State.

Production Orders

Closely associated with the provisions of search for and seizure of evidence are those for the making of Production Orders by a Judge of the Irish District Court.

The 1994 Act gives a judge the power to make an order, on the application of a Member of the Irish police (Garda Síochána), directing persons who appear to be in possession of relevant material to produce it to the Garda named in the order for him to take away or give the Garda access to it.

The provisions of the 1994 Act confine applications for Production Orders to offences of drug trafficking, money laundering, or other proceedings in which a confiscation order could be obtained.

The other conditions attached to an application for a search warrant apply equally to an application for Order to produce material.

Proceeds of Crime

While most requests to Ireland are under the 1959 Convention on Mutual Assistance an increasing number come within the scope of the 1990 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds of Crime. Irish law provides that an application may, with the consent of the Minister for Justice, Equality and Law Reform, be made to the High Court by or on behalf of the Government of a designated country for the enforcement of a confiscation or forfeiture order obtained in that country. The order made abroad can be made enforceable in Ireland by a way of corresponding Irish court order – called under Irish legislation a confiscation co-operation order or a forfeiture co-operation order. In essence, a foreign confiscation or forfeiture order is converted into a confiscation or forfeiture co-operation order by the High Court, so that the order which is enforced is actually an order of the Irish courts, not a foreign order. A confiscation order relates to property which is or represents the proceeds of crime and a forfeiture order relates to the instrumentalities of crime. The purpose of these orders in general terms is to recover payments or other rewards received as a result of drug trafficking, money laundering or other serious offences so as to deprive a person of the advantages of the proceeds of their crime.

When a foreign authority intends to make a request to obtain a confiscation co-operation order or a forfeiture co-operation order it is usually preceded by a request for a restraint order. The effect of a restraint order is to prohibit any person from dealing with any realisable property, subject to such conditions and exceptions as may be specified in the order. The court must be satisfied that proceedings either have been or will be instituted against a person in the designated country and that a confiscation co-operation order either has been or is likely to be made.

Under Irish law the enforcement of a confiscation co-operation order rests with the Director of Public Prosecutions as if it were a judgement of the High Court for the payment to the State of the sum specified in the order. Irish law does not allow for asset sharing or repatriation of assets. However, the rights of a person claiming to be the rightful owner of property will be respected by the court.

Service of Process

A summons or other process or document issued by a Court exercising criminal jurisdiction received by the Department of Justice, Equality and Law Reform will be served by registered post on the person to whom it is addressed, except in cases where personal service is requested, in which case service will be carried out by the Garda Síochána (police).

Requesting countries are advised that:

A summons or other process requiring a person to attend as a **defendant** in criminal proceedings in another country will not be served unless provision is made by the law of that country or by arrangement with the appropriate authority thereof that, if the person concerned appears as a defendant in compliance with the summons or process, he/she will not be proceeded against, detained or otherwise restricted in his/her personal freedom in that country in respect of any offences committed before his/her departure from the State other than the offences specified in the summons or process unless that person –

(a) having had for a period of 15 consecutive days from the date of his/her final discharge in respect of the specified offences an opportunity to leave the country concerned, has not done so, or

(b) having left that country, has returned to it (Section 49(4)).

Accordingly, a request should indicate whether the provisions that I have mentioned are made by the law of the country concerned; alternatively a request should be accompanied by an undertaking to the same effect by the appropriate authority of that country.

The same conditions apply to a request for the service of witness summons, except, of course, there is no reference to charges facing the witness

(iv) The summons or other process requiring a person to attend as a witness or defendant in criminal proceedings in another country when being served on the person will be accompanied by a notice in writing (prepared by the Irish Central Authority) stating that

(a) there is no obligation under Irish law on the person on whom it is served to comply with it

(b) under the law of the requesting country or by arrangement with the appropriate authority thereof, the person summoned is immune from prosecution for offences committed before his or her departure from the State subject to the exceptions that I have already mentioned

(c) the person on whom it is served may wish to seek advice as to the consequences of his or her failing to comply with the process under the law of the requesting country, and

(d) under the law of the requesting country he or she may not, as a witness, be accorded the same rights and privileges as would be accorded to him or her in criminal proceedings in Ireland.

The Act also empowers the Minister for Justice Equality and Law Reform to make arrangements to cause a process issued in Ireland to be served outside Ireland. The summons or process to be served is received in the Central Authority usually from the Irish police or the Chief State Solicitor's Office for onward transmission to the appropriate foreign authority. The conditions attached to the service of a summons from a foreign jurisdiction, in essence, apply to an Irish summons transmitted abroad for service.

Transfer of a Prisoner in Ireland to give evidence or assist in an investigation outside Ireland

The Minister for Justice, Equality and Law Reform may issue a warrant authorising the transfer to another jurisdiction of a prisoner in Ireland for the purpose of –

(a) giving evidence in criminal proceedings, or

(b) being identified in or otherwise by his or her presence assisting such proceedings or the investigation of an offence (Section 53(1)).

Prisoners must give their consent to the transfer. The Central Authority will make enquiries as to whether the prisoner is willing to attend but no compulsion can be applied.

The effect of the warrant is to authorise -

(a) the taking of the prisoner to a place of departure in Ireland and his/her delivery into the custody of a person representing the appropriate authority of the country to which the prisoner is to be transferred, and

(b) the bringing of the prisoner back to Ireland and his/her transfer in custody to the place where he/she is liable to be detained under the sentence to which he/she is subject (Section 53(3)).

The requesting authority must provide the Central Authority with details in advance of the arrangements for the return of the prisoner to safe custody in Ireland.

Irish law requires that provision must be made by the law of the requesting country, or by arrangement with the appropriate authority, that a prisoner will not be proceeded against, sentenced, detained or subjected to any other restrictions on his/her personal freedom in respect of any offence under the law of the requesting country or territory committed before his/her departure from Ireland (Section 53(4)). A requesting authority, therefore, when making the request should indicate whether such provision is made in its law or alternatively furnish an undertaking in this regard from the appropriate authority.

The Act allows for the reverse process. It enables the Minister for Justice Equality and Law Reform to make arrangements for the attendance of person in detention in another country to appear at criminal proceedings or assist in the investigation of an offence in Ireland. The conditions attached to a request for the transfer of a prisoner to another country largely apply to a request from Ireland.

Form of Requests

I would now like to outline briefly the form that requests to Ireland should take in general.

Firstly, requests should be in writing. In cases of urgency, advance faxed or e mail copies of requests may be accepted with an undertaking that the original request will follow without delay.

Secondly, requests should be in either the Irish or English language. In cases where requests are translated from the language of the requesting country, a certificate should accompany the translated request to the effect that the request is a complete and accurate translation of the version of the request in the language of the requesting country.

Thirdly, requests should include the fullest information possible, in general;

- (a) details and full address of the requesting authority including the details of a contact person;
- (b) a summary of the facts of the case;
- (c) the purpose for which the assistance has been requested and the relevance of the evidence to the foreign proceedings or investigation;
- (d) indicate that either an offence has been committed or that there are reasonable grounds for suspecting that such an offence has been committed;
- (e) a detailed description of the evidence or assistance required;
- (f) specific information on any property to be searched.
- (g) the date of the trial or any other relevant date

Outgoing Requests

I have up to now focused largely on incoming requests to Ireland I will now turn briefly to requests for assistance from Ireland.

Reciprocity is a fundamental principle in international co-operation and the same obligations which Ireland has to provide assistance to our foreign partners apply to them. I will briefly outline some of the pertinent issues relating to sending requests for mutual assistance abroad.

There are generally two avenues available to investigating authorities in Ireland to make requests abroad for assistance in relation to a criminal investigation or prosecution.

The first avenue currently available is pursuant to the Council of Europe Convention on Mutual Assistance in Criminal Matters which provides for the communication of requests between member states. Article 15 of the Convention sets out the channels for dealing with and transmitting requests, including urgent requests and requests for investigations preliminary to a prosecution. Ireland has designated the various courts, the Attorney General, the Director of Public Prosecutions and the Chief State Solicitor as judicial Authorities with the power to issue letters of request.

The second avenue is pursuant to the Criminal Justice Act, 1994. The Act provides for the obtaining of evidence from outside the State for use in the State.

Outgoing requests for assistance from Ireland are almost exclusively under the signature of the Director of Public Prosecutions. The requests are drafted by the police in conjunction with the Office of the Director of Public Prosecutions.

PART 2

Developments

The operation of mutual assistance continues to evolve both in Ireland and Europe, through Council decisions, new conventions, the enactment of new legislation, the operation of law and developments at European level.

I have selected the following to illustrate the positive developments that have or are about to take place in the area of mutual legal assistance

- The Schengen Implementation Convention
- The European Judicial Network
- Eurojust.
- Liaison Magistrates
- The Criminal Justice (Mutual Assistance) Bill

Schengen Convention

The Schengen Implementation Convention, at Title 3 deals with the whole question of better co-operation between E.U. Member States both in the area of police to police co-operation and in the area of mutual legal assistance. Article 53 of the convention, encourages the direct transmission of requests not just urgent requests. Direct transmission of requests means that the requesting authority, for example, an examining Magistrate in France is able to send a request for assistance to a

Magistrate in Spain in whose district the evidence is to be found, rather than having to forward the request through the appropriate Central Authority. This procedure, as I have already mentioned, cannot be applied in Ireland because judicial authorities in Ireland do not have the power to execute requests.

European Judicial Network

Under a Joint Action agreed in June, 1997 a network of contact points - the European Judicial Network - in each Member State of the European Union with responsibility for the provision of mutual assistance was established. The network meets as a group three times a year to exchange views and to promote closer co-operation between Member States. The contact points come from various backgrounds such as Magistrates, Prosecutors, Police Officers and Civil Servants. Ireland is represented at the Network meetings by representatives of the Irish police and the Central Authority. In furtherance of its aims the EJNI has been instrumental in the introduction various tools and instruments which have led to significant improvements in the whole area of mutual legal assistance

I propose to briefly refer to some of these instruments and tools.

(Fiches Belges)

The first instrument introduced was the fiches Belges. Its connection with Belgium is the fact that it was an initiative of the Belgium Ministry of Justice. The objective of the fiches or record is to improve the mutual knowledge of the criminal procedural systems so as to avoid exhaustive study of comparative law by practitioners working in judicial co-operation. Each fiches or record contains, as provided by the member States, information on a series of investigative measures. It includes information on such areas as a search, restraint of assets and hearing of a witness. It is divided into several fields covering all the useful information that the requested authority needs to execute an investigation measure in another Member State. The records are available on a protected website and are in the English and French languages.

(The European Judicial Atlas)

The prime goal of the European Judicial Atlas is to allow the local judicial authorities, in each Member State, to immediately identify the competent local authority in another Member State, who can receive and execute a mutual legal assistance request in criminal matters. It is an information technology system and it is based in a standard question/answer scheme that intends to be an instrument easy to consult and effective to the user. In addition to details of the contact points of the European Judicial Network, the Atlas also contains the 'Fiches Belges'. As the judicial authorities in Ireland do not have the authority to execute requests the Atlas shows Ireland as a single area, with the Central Authority as the authority responsible for the execution of requests.

(Standardisation of Letters of Requests)

It has been an aim of the EJNI that Member States should standardise letters of requests. The Irish police, who have the responsibility for drafting requests, have standardised the procedure, in line with the model form suggested by the EJNI. The standard format has been distributed in template form and C.D. Rom to police stations and specialised police units in Ireland so as to allow the unit or station concerned in the investigation to draft the request. The Mutual Assistance Section,

at Garda Headquarters checks the draft before it is forwarded to the Office of the Director of Public Prosecutions for final scrutiny and the Director's signature. The signed letter of request is forwarded to the Central Authority for onward transmission to the requested authority.

Eurojust

Eurojust is a college composed of, at least, one national member seconded by each Member State in accordance with its legal system. S/he must either be a prosecutor, or a judge or a police officer of equivalent competence. Ireland's representative is a prosecutor. Eurojust was set up, under a Council decision of 28 February 2002, as a measure to reinforce the fight against serious crime. The objective of Eurojust is to stimulate and improve the coordination, between the competent authorities of the Member States, to improve cooperation between competent authorities of the E.U. Member States and to provide support in order to render their investigations and prosecutions more effective.

While the Judicial Network is the paramount network in bilateral cases, one of Eurojust's primary tasks is its involvement in criminal investigations, involving several countries. In such investigations the national members of those countries connected to the crime under investigation meet to share views, problems, and arrive at a decision on the best way to progress the investigation. Eurojust is also available to assist in the areas of Joint Investigation Teams and the European Arrest Warrant.

The Council decision provides for a privileged relationship between Eurojust and the EJM and as part of the decision the secretariat of the Network has been placed at the Eurojust Headquarters in the Hague

Liaison Magistrates

Some of the larger countries have appointed legal officers in different countries with the aim of the speedier execution of requests between their respective States. The Liaison Magistrates not only act as go between they also make available their expertise to both the requester and the requested in matters contacted with requests for assistance. Ireland does not have any Liaison Magistrates. The U.K, for example, has Liaison Magistrates in France, Italy, Spain and the U.S.

The Criminal Justice (Mutual Assistance) Bill

The proposed legislation will build on the existing legislative framework in relation to the provision of mutual legal assistance. The Bill consists of a total 88 sections, divided into nine parts and it will repeal the existing Mutual assistance legislation, which consists of some eleven sections, plus regulations.

The new act when it comes into force will have a major impact on the Central Authority in the context of an increased workload and will lead to an overhaul of procedures. More importantly Ireland will be able to provide a far greater level of assistance to requesting States than heretofore.

PART 3

The execution of requests

Before I go through some actual requests for assistance there are a number of general issues I should mention. Firstly, I would like to refer to police to police co-operation.

Police to Police Co-operation

It is more usual and than unusual that a request seeks various types of assistance, within the same letter of request. A regular feature of requests is for assistance that is provided on a police to police basis.

This type of co-operation has been ongoing, long before the Central Authority for mutual assistance came into being. Some confusion arose in the early days of the Central Authority arising from the more formal arrangements of mutual assistance. Some people were under the impression that all requests for assistance had to be transmitted through a Central Authority. This is not the case. Police to police and indeed, customs to customs co-operation are very effective ways of progressing investigations.

When the Central Authority receives a request which it is considered can be executed by way of police to police co-operation it is forwarded to the Police authorities with an instruction that it be so executed. As Ireland has only one police force all requests for assistance proper to the police are forwarded to the Mutual Assistance Section at Garda (Police) Headquarters.

Forms of co-operation which can be obtained through the police, include

Interview of witnesses or suspects in criminal investigations, on consent, and the taking from them statements, under caution

Sharing of information concerning investigations in Ireland, where circumstances permit

Provision of criminal records

Provisions of details of motor vehicle registrations and driving licenses in Ireland

Provision of medical records, where the patient has given written consent

Provision of company registration details.

In summary the type of assistance that can be provided by the Irish police is evidence uplifted on a voluntary basis and records and documents that are available on public record. If the Irish police are in possession of evidence required by a requesting State that came into their possession by the power of compulsion this evidence cannot be forwarded to the requesting authority without going through the applicable statutory route – it must be uplifted for transmission by the Central authority to the requesting authority through a nominated Judge of the District Court.

In regard to requests forwarded to the Mutual Assistance Section at Police Headquarters these are referred to the Chief Superintendent of the relevant police unit or the district to carry out the required investigation. The usual practice is that the police report on the investigation is forwarded to the Central Authority for onward transmission to the requesting authority or if the need arises for further action by the Central Authority.

The Dublin office of Interpol deals with all police services, except the Police Service of Northern Ireland, in matters of co-operation outside the formal mutual legal assistance route.

CONFIDENTIALITY OF REQUESTS

The contents of a letter of request or the fact that it has been made will not normally be disclosed outside Government Departments, the Garda Síochána, the Courts or other official bodies in Ireland concerned with the execution of the request. Wider disclosure may be necessary, however, when evidence is being obtained or used in proceedings.

If confidentiality requirements make it difficult or impossible to execute a request, the requesting authority will be consulted by the Central Authority.

While confidentiality is expected from a witness, summoned to appear before a nominated Judge of the District Court the Irish authorities are not in a position to give a guarantee of confidentiality. There are no provisions under the mutual assistance regime that prevents a breach of confidentiality. In the event that any aspect of a request requires a court process once a Court Order is served nothing can be done to prevent disclosure by the notified party to third parties

Grounds for Refusal of assistance

The Central Authority provides all possible assistance to a requesting party so that effect may be given to a request. While cases of refusal are rare requests may be refused on the basis of political, security or national interest grounds, but may also be unavoidable in certain other cases. For example, in some instances evidence may not be taken or passed on where a witness has made a substantiated claim to privilege, or a request for search and seizure of evidence may be refused if the circumstances of the case do not satisfy the requirements for the exercise of the power contained in Irish law. In addition it may not be possible to provide assistance in relation to overseas proceedings where those proceedings may result in double jeopardy for the accused (e.g. retrial for an offence for which he or she has already been tried in Ireland or elsewhere). In the case of requests for the transfer of prisoners, assistance may be refused or delayed if the prisoner is unwilling to co-operate or is very near the date of his/her release in Ireland or is required for proceedings in Ireland.

More generally, the rule is that assistance cannot be granted where execution of the request would be contrary to the Irish Constitution, other Irish law or established practice.

In appropriate cases, requesting authorities will be invited to modify the request so that assistance may be provided.

I can recall an aspect of a request which the Irish authorities refused to execute. The offence concerned a murder in Northern Ireland and the requesting authority sought details of a particular phone number and its use. Because the phone subscriber was an informant this aspect of the request was refused in accordance with Article 2(b) of the European Convention on Mutual Assistance in Criminal Matters - the execution of that aspect of the request would prejudice the security and public interests of the State and place the safety of persons at severe risk.

Practical Examples

The Central Authority in Ireland is a small unit consisting of myself, as Operational Manager, and three other designated officers. Requests that are considered sensitive or of particular importance are brought to the attention of more senior personnel.

STATS

Example 1 – Joseph Strain - Evidence for use abroad – the request was described as urgent and it was executed within 10 days of receipt of the actual request.

Section 51 list

A list of potential section 51 cases is maintained in the Central Authority and examined on a regular basis. The reasons for maintaining the list is to keep a track of Section 51 cases and for the purposes of making of bulk applications. Rather than making arrangements as a case is ready for an application the Central Authority waits until there are approximately 8/9 witnesses to be examined. Applications are moved usually every three/four weeks. Contact is made with the Office of the President of the District Court with a view to the nomination of Judge to hear the applications and to set a date for the hearings. The Minister's representative formally nominates the Judge by forwarding a letter of nomination in respect of each request to the President of the District Court. At this point the Central Authority makes the other various arrangements for the applications to be moved e.g. stenographer (translator). The witness orders are usually already drafted at this stage and once the date has been set the State Law Office are in a position to apply to the nominated Judge to issue the witness summonses. The evidence is taken under oath and it is recorded by a stenographer. On a date convenient to the Judge and the witness the transcript of the evidence is signed by the Judge and the witness. The signed transcript and exhibits are transferred into the possession of the Minister for onward transmission to the requesting authority. The evidence can be handed to nominees of the requesting authority.

Example 2 – Christopher Agidi –Restraint Order - the request was described as urgent and it was executed within 12 days of receipt of the actual request.

Example 3 –Stephen O'Sullivan – search and seizure - the request was described as urgent and it was executed within 03 days of receipt of the actual request.

N.I. request - "seized" – Bus Ticket issued a couple of days prior to the discovery of the body – sought the CCTV footage (Dublin & Athlone) to identify the person who

bought the ticket. It was suggested that the word 'seize' be substituted with 'be obtained, preferably on a voluntary basis.'

Jim Clerkin
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