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MANUAL on Mutual Assistance in Criminal Matters

This guide includes contributions from the following States:

[Finland](#), [Hungary](#), [Republic of Moldova](#), [Portugal](#), [Romania](#), [Switzerland](#)

Some countries have communicated hard copy contributions to the Secretariat, namely:

Austria, Bulgaria, Germany, Greece, Malta, Netherlands, Norway, Romania, Russia, Sweden, Turkey, Ukraine, United Kingdom and Canada.

This document stands to be completed and updated upon the Secretariat receiving contributions from States.

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FINLAND

Information on national law and practice relevant to international cooperation in criminal matters

Finland has undertaken a major reform of its law in this area with the entry into force on 15 January 1994 of the International Legal Assistance in Criminal Matters Act (hereinafter the Legal Assistance Act). An English translation of the Legal Assistance Act and relevant legislation relating to that Act are enclosed to this document.

The forms of legal assistance

Section 1 of the Legal Assistance Act defines the forms of legal assistance which fall within the scope of application of the Act. According to section 1 legal assistance includes:

1. service of decisions, summonses, notices and other judicial documents relating to a criminal matter, including summonses to appear before an authority of the requesting State;
2. hearing of witnesses, experts and parties, obtaining of expert opinions, inspections, procuring and transmitting documents and objects to be produced as evidence, as well as taking of any other evidence relating to a criminal matter;
3. search, seizure and the use of other coercive measures in order to obtain evidence or to secure the enforcement of a confiscation order;
4. institution of criminal proceedings;
5. communication of extracts from and information relating to judicial records required in a criminal matter; and
6. any other necessary assistance in a criminal matter, provision of information on law as well as any other forms of mutual co-operation.

Thus the scope of legal assistance is wide. What is relevant is that the request has to relate to a particular criminal matter. Therefore requests for obtaining general information on Finnish law without a link to a criminal matter fall outside the scope of the Act. On the other hand, it is not necessary that the request has to be made by a judicial authority of the requesting State; also requests made by an administrative authority can be carried out under the Act as long as they relate to a criminal matter.

Transmission and execution of requests

Under section 4 of the Legal Assistance Act requests for legal assistance may be transmitted to the Ministry of Justice or made directly to the authority competent to execute the request. Requests may also be transmitted to these authorities through diplomatic channels or by foreign diplomatic agents or consular officers.

The main rule is that the execution of the request shall be carried out in accordance with Finnish law. However, the request for assistance may also be executed following a particular procedure specified in the request where such a form would not be contrary to Finnish law (section 11 of the Legal Assistance Act).

As regards languages to be used, the request and documents accompanying it may be in the Finnish or Swedish languages, but also in the Danish, English, French, German or Norwegian languages. The necessary parts of the documents shall be translated into Finnish or Swedish by the Ministry of Justice if the requested service or other measures cannot otherwise under Finnish law be carried out or if the translation is necessary for the reasons that the authority executing the request deems that it does not have a sufficient understanding of the language used in the request (section 8 of the Legal Assistance Act and sections 9 and 10 of the Legal Assistance Decree).

Competent authorities

As regards competent authorities, Finland has declared that for the purposes of European Convention on Mutual Assistance in Criminal Matters (1959) the following are deemed to be judicial authorities in Finland:

- The Ministry of Justice
- The Courts of First Instance, the Courts of Appeal and the Supreme Court
- The public prosecutors
- The police authorities, the customs authorities as well as the frontier guard officers in their capacity of pre-trial criminal investigations authorities in criminal proceedings under the Preliminary Criminal Investigations Act (449/87).

The Ministry of Justice

The Ministry of Justice acts as Central Authority and discharges the duties falling within the scope of application of the Legal Assistance Act. It receives and transmits requests for assistance to authorities competent to execute the requests. Ministry of Justice can itself carry out the execution of the request if it falls within the competence of Ministry of Justice. This, however, is quite seldom the case. Communication of information from judicial records and obtaining of information on Finnish law can be mentioned as examples. Ministry of Justice also carries out translations of documents. On the other hand, Ministry of Justice itself does not hear witnesses or take any other evidence relating to a criminal matter. These measures are carried out by other judicial authorities, meaning mainly the courts of first instance or the pre-trial investigation authorities.

The courts of first instance

The service of a summons in criminal proceedings on a defendant, on a complainant, witness or expert is effected by the courts of first instance. As normally in other cases, the request to effect service may be transmitted to the Ministry of Justice or made directly to the court of first instance competent to effect the service. However, where an authority of a foreign State requests an advance payment of allowances and expenses to be made on behalf of the requesting State, the request shall be transmitted to the Ministry of Justice. Furthermore, the service may also be effected by a consular officer of a foreign State or by a diplomatic agent performing consular functions.

In many cases also the taking of evidence and obtaining statements of persons is carried out by the courts of first instance. These situations are defined in section 20 of the Legal Assistance Act. The evidence is taken by the court of first instance provided that the criminal proceedings are pending in a court of the requesting State or that it has been requested that the evidence should be taken in a court. Requests for taking of evidence may relate to the hearing of witnesses or experts, the production of documents and records, the arrangement of inspections or the production of any other materials to be used as evidence, or the hearing of the parties.

In the above mentioned cases the summons shall be served or the evidence taken by the court of the first instance of the district where the person to be summoned or examined is domiciled or habitually resident, or where the service may otherwise be effected or evidence taken in an appropriate way. When the taking of evidence is concerned, a public prosecutor shall be present, where deemed necessary by the court. Also the competent authority of the requesting State, the parties as well as any other interested persons have the right to be present and put questions to the persons being examined in accordance with Finnish law (section 10 of the Legal Assistance Act).

The taking of evidence shall, subject to section 11 of the Legal Assistance Act (request to follow a particular procedure), be governed by the Finnish law on proceedings in criminal matters. This is the case also when the service of summons is concerned.

It is to be noted that a suspect or a defendant in criminal proceedings pending in the requesting State who is requested to be examined in Finland in pre-trial-investigations or in court may not be arrested, detained or subjected to a travel ban for the acts or omissions constituting the offence specified in the request.

The pre-trial investigation authorities

In cases other than those referred to in section 20 of the Legal Assistance Act the evidence shall be taken and the parties and other persons examined by the competent pre-trial investigation authority. In these cases the provision on the pre-trial investigation of an offence shall apply to the procedure, where applicable.

Such measures as searches and seizures, restraint and freezing of property orders, telecommunications interception or telecommunications monitoring or technical surveillance as well as identification of persons fall within the scope of the Police. Despite of identification of a person (apart from the power to apprehend the person in certain cases) powers to use these measures are regulated in the Coercive Measures Act (459/1987). In the execution of requests for legal assistance made by a foreign State coercive measures shall not be used, where not permitted under Finnish law had the offence to which the request relates been committed in Finland in similar circumstances (section 15 of the Legal Assistance Act).

The authority to decide on the use of coercive measures is usually either an official with the power of arrest or a district court. The authority to decide on searches and (as a main rule) on seizures is a police officer with the power of arrest. Such measures as authorisations for telecommunications interception or telecommunications monitoring, or restraint orders or freezing of property orders shall be made by a court. In certain urgent cases provisional measures may be made by a police officer without a prior authorisation.

HUNGARY

REQUESTS FOR ASSISTANCE/MUTUAL ASSISTANCE IN HUNGARY

The responsibilities of authorities in Hungary for criminal matters are indicated below.

It should be noted that public prosecutors' offices in Hungary are members of an independent organisation, which is why the Principal Public Prosecutor's Office is also empowered by the law on mutual international judicial assistance in criminal matters (Law No. XXXVIII, of 1996) to receive and execute letters rogatory.

The Hungarian office of Interpol

1. Is not empowered to carry out investigations.
2. Receives information from external and internal sources and forwards this to the responsible party, or itself conducts the checks necessary for a reply to be given to the requesting party.
3. Shares with requesting countries information about investigations into offences committed in Hungary.
4. Has the right of access to national files.

These files are:

- . civil status file, containing full identity data and permanent and temporary addresses;
- . identity card file (a photo of an individual is supplied on request);
- . motor vehicle file, containing information about vehicles and their owners (individuals or companies) and changes of ownership. Registration document numbers have recently been included as well;
- . vehicle registration document and driving licence file may be consulted by telephone;
- . vehicle insurance file is accessible by telephone;
- . search file covering persons and items sought. Individuals may be found via their surname, first name and date of birth, items via their identification number;

- . criminal record file, listing individuals' previous convictions;
 - . passport file, containing information retrievable either through the document number or through individuals' full identity details;
 - . fingerprint file, containing identification data, which is available. This file does not include individuals' photographs;
 - . aliens' file, with a register of aliens
 - resident in Hungary,
 - who have committed offences in Hungary, or
 - who have been involved in accidents in Hungary.
6. Checks subscribers' telephone numbers and addresses. If a number is ex-directory, this is stated. There are problems with mobile telephones.

7. Hungary's Interpol office is in regular contact with the International Law department of the Ministry of Justice, the Principal Public Prosecutor's Office and the Budapest court in relation to cases for which they are responsible; it is also involved in extraditions, international letters rogatory, transit transport, etc.

THE POWERS OF THE MINISTRY OF JUSTICE

(1887. Budapest, Pf.28)

1. A summons to appear or other judicial document asking a person to appear as a defendant or witness in criminal proceedings before judicial authorities in the requesting state.
2. Temporary transfer of detainees, with their consent, to a requesting state to appear as witnesses in criminal proceedings or assist in judicial investigations.
3. Letters rogatory if, in pursuance of the law in the requesting state, a defendant, witness or expert is to be heard by a judge.

THE POWERS OF THE PRINCIPAL PUBLIC PROSECUTOR'S OFFICE

(1372. Budapest, Pf. 438)

1. Obtaining evidence given under oath or other evidence certified as genuine, including bank documents, for use in criminal proceedings or judicial investigations.
2. Authentication of evidence for use in the requesting state when such evidence has already been obtained by the police in Hungary for their own purposes.
3. Exercising powers to search and seize, the evidence obtained being intended for use in criminal proceedings or judicial investigations.

MOLDOVA

Powers of the Principal Public Prosecutor's Office	Powers of the Ministry of Justice
1. Questioning of witnesses and suspects (no evidence is given on oath in the Republic of Moldova).	1. Summons to appear or other judicial document asking a person to appear before a judicial authority in the requesting country as a defendant or a witness in criminal proceedings.
2. Tracing capital, obtaining bank evidence.	2. Temporary transfer of detainees, with their consent, to the requesting country to appear as witnesses in criminal proceedings or to assist in a judicial investigation.
3. Exercising powers of search and seizure;	
4. Obtaining medical statements or reports	
5. Communicating information about previous convictions	
6. Communication of information about telephone subscribers	
7. Seizure and securing in the Republic of Moldova of goods stolen abroad	
8. Communication of passport details	
9. Obtaining of medical samples	
10. Communication of information about the owners of motor vehicles registered in the Republic of Moldova and of information from driving licences issued in the Republic of Moldova	

PORTUGAL

The Portuguese system allows criminal investigations only in criminal cases under the supervision of a member of the judiciary. Although cases are often investigated by the police, especially the judicial police, a force enjoying a very high degree of autonomy, the investigation of cases is always formally a matter for the judiciary.

Police co-operation in this framework is largely based upon information exchanges. In urgent cases, however, such co-operation may extend to certain action to obtain and to safeguard evidence.

Legislative Decree No. 43/91, of 22 January, governs the various procedures relating to mutual international judicial assistance.

In the event of doubt the Principal Public Prosecutor's Office, in Lisbon (Tel. 351 1 3955296/97), and the national Interpol office (Tel. 351 1 726 57 6/0382) can provide further information on request.

EXAMPLES OF MUTUAL ASSISTANCE IN THE JUDICIAL SPHERE

1. Questioning of suspects and accused persons;
2. Obtaining of evidence from witnesses on oath or otherwise;
3. Obtaining of bank evidence and of medical and dental reports;
4. Issuing of search warrants (searches of premises, homes, banks, lawyers' offices and doctors' surgeries);
5. Issuing of warrants for the seizure of documents and other items, including the seizure and securing of goods stolen abroad;
6. Issuing of authorisations for telephone tapping;
7. Issuing of authorisations for the interception of mail;
8. Ordering medical examinations of victims;
9. Ordering valuations of objects;
10. Ordering experts' reports;

11. Inquiries to monitor the disposal of capital connected with the laundering of money of fraudulent origin;
12. Summonses of persons to appear or other judicial documents requesting a person to appear in the requesting country as a defendant or a witness;
13. Temporary transfer of detainees, with their consent, to appear as witnesses or to assist in proceedings.

EXAMPLES OF "POLICE TO POLICE" CO-OPERATION

1. Details of previous offences:
 - i. On presentation of identification details (first name, surname, descent, date and place of birth, identity card number), a certified true copy of the criminal record can be provided, for the purposes of criminal investigations and proceedings;
 - ii. On presentation of identification details (first name, surname, descent, date and place of birth, identity card number), details of previous convictions can be provided for the purposes of general police intelligence;
2. Information about Portuguese nationals' identity (including passport and identity card details);
3. Information about the address in Portugal of a suspect, accused or witness (including telephone number);
4. Obtaining of copies of suspects' and accused persons' fingerprints, for the purposes of criminal investigations and proceedings;
5. Information about vehicles registered in Portugal;
6. Information about driving licences issued by the Portuguese authorities;
7. Information about property ownership;
8. Surveillance of accused persons within the framework of a criminal inquiry;
9. Identification of suspects.

ROMANIA

I. General information

1. Part IV, "Special procedures", of the Romanian Code of Criminal Procedure has a separate chapter, Chapter VI, entitled "international mutual assistance in judicial matters" (Arts. 513-522).

a. Requests for legal assistance. Article 513, Chapter VI, Section II, entitled "Requests for legal assistance", states that "the conditions for international mutual assistance in criminal matters shall be those laid down by the provisions contained in this chapter, unless they are otherwise laid down by conventions or, failing this, on the basis of reciprocity".

Article 514 (1) of the Code of Criminal Procedure provides that when an authority responsible for criminal prosecution or the judicial authority considers it necessary for a procedural to be carried out in another country, it may address a request for legal assistance to the authority responsible for criminal prosecution or judicial authority of that country able to carry out such measure. Article 517 of the Code states that the authority responsible for criminal prosecution or the judicial authority may respond to requests for legal assistance made by the authority responsible for criminal prosecution or the judicial authority of another country. Pursuant to Article 515 of the Code of Criminal Procedure, requests for legal assistance from another country are to be made, depending on the case, to the Public Prosecutor (at the criminal investigation stage) or the Ministry of Justice (at the trial stage); they in turn ask the Ministry of Foreign Affairs to transmit the request. Article 517 stipulates that requests for legal assistance made by the authority responsible for criminal prosecution or the judicial authority of another country are to be forwarded by the Ministry of Foreign Affairs, as appropriate, either to the Public Prosecutor (the criminal investigation stage) who refers them to the authority responsible for criminal prosecution, or to the Ministry of Justice (the trial stage), which refers them to the competent judicial authority.

b. Extradition. Extradition is regulated by Article 19 of the 1991 Romanian Constitution, by Act no. 4/1971 on extradition, implicitly amended by certain constitutional provisions, by bilateral treaties between Romania and other countries and on the basis of reciprocity.

c. The transfer of sentenced persons. The transfer of sentenced persons takes place on the basis of the European Convention on the Transfer of Sentenced Persons, which Romania ratified in 1996 (Act no. 76/1996), and in accordance with the conventions concluded between Romania and other countries. To date, only one agreement has been concluded, between Romania and Turkey, which was ratified by Act no. 99/1992.

II. Powers of the Public Prosecutor's Office and the Ministry of Justice

1. The Public Prosecutor's Office. Romanian prosecutors may be asked to carry out or adopt the following actions and procedural measures:

- questioning the accused and suspects;
- taking testimony from the victim, the complainant and witnesses;
- seizing objects and written material;
- undertaking house searches, reconstructions at the scene;
- ordering expert opinions;
- authorising the recording of telephone conversations and the use of electronic surveillance;
- extraditing foreign citizens.

An exchange of information in connection with investigations of transnational crime may be carried out with the prosecution authorities of other countries.

Letters rogatory and extradition are the legal instruments used by the prosecutor to respond to the above requests.

Requests to carry out these actions and procedural measures are addressed to the Public Prosecutor of Romania or the public prosecutor's office at the Supreme Court.

Requests for legal assistance are sent by way of the Ministry of Foreign Affairs or directly to the Public Prosecutor, who notifies the competent prosecution authority.

Extradition requests are sent by the Ministry of Foreign Affairs to the Public Prosecutor, who forwards them to the senior prosecutor of the court of appeal with jurisdiction for the area in which the person whose extradition is requested is domiciled or, when the person's domicile is unknown, to the senior prosecutor of the Court of Bucharest.

A certified copy of the arrest warrant must be attached to the extradition request.

The costs of extradition may be borne by the Romanian state, notably where a reciprocity arrangement exists.

2. The Ministry of Justice fulfils requests in connection with:

- serving judicial or extrajudicial documents, such as summonses and judicial decisions;
- letters rogatory;
- the transmission of data concerning criminal records.

With regard to extradition, the Ministry of Justice, acting upon the proposal of the judicial authorities showing grounds, formulates requests for extradition at the proceedings or execution stage and sends them to the foreign judicial authorities by channels established in bilateral conventions concluded by Romania or, failing that, on the basis of reciprocity. When a foreign state requests the extradition of a person who is in the territory of Romania, the Ministry of Justice transmits the request to the prosecuting authorities to start the extradition proceedings. Extradition is decided by the judicial authorities.

As to the transfer of sentenced persons, pursuant to the European Convention ratified by Romania (Act no. 76/1996, entry into force on 1 December 1996) and the agreement between Romania and Turkey, ratified by Act no. 99/1992 (the sole bilateral agreement concluded by Romania in this area), the relevant requests are made through the Ministry of Justice.

III. The powers of the Bucharest INTERPOL National Central Bureau

- verifying and confirming the identity of persons who are the subject of judicial inquiries in the requesting country;
- questioning suspects and hearing witnesses in all matters which fall within the field of competence of the police;
- exchanging information on investigations of offences committed in Romania;
- providing material on previous convictions for use by the police and the judicial authorities;
- making available data on passports, driving licences, identity cards and other documents issued by the Romanian authorities;
- providing data on subscribers to the public telephone network;
- making available data on the keepers of motor vehicles and the technical specifications of the vehicles concerned;
- providing any other information in police matters that may be of interest for an investigation in progress in the requesting country.

SWITZERLAND

The different areas of competence between international mutual legal assistance in criminal matters (Federal Office of Justice FOJ) and police co-operation (the Federal Office for Police fedpol) 1 February 2010 Status on 1 January 2012

For more information please consult the directives and aide-mémoire concerning international mutual assistance on the website of the Federal Office of Justice:
www.bj.admin.ch ⇒ <http://www.rhf.admin.ch/rhf/fr/home/straf/wegleitungen.html>

Competence: Extradition (FOJ)	Mutual Legal Assistance (FOJ)	Fedpol
	Art. 63 ff. IMAC: performance of procedural acts (i.e., service of documents, taking of evidence in criminal proceedings/in a criminal investigation commenced in a foreign country)	Exchange of police information/ Mutual assistance in police matters within the framework of art. 75a IMAC/ 35 D-IMAC, or within art. 13 Law on Central Authorities for Criminal Police
	Processing of requests for assistance emanating from judicial authorities and entailing all compulsory measures that are admissible in criminal proceedings / investigations; requests issued by administrative authorities are exceptionally admitted if the measures that are to be taken are compulsory measures.	Processing of requests from police authorities issued within their competence and which are not compulsory at the procedural level.
Interview of the persons subject of the request for extradition (authorisations to the cantons).	Formal interview of a witness (summons to appear, duty to testify and to tell the truth). Formal interview of an accused person	Interview police of persons by the police.
Identity checks on the persons subject of the request for extradition. If necessary, compulsory measures (authorisations to check delivered to the identification service or to the cantons).	Disclosure through compulsory measures of new information about a person's identity (i.e., photographs, fingerprints, DNA data, etc.)	Handing over of immediately available information about a person's identity (i.e., photographs, fingerprints, DNA data, etc.)
Handing over of entire criminal decision rulings (i.e., court files) or other legal documents in case of extradition	Handing over of entire criminal decision rulings (i.e., court files) or other legal documents in the original or in certified copies. Handing over of police records to foreign authorities (under the competence of the records' department of the FOJ)	Direct exchange of available information from police authorities about a person's criminal record or any other kind of police information

Competence: Extradition (FOJ)	Mutual Legal Assistance (FOJ)	Fedpol
Disclosure of secrets protected by law within the framework of the handing over of objects and/or assets including within the framework of delegation requests.	Requests requiring the disclosure of secrets protected by law (i.e., banking or business secrecy) ordered through a judicial authority	Exchange of information previously obtained by the disclosure of secrets protected by law, in agreement or with the authorisation of the judicial authority having ordered it and according to the modalities defined by law.
Seizure and handing over of objects and/or assets within the framework of the provisions for the handing over of seized objects and/or assets including within the framework of delegation requests.	Seizure and handing over of objects and/or assets within the framework of articles 74 et 74a IMAC	The surrender of unlawfully acquired objects and assets to the assigned person without the use of compulsory measures.
	Authorisation for observation/surveillance of persons (more than 30 day or using the surveillance techniques according to Article 280 CPP, or when the requests emanate from a non-Schengen country with which Switzerland has not reached an police co-operation agreement providing for this measure).	Authorisation for observation / surveillance of persons (up to 30 days), without using the surveillance techniques according to Article 280 CPP, within the framework of Schengen police co-operation and bilateral agreements providing for this measure. Operational planning and execution of these cross-border observations.
Extradition procedure for persons arrested following a cross-border pursuit.	Mutual legal assistance within the framework of criminal procedures following from a cross-border pursuit.	Operational authorisation and co-ordination of cross-border proceedings. Transmission of all useful information to the FOJ with a view to facilitating the extradition procedure.
	Processing of letters rogatory with a view to supervised deliveries.	
Surveillance measures (telephone surveillance) within the context of foreign requests for search and arrest	Telephone surveillance; disclosure of other information (i.e., secret numbers) ordered through a judicial authority	Disclosure of holders of telephone numbers and technical data accessible without the use of compulsory measures. Disclosure of holders of post office boxes and information about hotel registers
Transmission and reception of requests for concerning the transfer of proceedings and laying of information with a view to proceedings pursuant to Article 21 of the European Convention on Mutual Assistance in Criminal Matters.	Transmission of information and/or evidence within the framework of a criminal procedure carried out in Switzerland relating to the fight against Internet crime (Article 67a IMAC)	Transmission of the identity of holders of IP addresses and technical data without measures of constraint.
	Examination of requests for mutual assistance for the engagement of foreign undercover agents in Switzerland.	Planning and managing the engagements of foreign undercover agents in Switzerland.
		Handing over of extracts from official registers (i.e., companies, real estate, collection of debts and family registers)
	Requests for assistance in criminal matters related to offences committed in violation of traffic law	Police co-operation relating to offences against traffic law. Seizure of motor vehicle licence plates
Presence of persons involved in the foreign proceeding during the execution of requests for arrest with a view to extradition.	Presence of the persons involved in the foreign proceedings during the execution of foreign mutual legal assistance requests (i.e., Prosecutors and Examining Magistrates, Police Officers, Defendants, etc.) subject to an incidental Decree (art. 80e IMAC)	Visits of foreign officials within the framework of police co-operation. Accomplishment of official acts in accordance with existing police co-operation treaties or agreements
Transmission and reception of requests concerning the transfer of proceedings and laying of information in connection with proceedings pursuant to art. 21 of the European Convention on Mutual Assistance in Criminal Matters	Spontaneous transmission of information and/or evidence within the framework of a criminal procedure carried out in Switzerland (Article 67a IMAC)	Spontaneous transmission of information within the framework of police co-operation.

Competence: Extradition (FOJ)	Mutual Legal Assistance (FOJ)	Fedpol
<p>Requests for search or arrest for extradition purposes (95 CAAS, RIPOL warrants, to the cantons, etc.); detention orders for extradition.</p>		<p>Search for the place of residence of missing persons, witnesses, sentenced persons or persons susceptible of giving information. In agreement with the FOR: Execution, on a national and an international level, of targeted searches and exchanges of information leading to the arrest of wanted persons with a view to their extradition. Withdrawal of Swiss identity documents relating to a request for extradition (Article 7, LDI); granting of a pass for return to Switzerland in co-ordination with the ROJ.</p>