Project Cybercrime@EAP II

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Assessment report on international cooperation on cybercrime in the Eastern Partnership region

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Programmatic Cooperation Framework for
Armenia, Azerbaijan, Georgia, Republic of Moldova, Ukraine and Belarus

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Introduction

The primary purpose of international cooperation in cybercrime investigations and proceedings is the preservation and production of admissible and reliable evidence that can be used in pre-trial and trial proceedings in criminal cases. Electronic evidence in cases of offences against and by means of information technology is usually difficult to collect and relatively volatile; it is therefore crucial that, in investigating and prosecuting cybercrime, the states parties to the Convention on Cybercrime are prepared to employ a variety of international cooperation modalities available under the Convention in an efficient and timely manner.

Therefore, the purpose of this report, as a part of the Cybercrime @ Eastern Partnership Project II, is to analyse some of the issues pertaining to the mutual legal assistance in cybercrime cases in the Eastern Partnership countries – Armenia, Azerbaijan, Belarus, Georgia, Moldova and Ukraine. The report is based upon the replies to the questionnaire on international cooperation in cybercrime sent to corresponding states by the Council of Europe in 2015, as well as on experience and minutes of extended discussions on the same matters that took place during the workshop on "Improving international cooperation on cybercrime in the Eastern Partnership region", organised by the Council of Europe on 9-11 September 2015 in Bucharest, Romania.

This report takes note of the Cybercrime Convention Committee (T-CY) assessment report on mutual legal assistance provisions of the Budapest Convention on Cybercrime, adopted by the Committee at its 12th Plenary in December 2014, and makes use of wealth of additional information and analysis available from the report. Whenever applicable, findings of the T-CY assessment report are referenced to and compared in this document.

1. Institutional setup and responsibilities

As a general introductory remark, institutions in the Eastern Partnership states responsible for 24/7 communications under the Convention on Cybercrime are, to a most extent, similarly organized, while competent authorities fir mutual legal assistance vary according to placement, operational responsibility, legal basis for international cooperation, and the ways in which such cooperation is rendered in practice.

1.1. Setup and responsibilities of 24/7 points of contact

1.1.1. Institutional setup

The 24/7 contact points under the Convention on Cybercrime are established within the structure of Ministries of Internal Affairs in Eastern Partnership countries, with exception of Moldova which has an additional contact point at the Prosecution Service. Another common feature of 24/7 points of contact in the states of the region is placement of such contact points as a part of specialized cybercrime units.

Despite this uniform setup, those Eastern Partnership states that have cybercrime investigation units under the state security agencies may encounter problems related to timely communication and cooperation in cybercrime cases, especially where there are competing investigative jurisdictions for investigating a criminal case.

1.1.2. Responsibilities

The powers for the preservation of data, as required by the Convention of Cybercrime, is noted to be the key area of responsibilities for 24/7 units in Eastern Partnership states. However, even this common feature can be subject to problems due to the lack of clear legal regulations, thus limiting the power to perform its duties (as is the case in Ukraine), or the lack of practice in execution of foreign requests for the preservation of data (Armenia and Azerbaijan in particular). The preservation powers are deemed to be efficient in cases where they are supplemented by the obligation for Internet service providers to retain traffic data.

However, such narrow specialization on data preservation is the source for other problems in cases of some Eastern Partnership states, such as inability to collect admissible evidence, facilitate mutual legal assistance or provide technical advice. Cooperation and coordination with security services that normally possess other means to obtain data is limited.

On the other hand, awareness of the 24/7 units and their functions on the local level is reported to be high. Due to specialization of such units in police-to-police cooperation in cybercrime investigations, they are identified rather easily by other members of the police force. In some of the states of the region, awareness of 24/7 points of contact and their functions is facilitated by explanatory guidelines and use of hotlines.

1.2. Competent authorities for mutual legal assistance

1.2.1. Institutional setup

The institutional setup for the central authorities in Eastern Partnership states reflects the requirements of international treaties these states are party to. Therefore, states parties to the European Convention on Mutual Assistance in Criminal Matters (Armenia, Azerbaijan, Georgia, Moldova and Ukraine) designate Ministries of Justice and central prosecution services as competent authorities for handling mutual legal assistance requests, while Belarus designates the Prosecutor General's Office as competent authority under Minsk and Chisinau Conventions on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters.

In practice, however, and in national legislations, those states who designate both Ministries of Justice and Prosecutor's General's Offices as central authorities (Armenia, Azerbaijan, Moldova and Ukraine), the functional setup focuses on the stages of the proceedings, with the former designated for requests that relate trial-stage proceedings and the latter – to the pre-trial. Georgian central authority is under the Prosecution Service that is integrated into

the Ministry of Justice, thus being competent for both stages if the criminal proceedings, while in Belarus central competent authorities in respect of bilateral and multilateral international treaties of the Republic of Belarus are defined separately in the corresponding laws on ratification of these treaties.

In the context of Eastern Partnership states, institutional setup for competent authorities on mutual legal assistance is comparable. All of the competent authorities have been established as separate units under the structure of host institutions, with staff members specialized and experienced in processing of international cooperation in criminal matters.

1.2.2. Direct judicial cooperation

Four out of six Eastern Partnership states (Armenia, Georgia, Moldova and Ukraine) are parties to the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters that provides, among other things, for direct communication and cooperation between judicial authorities. At the same time, Belarus accepts direct communication between judicial authorities under the Minsk Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters. Azerbaijan strongly discourages direct judicial cooperation and prefers to centralize all communications through central authorities.

As a matter of practice, such cooperation between the states of the region is rather rare and is mostly available for local judiciary authorities in regions bordering other states that also allow for such practice. Discussions with representatives of the respective countries reveal that there is no uniform agreement between the Eastern Partnership states as to the feasibility and efficiency of direct judicial cooperation. Preference is generally given to the cooperation through central competent authorities; in rare cases of direct judicial cooperation, at least some form of centralized reporting is being done or strongly encouraged to the central authorities, not the least for the concerns about the quality of both incoming and outgoing requests being processed at the local level.

1.3. Channels of communication for mutual legal assistance

In the practice of the Eastern Partnership states, direct communications between central competent authorities are most frequent due to similarly frequent availability of the treaty basis for cooperation. Diplomatic channels are also used frequently and are used almost exclusively in cases where assistance in provided on the basis of reciprocity, due to professional involvement of the foreign affairs agencies in securing guarantees of reciprocity.

Against this background, the use of 24/7 points of contact under the Budapest Convention on Cybercrime for mutual legal assistance purposes is not a common practice. Due to their most frequent placement under the Ministries of the Interior, 24/7 units are seen as agencies that form a part of police-to-police cooperation framework and as units primarily specialised in data preservation requests rather than mutual legal assistance counterparts, even in cases where urgent assistance is required. All of the 24/7 contact points, however, can re-route the mutual legal assistance requests to the competent authorities for further consideration.

In contrast, Interpol contacts in the Eastern Partnership countries can be used as channels of communication for mutual legal assistance requests, due to the perception of broader competences of such units in dealing with almost all sorts of criminal investigations. Interpol communications are also accepted as preparatory communications in the early stages of the MLA process.

As regards technical means, assistance requests in electronic format, whether by fax or email or even specialized software, are accepted by all Eastern Partnership states even in cases that do not involve urgency. However, most of these states (Azerbaijan, Belarus, Moldova and Ukraine) require the original documents to be submitted in order to either continue (especially where court/investigative warrants are required) or complete (i.e. send the report of the execution of the request) the process of assistance.

2. Issues pertaining to 24/7 contact points: data preservation, subscriber information and cooperation with providers

This part of the report is aimed at providing insight into the features and problems of mutual legal assistance process in cybercrime/electronic cases from the perspective of definitions of offences and reliable statistics.

2.1. Data preservation

Eastern Partnership countries are aware of the legal and practical differences between the preservation of data under the Budapest Convention on Cybercrime - that is, order of freezing relevant data in order to allow time for obtaining a court order for the production or seizure of data - and data retention, which stands for mandatory continued storage of information (normally traffic data) for a certain time by the service provider.

Against this understanding, there are reported gaps in legal regulation as well as practice on the preservation of data. Data preservation provisions of the Convention are not reported to be implemented in most of the Eastern Partnership states, with general reference made to search and seizure procedures instead. Some of the region's states are yet to receive any data preservation requests in order to test such alternatives in practice. International preservation requests (Article 29 of the Budapest Convention) are often not followed by mutual legal assistance requests for production of data; moreover, there are often no formal modalities for informing states requesting preservation of a necessity of mutual legal assistance request (in the best practice of the EU states implementing the Convention, such replies can be automated). In the states that do have data retention provisions, requested data will be erased if the preservation request is not followed by an official letter rogatory in maximum time allowed for retention.

The need to accompany the expedited preservation of data (Articles 16 and 29 Budapest Convention) with the partial disclosure of a sufficient amount of traffic data to determine the path of a communication (Articles 17 and 30 of the Convention) appears to be problematic for Eastern Partnership countries in terms of insufficient legal regulation and practice. Experience of other states parties to the Convention (Romania in particular), which oblige Internet service providers to divulge information on the availability of data with the other provider upon receipt of a preservation request, can be a good guidance for reforming legislation.

2.2. Subscriber information

In some of the Eastern Partnership states, subscriber information is considered to be a part of traffic data and is treated as such, thus making it difficult to obtain it without a court order. In one of such jurisdictions where distinction is kept, the legislation was amended due to privacy/data protection concerns, requiring a court order to receive subscriber information. The general understanding of the subscriber information is that the definition applies to both static and dynamic IP addresses.

There is an interest among the states of the region to explore and put into effect the possibilities accorded by Article 18.1.b of the Budapest Convention, which allows domestic authorities to order the production of subscriber information from foreign service providers offering a service on the territory of the state in question.

2.3. Cooperation with Internet Service Providers (ISPs)

Cooperation with Internet service providers varies widely among Eastern Partnership states. Some of the states would assess cooperation as excellent, while others note particular difficulties due to the lack of legal regulation and availability of solutions for organizing public-private platforms and partnerships with Internet service providers. The common concern, however, is the availability of ISP cooperation and response only in working hours, which is a challenge due to urgent nature of data preservation requests. Often, the readiness of ISPs for cooperation with law enforcement would depend on a number of such companies in specific jurisdictions, with larger number of companies being obviously more difficult to handle.

The process is seen at its most efficient when ISPs themselves are actively requesting the authorities to put effort into sending specific and precise requests in reasonable deadline and for prioritising cases in order to receive more accurate information. In Romania, this process led to setup of an electronic system for filing and electronic signature, based on standard form for sending/receiving request for subscriber's information or traffic data (not for content data, however).

3. Issues pertaining to mutual legal assistance: legal basis, types of data requested, underlying offences and statistics

This part of the report is aimed at providing insight into specific features and problems of mutual legal assistance process in cybercrime/electronic cases as noted by and discussed with the representatives of the Eastern Partnership states' competent authorities.

3.1. Legal basis for mutual legal assistance

With the exception of Belarus, all Eastern Partnership countries are parties to the European Convention on Mutual Assistance in Criminal Matters, which lays down the framework for international cooperation in criminal offences investigation, including the offences related to computer systems and data. Armenia, Belarus, Moldova and Ukraine are parties to the Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters (Minsk Convention), while the CIS-sourced Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters (Chisinau Convention) includes Armenia, Belarus and Ukraine as parties to the treaty. Belarus often invokes the United Nations Convention on Transnational Organized Crime as a legal basis for cooperation. Besides, there are numerous bilateral agreements on cooperation in criminal and related matters between the Eastern Partnership states.

In implementing these treaties, the corresponding legal basis for mutual legal assistance is found either in the Code of Criminal Procedure (Armenia, Azerbaijan, Belarus, Moldova and Ukraine) or in specialized legislation that addresses international cooperation in criminal matters (Georgia). Even a cursory overview of the provisions of these acts that relate to mutual legal assistance reinforces the conclusion that the choice of incorporating legislation is immaterial from the point of regulatory or practical compliance.

In cases where legal assistance is not covered by a specific multilateral or bilateral treaty, legal assistance in criminal matters on the basis of reciprocity is expressly allowed in all of the Eastern Partnership jurisdictions. The provisions on reciprocity are found in the same legal acts that incorporate the legal basis and requirements for international cooperation in criminal matters into domestic law, that is, Codes of Criminal Procedure and specialized international cooperation acts. Nevertheless, the treaty basis for cooperation is a preferable solution in order to exclude delays or discretion in providing requested assistance; in this light, accession to the Budapest Convention on Cybercrime for states that are not yet party to this treaty would provide both clarity in terms of applicable legal basis and substantive law provisions as well as allow access to an environment of trust forged between the state parties in terms of cooperation and advice.

3.2. Types of data requested via mutual legal assistance process

The types of data requested through international cooperation in cybercrime cases within the Eastern Partnership region do not differ significantly from the general findings of the Cybercrime Convention Committee assessment report on mutual legal assistance provisions of the Budapest Convention on Cybercrime, with some differences in lower-number examples of requests.

The following data are sought most often:

- Subscriber information is requested most frequently, with noted minimum of 50% of all such requests, both in terms of communications data and website ownership;
- Traffic data, most often IP ranges, time intervals of access and end-to-end connections;

- Witness, suspect or victim testimony and interviews represent third most requested category of data, sought by means of interrogation requests via pre-trial or court testimony;
- Content data is sought often and is subject to requests of search and seizure, often together with the equipment that stores or transmits such content;
- Information on financial transactions and identification of account holders, both from banking institutions or virtual currency operators, is requested frequently.

3.3. Underlying offences

Article 23 of the Budapest Convention on Cybercrime requires states parties to cooperate "for the purposes of investigations or proceedings concerning criminal offences related to computer systems and data, or for the collection of evidence in electronic form of a criminal offence." This leads to a range of offences that is inherently wider in scope than definitions provided by the Articles 2 to 11 of the Convention. As noted above, this seems to present a particular challenge to the criminal justice systems of the Eastern Partnership states, with none of them having official guidance as the criteria and features of computer/data-related crimes or for offences involving electronic evidence. Thus, singling out such offences from all criminal cases subject to international cooperation proves difficult in the absence of such criteria and practice.

Against this background, a number of commonly reported offences can be still identified from the written submissions and extended discussions with Eastern Partnership states, namely:

- Computer-related fraud takes a distinctive lead and is in line with general trends reported to the Cybercrime Committee, most frequent being credit card and electronic payments fraud;
- Illegal access;
- Computer-related forgery;
- Illegal content (child pornography, copyright abuse);
- Blackmailing is an interestingly common occurrence, perhaps being an example of offence beyond Convention-sourced definitions;
- Illegal interception and intrusions of privacy.

3.4. Statistics

Based on written responses to the Council of Europe questionnaire on international cooperation as well as discussion during the Council of Europe event on "Improving international cooperation on cybercrime in the Eastern Partnership region", the statistical data on mutual legal assistance is collected and processed by central authorities in various ways. This leads to widely different data for similar jurisdictions in the period of 2010 to 2015, as illustrated by the table below:

State	Overall MLA requests received	Overall MLA requests sent	Received MLATs on cybercrime	Sent MLATs on cybercrime
Armenia	595	805	n/a	80
Azerbaijan	3304	103	n/a	n/a
Belarus	1647 (since 2011)	9268	n/a	121 (since 2013)
Georgia	5035 (since 2011)	361 (since 2011)	12 (since 2012)	24 (since 2012)
Moldova	2898	2504	48	35
Ukraine	4762 prosecution, 6665 Min. Justice (overall)	2493 prosecution, 6665 Min. Justice (overall)	220 prosecution, 10 Min. Justice (overall)	7 prosecution, 10 Min. Justice (overall)

The differences in data and some omissions in the above table demonstrate a number of obvious problems with the available statistical data related to cybercrime and electronic evidence. The problem of vague definitions and criteria for underlying offences, which should, as noted above, include all offences that rely contain electronic evidence, leads to

widely varying data reported from different jurisdictions in the absence of such definitions. On the other hand, in countries where there are several competent authorities for cooperation, data is usually not shared or compared in order to rule out repeated instances of accounting. Use of information technology for accurate statistical accounting of data processed via mutual legal assistance mechanisms is limited and most of the data analysis is processed manually. There is also a lack of integration of the software-based international cooperation process with the mainstream solutions for management of criminal cases (wherever available), which leads to discrepancies of data in cases where direct judicial cooperation is involved or lost opportunities for more efficient follow-up and monitoring of requests that undergo execution by local criminal justice authorities.

4. End-to-end procedures for international cooperation

4.1. End-to-end procedures for the 24/7 points of contact under the Budapest Convention on Cybercrime

As already noted, 24/7 points of contact in Easter Partnership states represent part of specialized cybercrime units, and operate as such. This means that once a 24/7 contact point receives a request, the contact point will most probably initiate or carry out the investigation and, if necessary, contact a prosecutor and obtain the necessary authorizations through the prosecutor or the court. The contact point may also communicate to the foreign contact point which prosecutor is in charge and provide other useful information to permit follow up through a formal mutual legal assistance request.

Most data sought by 24/7 contact points are held by Internet Service Providers (ISPs). Therefore, proper modalities for cooperation with the ISPs are crucial for core functions of 24/7 points of contact. However, such cooperation is often hampered by unclear or overly complex legal regulations, the reform of which in many cases takes considerable effort and time for law makers. In the absence of clear legal frameworks, the situation could be somewhat remedied by formal memoranda of cooperation with ISPs, modelled upon the Council of Europe Guidelines for cooperation between the law enforcement and internet service providers on cybercrime.

In Eastern Partnership states, it takes 1 or 2 days for Internet Service Providers to comply with the request. This is in stark contrast with practice of the EU member states parties to the Cybercrime Convention, where cooperation is often rendered in a matter of hours (especially considering the data preservation requests). Most of the states of the region indicate that the requests are handled by ISPs during working hours only.

In terms of best practice examples available in the Eastern Partnership states, Belarus noted that under the law the Internet Service Providers are obliged to have special groups/teams tasked with ensuring immediate response to law enforcement requests. Moldova noted its efforts in finding a solution through organization of public-private platforms and partnerships with ISPs, so that the ISPs could provide information outside office hours.

4.1.1. Armenia

In Armenia, the Police of the Republic of Armenia, namely the General Department of Combating against Organized Crime, Division on Fighting against High-Tech Crime, processes requests for providing police-to-police cooperation under the Budapest Convention and the network of high-tech crime units under the G7. It processes only operative and intelligence information (cannot be used as evidence in criminal proceedings) and does not receive and process mutual legal assistance requests. Information received through the 24/7 point of contact is forwarded to competent investigative authorities; if the specific investigative action is required, referral is done through the Prosecutor's Office. Technical assistance and support and advice can provided by the 24/7.

The data preservation process involves a number of distinct steps. Step 1 is recording of the incoming request, followed by confirmation of receipt by email delivery/email opening report (if requested by sender). At the next stage, legal review as to the lawfulness of the request and whether the information requested is of operative/intelligence nature is performed, with two alternative outcomes: a. In case where request concerns investigative actions – request

is sent back with indication that MLA process is required; b. If the request is for the content data – irrespective of nature of request, refusal is made and sent back with indication that other channels must be used. If the request is cleared, it is sent for execution to service provider/person and response (no guarantees for response due to lack of legal framework).

If requested data is of interest for operative agencies of Armenia and the service provider refuses to comply, national investigative procedures may be opened.

If the request in the end is turned down or not responded to by the provider, the request will be sent back to the requesting state with the indication that MLA procedures must be used for obtaining data.

If the data was preserved on a voluntary basis, then the requesting state will be notified to submit MLA request for the production of preserved data

In cases of terrorism or similar offences, urgent measures can be undertaken provided that the sanction of the court is received within 24 hours. The particular measures/steps will be decided on a case-by-case basis.

4.1.2. Azerbaijan

The authority in charge of the 24/7 communications is the State Security Service of the Republic of Azerbaijan, namely Department of Cybercrime and its Legal Provision Office.

With regard to requests, the following steps are involved: confirmation of receipt (if requested); legal review as to the national and international requirements (not more that 3 days); if necessary, sending request back for additional clarifications or, otherwise, proceeding with the request or refusing to comply; if acceptable, sending the request for execution to provider/person.

Follow up is undertaken in cases of urgency or where specific time for response was requested and there is no feedback from provider. Requests should be in principle executed within 10 days period after receipt (in exceptional cases the execution can be prolonged, however not more than for 2 months).

There is no special difference in terms of execution of urgent or regular requests. Applicable Order of the Prosecutor General provides for rational time for execution in all cases (in practice - 10 days).

4.1.3. Belarus

National authority for 24/7 point of contact is the Ministry of Internal Affairs of the Republic of Belarus, Department of High-Tech Crimes (Department "K"). It is important to note that his type of legal assistance is not provided by the Criminal Procedure Code of the Republic of Belarus. At the same time, according to Art. 6 of Decree of the President of the Republic of Belarus no.60/01.02.2010, the ISPs must keep data (subscriber, traffic and hosting data) in the timeframe of 12 months. They may keep the data for 3 years as a maximum. This is fitted to the statutory limitation period. ISPs are not required to delete data after the prescribed deadlines.

Receipt of data preservation requests is not confirmed, while legal review as to the national and international requirements is performed within 24 hours, another 24 hours is reserved for decision on sending request back for additional clarifications, proceeding with the request or refusing to comply. In case of approval, the request is sent for execution to provider/person within 24 hours of the approval. Internet-providers undertake necessary activities on preservation of information or data during the working hours and within a few days upon the written inquiry.

Urgent procedures are not stipulated in the Criminal Procedure Code of the Republic of Belarus, but in case of need and possible public danger (due justification is of importance) every kind of legal assistance sought in a criminal case can be rendered in the shortest term.

4.1.4. Georgia

The 24/7 National Contact Point is operating at the Cyber Crime Division of the Central Criminal Police Department at the Ministry of Internal Affairs of Georgia.

In case of requests for preservation of data, the request is recorded and confirmation of receipt is done by email delivery/opening report (if requested by sender). Next step is initial review as to the dual criminality, in which judicial cooperation central authority may be consulted. If approved, relevant ISP is approached and requested to preserve data, and if ISP confirms data preservation, requesting authority will be notified accordingly. If preservation is not available, requesting country is offered urgent MLA procedures.

Given the nature of preservation requests they are all treated urgently.

4.1.5. Moldova

Moldova employs two competent 24/7 points of contact for the purposes of the Budapest Convention, one at General Police Inspectorate (Centre for combating cybercrimes of National Inspectorate for Investigations) and another - at the Prosecutor General's Office, IT and cyber crime Investigations Section).

The 24/7 point of contact at the Police Inspectorate provides police-to-police cooperation under the Budapest Convention and the network of high-tech crime units under the G7, processing only operative and intelligence information (cannot be used as evidence in criminal proceedings). It does not receive and process mutual legal assistance requests, but can provide technical assistance and support/advice.

The procedure for data preservation starts with confirmation of receipt (30 minutes), followed by legal review as to the national and international requirements (1-2 hours). As a result of review, the request is either sent back for additional clarifications, proceeded with or refused compliance. In case the request goes forward, it must be verified with the supervising prosecutor. Then the request is sent for execution to provider/person in question.

In cases of terrorism or similar offences, urgent measures can be undertaken provided that the sanction of the court in Moldova verifying the request is received within 24 hours. The particular measures/steps will be decided on a case-by-case basis.

4.1.6 Ukraine

The Cyberpolice Department, Division for Combating Cybercrime of the National Police of Ukraine, as part of the Ministry of Internal Affairs of Ukraine performs the functions of the 24/7 point of contact. Because of the absence of the mechanism of exchanging messages to/from international law-enforcement agency between National Police and Security Service of Ukraine, the possibility of establishing second 24/7 National contact point at the Security Service of Ukraine is being discussed.

24/7 contact point is executing only police-to-police kind of requests about/or related to cybercrime. It can provide assistance in the investigation of criminal offences connected with computer systems and exchange of operative information (that is not the evidence in a criminal trial). Central Authorities of Ukraine may take into consideration a request that came from the requesting party electronically, by facsimile or other means of communication.

24/7 National contact point according to the national legislation has no competence in executing MLATs. Those kinds of requests could only be executed only through Prosecutor General's office of Ukraine.

It is important to note that Internet Service providers should, under the Law of Ukraine "On Telecommunications", preserve data for a period of limitation of action which is 3 years; however, this not done in practice. The computer data could be preserved on request of the law-enforcement of special services and agencies of Ukraine such as Security Service of Ukraine or National Police, but in practice ISPs also reject these kinds of requests. The data

could also be preserved by the court order, which could be issued only when a criminal case in Ukraine is opened.

As to the execution of preservation requests, oly regular procedures are used, as under Ukrainian legislation there is no separate definition of either regular and/or urgent preservation of data requests.

4.2. End-to-end procedures for the mutual legal assistance

Due to complexity of relevant procedures, description of the end-to-end procedures by each state of the region is provided, and some of the issues are identified for further analysis.

4.2.1. Armenia

At the stage of pre-trial investigation, competent authority for MLA is Prosecutor General's Office, Department for International Cooperation and Legal Support. Prerequisite for request at this stage is the Red Notice / Diffusion Notice (circulated by Interpol). Reciprocity is also prerequisite – written confirmation from requesting state is necessary.

At trial stage, Ministry of Justice, Department for International Legal Assistance is in charge of the MLA process. Prerequisite for request is the Red Notice by Interpol / Diffusion Notice (attached to request). Request according to the European Convention on Extradition of 1957 should be supported by documents noted in Article 12 of the Convention. In general, Indication of clear legal basis for the request is necessary; otherwise, reciprocity is a prerequisite – in the form of express written assurance of reciprocity from the requesting state.

National regulatory framework provides for dual criminality requirements (Criminal Code of Armenia), while process for mutual legal assistance is regulated Chapters 54 and 54[1] of the Code of Criminal Procedure. 24/7 point of contact operations are governed by Law on Operative-Intelligence Activity, Articles 26 and 32.

It is important to note that requests without the treaty basis should indicate the assurances of reciprocity in a clear manner; otherwise, in practice such requests may not be followed and implemented (some 70-80%[1] of requests are returned by the central authority for this reason).

In order to access information that contains personal data in compliance of the request, the request should include the procedural decision of the initiating state that authorizes obtaining such information or any confirmation that such information can be legally obtained in other ways.

The legislation of Armenia does not provide definitions of and therefore does not differentiate between the notions of subscriber information, traffic data and content data as provided by the Budapest Convention on Cybercrime. Given that there are no separate definitions of subscriber, traffic and content data under Armenian legislation, it is assumed that Article 31 requests under the Budapest Convention refer generally to stored computer data.

There is also no regulatory framework and thus no specific time limits for either retention or preservation of data under Armenian legislation.

Armenia can provide preliminary consultations can be provided without limitations as to serious offences, and email communications are preferred. After the receipt of the original request, Armenian competent authority will be proactive in seeking clarifications where necessary.

Specific legal basis for cooperation can be discussed during consultations, but it is useful to have a list of legal instruments accepted as a legal basis by Armenia:

- Budapest Convention on Cybercrime and its Additional Protocol

[1] The percentage note relates to Ministry of Justice, not to the General Prosecutor's office.

- European Convention on Mutual Assistance in Criminal Matters and Additional Protocols
- UN Convention against Transnational Organized Crime
- Minsk and Chisinau Conventions on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters
- Bilateral agreements (if applicable)
- Chapter 54^1 of the Code of the Criminal Procedure of the Republic of Armenia in cases of requests based on reciprocity.

In the absence of treaties and on the basis of reciprocity, Ministry of Foreign Affairs, Consular Department is the channel through which the request is received. Ministry of Justice is the consenting body for reciprocity. The request has to include assurances of reciprocity. Only the official written request needs to go through the Ministry of Foreign Affairs.

In cases of reciprocity, requesting state should follow, as a guidance, Article 14 of European Convention on the Mutual Assistance in Criminal Matters or the Article 18 or p. 15 of the UN Convention against Transnational Organized Crime, and indicate also legal provisions, court order or confirmation that evidence could be obtained in the requesting state in the same circumstances.

Subscriber information is not defined under the legislation of the Republic of Armenia. For accessing stored computer data, corresponding/relevant court decision of the requesting state is necessary, as this is a requirement for issuing the domestic court order for obtaining stored computer data; alternatively, a confirmation that evidence could be obtained in the requesting state in the same circumstances. Where access to banking information is sought and the request refers to a specific person, a document that recognizes the person as charged with an offence and also information that connects this person or information to Armenian jurisdiction (summary of facts).

According to the Criminal Procedure Code of the Republic of Armenia (Art. 201), investigation is confidential for the domestic cases. Similar approach can be provided to the MLA requests if the requesting Party provides a note of confidentiality in the request.

Applications to obtain computer data are conducted in the closed hearing with participation of the investigator and the judge.

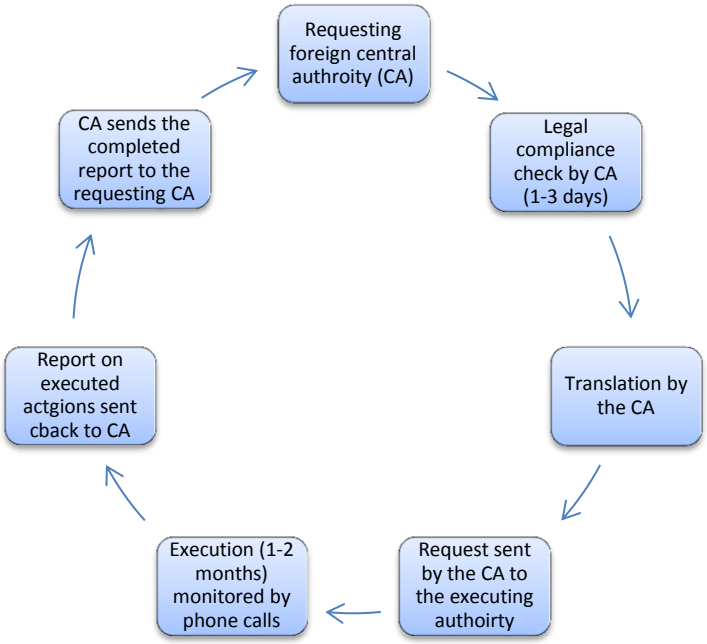
Similar procedure applies as to the pre-trial cases. In this case, applications to obtain computer data are conducted by the representatives of the Ministry of Justice.

A note of urgency included in the request is preferable. However, if it is seen from the context that the request is time-sensitive, the request will be dealt with immediately. If any of the below criteria are applied, the requesting country should refer to them in the request:
- Urgency
- Person in custody
- Seriousness of the offence.

Armenia has made reservations in the European Convention on Mutual Assistance in Criminal Matters and UN convention against Transnational Organized Crime regarding the translation requirements. The accepted languages are English, French and Armenian. In urgent cases it is advised to provide translation into Armenian language.

According to the Criminal Procedure Code of the Republic of Armenia, information obtained within the criminal case should be used only for that criminal case. It would be expected that the Requesting State would ask for consent of the Competent Authorities of the RA if the evidence should be used in the case other than for which it was provided.

Summary chart for the MLA process:



Processing of the incoming mutual legal assistance request starts with the legal compliance check (1 to 3 days) by the competent central authority. Where translation is necessary, it is handled by the in-house translation centre of the competent authority. The request is then sent directly to the executing authority. No formal follow-up and monitoring is done in the process of execution, although updates are frequently sought by phone communications. The report of the execution is sent back to the central authority, which conveys it to the requesting state by the same or specifically agreed channels of communication.

For outgoing requests, at pre-trial stage the General Prosecutor's Office receives communications from investigative agencies and, if there is no specific treaty basis to continue otherwise, the request is translated and sent to the Ministry of Foreign Affairs for processing via diplomatic channels. The process is the same for trial stage and is performed via the Ministry of Justice.

4.2.2. Azerbaijan

Prosecutor General's Office of the Republic of Azerbaijan, International Relations Department is a central authority for pre-trial stage. Reciprocity and dual criminality are important pre-requisites for mutual legal assistance, while channels of communication can go either centrally through General`s Prosecutor Office of the respective country or directly. Preferred means of communication include post, email or fax.

At the stage of trial proceedings, the Ministry of Justice of the Republic of Azerbaijan is the competent authority. Indication of clear legal basis for the request is necessary; otherwise, reciprocity is a prerequisite in the form of express written assurance of reciprocity from the requesting state. Preferred means of communication include post, email or fax.

National regulatory framework includes:

- For the mutual legal assistance – Law of Azerbaijan Republic on Legal Assistance in Criminal Matters of 29 June 2001 and Criminal Procedural Code of Azerbaijan Republic (Chapter LVII)
- Dual criminality requirements – Art. 3, p. 1.4 of the Law on Legal Assistance in Criminal Matters
- Reciprocity – the Law of Azerbaijan Republic on Legal Assistance in Criminal Matters is the legal instrument for reciprocity principle in case of absence of agreement.

Given that there are no separate definitions of subscriber, traffic and content data under Ukrainian legislation, it is assumed that Article 31 requests under the Budapest Convention refer to stored computer data.

If necessary, possible consultation can be provided via e-mail (consultation can be also made by phone), post service or fax, and in serious cases – through e-mail or fax. Consultations with 24/7 contact points and Interpol contact pointes are also allowed. It is preferred that the draft of the request is sent in advance.

Legal basis can be discussed during consultations but it is useful to have a list of legal instruments accepted as a legal basis in the requesting state:

- Budapest Convention on Cybercrime and its Additional Protocol
- European Convention on Mutual Assistance in Criminal Matters and Additional Protocols
- European Convention on Extradition of 13 December 1957
- UN Convention against Transnational Organized Crime
- Minsk and Chisinau Conventions on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters
- Bilateral agreements between the Republic of Azerbaijan and other countries (where applicable)
- Chapter LVII of the Criminal Procedure Code of Azerbaijan
- The Law of the Republic of Azerbaijan "On mutual legal assistance in criminal matters"
- Reciprocity basis (if no treaty available)

As to the content of the request, it should be the same as indicated in the relevant treaty. If no treaty available, Azerbaijan receives requests with content pursuant to legislation of requesting country, if it is in line with Azerbaijani legislation. Legal provisions, court order or confirmation that evidence could be obtained in the requested state in the same circumstances should be provided. Generally, in the absence of treaties and on the basis of reciprocity, Ministry of Justice of the Republic of Azerbaijan is the decision-making authority.

Subscriber data is not defined under the legislation of the Republic of Azerbaijan. For obtaining subscriber data court decision is necessary, however in exceptional cases investigator can obtain the relevant data before applying to the court.

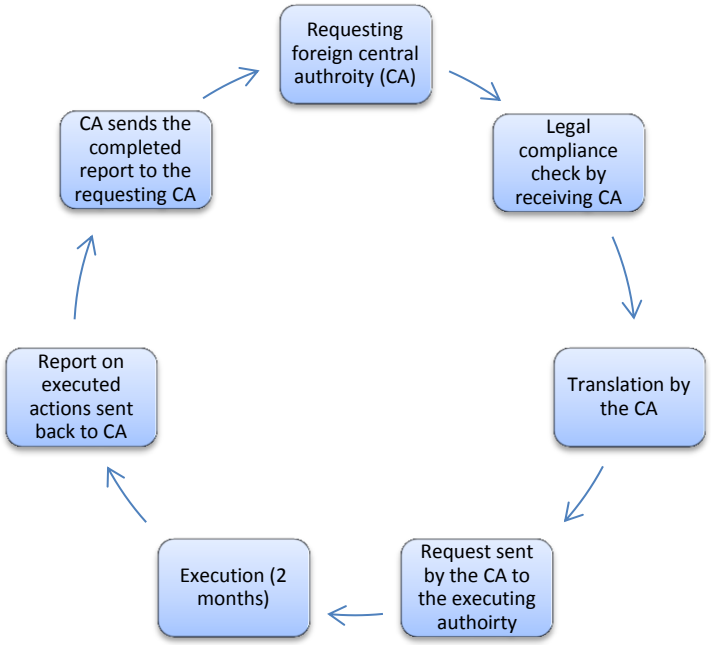
According to the legislation of the Republic of Azerbaijan, the confidentiality of request can be provided if the relevant notification was received. If the confidentiality cannot be provided, the requested country is informed and only upon its consent the request can be executed.

According to the Internal Order of the Prosecutor General, generally, requests should be executed in 10 days period after receiving (the execution can be prolonged, however not more than for 2 months). Requesting country is required to give a basis for urgency, otherwise the request will be executed in general manner. The main criteria to act on request in urgent manner are custody of the person or crime against life/health of the person.

Acceptable preferable languages are: Azerbaijani, English or Russian. Certified or stamped requests are required. Also, in accordance with Law of Azerbaijan Republic on Legal Assistance in Criminal Matters dated 29 June 2001, documents submitted in regard to legal assistance shall be translated into Azeri or with consent of Ministry of Justice of Azerbaijan Republic into one of official languages of United Nations (Article 16).

Information obtained while executing request can be used only in the relevant criminal case. The requesting country should receive consent to use it in other case. Upon request by Ministry of Justice of the Republic of Azerbaijan, the requesting authority of the foreign state shall return the files, documents and material evidence within the agreed period of time (Legal Assistance Law, Article 13).

Summary chart for the MLA process:



After receiving request for mutual legal assistance at pre-trial stage, the competent central authority (Prosecutor General's Office) initiates the compliance check as to legal requirements. After clearing this stage, the request, if necessary, is translated by the in-house translators, and then sent for execution directly to the criminal justice authority, which has to complete with the execution procedures within 2 months. Completed execution reports are communicated back to the Prosecutor General's Office and then conveyed to the requesting foreign central authority. Trial-stage MLA requests are processed in a similar manner by the Ministry of Justice.

For outgoing requests, investigative or judiciary authority decides on the necessity of initiating the request; in such case, all relevant materials of the case are collected, translated and sent to the competent authority on legal assistance (Ministry of Justice or the Prosecutor General's Office). After check of the request against the applicable legal requirements, the request is sent to the requested state through diplomatic channels or directly - whenever the treaty allows for this.

4.2.3. Belarus

At the pre-trial stage of criminal proceedings, Office of the General Prosecutor of the Republic of Belarus, International Legal Department is deemed to be central authority for mutual legal assistance in criminal cases based on the principle of reciprocity. Pre-requisites for request include guarantees of a competent body from a foreign state to cooperate on the principle of reciprocity; dual criminality (thus, actual facts and legal characterization of the act, information on the inflicted damage are important); decision of a court, prosecutor or investigator on providing a correspondent procedural action (search, seizure etc); and certified translation into Russian or Belarusian languages.

A request for legal assistance in a criminal case shall be submitted in writing, it shall bear the signature of an official and the official seal of the competent authority. As to channels of communication, diplomatic channels are requested in case of reciprocity. Preferred means of communication include post (there can be also express post means of communication) and e-mail (original version should be submitted subsequently without delay).

At the trial stage of criminal proceedings, Office of the General Prosecutor of the Republic of Belarus, International Legal Department (article 494 part 1 of the CPC of Belarus) and Supreme Court of the Republic of Belarus (article 494 part 2 of the CPC of Belarus) - only submitting procedural or other documents in criminal cases under trial and sentence execution (other court decisions in criminal cases) are competent authorities.

The Office of the General Prosecutor of the Republic of Belarus believes that a preliminary consultation on the issue of the peculiarities of provision of this type of legal assistance is possible and advisable for the states without a long history of cooperation. At the same time, a preliminary consultation is not a binding condition. It shall only contribute to prompt and efficient cooperation in the future. Submission of draft requests for legal assistance in general results, in our opinion, in excessive wasting of time and resources and does not serve the interests of preliminary investigation.

Legal basis can be discussed during consultations but it is useful to have a list of legal instruments accepted as a legal basis in the requesting state:

- The Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Cases dated January 22, 1993 (within the framework of the Commonwealth of Independent States);
- The Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Cases dated October 7, 2002 (within the framework of the Commonwealth of Independent States);
- The United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances dated December 20, 1988;
- The International Convention for the Suppression of the Financing of Terrorism dated December 9, 1999;
- The United Nations Convention against Transnational Organized Crime dated November 15, 2000;
- The United Nations Convention against Corruption dated October 31, 2003;
- The Council of Europe Criminal Law Convention on Corruption, 1999;
- Bilateral treaties of the Republic of Belarus.

Provision of subscriber information in Belarus does not require prosecutor's sanction; the communication services provider supplies this information following a request by the prosecuting authority free of charge, which significantly facilitates international cooperation. The court has the same powers (a request is submitted following an application by the parties or on one's own initiative). Prompt information exchange can be carried out using 24/7 channels and the Interpol channels.

In case of the treaty basis, with regard to every treaty or convention mentioned above, the Republic of Belarus determined its list of the national competent authorities or indicated only one such authority.

In the course of implementation of international cooperation in criminal cases and preparation of the corresponding requests for legal assistance on the basis of a treaty, the Office of the General Prosecutor of the Republic of Belarus is always indicated as the central competent authority. In some treaties apart from the Office of the General Prosecutor of the Republic of Belarus, the following authorities are often mentioned: the Investigative Committee of the Republic of Belarus, the Committee for State Security of the Republic of Belarus, the Ministry of Internal Affairs of the Republic of Belarus, the State Control Committee of the Republic of Belarus and others.

However, in the course of implementation of international cooperation based on the principle of reciprocity, the Office of the General Prosecutor of the Republic of Belarus represents the only central competent body (part 1 of Article 494 of the Criminal Procedure Code of the Republic of Belarus).

If an international request for legal assistance in a criminal case is mistakenly received by a non-competent national authority, this authority sends forward such request to a competent authority's address. For example, Interpol National Contact Point cannot implement the MLA request and has to forward it to the respective competent authority.

The requirements to preparation of requests by foreign states for legal assistance in a criminal case received by Belarus, as well as sent to foreign states, are defined in the corresponding international treaties or conventions, and in case of cooperation based on the principle of reciprocity – in the Criminal Procedure Code of the Republic of Belarus. There is no experience of cooperation of the Republic of Belarus with foreign states based on oral requests for legal assistance in a criminal case.

The main requirements are as follows: the name of the requesting and requested authorities of justice, information on the criminal case, the actual facts and legal characterization of the act, provisions on the essence of the requested assistance and its objectives, the text of the provisions of the foreign state's criminal legislation, which provide liability for the act, information on the inflicted damage. A request for legal assistance in a criminal case shall be submitted in writing, it shall bear the signature of an official and the official seal of the competent authority

In investigation of criminal cases in the Republic of Belarus confidentiality of preliminary investigation is maintained, and the persons dully warned about non-disclosure can be held liable as established by the current legislation.

Based on the mentioned above, Belarusian investigators in their requests for legal assistance in criminal cases always ask the international competent authorities to keep the fact of requesting for assistance and the results confidential.

In the course of fulfilment of requests by the competent authorities of foreign states, which contain above all provisions on supply of subscriber data, the national central and competent authorities, communication services providers having the relevant information, keep the fact of requesting by the foreign state for assistance confidential from the subscriber (we are expecting additional information from the Investigative Committee of the Republic of Belarus and the Ministry of Internal Affairs of the Republic of Belarus on this matter), at the same time the information received from a foreign law enforcement body can be considered as information on the crime with the following legal evaluation (if it falls within the national jurisdiction).

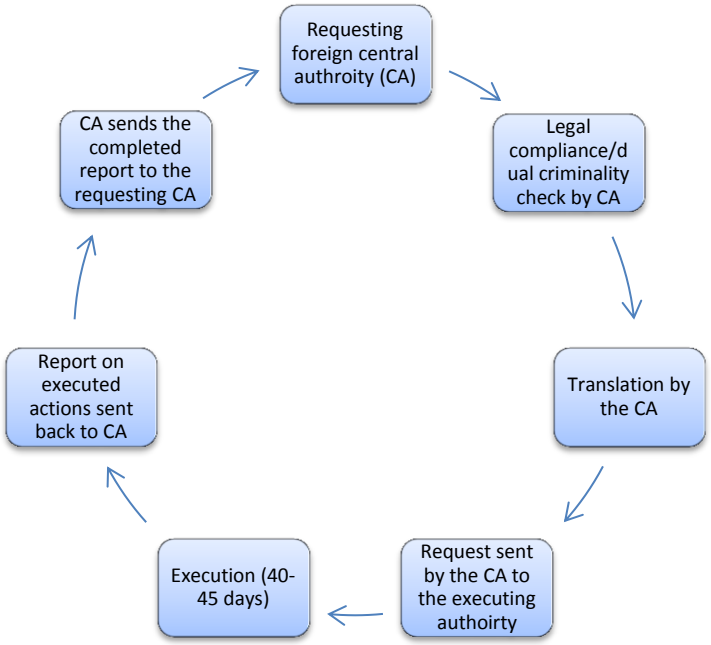
As the criteria of urgency in management of requests by the competent authorities of foreign states for legal assistance in criminal cases, applied in the Republic of Belarus, the following shall be mentioned: detention of the accused, possible procedural obstacles (expiration of the deadline for pressing of criminal charges, limited deadline for preliminary investigation (in specific cases), security risk, increased public danger of the committed crime (act of terror, murder, robbery, rape with aggravated circumstances), high profile crime, possibility to assist in detection of a crime on "hot scents" and others, and the party requesting for urgent legal assistance shall motivate the urgency.

As a general rule, a request by a competent authority of a foreign state for legal assistance in a criminal case shall be accompanied by a notarized translation to one of the official languages of the Republic of Belarus (Russian or Belarusian) of the request itself and the attached documents and materials (obligatory in case of cooperation based on the principle of reciprocity). This provision does not apply to requests emanating from the Czech Republic, the Slovak Republic, the Republic of Hungary, the Republic of India, and the People's Republic of China due to presence of treaty commitments which provide for the possibility of cooperation where each state uses its own language or the English language. Thus, a request of a foreign state competent authority for legal assistance in a criminal case submitted to the competent authority of the Republic of Belarus without translation into Russian or Belarusian, with the exception of the above mentioned states, shall not be considered, translation of the request shall not be organized by the national competent authority.

Using of the evidence received within the framework of another criminal case not related to the case for which the legal assistance has been requested is illegal and requires prior consent from the competent authority of the state which provided such evidence.

Information received/submitted through the Focal point channels is generally classified as received for operational use. Possibility of its usage in criminal procedures is identified by the legislation of the country that received the required information through the above-mentioned channels. Generally, for getting the information that can be used in criminal procedures the International investigation request is required.

Summary chart for the MLA process:



For incoming requests, the receiving central authority will perform initial scrutiny as to the elements of offence (in terms of dual criminality) and definition of the executing authorities. Translation is performed in-house and the request is then sent to the executing authority. There are no legally defined deadlines for compliance but 40-45 days in practice is respected. There is no dedicated monitoring on the execution, although some review would take place if the report on execution of the request is sent to the competent authority. Completed execution reports are communicated back to the central authority and then conveyed to the requesting state. Trial-stage procedures are similar.

For outgoing request, the authority in charge of the criminal case send a draft of the request to the competent authority, who can approve the request or request clarifications/corrections. Once cleared, the request and attached materials are sent to the foreign competent authority either through diplomatic channels or directly – in which case the requesting criminal justice authority is notified of progress.

4.2.4. Georgia

Georgia uses single central authority for MLA requests irrespective of the stage of proceedings, namely, the International Cooperation Unit of the Department of Legal Affairs, Office of the Chief Prosecutor, Ministry of Justice of Georgia. Although request can be technically transmitted via 24/7 contact point or Interpol point, it must be addressed to the central authority.

The preliminary consultation is not an obligation but highly recommended as specific restrictions apply to the access to electronic data. Hence, prior consultation may prevent waste of costs for requests that have no prospect. Consultation can be provided by designated e-mail for such consultations. 24/7 point of contact provides similar consultations at the designated email address but keeping Prosecutor's Office in copy is advisable. Georgian Central Authority may also review draft request if asked to do so.

Applicable legal bases include:

- Budapest Convention on Cybercrime
- European Convention on Mutual Assistance in Criminal Matters and Additional Protocols
- Relevant bilateral treaties
- Reciprocity
- International Cooperation in Criminal Matters Act 2010

Required content of the request: description of offences subject to investigation and/or prosecution, applicable law; statement of relevant facts, which is sufficient 1. to invoke the applicable criminal law, and 2. to reasonably infer the need for the requested assistance; relevant information that is enough for the reasonable doubt to believe 1. that data is retained/to be transmitted at a place wherefrom it is to be produced; 2. that there is enough linkage between the crime and data requested.

Under Georgian law, information related to obtaining subscriber information is confidential. Court proceedings over prosecution filing for warrant are held in camera and ex parte. However, data subjects must be notified within a year after obtaining the data. That time limit can however be extended by court upon the prosecution's filing, but prosecution must show very solid grounds for further necessity of confidentiality. The same rules apply to interception carried out based on MLA request.

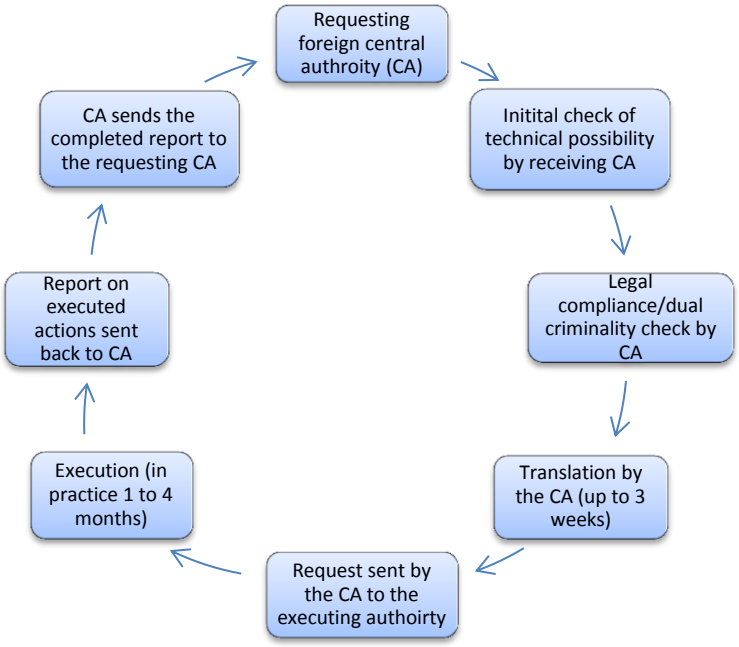
Urgent requests may be processed as soon as within hours but may normally require a week. Criteria of urgency in respect of requests for subscriber information would be volatility of data or immediate risk to life or physical integrity of persons. Justification for urgency must be provided by the requesting state.

If request is not urgent but prioritized otherwise, it may be processed within 1 month. Criteria for prioritization are: urgency (procedural time limits to expire soon, volatility of data) and seriousness of crimes.

Depending on a treaty Georgia accepts requests in Georgian, English, French and Russian. English is the most preferred language.

Georgia both as a requesting and requested state follows the rule of specialty.

Summary chart for the MLA process:



For incoming requests, the officer of the central competent authority initiates the check of the technical possibility of execution (e.g. if the witness is still available in Georgia). After this, legal requirements check with focus on dual criminality requirements is performed. Once past this stage, the translation of the request is handled by the central authority by employing trusted translation offices through centrally procured contracts. Georgian central authority has means to prioritize requests, which are the handled in expedited manner; in all cases, the request, once cleared and translated, is sent to the executing authority, which returns the report on performed actions to the central authority. These materials are then sent to the foreign central authority.

As to outgoing requests, prosecution offices are allowed to draft their requests and submit them to the central authority, while defence attorneys should file a motion with the court which would then initiate the same process of communicating with the central authority. All requests are screened for quality before sending and foreign countries' legal requirements are checked against a database of requirements kept by the central authority.

4.2.5. Moldova

The General Prosecutor's Office of the Republic of Moldova, Department for International Legal Assistance and European Integration is the designated central authority for the stage of pre-trial investigation. Requests at the the stage of trial proceedings or sentence execution are dealt with by the Ministry of Justice, International Legal Cooperation Division. Interpol NCP can receive but not implement the MLA request and has to send it to the competent authority for action.

The preliminary consultations can be provided, and email communications are preferred. No limitation is used as to the serious cases for preliminary consultations; 24/7 point of contact provides similar consultations. After the receipt of the original request, Moldavian competent authority will be proactive in seeking clarifications where necessary.

The list of legal instruments accepted as a legal basis includes:

- European convention on extradition
- European convention on mutual legal assistance in criminal matters and Additional Protocols
- Budapest Convention on Cybercrime and its Additional Protocol
- UN Convention against Transnational Organized Crime
- Minsk Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters
- Bilateral agreements (if applicable)

According to the Criminal Procedure Code of the Republic of Moldova, investigation is confidential for the domestic cases. Similar approach can be provided to the MLA requests if the Requesting Party provides a note of confidentiality in the request. Applications to obtain computer data are conducted in the closed hearing before the judge. Similar procedure applies as to the pre-trial cases. In this case, applications to obtain computer data are conducted by the representatives of the Ministry of Justice.

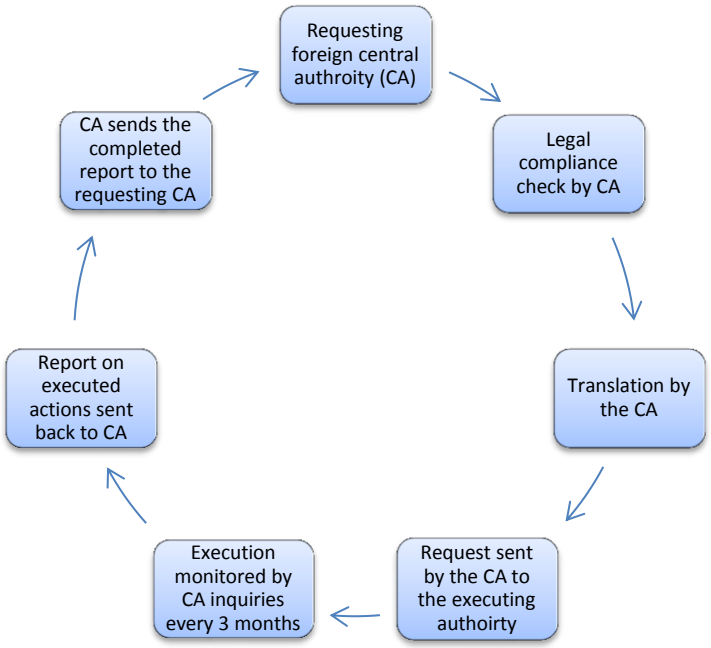
Usually a note of urgency included in the request is preferable. However, if it is seen from the context that the request is time-sensitive, the request will be dealt with immediately. If any of the below criteria are applied, the requesting country should refer to them in the request:

- Urgency
- Person in custody
- Seriousness of the offence

Documents are accepted if they are translated in Romanian, English or French.

Information obtained within the criminal case should be used only for that criminal case. It would be expected that the Requesting State would ask for consent of the Competent Authorities of Moldova if the evidence should be used in the case other than for which it was provided.

Summary chart for the MLA process:



After receiving request for mutual legal assistance at pre-trial stage, the competent central authority (Prosecutor General's Office) initiates the compliance check as to legal requirements. Prosecutor General's Office can contract translation services where necessary. The request is then sent directly to the executing authority. The timeframe for execution is not defined, but the mutual legal assistance officer in charge of the case would send a letter of inquiry every 3 months. Completed execution reports are communicated back to the central authority and then conveyed to the requesting state. This procedure is fully applicable to trial proceedings, involving the Ministry of Justice as the central authority.

For outgoing requests, the requesting authorities (prosecution offices or investigators) have to address all their communications to the central authority, which ensures further processing of requests with foreign competent authorities.

4.2.6 Ukraine

During the stage of pre-trial investigation, Prosecutor General's Office of Ukraine, Department for International Legal Cooperation and European Integration is the central authority. At the trial stage, Ministry of Justice of the Ukraine, Division on Mutual Legal Assistance in Criminal Matters, International Legal Cooperation Department, Directorate for International Law is handling MLA requests. Interpol NCP cannot implement the MLA request and has to send it to the competent authority (Prosecutor General's Office and Ministry of Justice of Ukraine) for action.

Pre-requisites for requests include:

- Prerequisite for request is the Interpol Red Notice and the existence of the European arrest warrant or the other order on arrest and keeping in custody. Request according to the European Convention on Extradition of 1957 should be supported by documents noted in Article 12 of the Convention;
- Basis in the international treaty (e.g. European Convention on Mutual Assistance in Criminal Matters 1959), bilateral treaties concluded between Ukraine and other state;
- If there is no any treaty between Ukraine and requested/requesting state the principle of reciprocity may be applied;
- Dual criminality is obligatory requirement for MLA request only in case of the absence of a relevant international treaty of Ukraine;
- The MLA request of a foreign State shall be considered by the Central authority of Ukraine only if the requesting State has guaranteed, in written form, to receive and consider, in future, Ukraine's request on the basis of reciprocity.

Pursuant to the Art. 548 of the Criminal Procedure Code of Ukraine an authorized (central) authority of Ukraine may accept for consideration a request submitted by the requesting Party via e-mail, fax or other means of communication. Such request shall be executed upon the confirmation of mailing or submitting its original. The materials of the executed request may be sent to a foreign competent authority only after the Ukrainian counterpart receives the original of a request.

Requests may be sent to a foreign State or received from a foreign State also through the Interpol. Diplomatic channels are also used in case of the absence of the international treaty.

Central Authorities of Ukraine may take into consideration a request that came from the requesting party electronically, by facsimile or other means of communication. The Requesting Party, however, should ensure the prompt provision of a written original of this request. Materials received as a result of the performance of such a request shall be provided to the Requesting Party after the receipt of the original request.

Given that there are no separate definitions of subscriber, traffic and content data under Ukrainian legislation, it is assumed that Article 31 requests under the Budapest Convention refer to stored computer data. It is also advisable for the requesting authority to consult in advance and/or send a draft in advance to the CA before proceeding with request. Consultations with executing authorities (Security Service of Ukraine and National Police of Ukraine) directly or via 24/7 contact point or by other (e-mail, phone, fax) means are equally advisable.

Ukraine employs the following list of legal instruments as accepted legal basis for cooperation:

- Budapest Convention on Cybercrime and its Additional Protocol
- European Convention on Mutual Assistance in Criminal Matters and Additional Protocols thereto
- UN Convention against Transnational Organized Crime
- UN Convention against corruption
- Minsk Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters
- Bilateral agreements (if applicable)
- Section 9 on International cooperation in criminal proceedings, Chapters 42-43 of the Criminal Procedure Code of Ukraine

In the absence of treaties and on the basis of reciprocity, Ministry of Foreign Affairs, Directorate General for consular service is the channel through which the request is forwarded and received. If received by the above, the request should be transferred to the central authority according to the stage of proceedings. The request has to include assurances of reciprocity. Only the official written request needs to go through the Ministry of Foreign Affairs.

There are no specific requirements for foreign MLA requests in the Ukrainian legislation. However foreign MLA request must comply with the requirements of international treaties of Ukraine. The request must contain substantial information indicating a crime qualification (degree of severity of the crime).

Upon request of the requesting Party, the designated (central) authority of Ukraine may take additional measures to ensure confidentiality of the fact of receipt of a request for international legal assistance, of its contents and of information obtained as a result of the execution of the request. If necessary, conditions and time limits for the retention of confidential information obtained as a result of the execution of the request shall be agreed.

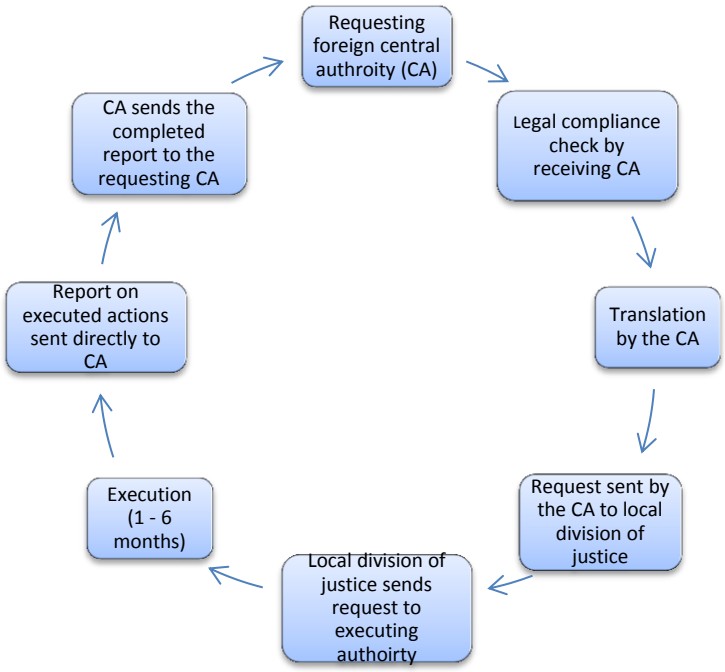
The requesting country is not required to give a basis (factual or legal reasons) for urgency.

Ukraine has made reservations to the European Convention on Mutual Assistance in Criminal Matters and UN convention against Transnational Organized Crime as well some other multilateral treaties regarding the translation requirements. The accepted languages are Ukrainian, Russian, English and French. In urgent cases it is advised to provide translation into Ukrainian (or Russian) language.

According to the Law of Ukraine "On Telecommunications" operators, telecommunications providers, provide and are responsible for the preservation of data, received from the consumer at the conclusion of the contract, including the services of, their duration, content, transmission routes and so on. Such measures under criminal proceedings shall be based on the decision of the investigator or court order.

According to declaration of Ukraine to Article 26 of the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters personal data transferred to another Party cannot be used without previous consent of Ukraine for the purposes specified in Article 26, paragraph 1, of the Second Additional Protocol, within the framework of proceeding, for which Ukraine may refuse or limit the transmission or use of personal data under the Convention or Protocols to it.

Summary chart for the MLA process:



Following receipt of the mutual legal assistance request, it takes up to 10 days for the decision of the competent central authority whether to execute the request, with a check of legal basis for cooperation and grounds for refusal. Translation of foreign-language requests is handled by a specialized division of translators at the competent authority. Cleared request is sent to one of the local departments of justice, who would then submit the request for execution to the relevant authority. The time for compliance with the request is 30 days, which can be prolonged on a monthly basis up to a maximum of six months (request for prolongation is submitted by the executing authorities). Similar procedures are being employed for cooperation at the trial stage, with communications taking place between the local divisions of justice and the competent courts.

For outgoing requests, the court, prosecutor or investigator - in consultation with the prosecutor - can send request for international legal assistance in criminal proceedings to competent central authorities, in which case the local divisions of justice are not involved. Central authorities ensure transmission to foreign counterparts and manage all communications in this respect.

4.2.7. Analysis of MLA procedures and related issues

It is apparent form an overview of available end-to-end procedures that there are comparable procedures available in the Eastern Partnership states for handling incoming and outgoing mutual legal assistance requests, with differences that can be due to relatively

adversarial, common law sourced criminal proceedings (in case of Georgia), as well as due to provisional steps of compliance checking (e.g. technical pre-screening, applicability of urgency procedures) and additional management (e.g. processing of requests through local divisions of justice).

Time-frames for processing and execution of incoming mutual legal assistance requests seem to be reasonable (ranging mostly from 2 to 6 months for non-expedited proceedings) and delays are experienced mostly due to large requests requiring translation and/or need to clarify ambiguities in cases of incomplete/low-quality requests. It was noted specifically during discussions during the Council of Europe workshop on improving international cooperation on cybercrime that the respective states usually provide responses in reasonable time.

Translation of documents was noted to be problematic among the Eastern Partnership states in terms of volume of documents rather than availability, speed or quality of the translations (as a rule, translations are handled by in-house personnel of central authorities or are contracted to trusted translation offices). This, therefore, is an issue that relates to lack of quality control of requests that has to be undertaken to by the sending state's competent authority in order to minimize the burden on foreign counterparts.

Availability of urgent or priority processing for incoming mutual legal assistance requests, with one exception,[2] is based upon informal criteria and is not uniform in application. This may not be problematic in terms of above-noted relative efficiency of Eastern Partnership jurisdictions in processing regular assistance requests, but would be a rather obvious solution for handling *de minimis* requests which put pressure on limited resources of international cooperation officers.

Direct contact with foreign service or content providers has been noted as a possibility for all Eastern Partnership, especially those parties to the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters; normally, there are no national regulations that expressly prohibit such practice. Outgoing requests are usually sent to large multinational providers (primarily social networks and mail services) that would have set up specialized channels or departments for cooperation with the law enforcement.

5. Conclusions and recommendations

While some of the problems with mutual legal assistance in Eastern Partnership States, identified through written submissions and more in-depth discussions, correspond to those listed in the 2014 T-CY Assessment Report on mutual legal assistance provisions of the Budapest Convention on Cybercrime, some are rather peculiar to the region. Therefore, both identified problems and applicable solutions follow the logic suggested by the discussions with the countries of the region, and focus on what has been clarified and discussed with responsible representatives of corresponding authorities.

5.1 Brief assessment of identified problems

As a general observation, there are differences in types of problems related to international cooperation in cybercrime cases that are identified in the context of 24/7 contact points cooperation and mutual legal assistance in the Eastern Partnership states. While 24/7 communications can be significantly improved by revising and improving applicable legal regulation, mutual legal assistance issues are primarily related to management of communications and quality of requests. With this in mind, the problems identified have been grouped into four thematic categories, as follows:

5.1.1. Legal requirements

The problems with sufficiently detailed and uniform legal regulations for 24/7 points of contact authority, functions and operations are rather apparent from the discussions with the

[2] Georgia, for example, applies separate criteria for urgent/priority settings in response to mutual legal assistance requests, which are laid down by internal guidelines. Georgian delegation has expressed readiness to share the English version of this document as good practice example with other participants of the workshop.

Eastern Partnership states' representatives. Where legislation is already in place, it needs to be revised accordingly.

Specific provisions on obtaining subscriber information (as opposed to traffic data) could be considered as one of the directions in which applicable legislation should be amended, with German experience of legal regulations taken as an example. There is also very limited use of the possibilities accorded by Article 18.1.b of the Budapest Convention on Cybercrime, which allows domestic authorities to order the production of subscriber information from foreign service providers offering a service on the territory of the state in question.

Although principle of dual criminality is reported to be applied rather liberally in Eastern Partnership states, some differences in applicable law (criminal or administrative) or lack of certain elements of crime – especially in cases of traditional offences that involve electronic evidence in contrast to substantive law provisions of the Budapest Convention on Cybercrime - are considered to be obstacles in execution of mutual legal assistance requests.

Differences in the rules of evidence between the states, although less apparent for the Eastern Partnership countries, have major impact on the willingness and possibility of timely execution of requests. Not only applicable thresholds of evidentiary standards (e.g. probable cause or trial-specific standards) are sometimes not clearly explained or publicly available, but there may be requirements that preclude admissibility of electronic evidence in criminal proceedings.

Although refusal of compliance with mutual legal assistance requests in cases of persecution for political views or for humanitarian reasons represents well-established practice in international cooperation, use of such reasons is often not well-explained to the requesting states.

5.1.2. Communication

Both 24/7 points of contact and mutual legal assistance officers identify lack of generally accepted, multi-language templates for, accordingly, preservation and mutual legal assistance requests, as well as other relevant communications, as a practical problem.

Sharing of information between different national contact points for mutual legal assistance and police-to-police cooperation matters is often problematic. Even though some degree of facilitation and assistance is required by the Convention on Cybercrime, in practice, such cooperation is often understood as re-routing of mutual legal assistance requests to competent authorities, while information on requests that follow data preservation requests under Article 16 of the Convention on Cybercrime is often not shared in a formal manner.

Local investigators, prosecutors and judiciary may lack awareness of equally or similarly effective alternatives to the formal mutual legal assistance process, such as national rules on discretionary prosecution or diversion possibilities in criminal proceedings applicable to international cooperation cases or direct cooperation modalities accorded by the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters.

Although low quality of translations into the language(s) accepted by the requested state may be also indicative of overall quality of the request, the need to clarify ambiguities, receive alternative text in other languages (e.g. Council of Europe official languages) or even to perform in-house translation by the requested state's central authority does have a direct impact on the expediency of the assistance process, as well as the length and frequency of communications required in this process.

5.1.3. Management

While the Budapest Convention on Cybercrime provides general guidance as to the powers and functions of 24/7 points of contact, more specific guidance based on best practices is needed.

Current modalities for cooperation between the law enforcement agencies and Internet service providers are not uniform, often not effective and thus in need of improvement, with already available guidance and best practice that should be helpful in this respect.

Due to many reasons that may include an array of legal, procedural, communication or even political concerns, mutual legal requests are processed for very long time (in some cases, for years) and, in some cases, no response to requests is being provided by the requested state.

With few exceptions, there are no formal modalities for urgent or priority processing of MLA requests based on set and publicly available criteria that are applied irrespective of the urgency notifications in the request itself.

De minimis requests that concern minor crimes and provide a disproportionate burden on the requested state's central authorities and criminal justice systems in terms of realistic outcome and sanctions are a frequent occurrence in the practice of Eastern Partnership states.[3]

Although some numbers can be produced through automated solutions or derived manually, no comprehensive statistics and analysis on international cooperation in cybercrime/electronic evidence is being undertaken in the region.

5.1.4. Quality of mutual legal assistance requests

Mutual legal assistance requests are often incomplete in terms of details that are necessary for the requested state in order to execute the request, with essential details missing as to the persons whose identity should be established, which facts are expected to be produced by witness interviews or which questions should be asked during interrogations.

Mutual legal assistance requests that concern application of coercive or covert measures available under domestic criminal law (such as wiretapping, interception of traffic, search of premises and/or seizure of equipment and the like) are often not followed by proper documentation that shows necessary legal authorization for such measures under domestic law, such as judicial warrants, prosecutorial orders in exigent cases, etc.

In certain cases, the scope of assistance requested under already sent and processed requests for mutual legal assistance is being extended to include new persons, data or facts without proper reasons and explanations.

There are serious discrepancies between the facts of the case as described in the MLA request and appended documentation, and the actions that are requested for execution of the request, often leading to refusal to cooperate due to lack of genuine case.

In limited experience of the states of the region, requests for direct judicial cooperation coming from local investigators or prosecutors are often low-quality in terms of both drafting as well as content.

5.2. Recommendations

This part of the report is based entirely on the solutions to the problems proposed by the Eastern Partnerships country representatives during the Council of Europe event on "Improving international cooperation on cybercrime in the Eastern Partnership region" in September 2015. The following recommendations therefore correspond to the problems identified in the previous part of the document.

With regard to legal requirements:
- Legal review of regulations for 24/7 points of contact authority, functions and operations;
- Legislative review on specific provisions on obtaining subscriber information (as opposed to traffic data), including possibilities under Article 18.1.b of the Convention on Cybercrime;
- Comprehensive legal review of the both substantive and procedural law for introduction of uniform concepts and definitions (underlying offences, electronic evidence) and removing obstacles to expedited processing of MLA requests (e.g. reduced requirements for originals of documents);

[3] Georgia has agreed to provide to project countries, as a good practice example, its internal guidelines for MLA handling, which also contain provisions on the handling of *de minimis* requests.

- Use of legal requirements and grounds for refusal to MLA requests can be at least partially remedied by public availability of best practice guides or handbooks on the subject.

With regard to communications:
- Standard multi-language templates and forms for 24/7 communications and mutual legal assistance would assist in the timely processing of the assistance requests.
- Launching dedicated (i.e. with focus on cybercrime and electronic evidence) online resource for international cooperation in cybercrime cases/electronic evidence;
- Better coordination between 24/7 points of contact and competent authorities for mutual legal assistance by sharing information and ensuring follow-up of incoming/outgoing cases;
- Training of investigators, prosecutors, judicial personnel, international cooperation officers tasked and representatives of national points of contact on the matters of international cooperation in cybercrime/electronic evidence cases.

In terms of management:
- Development and publication of guidelines on 24/7 points of contact based on best practices and experience;
- Encouraging formal cooperation between the law enforcement agencies and Internet service providers based on the Council of Europe Guidelines for cooperation between the law enforcement and internet service providers on cybercrime;
- Efficient use of human resources and communications available for processing international cooperation, with focus on police-to-police communications that can produce admissible evidence can be utilized more efficiently and agreed modalities for direct access to foreign service providers in communications and banking sector for available evidence;
- Formal urgency/priority processing for incoming mutual assistance requests based on formally agreed criteria and case-by-case examination or using advanced features of national legislation;
- Better integration of the core data on MLA requests into available criminal case management systems and more efficient follow-up and monitoring of requests that undergo execution by local criminal justice authorities.[4]

In terms of quality of mutual legal assistance requests:
- Capacity building activities aimed at both criminal justice professionals and international cooperation officers at competent authorities;
- Use of standard templates and/or handbooks for reaching an acceptable standard for outgoing mutual legal assistance requests;[5]
- In cases of direct judicial cooperation, obligation of centralized reporting, periodic follow-up and consultation from the central authorities aiming to improve overall quality of sought and rendered legal assistance.

5.3. Conclusions and next steps

In conclusion, the participants to both responses to questionnaire and the workshop in Bucharest represented key institutions responsible for mutual legal assistance and 24/7 points of contact for cybercrime and electronic evidence in Eastern Partnership states and partner countries and organisations, while detailed replies to the questionnaire provided background information which allowed for specific discussions. Bringing together mutual legal assistance authorities and 24/7 contact points is an immediate benefit and will lead to better cooperation in longer term.

Many of the discussions and specific recommendations voiced by the representatives of Eastern Partnership states and thus integrated into this report noted the specific need for revising and reforming applicable legislation. Extensive expertise of the Council of Europe in this area and availability of capacity building initiatives would favourably contribute to timely resolution of these issues.

[4] As a good example of integration of statistical accounting of cases involving electronic evidence, Georgia has agreed to share its practices on defining such data in its statistical reporting software.
[5] E.g. during the workshop, representative of Estonia has agreed to provide access to a translated version of the national manual for the prosecutors on handling of the mutual legal assistance requests among workshop participants. Similar materials from the United States have been provided.

The upcoming meeting scheduled under the Cybercrime @ Eastern Partnership Project II could be used as an opportunity to commence preparation of standard templates for international requests for cooperation, in particular for the preservation of data.

Annex - Excerpts from national legislation of Eastern Partnership states

Armenia

Code of Criminal Procedure

Article 474. Procedure for providing legal assistance in criminal matters in inter-state relations

1. Interrogation, inspection, seizure, search, expert examination and other procedural steps provided for by this Code conducted in the territory of the foreign state upon assignment or request (hereinafter referred to as "request") of courts, prosecutors, investigators, inquest bodies of the Republic of Armenia, as well as procedural steps provided for by this Code conducted in the territory of the Republic of Armenia upon request of competent authorities and officials (hereinafter referred to as "competent authorities") of the foreign state, shall be carried out in accordance with international treaties of the Republic of Armenia, in the manner prescribed by those treaties and this Code.
2. When carrying out procedural steps provided for by this Code in the territory of the Republic of Armenia upon request of competent authorities of the foreign state, courts, prosecutors, investigators, inquest bodies of the Republic of Armenia shall apply the norms prescribed in this Code with exceptions provided for by corresponding international treaties.

Article 476. Execution of requests provided for by more than one international treaty

1. Where the obligation of the competent authority of the foreign state to execute requests concerning procedural steps arises from more than one international treaty of the Republic of Armenia signed with the state concerned, the following rules shall apply:
(1) where the request includes indication of a particular international treaty, based on which it is drawn up and submitted, the court, prosecutor, investigator, inquest body of the Republic of Armenia executing the request shall be governed by that international treaty;
(2) where the request includes indication of more than one international treaty in force between the foreign state concerned and the Republic of Armenia, the court, prosecutor, investigator, inquest body of the Republic of Armenia executing the request shall be governed by the international treaty indicated in the request, which offers the most comprehensive solution to the issues concerning execution of the request concurrently applying those provisions of the other treaty (treaties), which are not envisaged by the international treaty offering the most comprehensive solution, but provide opportunity to execute the request more completely and promptly;
(3) where there is no indication of any international treaty in force between the state concerned and the Republic of Armenia, the court, prosecutor, investigator, inquest body of the Republic of Armenia executing the request shall be governed by the international treaty, which offers a more comprehensive solution to issues concerning full execution of the request not excluding application of provisions of other treaties in force between the foreign state concerned and the Republic of Armenia, that complement the treaty which the court, prosecutor, investigator, inquest body are governed with.
2. When there is an effective multilateral international treaty to which the Republic of Armenia and the foreign state making the request are parties, which in matters of extradition prevails over other international treaties in force between the parties and regulating extradition matters, the court, prosecutor, investigator, inquest body of the Republic of Armenia shall be governed by that multilateral international treaty.

Article 477. Refusal to execute requests stipulated by international treaties

Execution of requests concerning procedural steps submitted by competent authorities of the foreign state pursuant to international treaties of the Republic of Armenia may be refused on the grounds provided for by those treaties.

Article 482. Terms of provision of legal assistance in the absence of international treaties

1. In the absence of international treaties between the foreign state and the Republic of Armenia on provision of legal assistance in carrying out procedural steps in relation to criminal cases, legal assistance may be rendered in exceptional cases on the basis of reciprocity between the competent bodies and officials of the state concerned (hereinafter

referred to as "competent bodies") and courts, prosecutor, investigator, inquest body of the Republic of Armenia in accordance with arrangements reached through diplomatic channels between the foreign state concerned and the Republic of Armenia on provision of mutual assistance on the basis of reciprocity in the legal sphere, that must be previously agreed with:
(1) the Ministry of Justice of the Republic of Armenia when conducting procedural steps in relation to criminal cases in court proceeding and execution of judgments;
(2) the General Prosecutor's Office of the Republic of Armenia when conducting procedural steps in relation to cases in pre-trial stage.
2. Communication and provision of mutual legal assistance between the state concerned and the Republic of Armenia, between competent authorities of the foreign state concerned and courts, prosecutors, investigators, inquest bodies of the Republic of Armenia shall continue in the manner provided for by part 1 of this Article until conclusion of an international treaty (treaties) on the relevant matter (matters) or accession of the Republic of Armenia, as well as that of the foreign state concerned to an effective multilateral international treaty on provision of mutual legal assistance in criminal matters unless, prior to that, the arrangement on provision of legal assistance on the basis of reciprocity has been abolished unilaterally or by mutual agreement by the Republic of Armenia or the corresponding state through diplomatic channels.
3. When providing legal assistance on the basis of reciprocity in the manner provided for by part 1 of this Article, courts, prosecutors, investigators, inquest bodies of the Republic of Armenia shall communicate with other authorities of the foreign state concerned through the Ministry of Justice or General Prosecutor's Office of the Republic of Armenia, respectively, in accordance with rules stipulated in Article 475 of this Code.
4. The Ministry of Justice of the Republic of Armenia through the Ministry of Foreign Affairs of the Republic of Armenia shall provide the text of this Chapter, translated into a language acceptable for that state to the competent central authority of the relevant foreign state for using it while providing legal assistance based on the principle of reciprocity, obtaining the relevant law from that state.

Article 483. Content of request for legal assistance based on the principle of reciprocity in the absence of international treaties
1. An assignment, request or request (hereinafter referred to as "request") to carry out specific procedural steps addressed to the competent authority of the foreign state based on the principle of reciprocity must be drawn up in writing, signed by the official sending it and certified under the seal of the court, prosecutor's office, inquest body of the Republic of Armenia.
2. The request for legal assistance in carrying out procedural steps must contain:
(1) name of the court, prosecutor, investigator, inquest body of the Republic of Armenia sending the request;
(2) name of the authority of the foreign state, to which the request is sent;
(3) name of the case and nature of the request;
(4) information on those persons with regard to whom the request is sent: name, patronymic and surname, year, month, date and place (address) of birth, nationality, occupation, place of residence or location; in case of legal entities – name and place of location (address);
(5) statement of circumstances to be discovered, as well as the list of those documents, material and other evidence, that is expected to be received from the body responsible for carrying out the request;
(6) information on factual circumstances of the crime, qualification thereof, if appropriate information about the nature and extent of the damage caused by the crime, as well as other information available with the authority sending the request, which may contribute to efficient execution of the request.

Article 484. Execution of request for procedural steps in the absence of international treaties
1. The court, prosecutor, investigator, inquest body of the Republic of Armenia shall execute the request for legal assistance in criminal matters on the basis of reciprocity submitted by the competent authority of the foreign state in accordance with general rules of this Code (Chapters 1-53).
2. Where the request may not be executed the received documents shall be returned to the competent authority of the requesting foreign state with indication of reasons impeding the execution thereof.

Azerbaijan

Code of Criminal Procedure

Chapter LVII. LEGAL ASSISTANCE IN CRIMINAL MATTERS

Article 488. Procedural and other acts relating to legal assistance in the territory of the Azerbaijan Republic

488.1. In the territory of the Azerbaijan Republic, procedural and other acts relating to legal assistance may be carried out only at the official request of the relevant authorities of foreign states with which the Azerbaijan Republic has an agreement on legal assistance in criminal matters.

488.2. In the territory of the Azerbaijan Republic, procedural and other acts relating to legal assistance shall be carried out on the basis of this Code, of other laws and of the international agreements to which the Azerbaijan Republic is a party. In such cases, if the provisions of the legislation of the Azerbaijan Republic conflict with those of the international agreements to which the Azerbaijan Republic is a party, the provisions of the international agreements shall apply.

Article 489. General provisions governing legal assistance in criminal matters in the territory of the Azerbaijan Republic

489.1. Procedural documents drawn up in accordance with the legislation of the party submitting a request for legal assistance in the territory of the Azerbaijan Republic shall be accepted by the prosecuting authorities of the Azerbaijan Republic if they are accompanied by an official application for legal assistance signed by an official of the competent authority of the foreign state and certified by that authority's stamp.

489.2. The official language of the Azerbaijan Republic or, by mutual agreement with the competent authority of the foreign state, another language shall be used in the provision of legal assistance in the territory of the Azerbaijan Republic.

489.3. Unless otherwise provided for in an agreement signed by the requesting competent authority of the foreign state, all expenses connected with the provision of legal assistance by mutual agreement in the territory of the Azerbaijan Republic shall be paid by the prosecuting authorities of the Azerbaijan Republic.

Article 490. Content of official requests for legal assistance in the territory of the Azerbaijan Republic

490.1. Official requests for legal assistance in the territory of the Azerbaijan Republic shall indicate:

490.1.1. the name of the prosecuting authority to which the request is addressed;

490.1.2. the name of the requesting competent authority of the foreign state;

490.1.3. the title of the criminal case in respect of which legal assistance is requested and brief information about it;

490.1.4. a description and classification of the act committed;

490.1.5. the first and family names of the suspect, accused, victims and witnesses and, if possible, their address or whereabouts, nationality, occupation, place and date of birth;

490.1.6. the substance of the request for legal assistance; 490.1.7. any other information necessary for examination of the request.

490.2. Official requests for the extradition of a person who has committed an offence shall be submitted in accordance with Articles 488 and 489 of this Code.

Article 491. Rules governing the examination of official requests for legal assistance in the territory of the Azerbaijan Republic

491.1. Official requests for legal assistance in the territory of the Azerbaijan Republic shall be examined on the basis of the provisions of the legislation of the Azerbaijan Republic, under the procedure determined by the appropriate government authority of the Azerbaijan Republic.

491.2. When official requests for such assistance are examined and executed, the legislation of the foreign state may be applied at the request of the requesting body of that state if it does not conflict with the legislation of the Azerbaijan Republic.

491.3. If the prosecuting authority of the Azerbaijan Republic to which the request is addressed lacks the authority to examine and execute the official request for legal

assistance, it shall forward it to the competent prosecuting authority of the Azerbaijan Republic and inform the competent authority of the foreign state accordingly.
491.4. If the execution of the official request for legal assistance requires the conduct of procedural and other acts which need the approval (decision) of a court, the prosecuting authorities of the Azerbaijan Republic shall apply to the appropriate court of the Azerbaijan Republic exercising judicial supervision in accordance with the provisions of this Code.
491.5. Officials of the competent requesting authority of the foreign state may participate in the execution of the request for legal assistance as determined by the appropriate government authority of the Azerbaijan Republic, under the provisions of the legislation of the Azerbaijan Republic.
491.6. If the assistance requested cannot be given, the appropriate prosecuting authority of the Azerbaijan Republic shall inform the competent authority of the foreign state which made the request of the circumstances preventing its execution.

Article 492. Refusal of requests for legal assistance
492.1. If the provision of legal assistance may conflict with the legislation of the Azerbaijan Republic or may be detrimental to the sovereignty and security of the Azerbaijan Republic, the provision of such assistance may be refused.
492.2. Any decision to refuse legal assistance shall be made by the head of the prosecuting authority of the Azerbaijan Republic to which the request is addressed or by a court of the Azerbaijan Republic. The requesting competent authority of the foreign state shall be informed of the refusal and of the reasons for it.

Article 503. Content of an official request for criminal prosecution
503.1. An official request for criminal prosecution shall indicate the following:
503.1.1. the name of the prosecuting authority of the Azerbaijan Republic to which the request is addressed;
503.1.2. the name of the requesting competent authority of the foreign state;
503.1.3. a description of the act in respect of which prosecution is requested;
503.1.4. as far as possible, the exact time and place of the commission of the offence;
503.1.5. the text of the provisions of criminal law under which the act is considered an offence in the requesting foreign state and of any other legislation of the foreign state which is of importance for the proceedings;
503.1.6. the family name and first name of the suspect, his nationality and other information about his identity;
503.1.7. in criminal cases brought on the basis of an application by the victim, the victim's application and any claims for compensation for damage;
503.1.8. the cost of the damage caused by the offence.
503.2. All the documents and evidence at the disposal of the requesting competent authority of the foreign state shall be attached to the official request for criminal prosecution.
503.3. If the criminal case brought by the requesting competent authority of the foreign state is transferred, the prosecuting authority of the Azerbaijan Republic to which the request is addressed shall pursue the investigation of the case in accordance with the legislation of the Azerbaijan Republic. All the documents and evidence in the criminal case file shall be certified by the stamp of the competent authority of the foreign state.

Article 504. Notification of the results of criminal prosecution
The prosecuting authority of the Azerbaijan Republic to which the request is addressed shall inform the requesting competent authority of the foreign state of the final decision on the criminal case. At the request of the competent authority of the foreign state, a copy of the final decision on the case shall also be sent to it.

Belarus

Code of Criminal Procedure[6]

РАЗДЕЛ XV

МЕЖДУНАРОДНАЯ ПРАВОВАЯ ПОМОЩЬ ПО УГОЛОВНЫМ ДЕЛАМ НА ОСНОВЕ ПРИНЦИПА ВЗАИМНОСТИ ГЛАВА 50 ОСНОВАНИЕ И УСЛОВИЯ ОКАЗАНИЯ МЕЖДУНАРОДНОЙ ПРАВОВОЙ ПОМОЩИ ПО УГОЛОВНЫМ ДЕЛАМ НА ОСНОВЕ ПРИНЦИПА ВЗАИМНОСТИ

Статья 469. Основание для оказания международной правовой помощи по уголовным делам на основе принципа взаимности
Основанием для оказания международной правовой помощи по уголовным делам на основе принципа взаимности является просьба органа иностранного государства, в которой содержатся положения о ее сути и указываются сведения об уголовном деле, о фактических обстоятельствах и правовой квалификации деяния, текст положений уголовного закона иностранного государства, которыми предусматривается ответственность за это деяние, сведения о размере причиненного вреда, а также иные сведения, необходимые для ее исполнения. Просьба органа иностранного государства должна быть представлена в письменной форме, заверена подписью его должностного лица и скреплена гербовой печатью органа иностранного государства.

Статья 470. Общее условие оказания международной правовой помощи по уголовным делам на основе принципа взаимности
Общим условием оказания международной правовой помощи по уголовным делам на основе принципа взаимности является наличие:
1) заверенной копии решения органа иностранного государства, ведущего уголовный процесс, о производстве соответствующих процессуальных действий;
2) письменного обязательства органа иностранного государства об оказании международной правовой помощи по уголовным делам на основе принципа взаимности;
3) письменного обязательства органа иностранного государства о соблюдении условий, предусмотренных соответственно статьями 471–480 настоящего Кодекса;
4) иных документов и материалов, необходимых для исполнения просьбы органа иностранного государства;
5) заверенного письменного перевода на один из государственных языков Республики Беларусь просьбы органа иностранного государства и прилагаемых к ней документов и материалов, указанных в пунктах 1–4 настоящей статьи.

ГЛАВА 51 ОСНОВАНИЯ ДЛЯ ОТКАЗА В ОКАЗАНИИ И ОТСРОЧКИ ОКАЗАНИЯ МЕЖДУНАРОДНОЙ ПРАВОВОЙ ПОМОЩИ ПО УГОЛОВНЫМ ДЕЛАМ НА ОСНОВЕ ПРИНЦИПА ВЗАИМНОСТИ

Статья 481. Общие основания для отказа в оказании международной правовой помощи по уголовным делам на основе принципа взаимности
Международная правовая помощь по уголовным делам на основе принципа взаимности не оказывается, если: 1) оказание такой помощи может нанести ущерб суверенитету Республики Беларусь, ее национальной безопасности, правам и свободам граждан либо противоречит законодательным актам Республики Беларусь, а также международным договорам Республики Беларусь; 2) деяние, в связи с которым поступила просьба органа иностранного государства, не является преступлением в соответствии с Уголовным кодексом Республики Беларусь; 3) не соблюдены условия, предусмотренные главой 50 настоящего Кодекса; 4) иностранным государством не соблюдается принцип взаимности.

[6] Russian-language excerpts only, no English translation publicly available.

Georgia

International Cooperation in Criminal Matters Act 2010

Article 2 Legal Basis for Mutual legal assistance in criminal matters
1. Mutual legal assistance in criminal matters as a rule is governed by the International Treaty of Georgia.
2. Mutual legal assistance in criminal matters may be practiced in particular cases on the basis of an ad hoc agreements or reciprocity principle to the State with whom Georgia is not bound with relevant international treaty.
3. Judicial Cooperation in criminal matters on the basis of reciprocity principle may be carried out on the issues referred to Article 1 § 1 of the same Act except extradition and enforcement of judgment.
4. In case of mutual legal assistance in criminal matters on the basis of reciprocity principle, reciprocity conditions shall be determined which shall at least contain minimum guarantees provided for in this Act.
5. Ad hoc agreements shall be concluded in respect of an individual case of mutual legal assistance and shall at least envisage minimum guarantees determined by this Act.

Article 3 Communication Channels and Means
1. Mutual legal assistance in criminal matters is carried out through communication channels and means established by relevant international treaty or ad hoc agreements.
2. If communication channels and means are not arranged by relevant international treaty or ad hoc agreements mutual legal assistance in criminal matters may be communicated through direct channels unless otherwise provided for in the legislation of a relevant foreign state.
3. In case of practicing mutual legal assistance in criminal matters on the basis of reciprocity principle Georgia applies diplomatic channels.
4. Interpol or other means of communication can be applied in the course of practicing mutual legal assistance in criminal matters unless otherwise provided for in the legislation of a relevant foreign state.
5. The files received through communication channels and means stipulated I paragraph 4 of the same Article have to be approved with ordinary parcel sent by post.

Article 4 Expenses
1. Expenses incurred in the territory of Georgia by reason of the implementation of mutual legal assistance in criminal matters shall be borne by Georgia unless otherwise provided for in the International Treaties of Georgia, or ad hoc agreements, or/and reciprocity conditions.
2. Based on a relevant agreement the expanses may be otherwise redistributed.

Article 5 General Rule and Implementation Procedures on the Transfer of *Letter Rogatory* on the Criminal Case Investigated by the Competent Authorities of Georgia to a Foreign State
1. If procedural action envisaged by the Criminal Procedure Code of Georgia has to be carried out at the territory of a foreign state and therefore there is relevant legal basis for it, the investigator, prosecutor or the judge (the court) shall be authorized to file appropriate motion at the Ministry of Justice of Georgia.
2. The motion on the legal assistance in the criminal case proceeded by the competent authorities of Georgia shall be executed in compliance with the legislation of a foreign state except the case provided for in Paragraph 3 of this Article.
3. The Ministry of Justice of Georgia shall be authorized to request the foreign state to apply the legislation of Georgia when executing the *letter rogatory* on the criminal case proceeded by the competent authorities of Georgia unless otherwise provided for in the International Treaties of Georgia, or an ad hoc agreements, or reciprocity conditions.
4. In case of existence of a relevant legal basis, the Ministry of Justice of Georgia shall be authorized to request the foreign state to allow authorized representatives of Georgia to attend the process of execution of the *letter rogatory* on the criminal case proceeded by the competent authorities of Georgia.

Article 6 Form of *Letter Rogatory*
1. *A letter rogatory* shall be in a written form and as a rule shall contain as follows:
a) The name of the competent authority to which the *letter rogatory* is forwarded;
b) Description of factual circumstances and legal qualification of the criminal case;

c) The content of the legal provisions applicable in the criminal proceeding on a relevant criminal case as well as an extract from other relevant legislative acts, if necessary;
d) The content of the legal assistance requested;
e) The aim and necessity of the legal assistance requested;
f) Exact identity of the person claimed upon the request of legal assistance, as accurately as possible;
g) Any Other necessary information.
2. If the Criminal Procedure Code of Georgia requires a court decision (a court ruling) for carrying out a procedural action, such a decision signed by the judge and with the court seal affixed to it shall be enclosed to the *letter rogatory* .
3. Terms established by Article 112 §3 and Article 138 §4 of the Criminal Procedure Code of Georgia shall not be applied when the court decision (a court ruling) envisaged by Paragraph 2 of this Article is to be rendered.

Article 8 Requesting Information on Legal Issues from a Foreign State and providing it to the
Competent Authority of a Foreign State
1. If relevant legal basis exists the Ministry of Justice of Georgia shall be entitled to request information on its national legislation and on the application practice of this legislation from the foreign state.
2. In case of relevant legal ground and on the basis of appropriate motion the Ministry of Justice of Georgia shall be authorized to communicate information on Georgian legislation and its application practice to the competent authority of a foreign state.

Article 9 Requesting Information or Files on the Criminal Case from a Foreign State and Providing it to the Competent Authority of a Foreign State
1. If relevant legal basis exists, the Ministry of Justice of Georgia shall be authorized to request information or files on the criminal case proceeded by its competent authorities from a foreign state.
2. If relevant legal basis exists, the Ministry of Justice of Georgia shall be authorized to communicate such information and files on the criminal case proceeded by the competent authorities of Georgia to the competent authority of a foreign state.

Article 10 Rules for Applying Evidences Obtained as a Result of Legal Assistance
1. Evidence obtained at the territory of a foreign state in observance with rules prescribed by legislation shall bear equal legal force as evidence obtained at the territory of Georgia.
2. Any property or original document obtained as a result of legal assistance shall be immediately returned to the competent authority of a foreign state since it has been no longer necessary except for the case when the said state refuses its return.
3. No information or any other files obtained at the territory of a foreign state in observance with the rules prescribed by legislation can be used for the purposes other than those stated in a relevant *letter rogatory* .
4. The files referred to the Paragraph 3 of this Article can be applied for other purposes in case of a prior consent from the competent authority of a foreign state about which additional motion shall be forwarded.

Article 11 Execution of the *Letter Rogattory* of a Foreign State at the Territory of Georgia
1. If a relevant legal ground exists, the Ministry of Justice of Georgia shall ensure execution of *the letter rogatory* of a foreign state at the territory of Georgia.
2. The letter rogatory from a foreign state shall be executed in observance with the Georgian legislation.
3. If the legislation of the foreign state initiating the *letter regotary* does not contradict with the legislation of Georgia, it may be also applied while ensuring legal assistance unless otherwise provided for in the International Treaties of Georgia, or an ad hoc agreements, or reciprocity conditions.
4. The procedural actions related to coercing the person or restricting his constitutional rights and freedoms shall be carried out if they are sanctioned by the court or other competent authority of a foreign state.
5. In case of existence of a relevant legal ground, the representatives of foreign state may attend the execution of the *letter rogatory* forwarded by the foreign state if there is a prior consent from the Ministry of Justice of Georgia.

6. If the information provided by a foreign state is not found sufficient in order to execute the *letter rogatory* , the Ministry of Justice of Georgia shall be authorized to request additional information from the foreign state.
7. The materials obtained as a result of legal assistance shall be forwarded to a foreign state through the Ministry of Justice of Georgia.

Article 12 Grounds for Refusal to Execute *Letter Rogatory*
1. Legal assistance shall not be provided if:
a) the execution of *letter rogatory* may prejudice the sovereignty, security, public order or another substantial interest of Georgia;
b) the execution of *letter rogatory* contradicts the legislation of Georgia;
c) The crime in regard with the *letter rogatory* has been requested is considered by Georgia to be a political offence or related to a political offence. The crime shall not be considered political if through taking into account aims, motives, forms and other circumstances the signs of criminal act outweigh the political aspects of committing an offence;
d) the execution of *letter rogatory* may prejudice universally recognized rights and fundamental freedoms;
e) The crime in regard with the *letter rogatory* has been requested corresponds to a military crime, and is not punishable by the criminal law of the requesting state unless otherwise provided for in the International Treaties of Georgia, or an ad hoc agreements, or reciprocity conditions.
f) the execution of the *letter rogatory* will infringe the principle that a person may not be convicted twice for the same crime;
2. When it is requested by the *letter rogatory* to carry out search or seizure and a relevant legal basis does not provide for otherwise, it shall be executed only if the following conditions are in place:
a) The crime in regard with the *letter rogatory* has been requested is punishable both by the legislation of requesting state and the legislation of Georgia;
b) The crime in regard with the *letter rogatory* has been requested is subject to extradition under the legislation of Georgia;
c) Execution of the *letter rogatory* complies with the legislation of Georgia.
3. When a foreign state requests to appear imprisoned person at the territory of Georgia, in order to carry out investigative or court action at its own territory, the Ministry of Justice of Georgia shall be authorized to refuse to execute the *letter rogatory* , if:
a) The person in custody disagrees;
b) The presence of imprisoned person is necessary at the territory of Georgia to carry out criminal proceedings against the same person;
c) Transfer of the imprisoned person may prolong his custody.
4. The Ministry of Justice of Georgia may temporarily refuse to provide legal assistance to a foreign state, if transmitting the evidence or other documents requested may delay the criminal proceeding carried out in Georgia.
5. In other cases as provided for in the International Treaties of Georgia, or an ad hoc agreements, or reciprocity conditions, the Ministry of Justice of Georgia shall be authorized to refuse in full or partially to provide legal assistance.
6. If the *letter rogatory* cannot be executed, the documents received shall be returned to the foreign state through the Ministry of Justice of Georgia and the reasons of failure to execute it shall be stated.

Article 13 Procedural Status
The persons in regard of whom the competent authorities of foreign state request to carry out procedural actions shall have the same procedural status as assigned by the requesting country if it does not infringe fundamental rights of person provided for in the legislation of Georgia.

Moldova

Code of Criminal Procedure

CHAPTER IX - INTERNATIONAL LEGAL ASSISTANCE IN THE CRIMINAL MATTERS
Section 1 - General provisions and the rogatory commission

Article 531. Legal regulation of international legal assistance
(1) The relationships with foreign countries or international courts regarding the legal assistance in criminal matters shall be regulated by the present Chapter. The provisions of international treaties to which the Republic of Moldova is a party to as well other international commitments of the Republic of Moldova shall have priority in relation with the provisions of this Chapter.
(2) If the Republic of Moldova is a party to several international acts of legal assistance and the foreign state from which legal assistance is solicited or which solicits it, and if there are divergences or incompatibilities between the provisions of these acts, than the provisions of the treaty which ensures a better protection of the human rights and freedoms shall be applied.
(3) The admissibility of granting international legal assistance shall be decided by the competent court. The Ministry of Justice may decide the non-execution of a judgement regarding the admission of granting international legal assistance when the fundamental national interests are at stake.

Article 532. Manner of transmission of the legal assistance' addressing
Addressing concerning international legal assistance in the criminal maters shall be made through the mediation of the Ministry of Justice, of the General Prosecutor's Office directly and/or through the mediation of the Ministry of External Affairs of the Republic of Moldova, except for the cases when on the basis of mutuality another manner of addressing is provided.

Article 533. Extent of legal assistance
(1) nternational legal assistance may be solicited or granted at the execution of certain procedural activities provided by the criminal procedure law of the Republic of Moldova and of the respective foreign state, namely in:
1) transmission of acts to natural persons or legal entities which are abroad the borders of the country;
2) hearing of persons as witnesses or experts;
3) execution of the investigation, search, seizure of objects and documents and their transmission abroad, conduction of expert examination;
4) summoning of the persons from abroad to present voluntary in front of the criminal prosecution or of the court for hearing or confrontation, as well as forced bringing of the persons in detention at that moment;
5) conduction of criminal prosecution upon the denunciation made by a foreign state;
6) search and extradition of the persons who had committed crimes or for the execution of the imprisonment sentence;
7) recognition and execution of the foreign sentences;
8) transfer of the convicted persons;
9) other actions which do not contravene to the present Code.
(2) Taking of the preventive measures shall not be an object of the international legal assistance.

Article 534. Refusal of international legal assistance
(1) International legal assistance may be refused, if:
1) the request refers to crimes considered in the Republic of Moldova as being political or connected crimes to such political crimes. The refusal shall be inadmissible if the person is suspected, accused or convicted for the commission of perpetration provided in art.5-8 of the Rome Status of the International Court of Criminal Justice;
2) the request refers to a perpetration which constitutes exclusively a violation of the military discipline;

3) the criminal prosecution body or court which is solicited to grant legal assistance considers that its execution may violate the sovereignty, security or public order of the country;

4) the are founded grounds to believe that the suspect is prosecuted or punished for reasons of race, religion, nationality, membership of a certain group or for sharing certain political beliefs, or if his situation is even more aggravated due to the listed reasons;

5) the respective perpetration is punished with death according to the legislation of the soliciting state and the soliciting state offers no guarantee of non-application of the capital punishment

6) according to the Criminal code of the Republic of Moldova the perpetration invoked in the request does not represent a criminal offence;

7) according to the domestic legislation the person can not be held criminally liable.

(2) Refusal of international legal assistance shall be motivated if this obligation flows from the treaty the Republic of Moldova is a party to.

Article 535. Expenses related to granting legal assistance

Expenses related to granting legal assistance shall be covered by the soliciting party from the territory of its country if another way of covering the expenses in the conditions of mutuality or in an international treaty is not established.

Article 536. Addressing with a rogatory commission

(1) If the criminal prosecution body or the court considers necessary taking a procedural action on the territory of a foreign state it shall address with a rogatory commission to the respective criminal prosecution body or court from the respective state or to an international criminal court, according to the provisions of the international treaty to which the Republic of Moldova is a party to or under mutuality conditions.

(2) Mutuality conditions shall be confirmed by a letter through which the Minister of Justice or the General Prosecutor of the Republic of Moldova undertakes in the name of the Republic of Moldova to grant legal assistance to the foreign state or to the international criminal court in taking some procedural actions with securing of procedural rights provided by the domestic law concerning whom the assistance is granted..

(3) The rogatory commission in the Republic of Moldova shall be submitted by the criminal prosecution body to the Prosecutor General, and by the court - to the Minister of Justice in order to be transmitted for execution to the respective foreign state.

(4) The rogatory commission request and the documents attached to it shall be translated in the official language of that state or of that international criminal court to which it addresses.

Article 537. Content and form of request on rogatory commission

(1) Request on the rogatory commission shall be made in written and shall include the following data:

1) name of the body to which addresses the request;

2) name and address, if known, of the institution to which the request is sent;

3) international treaty or agreement of mutuality based on which assistance is requested;

4) indication of the criminal case in which it is solicited granting of legal assistance, information on the circumstances of the facts in which the actions had been committed and their legal qualification, the text of the respective article from the Criminal Code of the Republic of Moldova and data on the caused damage by the respective crime;

5) data on the persons regarding whom the rogatory commission is requested, including information on their procedural capacity, their date and place of birth, nationality, domicile, occupation, for the legal entities - name and premises, as well as the names and addresses of the representatives of this person when it is the case;

6) object of the request and necessary data for its fulfillment with the statement of the circumstances to be found, the list of the documents, *corpus delicti* and of other proofs requested, the circumstances in relation to which the evidence has to be administrated, as well as the questions to the asked the persons to be heard.

(2) Request on the rogatory commission and the documents attached to it shall be signed and authenticated with the official stamp of the competent soliciting institution.

Article 538. Validity of the procedural act

The procedural act drawn up in a foreign country according to the legal provisions of that country shall be valid before the criminal prosecution bodies and courts from the Republic of

Moldova, when its execution is performed according to the procedure provided by the present Code.

Article 539. Summoning of the witness or expert who is outside the borders of the Republic of Moldova

(1) The witness or the expert may be summoned by the body conducting the criminal prosecution for the execution of certain procedural actions on the territory of the Republic of Moldova in case of their acceptance to show up in front of the soliciting body.
(2) Summoning of the witness or expert shall be made under the conditions provided by art.536, par.(3) and (4).
(3) Procedural actions with the participation of the persons summoned according to the provisions of this article shall be taken in compliance with the present Code.
(4) The witness or the expert, regardless nationality, who has presented himself after being summoned as provided by this article in front of the soliciting body, may not prosecuted, detained or subjected to any individual freedom limitation on the territory of the Republic of Moldova for perpetrations or convictions prior to crossing the Republic of Moldova's borders.
(5) The immunity provided by par.(4) ends if the witness or expert has not left the territory of the Republic of Moldova within 15 days from the date when he was called and communicated by the respective body that his presence is not necessary any more, or when he came back later on in the Republic of Moldova. This term does not include the period of time when the witness or expert was not able to leave the territory of the Republic of Moldova because on reasons independent from his will.
(6) The summoning of the detained person in a foreign state shall be made according to the provisions of this article with the condition that the person temporary transferred on the territory of the Republic of Moldova by the respective body from the foreign state in order to take the actions indicated in the request on his transfer shall be returned in the time indicated in the request. The transfer conditions or its refusal shall be regulated by the international treaties to which the Republic of Moldova and the solicited state are parties to or on the grounds of written obligations in mutuality conditions.

Article 540. Execution of the rogatory commission requested by foreign bodies in the Republic of Moldova

(1) Criminal prosecution body or the court shall perform rogatory commissions requested by the respective foreign bodies on the basis of the international treaties to which the Republic of Moldova and the foreign soliciting state are parties to or in mutuality conditions confirmed according to the provisions of art.536, par.(2).
(2) The request for the performance of the rogatory commission shall be sent by the Prosecutor General to the criminal prosecution body or, upon the case, by the Minister of Justice to the court at the place where the solicited procedural action will be taken.
(3) The request on hearing the witness or the expert shall be executed in all the cases by the instruction judge.
(4) At the execution of the rogatory commission the provisions of the present Code shall be applicable, but, upon the request of the soliciting party a special procedure provided by the legislation of the foreign state may be applied, in compliance with the respective international treaty or with the observance of the mutuality conditions if this complies with the domestic legislation and with the international obligations undertaken by the Republic of Moldova.
(5) Representatives of the foreign state or of the international instance may assist at the execution of the rogatory commission, if this is provided by the respective international treaty or by an obligation provided in written by the mutuality conditions. In such a case, upon the request of the soliciting party, the body which has to execute the rogatory commission shall inform the soliciting party on the time, place and term of the rogatory commission's execution in order for the interested party to be able to assist.
(6) If the address of the person, with respect to whom the rogatory commission is solicited, is indicated mistakenly, the body charged with execution shall take the respective measures for finding the address. If the finding of the address is not possible, the soliciting party shall be announced.
(7) If the rogatory commission may not be performed, the received documents shall be restituted to the soliciting party through the mediation of the institution from which the documents have been received, with the indication of the reasons which have impeded the execution. The request on the rogatory commission and the attached documents shall be restituted in the refusal cases as well, on the grounds provided by the article 534.

Ukraine

Code of Criminal Procedure

Article 543. Legislation that regulates international cooperation in criminal proceedings

1. Procedure for sending a request to the other state, procedure for consideration of request of the other state or international judicial institution for such assistance by the authorized (central) body of Ukraine and procedure for performance of such request shall be defined hereby and by applicable international treaties of Ukraine.

Article 544. Providing and receiving the international legal assistance or other international cooperation without treaties

1. In the absence of the international treaty of Ukraine the international legal assistance or other cooperation may be provided on the basis of the other state's request or requested on the basis of reciprocity.
2. Authorized (central) body of Ukraine, sending a request to such state, shall guarantee in writing the requested party that in the future it will consider its request for the international legal assistance of the same kind.
3. In accordance with paragraph one of this Article, the authorized (central) body of Ukraine shall consider the request of a foreign country only if the requesting party provided the guarantee in writing to receive and consider Ukraine's request in the future on the basis of reciprocity.
4. Authorized (central) body of Ukraine when applying for international legal assistance to such state and providing international legal assistance to such state shall be guided by this Code.
5. In the absence of the international agreement with the corresponding state the authorized (central) body of Ukraine shall send a request for international legal assistance to the Ministry of Foreign Affairs of Ukraine for further transfer it to the competent authority of the requested party through diplomatic channels.

Article 545. Central body of Ukraine

1. The General Prosecutor's Office of Ukraine shall make requests for international legal assistance in criminal proceedings during pretrial investigation and consider corresponding requests of the foreign competent authorities, except pre-trial investigation of criminal offences referred to the investigative jurisdiction of the National Anti-Corruption Bureau of Ukraine, which in such cases performs functions of the central authority of Ukraine..
2. The Ministry of Justice of Ukraine shall make courts' requests for international legal assistance in criminal proceedings during the proceedings and consider corresponding foreign country courts' requests.
3. The General Prosecutor's Office of Ukraine and the Ministry of Justice of Ukraine shall forward to the National Anti-Corruption Bureau of Ukraine received (submitted) in the framework of international legal assistance materials relating to financial and corruption criminal offences, in form of certificate.
4. Should this Code or the international treaty of Ukraine provide for other procedure for relations, the body defined by these legislative acts shall have the powers provided for in paragraph one, two of this Article.

Article 548. Request for international cooperation

1. Request (order, motion) for international cooperation shall be prepared by the body which carries out the criminal proceeding, or the body authorized by it in accordance with the requirements of this Code and the relevant international treaty of Ukraine, and in its absence - in accordance with this Code.
2. Request and the documents attached thereto shall be made in writing, certified by the signature of an authorized person and the seal of the relevant body.
3. Request and documents attached thereto shall be accompanied by a certified translation into the language duly established in accordance with international treaties of Ukraine, and in the absence of such treaty – into the official language of the requested Party or any other language acceptable to this party.
4. Request shall be sent abroad by mail, and in urgent cases electronically, by facsimile or other means of communication. In this case, the original request shall be sent by mail no later than three days upon its transmission via email, fax or other means of communication.

5. Authorized (central) body of Ukraine may take into consideration a request that came from the requesting party electronically, by facsimile or other means of communication. Such request shall be performed exclusively subject to the confirmation of sending or transfer of its original. The competent authority of a foreign state may be sent the materials on the request performance only after receipt of the original request by the Ukrainian side.

Article 551. Request for international legal assistance
1. The court, prosecutor or investigator in consultation with the prosecutor shall send to the authorized (central) body of Ukraine request for international legal assistance in criminal proceedings, which it conducts.
2. The authorized (central) body of Ukraine shall consider the request for reasonableness and compliance with the laws and international treaties of Ukraine.
3. Should it be resolved to send the request, the authorized (central) body of Ukraine shall within ten days send the request to the authorized (central) body of the requesting party directly or through diplomatic channels.
4. In case of refusal to send the request, all material shall within ten days be returned to the relevant Ukrainian authority outlining deficiencies that need to be eliminated, or reasoning the impossibility to send the request.

Article 552. Content and form of the request for international legal assistance
1. Content and form of the request for international legal assistance shall comply with this Code or the international treaty of Ukraine applied in a particular case. The request may be made in the form of commission.
2. The request shall contain:
1) name of the authority which requests for assistance, and the competent authority of the requested party;
2) reference to the relevant international treaty or adherence to the principle of reciprocity;
3) title of the criminal proceedings, for which international legal assistance is requested;
4) brief description of the criminal offense that is the subject of criminal proceedings and its legal qualification;
5) information on the reported suspicion, accusation setting out the full text of the relevant articles of the Criminal Code of Ukraine;
6) data of the relevant person, including his/her name, procedural status, place of residence or stay, citizenship and other information that may facilitate the performance of the request, and the relationship of that person to the subject of criminal proceedings;
7) clear list of requested proceedings and justification of their relationship with the subject of criminal proceedings;
8) information on persons whose presence is necessary during the proceedings, and justification of such necessity;
9) other information that may facilitate the performance of the request or provided for by the international treaty or required by the competent authority of the requested party.
3. The request for interrogation of a person as a witness, victim, expert, suspect or the accused shall be attached a duly certified extract from the relevant articles of the Code to clarify procedural rights and obligations for the person. The request shall also be attached a list of questions to ask the person, or the information to be obtained from the person.
4. The request for a search, inspection of the scene, seizure, arrest or confiscation of property or other proceedings, permission for which is provided by the court in accordance herewith, shall be attached the information about the evidence justifying the need for relevant measures.
5. Provision of information in accordance with paragraphs 4, 5 and 8 of this Article shall not be required for the request for documents service or subpoena.
6. At the stage of pre-trial investigation, the request for international legal assistance shall be approved in writing by the prosecutor that oversees compliance with laws when conducting the pre-trial investigation.

Article 554. Consideration of the foreign competent authority's request for international legal assistance
1. After receiving a request for international legal assistance from the requesting party, the authorized (central) body of Ukraine shall consider it for reasonableness and compliance with the laws or international treaties of Ukraine.
2. Should it be resolved to satisfy the request, the authorized (central) body of Ukraine shall send the request to the competent authority of Ukraine for performance.

3. Within its competence, the General Prosecutor's Office of Ukraine shall have the right to give instructions to ensure proper and timely performance of the request. These instructions shall be binding on the relevant competent authority of Ukraine.
4. The central body of Ukraine on international legal assistance shall exclusively adopt resolution on the request (commission) for international legal assistance in relation to:
1) presence of the foreign competent authority's representative while providing international legal assistance. If request (commission) on international legal assistance that involves the presence of a representative, has been sent pursuant to paragraph three of the Article 545 hereof, a copy thereof shall be immediately sent to the authorized (central) body to resolve in this part;
2) providing the competent authority of the foreign state with the guarantees on the conditions of the request (commission), provided for by paragraph two of the Article 544 hereof, and obtaining such guarantees from other states;
3) temporary surrender of a person serving a sentence for participating in the investigation and other proceedings.

Article 557. Denial of request for international legal assistance
1. Requesting party may be denied a request for legal assistance in the cases provided for in the international treaty of Ukraine.
2. In the absence of an international treaty of Ukraine the request shall be denied if:
1) the request performance contradicts constitutional principles or may affect the sovereignty, security, public order or other interests of Ukraine;
2) the request relates to an offense, for which the Ukrainian court has adopted a resolution in respect of the same person, which has come into force;
3) the requesting party does not ensure reciprocity in this area;
4) the request concerns an offense, which is not a criminal offense under the law of Ukraine on criminal liability;
5) there are reasonable grounds to consider that the request is aimed at the prosecution, conviction or punishment of a person on grounds of race, colour, political, religious or other beliefs, sex, ethnic or social origin, property status, place of residence, language or other characteristics;
6) the request relates to a criminal offense, which is the subject of the pre-trial investigation or judicial examination in Ukraine.

Article 558. Procedure for performance of the request (commission) for international legal assistance in Ukraine
1. Central body of Ukraine on international legal assistance or body authorized to carry out relations in accordance with the part three of the Article 545 hereof, after consideration of the foreign state competent authority's request for international legal assistance, shall resolve on:
1) order for its performance to the pre-trial investigation body, prosecutor's office or court, while taking measures to ensure the confidentiality;
2) possibility to perform the request applying the laws of a foreign country
3) postponing the performance if it may hinder criminal proceedings in Ukraine, or shall coordinate the ability to perform a request on certain conditions with the competent authority of a foreign country;
4) denial of the request on the grounds specified in the Article 557 hereof;
5) possibility to perform the request, if the costs of such performance expressly exceed the damage caused by a criminal offense or clearly do not correspond to the severity of the criminal offense (unless it is contrary to the international treaty of Ukraine);
6) other actions stipulated by the international treaty, ratified by the Verkhovna Rada of Ukraine.
2. Request of the foreign competent authority for international legal assistance shall be performed within one month upon its receipt by the direct performer. If it necessary to perform complex and large proceedings, including those which require approval of the prosecutor or may be conducted under the approval of the investigating judge, the performance period may be extended by the central body of Ukraine or the body authorized to carry out relations with foreign competent authorities pursuant to paragraph three of the Article 545 hereof.
3. The documents executed by the pre-trial investigation body, investigator, prosecutor or judge to perform the request for international legal assistance shall be signed by the said officials and sealed by the appropriate authority. The documents obtained as a result of the request from other agencies, institutions or enterprises (regardless of the type of ownership)

shall be signed by their directors and affixed the seal of the relevant agency, institution or enterprise. Pre-trial investigation body or the investigator shall send the request performance materials to the prosecutor that oversees the compliance with the laws during the pre-trial investigation, to verify the completeness and legality of the investigative and other proceedings.
4. Documents obtained during the performance of the request for international legal assistance shall be sent to the competent authority of a foreign country in accordance with the relevant international treaty, ratified by the Verkhovna Rada of Ukraine.
5. In the absence of the international treaty of Ukraine with the relevant foreign state, the request for international legal assistance shall be subject to the requirements of this article, and the obtained documents shall be sent by the central body of Ukraine on international legal assistance through diplomatic channels.
6. When sending materials to the competent authority of a foreign state the central body of Ukraine on international legal assistance or body authorized to carry out relations with foreign competent authorities in accordance with the Article 545 hereof may set the restrictions on the use of such materials in accordance with the law and international treaty ratified by the Verkhovna Rada of Ukraine.
7. Should it be impossible to fulfill the request for international legal assistance, as well as in the case of denial of international legal assistance on the grounds specified in Article 557 hereof, the central body of Ukraine on international legal assistance or body authorized to carry out relations in accordance with paragraph three of the Article 545 hereof shall return the request to the competent authority of a foreign state stating the reasons.

Article 559. Postponing the international legal assistance
1. Legal assistance may be fully or partially postponed if the performance of the order hinders the pre-trial investigation or judicial examination in progress in Ukraine.

Article 560. Completing the procedure for provision of international legal assistance
1. The authority that was charged with the request performance, after carrying out the required procedural actions, shall send all received materials to the authorized (central) body of Ukraine. In case of incorrect or incomplete request performance, the authorized (central) body may require additional measures to perform the request.
2. The documents obtained as a result of the request performance shall be certified by the official stamp of the competent authority, which carried out the proceedings, and transferred to the (central) body of Ukraine for transfer to the requesting party without translation, unless otherwise provided for by the international treaty.
3. The authorized (central) body of Ukraine shall send materials obtained during request performance to the authorized (central) body of the requesting party within ten calendar days after their receipt by the competent authority of Ukraine.

Article 564. Service of the documents
1. At the request of the foreign competent authority for international legal assistance, the documents and resolutions attached thereto shall be served to the person specified in the request, as prescribed in this Article.
2. The investigator, prosecutor or court to perform the request of foreign competent authority for international legal assistance shall call a person for the service of documents. If the person has not appeared without good reason, the attachment may be applied to him/her in the manner prescribed hereby.
3. Pre-trial investigation agency, investigator, prosecutor or court shall execute the protocol on the documents service to a person indicating the place and date of their service. The protocol shall be signed by a person that is served the documents outlining its statements or comments when obtaining the documents. In cases envisaged by the international treaty ratified by the Verkhovna Rada of Ukraine, the separate confirmation shall be made, signed by the person that has received the documents, and by the person that served them.
4. Should a person refuse to receive the documents to be served, it shall be noted in the protocol. Thus the documents to be served shall be deemed served, which is indicated in the protocol.
5. If the documents to be served do not contain the Ukrainian translations and are executed in a language that is not understandable to the person specified in the request, the person shall have the right to refuse to receive the documents. In this case, the documents shall be deemed those that were not served.

6. The protocol on the documents service shall be transferred along with other documents attached to the request to the competent authority of a foreign state in the manner provided for in Article 558 hereof.