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BUREAU OF THE CONSULTATIVE COUNCIL OF EUROPEAN PROSECUTORS (CCPE-Bu)

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Strasbourg, 7-9 February 2007

REPLIES PROVIDED BY NATIONAL DELEGATIONS TO THE QUESTIONNAIRE ON WAYS TO IMPROVE INTERNATIONAL CO-OPERATION IN THE CRIMINAL FIELD

Working document prepared by the Secretariat
Directorate General I – Legal Affairs

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I. INTRODUCTION

The Committee of Ministers in 2006 set up the CCPE[1] which has the task in particular to prepare opinions concerning issues relating to the prosecution service and to promote the implementation of Recommendation Rec(2000)19 on the role of public prosecution in the criminal justice system.

The necessity to strengthen and ensure the security of European citizens was indicated in the Declaration and the Action Plan adopted by the Third Summit of Heads of state and Government (Warsaw, 16 – 17 May 2005).

In conformity with the instruction of the CCPE (see document CCPE (2006) 06, Part II), its Bureau, during its meeting in Strasbourg on 18-20 December 2006, decided the order of priority for the actions of the CCPE in the framework of the implementation of the framework overall action plan for the work of the CCPE.

Consequently, the first task of the CCPE will be to study ways and means to improve international co-operation between public prosecutors in Europe, on the basis of articles 37-39 of Recommendation Rec (2000) 19 (see Chapter VII of the action plan). In carrying out its work the Bureau will take account of the work of the Committee of experts on the operation of European Conventions on co-operation in criminal matters (PC-OC)[2] and the work of the High-Level Conference of the Ministries of Justice and of the Interior on improving European co-operation in the criminal justice field (Moscow, 9 – 10 November 2006)[3].

In order to facilitate the preparation of the opinion for the attention of the Committee of Ministers on this topic, the Bureau of the CCPE prepared the questionnaire below. The questions refer to the functioning of international co-operation (extradition, mutual legal assistance and other measures) in the light of the Council of Europe treaties in the criminal field.

II. ACTION REQUIRED

The CCPE will carry out work to promote and improve international co-operation between prosecutors. To prepare an opinion on this important issue we need to update the experience and expertise of practitioners, both in the field of treaties of the Council of Europe and in the field of international co-operation.

Delegations of the CCPE are invited to answer this questionnaire by 31 January 2007. Replies should be sent, in English or in French, to the following address: dg1.ccpe@coe.int. When preparing their replies to the questionnaire, delegations are invited to consult their relevant national bodies which could make a useful contribution to this request for information.

[1] See website : www.coe.int/ccpe/
[2] See website : www.coe.int/tcj/
[3] See website : www.coe.int/minint/

III. QUESTIONNAIRE ON WAYS TO IMPROVE INTERNATIONAL CO-OPERATION IN THE CRIMINAL FIELD

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

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

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

4. Any other comments.

Replies provided by national delegations

Latvia

In reply to Your request to fill out a questionnaire on ways to improve international cooperation in the criminal field we provide You the following information:

1. The Prosecutor General's Office of the Republic of Latvia as a competent judicial authority has not encountered serious difficulties as concerns to cooperation in the criminal field with Prosecution Offices or judicial institutions of European countries. Nevertheless, during transferring of criminal procedure initiated in Latvia to the foreign country a problem has arisen that foreign country within taking over of criminal procedure retards its continuation, as a result the limitation of criminal liability became applicable both in Latvia and foreign country. Hence within criminal case No.05050796 initiated in accordance with the 3rd Paragraph of 142nd Article (fraud committed on a large scale) of the Criminal Code of the Republic of Latvia the request were submitted to the Prosecutor General's Office of the Russian Federation, basing on Agreement between the Republic of Latvia and the Russian Federation on judicial assistance and judicial relations in civil, family and criminal matters (03.02.1993), on 15th June of 2005, to take over the criminal procedure in the concerned case because execution of criminal procedure in Latvia were impossible as it were established that accused person announced in international search is the citizen of the Russian Federation and resides in the country of his citizenship. It must be specified that sufficient evidences had been obtained within the case to submit it to court. On 10th November of 2006 the reply were received from the Prosecutor General's Office of the Russian Federation that on 9th March of 2006 a decision on termination of criminal case No.05050796 were taken by the investigation institution due to fact that limitation became applicable. In the concerned case it were not possible to consider a resuming of criminal procedure in Latvia and issuing of European Arrest Warrant to announce the search of accused person beyond a territory of the Russian Federation, because till 10th November of 2006 the limitation concerning actions incriminated to defendant have became applicable in accordance with the legal acts being in force in the Republic of Latvia as well.

2. As concerns to successful international judicial cooperation the criminal case No.1181001103 can be referred as an example – within the case three persons in 2005 were accused for commission of criminal offences provided by the 3rd Paragraph of 154^1 Article and 3rd Paragraph of 165^1 Article of the Criminal Law of Latvia, namely, for trafficking in human beings of juvenile and adult persons to Finland committed by the citizen of the Republic of Latvia in organized group with the citizen of the Republic of Finland and the citizen of the Republic of Estonia, as well as for sending with purposes of enrichment in organized group a person with his or her consent to Finland for sexual exploitation. Already in the initiating phase of criminal case from the law enforcement authorities of Finland were received information that facilitated disclosure of criminal offence. Within frameworks of concerned criminal case the requests were submitted to the competent law enforcement authorities of Finland and Estonia on providing of judicial assistance and replies were received as well. Effective international cooperation resulted in disclosure of organized group which carried out its activities in three countries, and in 2006 the Court while hearing the criminal case and appraising the materials obtained in the result of requests for judicial assistance took verdict of guilty.

3. As concerns to proposals for improvement of respective European Conventions related to international judicial cooperation in the criminal field we would like to emphasize that *Committee of experts on the operation of European Conventions on co-operation in criminal matters (PC-OC)* has provided a great contribution into studies of concerned issues, and to express a standpoint that a scope of problematic issues being under attention of Committee at that very moment, at our point of view, is quite in - depth.

4. No other comments.

Czech Republic

Questions 1, 2 and 3.

The practical experience we have could be briefly summed up in the following way.

Judicial co-operation usually works well in the systems where both the central authority and the authority executing the request for legal assistance in criminal matter (or at least the executing authority) are the judicial authorities, i.e. courts or public prosecutors. in these systems, the request for legal assistance in criminal matter is executed or its execution is supervised by lawyers, having practical experience with criminal proceedings (or possibly with judicial co-operation in criminal matters), which helps them understand better the requirements of the requesting authorities resulting from criminal procedure regulation of the requesting state and the urgency of the legal assistance and consider the possibility of meeting the requirements. The problems occur where the central authority is not the judicial one (and has weak competences with regard the executing authority) and the request is dealt with criminal proceedings, or where the request for legal assistance is executed by the police without the supervision of the public prosecutor.

Direct contacts between judicial authorities in the framework of judicial co-operation in criminal matters can improve the situation, but they are not panacea. The precondition for effective system of direct contacts is that the judicial authorities, who do not have everyday experience with judicial assistance in criminal matters, are given permanent assistance and guidance to be able to receive, anytime they need, the information, how to write the request for legal assistance, where the request is to be sent and further practical information.

Legal assistance is rendered on grounds of a bilateral or multilateral international agreement. The assistance can be, e.g. on grounds of the Convention on assistance in criminal matters rejected where the requested party assumes that fulfilment of the letter of request would prejudice its sovereignty, security, public order or other fundamental interests of the state. The European Convention on legal assistance in criminal matters permits fulfilment of any letter of request for the purposes of a proof or disposition of an item that are to be used as proofs, letters of request of the records or documents.
The following main problems can be mentioned:
- lengthy execution of the requests for legal assistance,
- differences in national legal regulations of particular states,
- different legal instruments and structure of the organs active in criminal proceedings (law enforcement authorities) in particular states,
- difficulties connected with the occasional absence of some central bodies involved in rendering and requesting legal assistance.

Poland

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

   Please find below some identified problem areas in the field of legal co-operation with some countries of the Council of Europe:

   Undue delay in execution of the MLA requests:

   In case of the MLA requests sent to some European countries, it takes years before such requests are properly and fully executed. And this is applicable even when some requests are flagged as "urgent" but applies also to the requests of an uncomplicated nature (taking witness statement, obtaining copies of the materials already in the possession of the executing authorities).
   From our side we try to monitor the execution of our MLA requests by sending official chasers to the executing authorities**.** In some cases these remain unanswered. After a lengthy trace we conduct on our own, we sometimes find our requests not even touched upon for years. A typical excuse in this regard is that the requested body hasn't received a request although in our files we have the fax or other confirmation that the requests were sent and delivered.

   Unnecessary requests for additional information:

   There are cases where the requests for additional information are sent by the executing authorities several times in a given case before our MLA requests are properly and fully executed. And it indicates that the requested party has not thought through the request in its entirety from the outset. For instance:

   - we were asked to confirm whether we still require assistance or want to withdraw the request even though we never indicated such was our intention;
   - we were asked to provide the data already to be found in the body of the initial request for MLA (e.g. offence committed);

   Problems with obtaining documents and data:

   This problem occurs even when the papers or information are already in the possession of the executing authorities (e.g. certificates from the registers, materials gathered during investigations - copies of records, witness statements, etc.).
   More pressing problem concerns obtaining documents from private and legal entities and also data on bank accounts especially, where the entity, being in the possession of the papers, has declined to submit them voluntarily. In such cases the organs executing the requests have simply stopped their activity there and then, and as a result the requests have remained unexecuted.
   Also in some cases, before executing our requests, executing authorities have demanded that we make prior inquiry via INTERPOL. And this has been irrespective of the fact that 'protocol' in the field of mutual assistance does not require any previous 'operational' inquiry and some requested information are of a 'sensitive' nature and as such should only be obtained through formal – judicial channels (data on bank accounts, data from the criminal files on the ongoing investigations, hospital documentation etc.).

Problems with the manner and form the requests are executed:

In some cases we requested obtaining witness statements. The reply was that the person in question simply declined to comment on the matter and executing authorities didn't take any further action and simply closed the case.
In another instance we requested some company documents. The organ executing the request approached the representative of the company, warned him about the activity to be carried out and advised him of the possibility of consulting a lawyer. He decided to use this possibility and promised to inform the executing body about the outcome in due course. As a result the documents were not seized and this person was not even questioned as he never returned nor replied to the executing body at all. That body on their side never pursued any further action on its own.
In yet another case, instead of taking a witness statement in the written form (which was explicitly requested by us), we received a statement form the executing body in which we found only the description of the conversation with the witness.
In another case we received a reply that the requested company documents would not be forwarded to our country as the company in question simply declined to surrender them. No further action was taken by executing authorities to get hold of the papers (e.g. by means of a production order or a search/seizure).
Further, in some cases materials that arrive as a result of 'execution' of the request are sometimes in the form which should not generally be acceptable by judicial authorities of any European country (not to mention the fact that the courts may not accept them for evidentiary purpose). A typical example occurred where we requested evidence and the only evidence offered was an e-mail sent from one Police station to another. In another instance we required some official information from the register of companies and what we received was some prints from the publicly available website which bore little relevance to our request, nor was accompanied by any official certification.

<u>We are of the opinion that reasons for the aforementioned problems may be as follows:</u>

- possible lack in competency (also lack of the foreign language) or dedication of the executing bodies,
- possible lack of proper communication between requested and requesting authorities,
- possible shortage of staff,
- differences in legal systems between partners (e.g. civil v. common law),
- lack of understanding of our respective legal systems and internal organization of the system of processing the requests,
- independence of the bodies (courts, prosecution service, police, customs etc.) responsible for the execution of the incoming requests, bad communication channels between them,
- shortages in national legislation transposing international instruments,
- treatment of foreign MLA requests in a way which indicates their inferiority in comparison with national cases.

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

Please find below some examples of cases where Polish public prosecutors were satisfied with the speed and scope of execution of their MLA requests:

In case of some countries the co-operation is seamless and speedy due to the system similarities and close regional bonds where the language plays an important role. In these

cases we could identify many success stories and on many levels of mutual collaboration. An additional element that adds up to that positive picture is that we have a decentralized and not very formalistic co-operation with these countries.

Another positive example is the case of using the liaison officers of most of the Embassies of foreign countries seconded to our country. In case of problems with the execution of our requests abroad, we often seek the assistance of these persons. As their knowledge of the system and law in their home country is much broader than ours, they may 'make things happen' as it comes to the final execution of our requests.

Even in case of some countries where our mutual co-operation is not that seamless, we may nevertheless achieve very good results depending on the level of engagement on the part of the requested country. In one of the cases we required a speedy action to be taken without delay by the requested authority in performing its coordinating function. In this case the successful prosecution was wholly dependent from the execution of our request, namely - providing the expert's opinion by one of the telecommunication centers. The trace was going cold every day. Knowing that, the executing authorities organized the execution of our request within just 2 days and the opinion obtained enabled us to prosecute the suspect successfully. All the time we remained in a direct contact.

Also in yet another case our request for obtaining medical documentation was executed within 3 weeks only and we were able to close the case within a reasonable time.

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

- establishing the network of MLA practitioners responsible for direct contacts (some form of the European Judicial Network of the European Union);
- drawing up the list of contact points of that network with their data available on the Council of Europe website;
- providing training for the contact points of the network;
- exchange of materials in a concise and simple form explaining the system of execution of the MLA requests in each country, limits in their executions, conditions to be fulfilled to make the request fully and seamlessly executed, and powers of the responsible bodies;
- general, coordinated training sessions for prosecutors (and also some other relevant bodies) in the area of the MLA based on specific cases and examples;
- elaborating the manual for practitioners in the area of MLA in criminal matters.

Hungary

1. Regarding to our experience we can say that the co-operation between EU member states is getting more effective but to improve the direct contact with the local judicial authorities of the other member states we still have a lot to do. On the one hand the reasons of insufficiency derive from the lack of knowledge of local authorities and on the other hand below mentioned circumstances. We'd like to mention that the Office of the General Prosecutor as a central authority still pays a special attention for training of the local offices to reach the required knowledge on the field of international co-operation.

The frequent problems of the applying the Convention on Mutual Assistance in Criminal Matters and its Protocol are connecting to the Article 6 (1):

a) It is difficult to handle the searching program of the competent local judicial authorities. Sometimes we are not able to find which authority is the really competent for the fulfillment of the request, whom to address, so the Hungarian local judicial authorities usually send the request to Hungarian central authority to pass it over to the member state's authority. This situation causes the unnecessary applying of the Article 15 (1) of the Strasbourg Convention which applying is in this context against the aims of the Convention on Mutual Assistance in Criminal Matters and its Protocol.

b) In spite of the regulations of conventions on necessary translations the practice is not unified.

It is not clear that if only the request has to be translated or the fulfillment of the request also. Our point of view that generally only the requests have to be translated.

The other problem is the standard of translations. Sometimes the translations are really low-standard, not only the incoming requests but our outgoing requests, too. The bad translation might cause unnecessary delay and includes the danger of insufficient fulfillment of the request.

c) Problems of the contents of requests:

- Sometimes the facts of requests are not detailed as required. It caused a problem of determining the existence of the double criminality. The undetailed facts also might cause insufficient fulfillment. The difference between legislations also might cause the problem of double criminality. (E.g. in some cases the difference between German and Hungarian law raised problems: in Germany the "Hit and Run" is criminalized regardless of injury. According to the Hungarian Criminal Code to state this crime the minimum 8 days healing up of injured is necessary. In few cases the German request didn't contained if somebody was injured or not. Another problem occurred with Austrian request: "Battery" is punishable in Hungary if the healing of bodily harms or injures the health of another person is more than 8 days. In Austria the necessary healing to commit this crime is much more than 8 days.)

- It occurred that the request didn't contain the procedural position of the person should be questioned, the list of the questions were missing, the necessary declarations or clauses to fulfillment of the request were not attached (e.g. the declaration to lift the bank secret).

- Further these, the improper knowledge of the rules on house searching, on seizure, on confiscation and on bank secret also caused problems in the practice.

<u>Examples:</u>

a) *Missing lists of questions*: requests from Netherlands mainly not contain the lists of questions. The reason of not causing problems that the officers of the law enforcement bodies are frequently coming to Hungary to participate on questioning. We call them for bringing the list of questions.
b) *Missing declarations or clauses*: according to the Hungarian Criminal Code to lift the bank secret the incoming requests must contain the declaration. Requests from Finland, Italy, Germany, France, Netherlands are mainly not contains, so we have to call for them to supplement the requests which causes unnecessary delay.

2. Regarding to our experience and to the replies from the other member states we can state that the co-operation – generally – appropriate. As we see the main reason of this the helpful intention on both side.
We are taking account the replies on mistakes.

On the field of international legal co-operation Hungary has a specially good and sufficient connection with Austrian and German authorities. The performs of requests by these states are mainly really fast.

From the other member states we have frequent connection with Italy, Spain, Great Britain and Northern Ireland. According to our experience the co-operation with this states are improving, but the performing of our requests by these states are still take longer time than by Austrian and German authorities.

3. We suggest more development of the searching programs on (local) judicial authorities to find more easily the competent authority.

Northern Ireland

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

In responding to this questionnaire in addition to prosecutor colleagues we have conferred with the Crown Solicitor for Northern Ireland who has conduct of any extradition proceedings in Northern Ireland and provides advice on matters relating to extradition proceedings in Northern Ireland.

Examples of instances where we have experienced significant difficulties – include cases where we have been dealing with countries where delay has arisen; poor translations have been provided; legislation or rules have been referred to which have not been provided or incomplete or wrong portions have been provided; the circumstances relating to various offences have either been too short or so detailed as to make it extremely difficult to clearly identify the relevant facts and issues. Also when matters of this nature have been bought to the attention of the appropriate authorities some have tended to either do the minimum to correct them or indeed have made things even more complex.

More specific examples are:-

- Difficulties may arise as a result of the differing systems of presenting evidence in court. In a request for mutual legal assistance on behalf of Her Majesty's Revenue and Customs (hereinafter referred to as HMRC) the foreign authorities provided the requested surveillance of the movements of a smuggler's lorry in the foreign jurisdiction together with a written report detailing those movements but the individual officers involved in the surveillance declined to make statements or to attend court in Northern Ireland.

- Replies to requests for mutual legal assistance usually provide only the specific assistance which is requested therein. The Police Service for Northern Ireland (hereinafter referred to as PSNI) have found that foreign jurisdictions may have possession of other relevant and useful information or evidence the existence of which is unknown to PSNI. In one HMRC/PSNI investigation a request for mutual legal assistance issued. During the course of obtaining the requested information PSNI officers discovered (in the course of a conversation with foreign police) that the foreign authorities were themselves investigating the same suspects and had also carried out surveillance. The evidence relating to that surveillance would have been of assistance to police in Northern Ireland. A direct liaison with police in the foreign jurisdiction would have highlighted this before the request for mutual legal assistance issued.

- It is essential that the evidence is received in a form that is admissible in a criminal trial in Northern Ireland. In one case PSNI required formal proof of the judgment given in a criminal trial in another country. The reply took the form of a document copied from the Internet. This was not in an evidential format and therefore added to the delay in proceedings as a supplementary request for mutual legal assistance will have to issue. Direct contact between the investigators and the foreign jurisdiction would have clarified the format in which the evidence was required and avoided this problem arising.

- Telephone records, and particularly mobile telephone records, play an increasingly important part in criminal investigations into cross-border offences such as smuggling, drugs or money laundering. At the commencement of an investigation investigating officers may be unaware of the identity of all persons involved in the offence under investigation so evidence proving the identity of the subscriber to a mobile telephone is often crucial in the early stages of an investigation. In this jurisdiction PSNI have set up a liaison system with the various telephone companies to enable them to obtain speedy access to telephone records. This may not be the case in all countries and obtaining telephone records in some jurisdictions has proven to be particularly slow.

- A request for mutual legal assistance was forwarded to the foreign authorities. It appears to have gone astray after leaving the UK Central Authority and no reply was received for a considerable time. It appears that it may have been misdirected once it arrived in the foreign jurisdiction. Direct contact with local police would have disclosed the fact that it had not arrived at its correct destination.

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

We were satisfied with the level of co-operation where the European countries concerned have more literally transcribed the Framework Decision into their law, thereby making the procedure, machinery etc more accessible and more practicably applicable. Also in those places where the United Kingdom has liaison magistrates the way is smoothed as they know the system, can identify the appropriate authorities and can intervene or intercede when and where appropriate.

Specific examples are:-

- Both PSNI and HMRC report that requests for mutual legal assistance are answered expeditiously when they are in a position to have direct telephone or e-mail contact with a police or customs officer in the country to whom the request is addressed. PSNI report that in one murder case the request for mutual legal assistance that issued to the Kingdom of the Netherlands received a very swift response. They were able to liaise directly with an Inspector of the Netherlands police force in order to clarify the evidence required and the format that it should take, she in turn was able to inform them what evidence was in fact available and obtain it for them in the requested format. The request for mutual legal assistance was correctly drafted to obtain the available evidence in the proper format. In the same case the reply to a request for mutual legal assistance to another jurisdiction was slow, police had no contact in that country and were unable to ascertain the cause of the delay. Investigators in Northern Ireland are of the view that having a personal police/customs/prosecutors contact is of great assistance in clarifying whether the required evidence is in fact available and in obtaining that evidence in an admissible form.

- In a request for mutual assistance to France to obtain evidence in the investigation into the abduction of a child from Northern Ireland, the PSNI found the French authorities most helpful in permitting the PSNI officers to be present during the interview of witnesses, in providing instantaneous translation and in permitting PSNI officers to assist in the questioning of the witnesses. The assistance was provided in a timely and efficient fashion.

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

- It is unfortunate that so many new initiatives are being taken forward on the basis of Framework Decisions which, in many ways, are set at the lowest common denominator for all the participant countries. Thereafter the various countries have to transpose the Framework Decision into their own law. At the transposition stage there is a tendency to include additional provisions for a variety of reasons (many may be constitutional) but the end result is a Framework Decision operated within the domestic legislation of all the participating countries. Convention documents would be preferable where each country can in one document register their reservations/derogations etc but the transposition will consist merely of the legal mechanism whereby the Convention is in toto brought into their domestic law. That way certainty, uniformity and smooth ness of procedure would be best served.

- It would be of assistance, if at a very early stage in an investigation the prosecutors or investigating officers could have direct contact with police officers/prosecutors in the country to whom the request will be addressed in order to clarify the availability of assistance that can be provided, the format that assistance should take and to explain any delays in obtaining that assistance. This informal contact between investigating officers/prosecutors and the authorities in the requested country can also serve to disclose information not known to the investigators/prosecutors in the requesting country.

4. Any other Comments : None.

Croatia

1. Recently, the Office of the State Attorney General has urgently needed information regarding pre-investigative actions concerning serious criminal acts in economic business operations. Appropriation of multimillion sums (in US dollars) was in question.

   It was necessary to obtain information from several European countries, and since we could not obtain the information from competent State Attorney's Offices, the only option was to ask for regular international assistance through competent Ministries of Justice, or through police – Interpol.

   In this specific case, a problem of inability of immediate cooperation arose, which is even more emphasized by the fact that the Republic of Croatia is not a member of the European Union.

2. There are more such examples.

   a) In Bosnia and Herzegovina, a rocket was launched to a mosque from a rocket launcher. A suspicion, that a suspect had a flat in the Republic of Croatia in which certain material evidence could be found (clothes and footwear), existed. The Office of the State Attorney General was asked to collect those clothes. A search warrant for the flat in the Republic of Croatia was asked, clothes and footwear were collected and delivered to prosecutors in Bosnia and Herzegovina.
   b) In County Prosecutor's Office in the city S in the Republic of Serbia, there were certain case documents, important for conducting the investigation in a case regarding criminal offences of different crimes. A request was sent to the Prosecutor's Office of the Republic of Serbia and a visit of representatives of the Office of the State Attorney General of the Republic of Croatia was arranged so as to provide insight into the case documentation and copy whatever was needed. The visit was very successful.
   c) We were asked by the Prosecutor's Office for War Crimes in Serbia to check certain information from the State's Archive of the Republic of Croatia. We enabled our colleagues from Serbia to come and check the information they needed.
   d) Investigators from Canada are interested in questioning of witnesses in the Republic of Croatia regarding a possible perpetrator of criminal offence who is residing in Canada. They asked us to identify the witnesses and check whether they are willing to answer questions of Canadian investigators. All preparatory actions have been conducted and now we are awaiting the arrival of the Canadian investigators.

3. Some more work regarding the possibility of immediate cooperation is needed.

Portugal

1. « *Veuillez donner des exemples de cas pénaux, sans y inclure les données à caractère personnel, dans lesquels les procureurs de votre pays ont éprouvé des difficultés significatives dans le travail avec les procureurs ou avec d'autres instances judiciaires d'autres pays européens. A votre avis, quelles sont les raisons de ces difficultés (par exemple, types d'affaires qui présentent des difficultés particulières liées aux législations nationales ou aux législations ou procédures étrangères, manque de connaissance des démarches à entreprendre, manque de contacts directs, connaissance insuffisante de langues ou d'instruments juridiques, problèmes liés à la traduction, des retards abusifs, des lacunes ou dispositions inappropriées dans les conventions européennes et accords bilatéraux, ou dans d'autres textes, etc…). »*

Sur ce point, on met en exergue les contributions de l'autorité centrale portugaise siégée au Parquet Général de la République, qui a une vision générale, au niveau du Parquet, des succès et des échecs de la Coopération internationale.

Ainsi et en ce qui concerne échecs:

1. Suivant l'expérience des derniers six années *la coopération directe* offre des résultats plus efficaces que la coopération avec intervention d'une autorité centrale. Ainsi, un cas classique est celui de la coopération à niveau entraide judiciaire avec un certain État dont l'autorité centrale ne semble avoir aucune possibilité de pousser voire accélérer l'exécution des demandes, laquelle est compétence des polices*. L'existence d'autorités centrales, sauf si elles sont placées dans une institution judiciaire, apporte beaucoup de fois des situations d'inefficacité.*

2. Tout de même on vérifie des difficultés, qui devront être résolues au cas par cas, qui résultent des *différences de régimes juridiques*, les plus évidentes résultant du confront entre les *common law systems* et les systèmes romano germaniques. Il arrive souvent que des demandes provenant d'un État de *common law* soit difficilement bien interprétées du à la différence de terminologie, phase procédurale et nature de la mesure à exécuter.

3. *La nature de l'infraction* ne semble pas affecter sérieusement l'efficacité de l'entraide, sauf les juridictions qui ont des restrictions profondément liées à la nature de l'infraction (il y a une juridiction qui ne permet le gel de biens que pour des crimes de trafic de drogue, tous les autres, nommément ceux de type économique comme le contrebande ne donnant pas lieu à des saisies ou appréhensions).

4. *Le manque d'habilité linguistique* porte naturellement attente à l'efficacité de la coopération, tout comme *l'absence de formation spécifique* en cette matière. Ainsi, le plus habile est un Magistrat en termes linguistiques, le plus facilement essayera-t-il de chercher des solutions, sans alourdir l'activité de l'autorité centrale avec des demandes successives d'intermédiation. Comme exemples, deux vidéo conférences étant en préparation en deux ressorts différents du Portugal, l'une a marché vite et souple parce que les Magistrats involucrés ont directement contacté leurs collègues, l'autre a totalement dépendu de l'intervention de l'autorité centrale, pour traduction, envoi (lequel était possible directement), premiers contacts avec l'autorité requise et obtention de coordonnées des techniciens involucrés, ce qui a ralenti la procédure.
Une formation spécifique et curriculaire, présente si possible dès le début de la carrière et, pour les États qui en ont, donnée dans les Écoles de formation des Magistrats du Parquet, apporteront naturellement des conditions beaucoup plus favorables à une bonne coopération.

5. En ce qui concerne *des retards abusifs* et sans nommer des cas concrets, on dira qu'il est visible que, chez quelques États, l'emplacement de l'autorité centrale hors de l'ambiance des autorités judiciaires crée des difficultés parce que celles-ci sont un peu immunes aux pressions venues d'un milieu qui n'est pas le sien. Ainsi, et reprenant l'exemple donné en 1. on voit souvent

que l'Autorité Centrale est beaucoup de fois impuissante pour obtenir des résultats positifs, les autorités chargées de l'exécution étant immunes à ses rappels. La présence d'intermédiateurs stratégiquement placés et proches, comme est l'exemple du Réseau Judiciaire Européen et, peut être vite au COE, suivant les travaux du WP du Comité PC-OC, des autorités chargées de l'exécution des demandes apportent normalement de bons résultats.

2. Veuillez donner des exemples de cas pénaux, sans y inclure les données à caractère personnel, dans lesquels la coopération avec des procureurs ou avec d'autres instances judiciaires d'autres pays européens a été satisfaisante pour les procureurs de votre pays. A votre avis, quelles sont les raisons de cette réussite (par exemple, types d'affaires qui ont pu être conduits sans difficultés, bonnes pratiques nationales ou étrangères, mesures pratiques contenues dans les dispositions des conventions européennes pertinentes et accords bilatéraux, ou dans d'autres textes, etc…).

Je citerai comme condition pour que un problème puisse être résolu de façon efficace et rapide, la possibilité d'établir des contacts directs entre les deux autorités involucrés dans le procès, est dire l'autorité requérante et l'autorité requise.

Ainsi :

1. La *connaissance des coordonnées des autorités chargées* de l'exécution de la demande est fondamentale et sera facilement obtenue par un simple avis de réception, voire une *cover note*, dûment remplie et renvoyée comme a été conseillé à niveau UE.
2. La *pratique des contacts directs*, établis en une des langues officielles du COE (français ou anglais) apporte normalement de bons résultats une fois que personne comme les deux autorités requérante et requise est parfaitement consciente du résultat souhaité et des difficultés qui ont surgie.
3. Le monde idéal des contacts directs n'étant pas pour aujourd'hui dans beaucoup de cas, alternativement pourra être considérée la possibilité de créer *un réseau*, à niveau du Parquet, en involucrant des autorités saisies des procédures de coopération, ou en conditions de faciliter les mêmes, qui agira comme facilitateur des procédures. Ça est constamment le cas de l'UE ou le RJE apporte des réponses qui, auparavant et par le biais des canaux de coopération classique tardaient des semaines et même des mois (aujourd'hui j'ai pu confirmer, en cinq minutes, le temps de détention subi sous écrou extraditionnel par un ressortissant Portugais, information que même par intervention d'INTERPOL ne sera pas obtenue avant moins d'un mois).
4. Aussi, des expériences très sympathiques à niveau cas concrets sont celles ou, *directement ou avec intermédiation de quelqu'un de plus expert en cette matière, des alternatives ont été considérées et/suivies par application des mécanismes établis par les conventions*. Par exemple, la transmission de procédures pénales peut se révéler la meilleure solution pour un dossier autrement bloqué. Donc, l'intervention ponctuelle d'experts peut faciliter la résolution d'un cas concret.

3. Veuillez communiquer les suggestions émanant des procureurs et d'autres instances judiciaires de votre pays, relatives aux mesures qui pourraient être prises pour améliorer la coopération entre les procureurs des Etats membres du Conseil de l'Europe, y compris des propositions d'amélioration de traités européens pertinents.

D'une façon synthétique il nous parait indispensable :
a. Créer des conditions pour que les Magistrats du Parquet reçoivent une formation spécialisée en cette matière.
b. Diffuser des informations synthétiques mais complètes sur l'existence des mécanismes de coopération, par des circulaires ou notes de diffusion générale.

c. Encourager l'établissement de contacts directs, si nécessaire supportés par l'intervention d'experts.
d. Créer des conditions pour des procédures de formation permanente, en petit format (les grandes conférences et séminaires normalement apportent des résultats pas proportionnels aux efforts des organisateurs), préférablement à niveau des Tribunaux locaux (*Tribunais de Círculo*)

4. Autres observations.

Rien à ajouter.

Slovenia

The Slovene State Prosecutors deal with more and more cases where their work depends in international cooperation.. When preparing our replies to the questionnaire we contact District State prosecutors and the Group of prosecutors for organised crime.
The main impression is that the state prosecutors haven't experienced significant difficulties when working with prosecutors or other judicial bodies in other Europeans countries.

The main problems which have been noticed at our work are:

- Lack of knowledge of the steps to be taken,
- Lack of direct contacts
- Problems linked to translation
- Undue delay to gain required documents or information

Concrete cases:

Undue delay to receive the documentation for the cars stolen in Italy and seized in Slovenia. The storage fee represents a considerable expense for District State Prosecutors offices.

The personal data of owners of a large numbers of credit cards issued by different banks in Italy were needed. The problem was quickly resolved in contact and cooperation with national members in Eurojust.

The interrogation by the court in Germany has been required and realised by the judge in 40 days, but it took 10 month that the request has returned in Slovenia.

We had a direct cooperation with State prosecutors office in Czech Republic which we estimate as an example of a good practice.
The Slovene state prosecutor took over the prosecution of a Slovene citizen who in Czechoslovakia killed a Dutch citizen. The interrogation of the witnesses passed without any problems and without a delay , in the Netherlands with the cooperation with Eurojust .
The competent court of justice in Berlin took over the prosecution of two German citizens suspected the abuse of the position in Slovene-German corporation with its headquarters in Slovenia.
With the cooperation with national member in Eurojust, direct contact between Slovene and German prosecutor has been taken and estimate as good practice.

Regarding international cooperation between public prosecutors and other judicial bodies more efforts should be taken to improve it and make it with all possible speed. In our opinion the cooperation with Eurojust is of a great help. National member in Eurojust can facilitate the direct contact with competent body in other European country. Of course insufficient knowledge of language or legal instruments are sometimes a major obstacle for effective cooperation. We are looking forward to overcome it with permanent education of public prosecutors and good information of possibilities of the mutual assistance between competent judicial bodies.

Scotland

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

Outgoing Extradition request 2004

The accused was charged with 2 counts of rape and fled the country using a false passport. He was traced to a European country following intelligence information of 2 telephone calls from the accused to his associates. On the basis of this information an EAW for his arrest marked urgent was sent through Interpol. However the police in this country were unable to trace the accused as one of the phone numbers was either ex-directory or a company extension and without an International Letter of Request they would not be able to make any further enquiries. We were unable to provide this ILOR as we were not requesting assistance in relation to the investigation or prosecution of a crime but in relation to an arrest. Article 1 of The 1959 Convention on Mutual Assistance in Criminal Matters states that the Convention does not apply to arrests. Advice was sought from the country's national member at Eurojust who, in turn, referred the matter to their local prosecutor's office. Initial advice from both the Eurojust national member and the local prosecutor's office to direct the UK police to obtain more information on the whereabouts of the fugitive through the police embassy liaison officers proved fruitless. Even when a formal letter was sent to the Prosecutor's office of the European country asking for assistance to arrange enquiries into the telephone number they were reluctant to assist. The accused remains untraced to date.

Money Laundering and Drug Trafficking Cases generally

We have a number of money laundering and drug trafficking cases that are part of multinational investigations. In these cases we generally have enough domestic evidence to secure a conviction at a UK level, however, with effective mutual assistance it becomes possible to secure even bigger International convictions that have higher penalties.
However, often we see problems of delay and we do not receive the evidence requested in time for court. This delay appears to be for a number of reasons including: the language barrier, a lack of appreciation of urgency and a poor understanding of national investigation and prosecution systems. For example we have attempted to obtain Spanish evidence a number of times and this evidence has often been received too late or not at all. A lack of understanding on our part as to how the Spanish authorities investigate and obtain evidence contributes to this problem. At present, Crown Office issue LORs directly to the Ministry of Justice in Madrid. Where we know the evidence is in a particular jurisdiction, it would be helpful to know whether we can transmit LORs directly to regional/district offices. It would be helpful to be able to access a list of contacts naming relevant contact persons in different prosecuting authorities. Such a list could also include email addresses and would be beneficial for sending supplementary enquiries or operational enquiries so as to circumvent the slow and often tedious process of sending such questions via the Central Authority.

Poor Translations

Problems also occur when we receive badly translated Letters of Request, in these cases it is often difficult to understand the offences that are being investigated and what is required by the country. When such LORs are received in respect of complicated matters for example fraud, they can be extremely confusing.

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

Outgoing MLA 2006

This case involved a large-scale investigation targeting a criminal enterprise concerned in the acquisition and importation of large-scale consignments of all classes of illegal controlled drugs from Mainland Europe into the United Kingdom. One of the principal subjects of the UK led investigation had been the subject of criminal proceedings in another European country previously. A coordination meeting facilitated by Eurojust was arranged between prosecutors. At this meeting the European country agreed to provide their prosecution file to the Scottish authorities in response to two International Letters of Request sent previously. The Prosecutors file was sent quickly by the country and proved to be very useful to the Scottish case. A significant conviction was secured against the accused. This case exemplifies multilateral assistance and the significance of Eurojust in arranging links and contacts between Prosecutors in cross border crime.

Outgoing MLA 2006

As part of a large money laundering investigation, intelligence was received that the suspect, whilst using an alias, was the beneficial owner of a company based Country A that maintained several bank accounts. The subject had been the subject of two previous International Letters of Request to Country A previously and the authorities in Country A had granted Scottish officers permission to assist with these investigations. It was in the course of these investigations that the accounts were discovered. One account contained a six-figure amount. The suspect was subject to restraint proceedings in Scotland. Police investigations in Country A discovered that an application had been made to transfer the large sum of money from the bank account in Country A. The bank stalled this transfer for three days alerting the authorities.

Thereafter, the Scottish Authorities varied the restraint order to specifically mention the bank accounts in Country A and submitted an International Letter of Request to the Ministry of Justice in Country A requesting that they enforce the restraint order. Within 2 days the Ministry of Justice in Country A in conjunction with the local Police and The Unit for Combating Money Laundering had successfully, albeit temporarily, restrained the assets. Although we are still awaiting confirmation that a formal order has been granted, this case illustrates successful co-operation. The initial cooperation between the Scottish and local police uncovered previously unknown and materially relevant bank account information. Thereafter good communication and an established contact in the Ministry of Justice in Country A allowed this case to progress with the necessary urgency.

Incoming MLA 2006

In January 2006 we received a request for Mutual Legal Assistance from the authorities of Country 2 requesting that we interview and obtain evidence from witness X (a civilian) and witness Y, a retired undercover police office, in connection with an ongoing appeal in the Country 2.

Owing to the complicated nature of the case it was requested that the investigating Magistrate in from Country 2 traveled with her clerk, a prosecutor, and two defence counsel from to Scotland to assist in acquiring the evidence from these individuals. The appeal was in connection with the conviction and sentence of 2 individuals in respect of drug trafficking offences. After many lengthy discussions between the Magistrate from Country 2 and the Scottish International Unit it was decided that the procedure to best meet the requirements was for the witnesses to give evidence on oath in Scotland. The delegation wished to achieve this in one day. Accordingly it was arranged for the delegation to attend at Edinburgh Sheriff Court both for their convenience and also to enable discussion between the Scottish International Prosecutor and the Sheriff charged with overseeing the proceedings. The logistics of the procedure to be applied, who was to ask the questions, the provision of interpreters and short hand writers and other technical difficulties required to be addressed as procedure the procedure in Country 2did not accord with domestic procedure for taking evidence on oath.

The availability of the witnesses, the Scottish Court, the European country delegation and the local prosecution authorities was compared and 23rd March found to be the only suitable day for the interview on oath to proceed. In order that the evidence of Witness X and Witness Y could be obtained in this way, the Lord Advocate signed a nomination authorising the Court to cite the witnesses. The witnesses were duly cited and arrangements made for the payment of their expenses by the Procurator Fiscal.

It was agreed between the parties that the witnesses were to be put on oath by our Sheriff and thereafter they were to be interviewed by the Magistrate, prosecutor and Defence counsel and thereafter an interpreter would relay the questions into English. The witnesses were to answer in English and their replies would be translated where they were to be recorded by the Clerk as directed by the Magistrate. This document was then read back to the witnesses, via the translator, who vouched for the fact that it was a true record of their evidence. Overall this was a very successful example of mutual legal assistance whereby, for all intents and purposes, a Country 2 court was convened in Scotland and was assisted by the Sheriff and the prosecuting authority.

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

- As noted previously, it would be beneficial to have an easily accessible list providing the names of the relevant contact persons within the different prosecuting authorities. This would be helpful especially in cases where we know the evidence is in a particular jurisdiction, so that we could transmit the LORs directly to regional/district offices.
- It would also be helpful to be provided with a synopsis of the prosecution and investigation model within each member country. Such a visual model would help with understanding the procedure specific to each country when dealing with International Requests.

4. Any other comments.

Spain

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4. Any other comments.

Monaco

En règle générale, l'exécution des commissions rogatoires internationales ne pose pas de problèmes de fond.

Les seules difficultés qui se sont posées ont été liées à la forme, notamment dans le cadre de l'entraide judiciaire avec l'Italie où des documents procéduraux ont été manquants ou insuffisants, décision judiciaire manquante (« decreto»), commission rogatoire non signée par l'autorité compétente (cf. dossier X).

Cependant un entretien téléphonique avec l'autorité judiciaire compétente ou un échange de messages Interpol suffisent dans tous les cas à régler le problème.

Par ailleurs, obtenir la transmission d'une commission rogatoire internationale en Grande-Bretagne reste aléatoire.

Il semble que la chaîne de transmission des commissions rogatoires internationales interne à la Grande-Bretagne soit à l'origine de lenteurs induisant des délais trop longs (cf. dossier Y).

Greece

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

A. Introduction

The existing system of international judicial cooperation in Greece operates in a highly flexible and efficient manner. A significant contribution to this is the central role played by the Prosecutor of the Court of Appeal, within whose competence fall the examination of procedural and substantial legality of every incoming and outgoing request and the subsequent assignment of the execution of the relevant investigative acts to the most appropriate, in each case, investigatory or pre-investigatory authority (e.g. examining magistrate, misdemeanour court judge, police, customs, etc.). At the same time, the Prosecutor of the Court of Appeal has, according to Greek legislation (article 35 of the Greek Code of Criminal Procedure) the overall supervision of the interrogation. The Prosecutor has, according to the law, the right to guide, to control potential delays and to coordinate the work of those who have been assigned with the execution- processing of a request.

B. Difficulties encountered when working with public prosecutors or other judicial bodies in other European countries in the case of specific criminal cases

i. There was a case in which the Greek authorities had requested the extradition from the English authorities of a defendant accused of two premeditated homicides. The request met great difficulty and was finally processed with significant delays, despite the willingness and efforts of the competent authorities of the United Kingdom. This was primarily due to the fact that the defendant invoked the protection of HABEAS CORPUS and then the benefit of pauperis; thus, the defendant took advantage of every possibility of obstructing the procedure of extradition and by using the anachronistic system of HABEAS CORPUS succeeded in delaying the procedure.

ii. In another case Greek requests for judicial assistance were repeatedly rejected by the competent authorities of Switzerland and Germany. The main reason for this rejection was the fact that the essence of the case had previously been examined by the Swiss courts, which had decided that there is no punishable act involved. By applying the principle of 'NE BIS IN IDEM', the Swiss judicial authorities denied judicial assistance and refused to provide any information relevant to this case. In some cases in which there was no res judicata by Swiss courts, denial of judicial assistance was based upon the lack of sufficient evidence supporting the requests made by the Greek investigators, so as to justify the granting of judicial assistance.

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

An example of excellent practice is the cooperation between Greek and French Prosecutors for the dismantling of a network of human trafficking with an action in Greece, France and other European countries. A fundamental factor of the efficient and successful cooperation was the direct contact between Greek and French Prosecutors with telephone communications

and fast coordinated actions preceding the sending of documents with the requests. This played a decisive role in the arrest of the perpetrators, as well as in collecting the evidence.

Another example of excellent practice was the cooperation between Greek and German authorities in a number of cases involving mainly money laundering in Greece by criminal activities in Germany. An important role for the successful cooperation in these cases played the 'liaison officer', who was in direct contact with the competent Greek authorities.

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

There is one published article by a Greek Prosecutor of the Court of Appeal in Athens, on the European Arrest Warrant, entitled 'When and how the 'surrender' (remand/committal) of a national is possible according to Law 3251/2004.

4. Any other comments.

a). We believe that direct communication between Prosecutors of the interested countries, before submitting a formal request, as well as during the execution- satisfaction of the request, would facilitate cooperation and make it more efficient.

b). We also believe that 'liaison officers', where they exist, are a major help and extending this institution would be an improvement.

c). The issuance and distribution of circulars by the Prosecutor of the Supreme Court to inform all the parties involved in the procedure of judicial cooperation would also be crucial.

Russian Federation

Background

Russia takes an active part in judicial co-operation in the criminal field with many foreign countries, including the Member States of the Council of Europe.

In order to show the scope and experience of Russia's participation in this co-operation, suffice it to say that in 2006 in total more than 10 000 requests for assistance were received from abroad or forwarded to our foreign partners, mainly in the sphere of extradition and legal assistance in criminal matters. And the extent of such co-operation is constantly increasing.

Taking into account ***new character and level of criminal threats and challenges*** to the international community, it is necessary to work out and use efficient means and methods of legal co-operation, which will be adequate to counter these threats.
At the same time, the required new level of anti-criminal co-operation should be based not only on traditional concept of sovereignty, but also on the new principles of European solidarity, mutual trust and responsibility. A pan-European area of freedom, security and justice should be formed in future on the basis of these principles.

It is obvious that the existent European mechanisms of co-operation in criminal matters do not meet, in many aspects, the requirements of present days and, all the more, perspective needs of our countries.

That is why, in accordance with the decisions of the 24th Conference of European Ministers of Justice, which took place in Helsinki in April 2005, the Third Summit of the Council of Europe (Warsaw, May 2005) and the 7th Conference of the European Prosecutors General, held in Moscow in July 2006, some activities to modernize legal instruments and practice of pan-European co-operation in the criminal field are being carried out in the framework of the Council of Europe.

Some amendments to several European conventions in the criminal field had been made before which is shown, in particular, by the conclusion of two supplementary protocols both to the Convention on Extradition and the Convention on Mutual Assistance in Criminal Matters in 1975, 1978 and 2001, as well as the 2003 Protocol amending the European Convention on the Suppression of Terrorism.

But today, taking into account new nature of criminal threats as well as the experience of legal cooperation gained either in bilateral relations or within the sub-regional European organizations (especially in the European Union, the Nordic Council, and the Commonwealth of Independent States), we should, in our opinion, take up a fundamentally new level of legal and organizational ensuring of the pan-European judicial cooperation.

As to the European conventions on extradition and legal assistance, we should take steps to elaborate the treaties of the "second generation" as it was done, for instance, with respect to the 1990 Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime which will be soon replaced by the new Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (2005).
As is well known the Committee of Experts on Operation of the European Conventions on Co-operation in Criminal Matters (PC-OC) is engaged in the work to determine the problem issues related to the interpretation and implementation of, first of all, the European Convention on Extradition and the European Convention on Mutual Legal Assistance in Criminal Matters which are of most interest from the point of modernization of these two instruments and of practice of their application.

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

As we know, many States have different problems connected with the execution of the European conventions in the criminal field. In particular, they are caused by the differences in national legislations, misinterpretation and improper implementation of conventional norms, by disadvantages and gaps in legal regulation on both national and international levels, lack of skilled personnel and, in some instances, by groundless politicization of co-operation issues.

Russia often faces some problems in legal co-operation in criminal matters, including inadmissibly long term of execution of Russian requests for legal assistance in several countries and groundless, in our opinion, refusals of extradition for political reasons of the persons accused of committing economic crimes (fraud, misappropriation, money laundering etc.).

It is worth to be mentioned that at present in a number of the Council of Europe Member States dozens of Russian requests for legal assistance in criminal matters have been under execution for more than 2 years, and one of such 'long-live' requests is still being executed for almost four and a half years. At the same time when our prosecutors ask to provide any information concerning the processing of these requests, we often receive no replies. But in such circumstances there is a great danger of lapse of time and to the fundamental right of any individual to fair trial in a reasonable time, fixed by Article 6 of the European Convention on Human Rights.

Now we do not want to name the countries that are 'problem' ones for Russia. The Russian Prosecutor General's Office is making additional efforts to solve the above-mentioned problems and still has some hopes for positive results. In case of failure we will have to apply to some international instances to get justice settlement of those problems.

According to the confidential police information, the Russian criminal community considers some European countries as possible safe havens because of their very liberal regimes of extradition and granting of asylum. But it is necessary to remember that offenders bring to the countries of their new residence not only 'dirty' money but their criminal expertise and illegal methods of doing business, including corruption and violent offences. And this conclusion has been confirmed in many instances.

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

The Russian Federation has good results of judicial co-operation in criminal matters with many of our European partners (for example, with Azerbaijan, Armenia, Germany, Norway, Switzerland, Estonia).

In the sphere of extradition our colleagues from the Czech Republic and Lithuania may be praised as good and reliable partners.

It proved very fruitful to establish close working contacts with those officers in foreign agencies who are responsible for certain forms of mutual legal assistance. In many cases the Russian Prosecutor General's Office signed bilateral and multilateral ***agreements (memoranda of understanding) on co-operation*** with its foreign counterparts. Now the Prosecutor General's Office of the Russian Federation has 25 such agreements (memoranda of understanding) on co-operation, including 4 multilateral ones (in the framework of the CIS). For instance, these formal arrangements of co-operation embrace our partners from ***13 European countries*** (Armenia, Azerbaijan, Belarus, Bulgaria, Cyprus, the Czech Republic, Georgia, Moldova, Montenegro, Slovakia, Switzerland, Ukraine and the United Kingdom).

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

There were many concrete proposals made by the representatives of the Prosecutor General's Office of the Russian Federation and other Russian agencies concerned in relation of various steps which could be taken to improve co-operation between prosecutors and other judicial bodies in Council of Europe member states, including suggestions for an improvement of the relevant European conventions. One might note, for example, the contribution made by Yu. Chayka, Prosecutor General of the Russian Federation at the High-Level Conference of the Ministries of Justice and of the Interior "Improving of European Co-operation in Criminal Justice Field" (Moscow, 9-10 November 2006).

The most substantial of these proposals are as following:

1. As for **the European Convention on Extradition** which, by the way, this December will have its 50th anniversary, some measures to ensure, in particular, the ***acceleration and facilitation of extradition procedures*** should be provided for. There are often cases when requests for extradition are under consideration for years and the wanted is frequently under arrest all that time.

Within the European Union due to the application of the European Arrest Warrant the time for extradition procedure has been reduced to 35-40 days. If there is no way to partially extend this practice to all European countries then one of the important steps to facilitate extradition may be the institution of **simplified extradition procedure** in case when the person agrees to his/her surrender.

2. It is also necessary to discuss the issue of limiting the application of the **rule of speciality** that is foreseen in Article 14 of the Convention in regarding to some restrictions of criminal prosecution of the person extradited. At least, such person should have an opportunity to refuse the immunities granted to him by that Article.

3. It seems that the **lapse of time** as a mandatory ground for refusal of extradition (Art 10, the European Convention on Extradition) may be turned into an optional ground.

For instance, the *European Arrest Warrant* (EAW) foresees in Art 4.4[4], as an optional ground for refusal to surrender, the situation where the prosecution or the punishment is statute barred according to the law of the requested State and where that State has jurisdiction over the acts according to its law.

4 Art 4.4 EAW: "The executing judicial authority may refuse to execute the European arrest warrant: 4. where the criminal prosecution or punishment of the requested person is statute-barred according to the law of the executing Member State and the acts fall within the jurisdiction of that Member State under its own criminal law "

4. Plenty of issues have not been regulated or have not been fully expounded in the **1959 European Convention on Mutual Legal Assistance in Criminal Matters**.

In particular, in our opinion, the procedures connected with **transfer of separate types of evidence**, namely drugs, firearms and a person's DNA sample, need a separate and detailed regulation since such transfer concerns with customs requirements and human rights, respectively.

5. The important issue for the pan-European treaty regulation is **protection of witnesses** and their relatives, including those living abroad. One should also think about the European cooperation in providing **key witnesses with shelter abroad** that is of particular importance for small countries in Europe.

6. In our point of view, provisions on **delivery of information on criminal records of nationals** of the Parties to the Convention is to be expounded; in the conditions of high mobility of the population of the "Grand Europe" it seems to be important for both prevention of crimes and possible registration with a view to establishing the fact of repeated crime committed by a certain person as a circumstance aggravating his/her responsibility. One may note this kind of experience in the international treaty practice (including within the Commonwealth of Independent States); certain work is being carried out within the European Union in that direction.

7. It seems rather promising to regulate issues connected with rendering assistance to other State Parties in **conducting technically complicated expert research** (for instance, DNA analysis and blast-technical examination). In particular, there is a problem of admissibility of evidence obtained in such a way.

8. In regard to **updating of the both European conventions** (either on Extradition or Legal Assistance in Criminal Matters) it is necessary to consider the issue of restricting traditional grounds to refuse assistance.

For instance, quite often persons charged with commission of various crimes (including crimes connected with drug trafficking, organized crime, money laundering, fraud), in order to avoid liability, declare that **political motives** serve as grounds of their actions or that they are criminally prosecuted due to their political, religious or other views.

Meanwhile, at present there is no internationally recognized definitions of such notions as a "political offence", an "offence connected with a political offence" and an "offence inspired by political motives", widely used in some European conventions. Moreover, almost all states in Europe (and in the world as a whole), including the Russian Federation, do not have definitions of these notions in their national legislations.

Of course, it's impossible and of no need to give a positive legal definition of a "political offence", an "offence connected with a political offence" and an "offence inspired by political motives". But we suppose that it'll be very useful and practically achievable to limit the possibility of abusing the "political offence" clause, by excluding from offences that might be considered as political offences, etc. the offences envisaged in the international treaties concluded at universal and regional level.

Similar approach of the so-called "negative" definition of a "political offence" was used in many bilateral treaties concluded in the XIXth century between some States in Europe, including Russia (in relation to the murder and attempt to murder of heads of State and members of their families). Nowadays there are plenty of provisions based on the said approach (but provisions of not a general nature) in the multilateral treaty practice, both regional and universal (e.g. the European Convention on Extradition, Article 3 (3); the 1975 Additional Protocol to the European Convention on Extradition, Article 1; the 2003 Protocol amending the European Convention on the Suppression of Terrorism, Article 1; the 1997 International Convention for the Suppression of

Terrorist Bombings, Article 11; the 2005 Council of Europe Convention on the Prevention of Terrorism, Article 20 (1).

It's high time to restrict the possibility of arbitrary interpretation of the above-mentioned conventional notions. In this regard the approach fixed in the 2003 Protocol amending the European Convention on the Suppression of Terrorism could be used. The idea is to include into the European Convention on Extradition and the European Convention on Mutual Legal Assistance in Criminal Matters a provision saying that the Contracting States shall not consider offences envisaged in the international treaties to which both the requesting and the requested States are Parties, as political offences or offences connected with political offences.

9. The two Conventions should also provide for **effective mechanisms to settle disputes** concerning interpretation and application of these instruments (for instance, the European Convention on Extradition does not contain such provisions at all). Unsettled disputes may lead to deterioration of relations between the Participating States in general and affect bilateral legal co-operation due to possible use of the reciprocity principle as a measure of "retaliation".

But we think that the corresponding provisions of the European Convention on the Suppression of Terrorism amended by the Protocol of 2003 may be taken as an example for such a regulation.

We also believe that in relation to the **reservations** to the European Conventions on Extradition and Mutual Legal Assistance in Criminal Matters one may use the Council of Europe's modern treaty practice. It is proposed to introduce some limitation of a number of reservations which a Participating State may make and the institution of the mechanisms of their periodic (in 3 or 5 years) review in order to confirm or withdraw such reservations.

10. The experience of not only European countries may be used in order to improve the efficiency of pan-European cooperation in criminal matters. In particular, the Group of Eight, the United Nations, the Organization of American States and the Commonwealth of Independent States have some documents of interest in this field.

For instance, the 1981 Inter-American Convention on Extradition (in contrast to the European Convention on Extradition) establishes some priorities in extradition when **concurrent requests** from different states are submitted. Article 15 of the said Convention reads as following:

"When the extradition is requested by more than one State for the same offense, the requested State shall give preference to the request of the State in which the offense was committed. If the requests are for different offenses, preference shall be given to the State seeking the individual for the offense punishable by the most severe penalty, in accordance with the laws of the requested State. If the requests involve different offenses that the requested State considers to be of equal gravity, preference shall be determined by the order in which the requests are received."

Perhaps, it will be wise to add a similar provision to the European Convention on Extradition in order to facilitate the requested State the task of making a hard choice between the interests of two or more requesting States and to avoid "creating offended Parties".

Perhaps, a revised European Convention on Extradition should also establish the priority of the request for extradition (or transfer) received from **an international criminal court (tribunal)** when both the requesting and the requested states recognize the competence of that.

11. We also strongly support the PC-OC proposals to set up a **network of national persons of contact** experienced in the issues of international co-operation in the criminal field and an **electronic database** on national procedures as well as development of **CoE publications, web site and a special newsletter**.

4. Any other comments.

There are a lot of problems in the field under consideration and they should be resolved rather urgently.

The current task of the Consultative Council of European Prosecutors (CCPE) is to give a highly professional impulse to the on-going work on bringing pan-European mechanisms of legal co-operation in line with the today's demands and, if possible, with the needs of near future at least.

There is a strong feeling that the outcome of the CCPE's study on ways and means to improve international co-operation between public prosecutors or other judicial bodies in Europe will persuade the European Committee on Crime Problems (CDPC) in its plenary meeting in June 2007 to give a mandate to the PC-OC to carry out practical work on strengthening the European treaty regime in the sphere of extradition and legal assistance in criminal matters including, as a matter of high priority and at first stage, prompt elaboration of a draft legally-binding instrument modernizing the European Convention on Extradition. We think that it may be a revised version of this Convention (depending on the number of amendments agreed) – the Convention of the "second generation".

Finland

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

Background

In Finland, the criminal investigation authority leads the criminal investigation, not the prosecutor. The prosecutor leads the criminal investigation only in cases where police have committed offences. The prosecutor and the criminal investigation authority are by law obliged to co-operate in the criminal investigation. With respect to Article 24 of the Council of Europe Convention on Mutual Assistance in Criminal Matters, Finland has declared that, for the purpose of the Convention, i.a. the criminal investigation authorities will be deemed judicial authorities. In practice, many of the requests for legal assistance that Finland receives (e.g. house searches, confiscations, hearings of parties) are executed by authorities with the power of arrest, i.e., in addition to the prosecutors, high-ranking criminal investigation authorities. The criminal investigation authorities are also authorized to make requests for legal assistance to foreign states. Therefore, also their experiences of legal assistance co-operation have been mapped out in the answers to the questionnaire.

In general, the legal assistance cooperation has worked well. There are very few cases where a foreign state, or Finland, has flatly refused to provide legal assistance.

The most common problems have been related to an unreasonable delay in answering the request on the part of the foreign state. Requests for expediency have not always been answered and not always led to a more expedient execution. Such situations have occurred with different states.

There have also been situations of the following kinds:

1) in spite of an inquiry regarding the person in charge of the execution of a request no information has been given in order to facilitate direct contact
2) the request has originally been directed to the wrong authority, and it has not been immediately transferred to the correct competent authority
3) sometimes the request has caused no reaction; the request has disappeared into a “black hole”
4) in some cases the states (e.g. Estonia and Russia) have required that the request be sent through a certain official channel before they can start considering the matter
5) in certain countries strict bank secrecy rules have made it difficult to obtain information on bank accounts
6) problems related to competence have occurred in some cases when Finnish criminal investigation authorities (police and customs authorities) have not been deemed competent to request legal assistance
7) lack of coordination in requests requiring expediency and significant resources, for example in cases involving controlled delivery
8) finding sufficient resources for cases involving tracing of the proceeds from crime has proved difficult
9) in cases of a tax fraud type the criminal law provisions vary: a tax fraud in Finland does not necessarily constitute a crime in another state

10) a request for the hearing a person has been submitted but the request does not indicate the procedural capacity (suspect, witness or victim) of the person to be heard
11) in cases involving Russia it has been found that the Russian legislation appears to prevent the execution of a request for legal assistance if the person in question is to be heard in the capacity of suspect. In practice, this means that the investigation in Finland cannot proceed. An extradition procedure is not possible since Russia does not extradite its own citizens, and Finland, on the other hand, cannot transfer prosecutorial measures to Russia, since the suspect has not been heard at all.

We further refer to the annual report of Eurojust 2005 and its appendix II which presents problems in connection with cross-border crime.

Possible reasons for the problems:

- the requests go via the Central Authorities and the possibility for direct contacts between the competent authorities is sometimes lacking (for reasons related to the legislation of a country or for practical reasons, such as deficient language skills), which slows down the procedure
- delays due to translation especially if a state does not accept requests in any other language than its own (if the language in question is not very common, the translation can be time-consuming and the possibility for errors in the translation will increase)
- the request is not forwarded to the competent authority in the executing state without delay, nor is information on the official dealing with the matter provided
- received requests are not registered; they may disappear into a “black hole”
- inquiries are not always answered
- national procedural provisions are more restricting than required by the valid international treaties
- the states should create a system with special experts dealing with matters of legal assistance and extradition of offenders; the language skills of these officials should be enhanced
- the resources of the state are used up by its own domestic crime investigations and the requests of a foreign state cannot be adequately attended to
- the quality of the requests for legal assistance should be improved (a clear description of the matter in question, what is requested and why).

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

On the whole the cross-border co-operation works well.

Reasons for the smooth co-operation:

- direct contact, good language skills
- the central authority system quickly offers information on the official to whom the matter has been delegated and contact information for him or her
- good professional skills (knowledge of international treaties and official channels/co-operation networks) of the officials dealing with matters of legal

assistance and extradition of offenders and good national organization of the consideration of these matters
- prompt replies to inquiries
- requests for further clarification without delay
- prompt consideration of matters
- knowledge of the judicial system of foreign states and personal acquaintance with the official dealing with the matter in question
- use of Eurojust
- creation and utilization of co-operation networks (e.g. EJN)
- utilization of liaison prosecutors and police contact persons
- high quality in the presentation of requests.

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

A key prosecutor system has been created in Finland around different crime types and criminal procedure provisions thereby guaranteeing the special competence required for the different fields of law. The key prosecutors dealing with international legal assistance and extradition of offenders have been trained to become special experts in international treaties and international co-operation instruments and contact channels. They also have good language proficiency. The services of the key prosecutors in international matters are distributed geographically so that every prosecution unit knows the key prosecutor of their own district. The other prosecutors in the country are instructed to ask for consultation help from the prosecutors. This ensures the level of the competence and a coherent praxis. In addition, it means that all prosecutors do not have to be given the same high-level training.

The key prosecutors act as instructors in questions regarding international criminal procedures. They also carry out a coordinated collection of decisions made in these matters by the supreme courts and inform the whole field of them. They participate in international meetings in the field and procure information on international criminal phenomena in general.

The Office of the Prosecutor General, which is the Central Authority of the Prosecution Service, has an international unit leading the activity of the key prosecutors in international matters and also otherwise answering for the international activity and training of the Office of the Prosecutor General. Being a member of the International Association of Prosecutors, the principal prosecution agency maintains good inter-authority contacts with all continents. Connections made within the Association have made it possible quickly to establish contact even with authorities in the most remote countries.

An emergency duty system has been created for the prosecutors enabling urgent matters to be taken care of outside normal office hours.

The prosecutors have direct access to the electronic intranet containing information on legal assistance matters and matters regarding extradition of offenders, model forms, manuals and contact information for authorities as well as useful international links. The Office of the Prosecutor General maintains and develops international intranet pages. The prosecutors have always had access to e-mail. The prosecutors are encouraged to utilise direct inter-authority contacts.

Often needed documents that have been translated into different languages have been gathered for general access. In this way they do not have to be translated again and are quickly accessible.

An expert group composed of representatives of different administrative sectors tasked with coordinating international legal assistance matters has been working for some years in Finland. It meets once a month under the direction of the Ministry of Justice. In addition to the prosecutors, the members consist of representatives of the International Affairs Unit (Central Authority for legal assistance matters), the Law Drafting Unit and the Criminal Policy Department of the Ministry of Justice, representatives of the courts, representatives of the criminal investigation authorities (police and customs) and representatives of the Ministry of the Interior. The group considers different matters in relation to legal assistance, maps problems and the need for training, proposes solutions and coordinates participation in international inquiries and functions. The group drafts recommendations that each administrative sector develops into instructions. This is an excellent concept for the distribution of information and standardization of procedures in the whole country. When all those who are involved in the international inter-authority co-operation gather around the same table, they get to know each other's work and, through their co-operation obtain advantages of synchronization and reduce overlaps. The group does not consider concrete cases of legal assistance.

The prosecutors have further established a multi-administration expert group to consider questions regarding extradition of offenders and the need for training.

In the police organization all requests for legal assistance go via the National Bureau of Investigation. The NBI has prepared a quality guarantee system comprising an electronic manual with instructions on the legal assistance proceedings, national and international provisions, official channels and useful relevant links. An internal control system ensures that the instructions are observed.

In Finland the national activity of the EJN is organized with contact points meeting regularly and discussing the development of the network.

Finland also has good experiences of the work of the Finnish liaison prosecutors stationed in St. Petersburg, Russia and Tallinn, Estonia. The activity of Eurojust and the EJN has proved positive. The prosecutors have been instructed to utilise Eurojust in full. Also the activity of the liaison police officers stationed in different states has been very useful.

Comments related to European treaties

In the field of extradition, there has been a question on the interpretation of the concept "detention order" within the meaning of Article 23 of the 1995 Extradition Convention. In Finland there was recently a case concerning surrender of our own citizen for the purpose of enforcement of a measure, where the person concerned, on the basis of his/her mental health had not been sentenced to imprisonment but to mental care. In that particular case the Finnish Supreme Court took the view that such measures fall within the scope of a relevant extradition instrument. Even though in that case the question was about interpretation of an EU instrument, namely the Frame-work Decision on the European Arrest Warrant, the arguments behind the decision of the Supreme Court were taken, inter alia, from the wording of Article 25 of the 1957 Council of Europe Convention. It would be important for practitioners to know whether such measures can be regarded as "detention orders", as referred to in Article 25 of the said Convention.

Securing the claims for compensation of the injured party in a cross-border criminal matter is problematic. There are international instruments for confiscating the proceeds from crimes. The position of the injured party is weak and should be improved in international criminal matters. In Finland the damage suffered by the injured party can be dealt with in connection with the criminal matter. Now it is uncertain whether the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (adopted on 3 May 2005) is applicable to the securing of an injured party's claims for compensation.

In certain legal assistance situations it has happened that the requested state does not on the basis of the European Convention on Mutual Assistance in Criminal Matters (1959) execute requests concerning the hearing of a suspected person.

4. Any other comments

The Council of Europe has in 1998 prepared the publication “Standard text providing information about the Convention on the Transfer of Sentenced Persons” The practitioners in the field wish that this publication be updated and easily accessible on the CoE website.

France

1. Veuillez donner des exemples de cas pénaux, sans y inclure les données à caractère personnel, dans lesquels les procureurs de votre pays ont éprouvé des difficultés significatives dans le travail avec les procureurs ou avec d'autres instances judiciaires d'autres pays européens. A votre avis, quelles sont les raisons de ces difficultés (par exemple, types d'affaires qui présentent des difficultés particulières liées aux législations nationales ou aux législations ou procédures étrangères, manque de connaissance des démarches à entreprendre, manque de contacts directs, connaissance insuffisante de langues ou d'instruments juridiques, problèmes liés à la traduction, des retards abusifs, des lacunes ou dispositions inappropriées dans les conventions européennes et accords bilatéraux, ou dans d'autres textes, etc…).

Réponse :

De façon générale, les magistrats français interrogés ont souligné que les affaires qui ont été le plus difficiles à traiter, furent celles dans lesquelles il ne leur a pas été possible d'avoir un dialogue avec l'autorité requérante ou un point de contact désigné par celle-ci ; c'est principalement entre la France et la Grande Bretagne où l'autorité centrale le home office parait débordée et impuissante à répondre aux commissions rogatoires qu'elle déléguait selon un système dont la traçabilité pour l'autorité requérante était nulle

En revanche, le Réseau Judiciaire Européen qui relie tous les pays membres de l'Union européenne, l'Atlas judiciaire européen ou les « fiches belges » détaillant les lois nationales en matière d'entraide, les magistrats de liaison échangés entre certains pays, apportent une aide précieuse au bon déroulement de la coopération judiciaire, en particulier quand des investigations nombreuses doivent être conduites en plusieurs points du territoire de l'Etat requis. L'utilité des points de contact est également notable quand des difficultés procédurales surgissent du fait des différences entre les droits et les organisations nationales par exemple en matière de perquisition et de saisie, ou d'assistance d'avocat ou tout simplement en cas de silence ou d'inertie–encore trop fréquents- de la part de l'autorité requise.

Certaines demandes d'entraide ou d'extradition n'ont pu être exécutées car les autorités requises les ont jugées inspirées par des motifs politiques ou contraires aux intérêts essentiels de l'Etat requis.

Il est rare ou très difficile de connaître les suites réservées par les Etats aux « dénonciations officielles » qui devraient pourtant constituer un instrument essentiel d'efficacité répressive.

Certains Etats requis n'attachent pas d'importance ou sont lassés de recevoir des CRI sur certains types de délinquance de masse qui se déroulent sur leur territoire : c'est le cas des autorités espagnoles par rapport à ces milliers d'escroqueries commises lors de ventes de résidence à temps partagé « time share » - dans le déroulement desquelles il est vrai, il est souvent difficile de faire la part entre l'habileté commerciale et la malhonnêteté caractérisée par des manoeuvres.

En matière de stupéfiants il m'est indiqué que les Pays BAS remettent systématiquement les personnes interpellées sur mandat d'arrêt en liberté y compris pour les très gros trafics comme si une appréciation de l'opportunité de l'interpellation venait contrecarrer la politique pénale de l'autorité requérante.

En revanche, les magistrats de certains pays liés par le principe de légalité des poursuites comme la Turquie, multiplieraient les demandes d'entraide pour de menus larcins en contribuant à bloquer le système du pays requis par l'encombrement et en occasionnant des dépenses de traduction faramineuses.

L'existence de banque de données comme celle de la Direction Nationale ANTIMAFIA italienne qui permet à tout miment de savoir si les membres d'une organisation criminelle font l'objet de poursuites en Italie est un facteur de succès pour la coopération avec ce pays, il est souhaité que tous les pays se dotent d'une telle banque, sous réserve bien sur des garanties nécessaires en matière de protection des données personnelles.

L'absence de telles banques de données complique en revanche le travail voire, le rend inefficace.

La spécialisation de certains magistrats ou de certaines structures est un facteur de succès dans la coopération internationale : c'est le cas notamment du parquet fédéral antiterrorisme allemand, de la direction nationale antimafia italienne, des juridictions interrégionales spécialisées françaises, de l'audiencia nacional espagnol, de la prokuratura de la fédération de Russie au sein desquelles les magistrats finissent peu à peu par trouver des correspondants très rompus aux questions de coopération internationale et parlant des langues étrangères.

Grâce à cela de bons succès ont pu être obtenus en matière de lutte antiterroriste, antidrogue, de trafics d'êtres humains etc..

En revanche, l'absence de spécialisation, même dans de grandes juridictions, la méconnaissance des langues et des pratiques et une absence de culture judiciaire commune voire de confiance entre les autorités judiciaire continuent à hypothéquer la coopération judiciaire entre pays européens, à un moindre degré il est vrai entre pays membres de l'Union européenne, notamment aussi grâce au programme d'échange entre magistrats organisés par la Commission.

Le gel et la saisie d'avoirs obtenus par le produit du crime fonctionne presque toujours mal : il reste compliqué et les autorités judiciaires hésitent à s'y consacrer alors que pour certains types de délinquance comme le trafic de drogue, d'êtres humains, l'immigration clandestine il s'agit du « nerf de la guerre » et l'insolence des fortunes mal acquises est un facteur de développement de ces trafics.

Le refus par certains Etats d'extrader leurs nationaux constitue une entrave à la coopération judiciaire alors qu'on pourrait facilement prévoir un système d'exécution de la peine sur le territoire de l'Etat d'origine.

Les insuffisances de la répression en matière de recel par exemple en Belgique compliquent la coopération en matière de lutte contre le pillage du patrimoine culturel.

De même l'absence d'incrimination de l'association de malfaiteurs et de blanchiment constituent elles des entraves à une coopération efficace, même en l'absence de condition de double incrimination pour accorder l'entraide.

La protection des victimes est insuffisamment harmonisée et certaines commissions rogatoires en matière de trafic de drogue ou d'êtres humains, mettent les témoins en danger de mort s'ils acceptent de déposer sans que l'autorité requérante sache sur quel système de protection elles peuvent se reposer (c'est une situation quasi généralisée avec peut être l'exception italienne et certaines possibilités de témoignage anonyme comme celles offertes par la législation française).

2. Veuillez donner des exemples de cas pénaux, sans y inclure les données à caractère personnel, dans lesquels la coopération avec des procureurs ou avec d'autres instances judiciaires d'autres pays européens a été satisfaisante pour les procureurs de votre pays. A votre avis, quelles sont les raisons de cette réussite (par exemple, types d'affaires qui ont pu être conduits sans difficultés, bonnes pratiques nationales ou étrangères, mesures pratiques contenues dans les dispositions des conventions européennes pertinentes et accords bilatéraux, ou dans d'autres textes, etc…).

Comme déjà indiqué plus haut, la possibilité de transmission directe d'autorité judiciaire à autorité judiciaire est un facteur de progrès mais qui résulte nécessairement d'accords régionaux ou bilatéraux comme ceux de l'Union européenne, de l'Union nordique, de la convention franco-suisse etc.. Mais à tout le moins la possibilité pour l'Etat requérant de connaître l'autorité chargée de l'exécution de sa demande constitue t'elle un grand progrès.

D'innombrables exemples de coopérations réussies, notamment en matière de lutte antiterroriste ou antidrogue se réalisent chaque année grâce aux systèmes variés de points de contact : des magistrats de liaison à EUROJUST ou au Réseau Judiciaire européen mais même quand les autorités centrales savent s'organiser pour permettre de trouver qui s'occupe de quoi, accuser réception des demandes, organiser la relance en cas de retard, rectifier les erreurs ou clarifier les difficultés liées aux différences entre système juridiques, effectuer de bonnes traductions etc..

De façon presque générale, le dispositif du mandat d'arrêt européen entre pays membres de l'Union fonctionne bien, dans le respect des dispositions de la Convention de Strasbourg; il constitue même un progrès en matière de jugement dans un délai raisonnable.

3. Veuillez communiquer les suggestions émanant des procureurs et d'autres instances judiciaires de votre pays, relatives aux mesures qui pourraient être prises pour améliorer la coopération entre les procureurs des Etats membres du Conseil de l'Europe, y compris des propositions d'amélioration de traités européens pertinents.

Toutes les personnes interrogées insistent sur l'utilité de contacts directs entre autorités requérantes et autorité requises et sur l'utilité de développer la confiance entre toutes les autorités judiciaires des pays membres du Conseil de l'EUROPE.
Sont suggérés à cette fin des forum thématiques, des jumelages de juridictions, l'identification de points de contact, l'amélioration des dispositifs nationaux : spécialisation, qualité des traductions, sensibilisation au niveau de la formation. Peu de suggestions sont faites quant au besoin de nouveaux traités.

4-. Autres observations.

Il y a encore peu de réflexion sur le parallèle : liberté et sécurité en matière de coopération internationale par exemple les dispositifs de protection des données sont mal connus, et même la question du procès équitable, du respect des droits de la défense, de l'harmonisation de la condition pénitentiaire autour de certaines normes qui doivent pourtant aller de pair avec l'aspect répressif des travaux du CCPE et qui conditionne aussi l'existence de cette « confiance » que doivent s'accorder les systèmes judiciaire pour que la coopération judiciaire fonctionne bien.

Les avocats sont quasiment ignorants de l'acquis européen en matière de coopération judiciaire et de son volet concernant les droits de l'homme. Les magistrats ne sont pas non plus tous formés à ce corpus alors que l'européanisation de leur activité est toujours croissante. Il nous semble que des formations ouvertes à l'ensemble des pays membres du conseil de l'EUROPE seraient utiles, de même qu'une réflexion sur tout l'acquis de l'Union européen qui pourrit être adapté aux pays du Conseil de l'Europe dont l'acquis a fortement besoin d'être modernisé depuis la convention de 1959.

Olivier de BAYNAST

Sources : ensemble des cours d'appel et autorité centrale du ministère de la justice français.

Ukraine

1. Answers to this question are illustrated by the examples of execution of requests for legal assistance in the concrete criminal cases, though they are generalized in problem issues which occur systematically while considering the legal assistance requests and extradition requests.

Problem issue 1: Identification of punishability of action for which extradition is requested in accordance to the legislation of the requesting state.

While considering requests of competent authorities of Ukraine, the Prosecutor General's Office of the Russian Federation often complies with the request as a whole though refuses extradition for the qualified indications, for example, "repeated crime", "on a large scale", "significant harm" etc. Thus, refusal in extradition is based on a difference of criminal legislation of Ukraine and the Russian Federation including the difference in the norms of material law, namely the qualified indications of crimes in the criminal laws of two countries.

For example, in December 2006 the Prosecutor General's Office of the Russian Federation complied with the request for extradition of L., Ukrainian, who was detained on the territory of Russia to be brought to the criminal responsibility for theft. Though the Prosecutor General's Office considered lawful to comply only with "theft" which is a part of the extradition request, excluding the qualified indication of "repeated action", because the latter is absent in the Russian criminal legislation. Thus, in this case the person was extradited only for the theft with further bringing to the criminal responsibility for this crime. This position of the Russian Federation competent authorities influences the measure of punishment for L. fixed by the court in its verdict.

Problem issue 2: Difference of procedures in continental and Anglo-Saxon systems of law.

Ukraine and the UK are related to different legal systems. Consequently, every country has different legal procedures which results in the duration of execution of requests which are sent by the Ukrainian competent authorities to the UK.

Long terms of execution of requests are characteristic for the mutual legal assistance with the other countries of Western Europe. This fact is explained by significant possibilities for appellation of decisions taken in the course of rendering mutual legal assistance.

Problem issue 3: Long term execution of requests and groundless requirements to render additional information.

Execution of Ukrainian legal assistance requests which are sent to the State of Israel is long-term. More often the execution of these requests are accompanied by the Israel side to give additional information concerning the matters raised by the Ukrainian competent authorities in the request. Though the State of Israel is not a member state in the Council of Europe, it ratified the European Convention on Mutual Assistance in Criminal Matters, 1959, and the European Convention on Extradition, 1957. Requests on mutual legal assistance and extradition are based on the above mentioned conventions.

Problem issue 4: Legal assistance in matters concerning fiscal offences.

In October 2004 the request of the Prosecutor General's Office of Ukraine was refused by the Federal Department of Justice. The request concerned the fiscal offence and it is qualified as "intentional tax evasion" in accordance with the Ukrainian Criminal Code. Switzerland came to the conclusion that on the basis of indicated circumstances there does not exist the body of the crime "tax fraud" under the Swiss legislation. Accordingly the Ukrainian request for legal assistance was refused.

With this Switzerland made a note that its state had not ratified the Additional Protocol to the Convention on Mutual Assistance in Criminal Matters. Resulting from this, the state could not apply Article 1 of this Protocol related to the fiscal offences because the state did not have any obligations in rendering legal assistance concerning fiscal matters.

Problem issue 5: Languages application in relations of mutual legal assistance

While considering Ukrainian requests for legal assistance Turkey returned them together with the annexes which were compiled in English.

For example, in December 2006 the Prosecutor General's Office of Ukraine has received the letter from the Turkish Ministry of Justice enclosed the supplements to the request. Besides it asked for more detailed description of the articles of the Criminal Code of Ukraine, it contained the complaint that the Ukrainian competent authorities didn't send the supplements in Turkish. Though as it is seen from the list of declarations and reservations to the European Convention on Mutual Assistance in Criminal Matters, 1959, the Turkish Republic didn't make any declarations to the Article 16 of the mentioned convention.

2. In general, the Prosecutor General's Office of Ukraine is actively involved into cooperation in the field of mutual legal assistance with practically all member-states of the Council of Europe on the basis of European conventions.

As a rule, main grounds for successful cooperation are well established contacts on the working level. In most cases it allows to speed up the execution of mutual legal assistance requests, or even to avoid misunderstanding at the beginning while drafting the request.

3. In our opinion, the basis for successful cooperation is further ratification of the Council of Europe legal instruments by the European countries. Ratification of the conventions and protocols to them in the sphere of mutual legal assistance in criminal matters by the most of the CE states will illustrate the readiness of the states to cooperate under obligations taken in this sphere.

Besides, with the aim to improve cooperation between prosecutors from the Council of Europe states it seems useful to start the process of drafting absolutely new conventions on mutual legal assistance and extradition. The provisions of these new conventions shall conform with the requirements of time and substitute the active conventions which need to be updated already.

Slovakia

1) Negative experiences

Legal assistance

Within criminal matters conducted in the territory of one CE Member State when a national of another CE Member State living in that state is prosecuted/accused (extradition is out of question), and given that the accused person does not cooperate, fails to attend the acts, the following problems have been identified within the scope of mutual cooperation in criminal matters, primarily, with regard to the execution of the questioning of the accused person, and several problems have arisen:

- instruction,
- form and way of questioning,
- possibility for the defense counsel to actively participate in the questioning.

In majority of cases, only the countries with similar legal regulations (or those with flexible legal regulations) carry out the questioning of the accused person.

According to our experience, the countries which shall not execute the questioning of the accused are Russia, United Kingdom, Ireland.

With regard to the Ireland, we even have identified the problem concerning service of resolution to accuse, since the legal department has decided that the request shall not be forwarded to the competent authority, because the resolution to be served had not been issued by **judicial authority.**

The Ireland's construction of the Article 7, par. 1, ETS 30 is that the decisions taken/issued by a judicial authority only can be served.

The analysis of relevant linguistic versions has shown that a slight difference may be identified which might result in such problem, but in my view, any procedural document may be served if competent/judicial authority had requested for.

The following and more active problem concerns the possibilities to ensure the accused person's rights – defence, active participation of the defense counsels. Majority of countries including SK allows/permits the defense counsel's attendance of the act given that the counsel asks questions by means of the competent authority of the executing state. There are countries (e.g. Russia), which do not permit defense counsel's attendance at all based on the fact that they have to observe internal/domestic legal regulations on exclusivity of solicitors/barristers listed in the domestic registry.

Length of proceedings represents one of the major problems especially with relation to the United Kingdom, Ireland, France, Ukraine, Russia and Croatia.

Transfer of criminal proceedings

The problems related with transfer of proceedings (jurisdiction) represent further problem that has been identified.

In such case, primarily the statutory bar/limitation of actions issues is concerned with relation to the cases with no possibility to surrender a person. If the period of criminal proceedings exceeds the statutory bar period then a person in question shall not be punished.

Incorrect application of the ETS 30 instead of the ETS 73 causes doubts about acceptability of evidence, Czech Republic.

Insufficient (or none) instruction to the injured persons who – within proceedings in the other state – have completely different rights and they have to exercise them again. Usually that results in prejudice to their rights in relation to their claim.

Extradition

Extreme length of proceedings is the major problem.
Application of the speciality principle:

- proceedings are inadequately long to grant consent with criminal prosecution for criminal acts that had not been included in the original arrest warrant (France)
- as for the Article 12, par. 2, different countries use different constructions concerning the documents to be submitted (some states do not issue a new arrest warrant but, as for the request to extend the extradition, they submit the genuine/original one arguing that their domestic regulation does not permit it (United Kingdom, Poland)
- there are also problems concerning the length and complexity of proceedings to take decision about extension of extradition in relation to third countries (re-extradition).

2) Positive experiences

Co-operation on the basis of bilateral international agreements is the best operating/functioning one.
Reasons:

personal contact,
smaller linguistic obstacles.

Nowadays, the closest co-operation we have is that one with the neighboring countries.

Italy has always been problematic state as far as the length of proceedings is concerned; co-operation has significantly accelerated since the Italians have accepted that requests shall be sent directly to the competent judicial authority.

3) Proposed steps to be taken

LEGAL ASSISTANCE

- to carry out the analysis of the Article 7, par. 1),
- to carry out review of the application of the Article 4, ETS 30,
- to create database of the competent authorities (similarly to the EU Judicial Atlas).

EXTRADITION

- simplified extradition proceeding
- simplified procedure to take decision about granting consent with further criminal prosecutions,
- to introduce for both the state and extradited person the possibility to waive application of speciality principle,
- to introduce the possibility of restricting personal freedom of a person in relation to which extension of extradition is requested for i.e. the person's personal freedom should be restricted immediately after submission of a request by the state of extradition.

TRANSFER OF CRIMINAL PROCEEDINGS

- after taking over the criminal proceeding, the obligation should be introduced to respect the injured person's rights pursuant to the rules of the requesting state. In case of doubts it is supposed that the rights have been asserted.

It can be stated in general, that the most positive co-operation (as for swiftness, quality of the execution of the acts as well as flexibility of supplementation) exists with the neighboring countries with which we have similar legal regulations and minimum linguistic problems.

Italy

Answers to the Questionnaire on
"WAYS TO IMPROVE INTERNATIONAL CO-OPERATION
IN THE CRIMINAL FIELD"

The following indications are not aimed to be exhaustive, but can represent significant examples for the purposes of the survey.

The Public Prosecution Office of Torino reported the following results of direct requests of cooperation related to criminal investigations:

- France: 6 request for documents and examination of witnesses, addressed to different Offices throughout France – all positively dealt with in few months.
- Germany: request for transmission of documents – one case – positive answer in 1 month; in two other cases: refusal justified on the basis of German Legislation.
- The Netherlands: 2 requests of documents and examination of a witness – positively dealt with in few months; no answer to a third request.
- Portugal: 1 request for transmission of documents – no answer.
- Romania: very positive cooperation in 2 recent cases concerning traffic in women and children.
- Spain: requests of documents and examination of a witness – positive answer with reasonable delay.
- Switzerland: request for transmission of documents – two cases – positively dealt with in few months; examination of a witness: 2 years.
- UK: 1 request of documents and examination of a witness – the sent documents were not the ones requested – no witness examination. Total lack of response in some cases of cyber-criminality; better results in cases of crimes related to the production and commerce of pharmaceutical and chemical products for sport activities.
- Russia (through Diplomatic Authorities): a request for the notification of an act sent in 2006: no answer up to now.
- USA (through Diplomatic Authorities): requests aimed at taking documents and identifying persons possibly responsible for crimes – the response arrived after years.

The PP Office of Milano gave separate responses concerning on the one hand investigations on terrorism and, on the other hand, different kinds of crimes.

The investigations related to Terrorist Groups that allegedly had committed crimes in more than one Country implied not only need of cooperation as for "Commissions rogatoires" or extradition, but also questions of jurisdiction between different Countries.

Examples of lack of cooperation or delayed cooperation:

- France (requests all addressed to the same Office):

a) an Egyptian citizen was supposed to be one of the responsible of the Madrid attack of 11th March 2004; there were investigations in Belgium, Spain and Italy, with continuous "in real time" contacts among the competent Authorities, mainly related to wiretapping or electronic eavesdropping; it allowed

simultaneous searching and arrests in the three Countries. There had been an endeavour to actively implicate in these contacts the French Authority, too, in relationship with another Egyptian citizen resident in France. Notwithstanding the efforts aimed at receiving updated information, only after several months the Italian Prosecutors happened to learn that the concerned person had disappeared from France without leaving any tracks;

b) in a similar case, the "Commission rogatoire" was implemented only with months of delay. It dealt with the interview of some "collaborators", able to give relevant information on some citizens from Morocco, allegedly responsible for the creation of a "Terrorist Group".

- UK: in 2002 a Libyan citizen was arrested in UK on the basis of information transmitted by the Italian Police. The PP of Milano sent a double request of cooperation for the extradition and the gathering of evidence, but all that wasn't even taken into account by the UK Authorities.

Examples of good practices:

- Belgium and Spain: see the positive aspects mentioned with reference to the case above indicated in point a).
- Germany: during the investigation related to an Islamist Terrorist Group there was a full cooperation by the PP of Munich and Karlsruhe, with quick exchanges of information and documents, meetings in Germany and Italy, that allowed the immediate interview of accused persons and witnesses.
- Italy: in 2005 it took only 50 days for the Italian Authorities to deliver to the UK a person who had confessed his participation in the attacks in London of 21st July 2005.

As far as other kinds of crimes are concerned, the PP Office of Milan referred the following contacts:

- Belgium: unsatisfying cooperation in one case (2006) concerning drug crimes.
- France: very quick action in identifying the persons under investigation and in wiretapping for a drug crime (2004).
- Germany: good results (quick answer) in a 2006 case concerning drug crimes. In another case (2003) the requested video-conference with detainees was not allowed due to the lack of specific law provisions in the interested *Lander*.
- Liechtenstein: one case (2001-02) of money laundering: very quick delivery of bank documents and identification of the beneficiaries of the deposits.
- Luxembourg: very good cooperation and results in 2 cases (2001-02 and 2006) concerning money laundering, aggravated by mafia purposes. Fruitful help by Eurojust, in one case, for the seizure of the profits of the crime. Request of cooperation not carried out in another case (2005).
- Monaco: good cooperation in one case (2004), with location and seizure of the profits of the crime.
- The Netherlands: unsatisfying cooperation in one case (2006) concerning money laundering.
- Spain: very good cooperation in 4 cases (2005-2006) concerning drug crimes. Quick responses, fostered by similar legal rules in the two countries. Not good results in other 2 cases; in one of them (2003), concerning a criminal organization for drug crimes and money laundering, the Italian request was not forwarded by the Spanish PP Office to the *Guardia Civil*; the problem is most

likely related to the lack of direct control of investigations by the Spanish Prosecution Office. In another case (2002) a fugitive offender, convicted for drug crimes, although arrested was not searched; relevant documents were probably lost, which could have been helpful for further investigations.

- Switzerland: good results (quick answers) in 2 recent cases (2006) concerning bankruptcy offences.
- UK: very good and quick cooperation in a case (2003) concerning money laundering. Delay of 7 months in another case (2005).

Themes and proposals for the improvement of international judicial cooperation in criminal matters are hereinafter presented (the indications concerning investigation on terrorism come mostly from the Milan PP Office).

a) juridical issues:

1. uniform rules would be useful with reference to:
- trials *in absentia,* according to the jurisprudence of the ECHR;
- validity of evidence gathered abroad;
- the principle of *ne bis in idem* at international level;

2. tardy cooperation is detrimental for investigations related to many kind of crimes; among them, cyber-crimes and connected matters (like child pornography through the internet) would request the establishment of supranational bodies for effective and timely actions of contrast;

3. better results almost always come from direct contacts with the foreign PP Offices or Judges;

4. difficulties in enforcement of judgements come from the inconsistency of national legislations;

b) possible organizational measures, related to the matter of terrorism:

b.a) concerning the EU Countries:

1. creation of a database entrusted to Eurojust, with all possible guarantees for the insertion of data and for accesses;

2. give Eurojust competencies as a “service structure”, for the knowledge both of the phenomena and of the national legal systems;

3. strengthen – after the indispensable controls on issues and practices - the recourse to the European Arrest Warrant;

4. better employment of Europol.

b.b) concerning all the European Countries:

i. prepare a Manual containing an updating of the relevant Treaties of Judicial Assistance as well as the National norms, the latter related to (*) antiterrorism structures, (**) special investigative measures, (***) relevant databases, (****) procedural norms on use of evidence gathered abroad, (*****) national jurisprudence on these issues;

ii. elaborate uniform rules and practices on the procedural treatment and protection measures of witnesses and “collaborators”, as well as on the issues related to their “transfer” to different Countries for justice purposes;

iii. uniform national laws on wiretapping and electronic eavesdropping;

iv. support the creation and improvement of Investigative Common Teams;

v. better employment of Interpol;

vi. improve cooperation and assistance relationships among judicial and police authorities, even out of the European area;

vii. counter the financing of terrorism, even by enhancing the freezing of goods;

viii. mutual exchange of advanced means and technologies;
ix. recruitment and professional training of interpreters and translators.

A final mention must be made not only to Eurojust, but to the “liaison magistrates” too, whose action has been appreciated in recent years. Their function can play an increasing key-role in all matters of cooperation, mainly thank to their knowledge of the laws of the respective countries of assignment as well as to their personal knowledge of local colleagues.

Rome, January 31st, 2007

Armenia

QUESTIONNAIRE
On ways to improve International Co-operation
in the criminal field

1. General Prosecutor's Office of the Republic of Armenia has received the request of legal assistance from the law-enforcement bodies of the Republic of Poland, according to which witness, residing in the Republic of Armenia, should be examined. The demands of the legal assistance request has not be possible to exercise, because the person mentioned in the request has been registered in the Republic of Armenia, but did not reside by the address of residence and there was no information on his whereabouts.

In our opinion, the legal assistance for exercising the request receiving from the law-enforcement bodies of the European countries makes difficulties, because the person's personal data including in these requests are usually wrong and not satisfactory or these persons are being absent from the territory of the Republic of Armenia.

2. General Prosecutor's Office of the Republic of Armenia has received the request of legal assistance from the law-enforcement bodies of the Kingdom of Netherlands, according to which it should be clarified whether the organization mention in the request has real estate in the territory of the Republic of Armenia or not, as well as it is requested to examine witness, registered in the RA. The demands of above-mentioned request have been exercised by the law-enforcement bodies of the RA and materials have been sent to initiator. During the execution of the above mentioned request, the representatives of the law enforcement agencies of the Netherlands were present.

In our opinion, the reason of successfully cooperation is that the provisions of the relevant European Conventions were effectively implemented.

3. General Prosecutor's Office of the Republic of Armenia concluded bilateral Agreements on legal assistance between the Prosecutor's Offices of different CIS countries, which is sophisticated the cooperation in this field. In our opinion, the Prosecutor's Offices of the member States of the Council of Europe may exercise this practice in their activity.

Turkey

As you know the legal assistance in criminal matters is executed by the bilateral and multilateral conventions. Turkey is a party of the European Convention on Mutual Assistance in Criminal Matters. Also Turkey has made bilateral conventions. The mutual legal assistance is carrying out by the conventions mentioned above and by the domestic law. If there is no convention between the parties, the requests are executed by reciprocity and consuetudinary law.

The legal assistance especially matters to offences of drug and human trafficking, Money laundering and terrorism. Because of the execution of the legal assistance according to domestic law and conventions about mentioned crimes, the attention must be attracted to the problems arise from domestic law. Consequence of this, I would like to inform you about our domestic law and the conventions we ratified.

1 - The Judicial Cooperation in Criminal and Civil Matters

- The Turkish Constitution and the Turkish Criminal Code includes provisions on extradition in Turkish Constitution, article 38 / last paragraph. It provides that citizens shall not be extradited to a foreign country on account of an offence except under obligations resulting from being a party to the International Criminal Court. Also Turkish Criminal Code (law No: 5237) Article 18 governs the extradition of foreign criminals. As Turkey ratified the European Convention on Extradition and according to article 16 of this convention, in case of urgency the competent authorities of the requesting Party may request the provisional arrest of the person sought. According to the article 90/last paragraph of the Turkish Constitution, if it is related to the fundamental rights and freedoms and beneficial, the legal value of the international conventions exceeds the national legal system.

- Turkey believes in the importance of combating with transnational serious organised crime and developing new tools for this aim. Since the beginning of Eurojust as a cooperation unit, Turkey takes parts in its activities as far as possible. Turkey is aware that new measures have to be taken into account for full participation in Eurojust activities in active way. Turkey drafts a new strategy includes enactment of a new law, enhancing legal capacity, improving the quality of human sources and other necessities. For example foreign language requirements are a issue to be tackled thorough this strategy.(Replies to issues and questions posed to the Turkish authorities by the European Commission. www. abgs.gov.tr) Also Turkey is a part of the European Convention on Mutual Assistance in Criminal Matters.

As the problems related to the legal assistance, we can give an example about England. England authorities invites the person whose testimony is wanted to be taken, and if the person does not came willingly to give testimony, England authorities do not orders the person by force and returns back the legal assistance as unexecuted.

European countries (especially Germany, Holland, Belgium and England) are returning back our requests about extradition of the terror criminals as unexecuted by the political reasons.

2 - Fight Against Terrorism

So far Turkey has ratified 13 international agreements regarding combat on terrorism. Turkey becomes party to all present 12 UN basic international conventions regarding terrorism. There is an anti terror Law (Act No 3713) and the law on the “Compensation of Losses Resulting from Terrorist Acts and the Measures Against Terrorism” (law No: 5233). Financing of terrorism offence is also a crime under the law of 3713 article 7/A.

3-Co-operation in the Field of Drug Trafficking

The Turkish Criminal Court (law no 5237) Article 188, declares heavy penalties about drug trafficking and drug making. The same law contains article 35 (attempt to commit an offence), article 37 (perpetration), article 38 (solicitation), article 39 (aiding), article 220 (establishing organisations for committing an offence). We have national strategy in drug trafficking.

The Holland authorities do not reply the legal assistance of the Turkish authorities about the drugs transferred abroad from Turkey and caught in Holland because of the reason that it is a continuing crime.

4 - Fight Against Human Trafficking

Trafficking in human beings for purposes of sexual or labour exploitation is punishable according to the Turkish Criminal Court (law No 5237) article 80. Also as mentioned above the same law contains article 35 (attempt to commit an offence), article 37 (perpetration), article 38 (solicitation), article 39 (aiding) , article 220 (establishing organisations for committing an offence). Our legal system is compatible with EU standards.

5 - Fight Against Money Laundering

According to article 9 Law No 4208 measures can be taken in the scope of Money laundering offence. According to this article if there is a serious circumstantial evidence about money laundering the authority can give an order of freezing of claims and rights in banks and non-bank financial institutions as well as in real and other legal persons. Also public prosecutors may decide to freeze claims and rights in cases where it is necessary . To avoid delay Public Prosecutors Office notifies the peace court magistrate about the decision at the latest 24 hours. Peace court magistrate at most within 24 hours whether to approve the decision or not, in case of non approval, the decision of the public prosecutor becomes void.

Also article 133 of the Criminal Procedure Code stipulates the appointment of a curator fort he company management. Article 54 and article 55 of the Turkish Criminal Code deal with the concepts of “confiscation of property” and “confiscation of benefits” respectively. For article 55 of the Criminal Code; not only the material benefits derived from an offence or constituting the subject of an offence but also economical earnings obtained by the evaluation or conversion of these material benefits are confiscated. There is a good organization and co-operation between prosecutors, and law enforcement bodies who are working under the control of public prosecutors.

United Kingdom

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

In a drugs trafficking conspiracy dealt with by CPS Organised Crime Division (OCD) involving cocaine being smuggled in to the United Kingdom from Spain, difficulties were encountered in obtaining evidence from the Spanish authorities. The letter of request from the Crown Prosecutor conducting the prosecution produced no response for 14 months; indeed it was not even acknowledged until after the completion of the prosecution.

In another operation involving drug trafficking in the English Channel, letters of request were submitted to the competent authorities in Cherbourg, Fecamp and Dieppe. Letters were executed very efficiently in Fecamp and Dieppe. The Letter of Request to Cherbourg was rejected. It was not possible, even with the assistance of the UK Liaison Magistrate in Paris, to determine whether there were any problems with the letter or whether any further information might assist.

These cases illustrate

- the need on occasion for increased awareness of where different types of request might be best addressed.

- the type of difficulty which may sometimes be encountered (notwithstanding the best efforts of a Liaison Magistrate to identify and/or maintain direct liaison with a foreign judicial authority.

In addition to its role as the main prosecuting authority in England and Wales, CPS through its Special Crime Division (SCD) conducts extradition proceedings before the English courts on behalf of foreign judicial authorities and states. One such case involving a European Arrest Warrant for a convicted person failed due to the fact that the prosecutors in the requesting state had not stated in terms that the requested person was unlawfully at large. At the time this was a requirement of UK domestic legislation but not a requirement of the Framework Decision on the European Arrest Warrant. The UK provided guidance to foreign prosecutors as to the correct formula of words required to satisfy English domestic law. This was not followed. The case went to appeal and the court concluded that in the absence of a statement by the requesting state that the relevant was not only at large, but unlawfully at large, the case should fail.

In view of the difficulties of our foreign counterparts in meeting this requirement, the Extradition Act has recently been amended so as to reflect the terms of the framework Decision.

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

Following the terrorist bombings in London in July 2005, CPS Counter-Terrorism Division (CTD) submitted a European Arrest Warrant to Italy in respect of one of the suspects who had fled there. Excellent co-operation was received from the Italian authorities. Surrender proceedings were completed within approximately a month of the suspect's arrest in Rome. The suspect is currently on trial at the Old Bailey. The work of the UK Liaison Magistrate in Rome both in relation to the specific case and more generally in building relationships with the Italian authorities, was a key factor in determining the speed and effectiveness of the co-operation received.

In a fraud case prosecuted by CPS OCD, excellent co-operation was provided by the French authorities. Co-ordination was facilitated by a senior French officer based in London, who made arrangements for a controlled delivery of stolen goods to an address in Paris. Using information provided by the British authorities, the French police were able to locate the suspect. He was arrested in an internet café as he conducted further fraudulent activities and important evidence was seized. The French authorities acted upon a UK European Arrest Warrant (EAW) and returned the suspect to the UK for prosecution.

In an OCD case involving the importation of Turkish heroin to the UK via Germany, the German authorities have been exceptionally cooperative in their handling of a suspect arrested in Germany after the conviction of those standing trial in the UK. The German authorities contacted us to discuss problems with the EAW and facilitated meetings to discuss the how the case might move forward to a mutually satisfactory outcome. They accepted an urgent letter of request in English and responding to it almost immediately, allowing British officers to travel to Germany to meet and discuss the evidence with their counterparts.

In several operations involving the trafficking of drugs or human beings into the UK, the Dutch authorities have provided assistance in providing surveillance teams to gather evidence on the movements of key suspects in and around Channel ports and/or airports. The willingness of the Dutch authorities to respond quickly to requests, usually transmitted In English via the SOCA liaison officers in The Hague has provided important evidence in several prosecutions.

Direct transmission of Letters of Request has significantly improved the efficiency and effectiveness of Mutual Legal Assistance.

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

In our experience deployment of liaison magistrates (and other similar enforcement liaison officers) to facilitate liaison between relevant prosecutors and judicial authorities significantly improves judicial co-operation. We suggest that the creation of further such posts in key countries/regions would further enhance the fight against cross-border crime.

In spite of the advances brought about by the 2000 Mutual Legal Assistance Convention, there is still more work to be done in improving the form in which evidence is provided from foreign states. This is best tackled by the continuation of training initiatives both at domestic and international level, to ensure that all prosecutors are familiar with the law and practice of relating to judicial co-operation both in their own jurisdictions and abroad. It is particularly important that awareness of the help available from bodies such as Eurojust and the European Judicial Network is raised and maintained.

In recent years CPS has been involved in 2 programmes in point.

Between 2002 and 2004, it ran a series of seminars for prosecutors throughout England and Wales dealing with:

- making extradition and mutual legal assistance requests;
- resolving issues of concurrent jurisdiction;
- joint investigation teams;
- raising awareness the role of Liaison Magistrates, Eurojust and the EJN in facilitating judicial co-operation.

These seminars were also attended by prosecutors from Scotland and Northern Ireland and police officers from a wide range of domestic forces.

In 2004 and 2005, CPS ran a series of seminars for judges and prosecutors in France and Italy, regarding changes to UK extradition law brought about by the Extradition Act 2003. Lectures were given by prosecutors, policy-makers, members of the Bar, the judiciary and police officers. These events were organized in association with the British Embassies in Paris and Rome respectively. The event in Italy was delivered in association with the Consiglio Superiore della Magistratura. Both afforded considerable opportunity to establish and strengthen networks for direct contact and enhanced the role of the Liaison Magistrates in relations between the countries concerned.

CTD representatives recently attended a seminar on co-operation in counter terrorism cases in Istanbul. It was also attended by representatives from Turkey, France and the Netherlands. There was discussion on the domestic legislation and systems of the participant countries. Consideration was given to methods of improving co-operation. In our view the exercise was very useful in promoting mutual understanding and reinforcing networks to support co-operation in terrorist cases.

4. Any other comments.

Austria

Austrian Reply
to the Questionnaire
“On ways to improve international co-operation in the criminal field”

by Ernst Eugen FABRIZY

According to Austrian law in force mutual assistance in the criminal law field has to be demanded and granted not by the public prosecutor, but by the judge. Thus international co-operation between prosecution offices plays a minor role in Austria. This will change fundamentally in the year 2008, when the new Code of Criminal Procedure will come into force: according to the new law the public prosecutor will have the competence for mutual assistance.

Since the Austrian prosecution offices do not have much experience with international co-operation up to now, I am not able to give examples of typical positive and negative cases. I just like to mention the outstanding case of an Austrian banker charged of abuse of power which caused a damage of € 1,4 billions, who had been surrendered by France recently through the intervention of Eurojust, which procured for the contacts with the French authorities professionally.

Ireland

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

This Office has not experienced significant difficulties when working with public prosecutors or other judicial bodies in other European countries.

It should be pointed out that incoming requests in relation to European Arrest Warrants (EAW), or otherwise in relation to mutual assistance, are channelled though the Minister for Justice, Equality and Law Reform, as the Central Authority for the European Arrest Warrant and Mutual Assistance, and are not dealt with by the Office of the Director of Public Prosecutions in Ireland.

The Central Authority has indicated that there can be some practical difficulties in relation to incoming EAWs due in part to the lack of familiarity with Irish legislative requirements. The European Arrest Warrant Act, 2003, as amended, which implements the Framework Decision on the European Arrest Warrant requires a warrant to be in order in respect of form and content before it can be endorsed by the Irish High Court. If the transmitted warrant is deficient in form and content it is necessary for the Central Authority to revert to the issuing Judicial Authority for additional information or a new EAW. There can be a delay in providing the requested additional information or the new EAW.

It is also appropriate, in this context, to point out that the investigation of crime in Ireland is a matter for the Irish police. While outgoing requests for mutual assistance are made by the Office of the Director of Public Prosecutions via the Central Authority, the replies to those requests are channelled though the Central Authority, to the Irish police and are not dealt with by the Office of the Director of Public Prosecutions in Ireland. However, this Office has not been advised of any significant difficulties in this regard.

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

This Office is very satisfied with the level of co-operation received from public prosecutors and other judicial bodies in other European countries. This is particularly so in relation to outgoing European Arrest Warrants. In this regard prosecutors in this Office have built up some very good direct contacts with prosecutors in, in particular, the UK, Holland, Spain and Belgium. This direct contact has been of great assistance.

The Central Authority has indicated, in relation to incoming EAWs, that it has also received very positive co-operation with other States due to the growing familiarity with each other State's procedures and legislative requirements.

There are, in many cases, often informal contacts with national Prosecution Service representatives based in Eurojust, the Hague, through the national representative who have direct access (as required by Eurojust Decision of 2002) to their National Prosecution

systems and can also liaise in their native language with Police, Judicial and Ministry of Justice contacts as necessary. This has resulted in some cases is faster supply of necessary requested information.

The development of Eurojust since February 2002 has facilitated speedy responses to requests for, in particular, conviction records, details of court proceedings, searches and bank records in fraud and organized crime cases. Eurojust has also been of assistance in ensuring speedy responses to outgoing Letters Rogatory in a number of criminal investigations into moneylaundering, fraud, drug trafficking and organised illegal immigration.

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

Public prosecutors could meet more often so that they learn about the various tools available to them in the areas of mutual assistance. It is also very important that Prosecutors forge links with their colleagues abroad and are familiar with their procedures.

There will always be some obstacles to judical co-operation in the absence of harmonised Criminal Law and Procedure. Therefore increased opportunities of contacts between Prosecutors through training, study visits, conferences and use of other continuing educational opportunities is extremely useful in building mutual trust and confidence.

There are also, in an EU context, a number of initiatives in the Hague Programme of 2004 and subsequent Council and Commission Review of objectives that are underway which may assist. An example of one initiative is the Commission proposal under the current 2007 Work programme in Justice and Home Affairs Matters for the construction of an EU Register of convictions link with each national Judicial register. Such a register would be very useful for sentencing information.

There are also several existing EU instruments such as those relating to European Arrest Warrant, Joint investigation teams, moneylaundering, cash movement, asset restraint and seizure and trafficking in human beings, exchange of information on convictions of Non Nationals, Terrorism information exchange. In addition there are several more at draft stage for final negotiation or implementation, for particular example the European Evidence Warrant Framework Decision proposal. The challenge is more intensive use of these instruments and by Prosecution/Police and Judicial national authorities.

4. Any other comments.

The provisional arrest provisions contained in UK law have been used a number of times and have been very successful. These provisions enable the UK authorities to arrest a suspect without an EAW if they are advised that an EAW is to be issued. The EAW must then be issued and transmitted to the UK within 48 hours.

Suisse

1. Veuillez donner des exemples de cas pénaux, sans y inclure les données à caractère personnel, dans lesquels les procureurs de votre pays ont éprouvé des difficultés significatives dans le travail avec les procureurs ou avec d'autres instances judiciaires d'autres pays européens. A votre avis, quelles sont les raisons de ces difficultés (par exemple, types d'affaires qui présentent des difficultés particulières liées aux législations nationales ou aux législations ou procédures étrangères, manque de connaissance des démarches à entreprendre, manque de contacts directs, connaissance insuffisante de langues ou d'instruments juridiques, problèmes liés à la traduction, des retards abusifs, des lacunes ou dispositions inappropriées dans les conventions européennes et accords bilatéraux, ou dans d'autres textes, etc…).

Réponse :La Suisse consiste de 26 cantons, chacun a un parquet de procureur/office de juge d'instruction. Sur le niveau fédéral, il y a le Ministère Public de la Confédération ainsi que l'Office fédéral de Justice comme autorité centrale en matière d'entraide pénale. Afin de pouvoir donner une réponse exhaustive, nous devrions consulter tous les procureurs cantonaux et l'Office fédéral de Justice ce qui n'est pas possible dans le court délai à disposition.

Du point de vue du Ministère Public de la Confédération, nous avons constaté quelquefois des difficultés particulières liées aux différences entre législations nationales, ce qui l'a rendu nécessaire d'échanger des explications et de trouver une compréhension entre les autorités de poursuite pénale afin de pouvoir rendre ou obtenir l'assistance dans les méilleurs délais. Le niveau des traductions a quelquefois posé des problèmes, surtout des traductions venant de pays qui ne disposent pas encore d'une grande expérience en matière d'entraide. Les conventions du Conseil de l'Europe et les accords bilatéraux ratifiés par la Suisse sont une bonne base pour la coopération de notre point de vue. Pourtant, une difficulté se présente en vue du fait que la Suisse n'est pas membre de l'Union Européenne et n'a donc pas ratifié les conventions de l'UE. Nous avons ratifié le deuxièem protocol additionel à la Convention du Conseil de l'Europe de 1959 sur l'entraide, et ce protocol contient toutes les nouveaux instruments de coopération. Cependant, la majorité des pays de l'UE n'a pas ratifié ce protocol parce qu'ils trouvent les instruments nécessaires déjà dans les conventions de l'UE. Cela crée en quelques cas des problèmes.

2. Veuillez donner des exemples de cas pénaux, sans y inclure les données à caractère personnel, dans lesquels la coopération avec des procureurs ou avec d'autres instances judiciaires d'autres pays européens a été satisfaisante pour les procureurs de votre pays. A votre avis, quelles sont les raisons de cette réussite (par exemple, types d'affaires qui ont pu être conduits sans difficultés, bonnes pratiques nationales ou étrangères, mesures pratiques contenues dans les dispositions des conventions européennes pertinentes et accords bilatéraux, ou dans d'autres textes, etc…).

Réponse :

Du point de vue du Ministère Public de la Confédération, nous pouvoins dire que les contacts directs entre procureurs et une base de confiance née d'une collaboration fréquente et regulière sont un élément clef pour une coopération satisfaisante. Cela est donné le plus fréquemment avec les pays voisins. Vu que la lutte contre la criminalité transfrontalière est en train de s'intensifier et qu'il y a toujours plus de pays impliqués dans la coopération en matière pénale, nous aimerions confirmer nos expériences très positives avec Eurojust. Cette institution a une fonction très importante en la coordination de la coopération internationale, notamment avec des pays qui ont seulement récemment commencé à participer dans cette coopération. Eurojust fournit un soutien très important aussi dans le contexte d'échange de bonnes pratiques entre les diffférents pays européens ainsi qu'en identifiant des questions de droit et des cas qui sont d'un interêt particulier avec plusieurs pays europèens.

3. Veuillez communiquer les suggestions émanant des procureurs et d'autres instances judiciaires de votre pays, relatives aux mesures qui pourraient être prises pour améliorer la coopération entre les procureurs des Etats membres du Conseil de l'Europe, y compris des propositions d'amélioration de traités européens pertinents.

Réponse :

Du point de vue du Ministère Public de la Confédération, nous sommes de l'opinion que, vu les différence entre législations et entre niveaux d'expérience dans les différents pays européens d'un côté et la vitesse accelerée de la lutte transfrontalière contre la criminalité grave, un échange efficace d'expériences et des contacts directs et coordonnés sont plus importants que jamais. Dans ce contexte, Eurojust peut avoir une fonction très importante.

4. Autres observations.

Réponse :aucunes.

Luxembourg

Réponses du Grand-Duché de Luxembourg au questionnaire sur l'amélioration de la coopération internationale dans le domaine pénal.

Question 1.

Il est indéniable que depuis le début des années 1990 des progrès considérables ont été accomplis en matière de coopération judiciaire. Le fait est cependant que la coopération se déroule de manière bien plus simple avec certains pays qu'avec d'autres. Il y a des pays - même au sein de l'Union Européenne – par rapport auxquels des magistrats parfois hésitent émettre une commission rogatoire, les chances d'obtenir une réponse en retour dans un délai approprié étant réduites.

Ce n'est d'ailleurs pas contrairement à ce que l'on pourrait croire que la gravité ou la complexité de l'affaire soient l'obstacle le plus important étant donné que plus une affaire est grave, moins les pays requis visés sont réticents dans l'exécution d'une commission rogatoire. Il est vrai que dans ces affaires les pays requérants exercent une certaine pression pour l'exécution de la commission rogatoire. C'est ainsi que toutes les possibilités d'entrer en contact avec les autorités requises sont mises en œuvre et ceci tant au niveau policier qu'au niveau judiciaire.

En général on peut dire que ce qui pose des problèmes réels résulte

a) du fait que les magistrats nationaux ont une tendance, au demeurant compréhensible, de traiter prioritairement leurs dossiers nationaux, surtout s'ils sont surchargés d'affaires nationales importantes, où il y a par exemple des personnes en détention préventive. Il est vrai, d'après l'article 8 de la loi luxembourgeoise sur l'entraide judiciaire les affaires de commission rogatoire internationale sont à considérer comme affaires urgentes.

b) de ce que certaines demandes d'entraide sont mal rédigées ou traduites par les requérants. Il s'entend que cette difficulté se présente bien plus rarement lorsque les magistrats du pays requérant ont l'habitude de procéder par commission rogatoire.

c) d'une certaine méconnaissance du système juridique du pays requis ce qui est parfois également un élément qui rend plus difficile l'exécution d'une commission rogatoire internationale. Par ailleurs la multitude des traités et conventions portant parfois sur le même sujet est une source de difficultés réelle, étant donné qu'il arrive que ces conventions diffèrent parfois sur des points non négligeables. Ceci est évidemment d'autant plus le cas lorsqu'on ne sait pas si différents pays ont émis des réserves ou non. Il est vrai, que cette difficulté est amoindrie au niveau des connaissances des magistrats eu égard à la consultation des textes par voie électronique ou encore l'amélioration sensible des contacts directs et l'institution de points de contacts.

Le fait cependant que de nombreux textes permettent de faire des réserves, sont transposés de manière différente dans des textes nationaux et le retard mis pour la ratification et la transposition de différentes textes est une difficulté bien réelle qui fait d'ailleurs qu'on est loin de pouvoir parler d'un espace judiciaire européen réel.

Question 2.

Ainsi qu'il a été indiqué ci-avant, la collaboration avec des instances judiciaires étrangères est d'autant plus satisfaisante qu'on est en contact régulier avec celles-ci. En général, et c'est le plus important, on constate depuis une quinzaine d'années une sorte de décrispation dans tout ce qui touche aux commissions rogatoires internationales. Il y a plusieurs raisons à cela dont la première est que tous les magistrats ont saisi que toute affaire, tant soit peu importante de

criminalité organisée, sous quelque forme que ce soit, ne se limite plus aux frontières de son pays. Une deuxième raison est certainement qu'au fil des temps il y a eu dans différents pays une meilleure structuration et spécialisation dans tout ce qui touche aux commissions rogatoires ce qui entraîne une bien meilleure qualité dans le traitement de ces affaires.

Le contact direct entre magistrats s'est très notablement amélioré. Au sein de l'Union Européenne le réseau judiciaire des magistrats qui permet des contactes directs et informels entre magistrats nationaux est d'une grande utilité. Il s'entend également que dans les affaires plus importantes où la collaboration des instances judiciaires de plusieurs Etats s'impose, la concertation au sein d'EUROJUST est des plus utile.

Ad question 3.

La réponse à fournir à cette question se dégage largement de celle fournie aux questions 1 et 2.

Il y a notamment lieu de rappeler que seraient d'une utilité pratique réelle.

- L'accélération de la ratification des conventions ayant trait à la coopération internationale.

- Une plus grande limitation des possibilités de réserves dans l'application des instruments internationaux. C'est ainsi qu'au niveau du Mandat d'Arrêt Européen on constate des divergences entre les différents pays parties à la décisions-cadre.

1) à l'application du principe de spécialité

2) aux réserves concernant la remise des ressortissants d'un pays

3) à la date à laquelle les faits doivent avoir été commis.

Ad point 4.

Dans la pratique, se pose parfois la question de la délimitation entre la coopération policière et la coopération judiciaire.

Une autre question qui est à examiner de plus près est de savoir s'il n'y a pas lieu de mettre en place, une instance habilitée à donner une interprétation uniforme des différents instruments juridiques afin de garantir une application homogène des différents textes.

Le Procureur d'Etat,

Robert BIEVER

Norway

Generally, our impression is that the international co-operation in Europe has improved vastly over the last years. In our experience, the inevitable exceptions to this are not found in specific types of cases or letters of request. When we do encounter problems, it seems to us that this most often is due to the “human factor”, i.e. the competence and willingness of the individual prosecutors and police officers handling the requests.

In general, the co-operation seems to run more smoothly in Europe than in many countries outside Europe. However, there are obvious differences also within Europe. It is our experience that the co-operation works best when the case is handled by Eurojust or the European Judicial Network (EJN). In such cases, the information exchange runs smoothly between the involved countries, and unnecessary duplication of investigation is avoided. Moreover, coordination by Eurojust is a great advantage in the increasing number of cases that need to be investigated simultaneously in several countries. This experience leads us to believe that further development of the cooperation between the prosecution services in Europe should draw as heavily as possible on Eurojust and the EJN and their experience. Rather that trying to duplicate Eurojust and/or the EJN, those organisations should be encouraged to extend their cooperation with “third states”, by entering into operational agreements, establishing contact points etc.

The CCPE should also call upon the Directors of Public Prosecutions (DPPs) to urge the prosecutors of their countries to handle requests of legal assistance speedily and thoroughly. The CCPE could also play a role in assisting the prosecution services in Europe by developing teaching material, training packages etc. for handling letters of requests. There is an obvious need to improve the general knowledge of how legal assistance can be obtained abroad and how a request for assistance should be handled domestically. Quite frequently, we see imprecise and unclear letters of requests (both from our own prosecutors and from abroad).

Finally, we would like to draw your attention to a problem most prosecution services face in their daily work with letters of request: The translation of requests and the necessary documents is very costly and time-consuming. If the CCPE could take an initiative in order to make all European countries accept requests in English, it would be highly appreciated. This would be a very important step forward in the practical work with assistance across the borders.

Tor-Aksel Busch

Anne Grøstad
Public Prosecutor