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*This information sheet has been prepared by the Cybercrime Programme Office (C-PROC) of the Council of Europe in view of facilitating international cooperation. It does not necessarily reflect official positions of the State covered or of the Council of Europe.*

## 1. Categories of Data (subscriber information, traffic data, content data)

### 1.1. Definitions under national legislation

<b>Subscriber Information</b>	<p>The UK has a number of laws which define electronic communications so there is not one standard definition for these terms. The most comprehensive definitions are in section 261 of the Investigatory Powers Act 2016 (IPA) so those are the ones we will use here.</p> <p>Section 261 of the IPA uses the term “communications data” which is defined as follows:</p> <p><i>“Communications data”, in relation to a telecommunications operator, telecommunications service or telecommunication system, means entity data or events data—</i></p> <p><i>(a) which is (or is to be or is capable of being) held or obtained by, or on behalf of, a telecommunications operator and—</i></p> <p><i>(i) is about an entity to which a telecommunications service is provided and relates to the provision of the service,</i></p> <p><i>(ii) is comprised in, included as part of, attached to or logically associated with a communication (whether by the sender or otherwise) for the purposes of a telecommunication system by means of which the communication is being or may be transmitted, or</i></p> <p><i>(iii) does not fall within sub-paragraph (i) or (ii) but does relate to the use of a telecommunications service or a telecommunication system,</i></p> <p><i>(b) which is available directly from a telecommunication system and falls within sub-paragraph (ii) of paragraph (a), or</i></p> <p><i>(c) which—</i></p> <p><i>(i) is (or is to be or is capable of being) held or obtained by, or on behalf of, a telecommunications operator,</i></p> <p><i>(ii) is about the architecture of a telecommunication system, and</i></p> <p><i>(iii) is not about a specific person,</i></p> <p><i>but does not include any content of a communication or anything which, in the absence of subsection (6)(b), would be content of a communication.</i></p>
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	<p>“Entity data” includes subscriber information.</p> <p>Entity data is about entities or links between them and describes or identifies the entity but does not include information about individual events. Entities could be individuals, groups and objects (such as mobile phones or other communications devices);</p> <p>The IPA does not use the term “subscriber information” but talks of “identifying data” as follows:</p> <p>(2) In this Act “identifying data” means—</p> <ul style="list-style-type: none"> <li>(a) data which may be used to identify, or assist in identifying, any person, apparatus, system or service,</li> <li>(b) data which may be used to identify, or assist in identifying, any event, or</li> <li>(c) data which may be used to identify, or assist in identifying, the location of any person, event or thing.</li> </ul> <p>(3) For the purposes of subsection (2), the reference to data which may be used to identify, or assist in identifying, any event includes—</p> <ul style="list-style-type: none"> <li>(a) data relating to the fact of the event;</li> <li>(b) data relating to the type, method or pattern of event;</li> <li>(c) data relating to the time or duration of the event.</li> </ul>
<p><b>Traffic Data</b></p>	<p>In relation to the above, “events data” includes traffic data.</p> <p>Section 261(4) defines events data to mean “any data which identifies or describes events in relation to a telecommunication system which consist of one or more entities engaging in an activity at a specific point, or points, in time.”</p>
<p><b>Content Data</b></p>	<p>Section 261 of the IPA defines content data:</p> <p><i>“Content”, in relation to a communication and a telecommunications operator, telecommunications service or telecommunication system, means any element of the communication, or any data attached to or logically associated with the communication, which reveals anything of what might reasonably be considered to be the meaning (if any) of the communication, but—</i></p> <ul style="list-style-type: none"> <li><i>(a) any meaning arising from the fact of the communication or from any data relating to the transmission of the communication is to be disregarded, and</i></li> <li><i>(b) anything which is systems data is not content.</i></li> </ul>

UK law does not distinguish, for the purposes of MLA requests between the different kinds of cyber data.

## 2. Procedures for preservation requests of stored computer data

### 2.1 Expedited preservation of stored computer data (Art. 29)

#### General remarks

Currently preservation requests may be executed if a UK Communications Service Provider (CSP)/Digital Service Provider (DSP)/Internet Service Provider (ISP) voluntarily complies with a Law Enforcement Agency request. UK CSP/DSP/ISPs normally comply with such requests but it is not guaranteed.

Preservation requests must be addressed to the 24/7 contact point. The UKs designated 24/7 contact point is the National Cyber Crime Unit, National Crime Agency. Preservation of data requests are accepted by e-mail. Out of normal business hours urgent requests need to be notified to the on-call team by telephoning.

#### Procedures in place (preservation requests)

Step 1: Recording of the request and assigning case number by 24/7 contact point

Step 2: Confirmation of receipt by e-mail delivery/opening report (if requested by sender)

Step 3: Confirmation of technical details listed in the request and corresponding lawful basis (based from criminality).

Step 4: Relevant CSP/DSP/ISP is approached and requested to preserve data.

Step 5: If CSP/DSP/ISP confirms data preservation, requesting authority will be notified accordingly and requested to use the case number when requesting the data via MLA or European Investigation Order.

Step 6: If preservation is not available due to CSP/DSP/ISP reluctance requesting country contacted with options presented based on crime type and severity. 24/7 contact point may utilise local legislation to obtain data (Section 60A of the Investigatory Powers Act 2016)

All preservation requests where possible are dealt with within 24 hours, urgent requests are prioritised and actioned as required.

## 2.2 Expedited disclosure for stored traffic data (Art. 30)

### General remarks

Preservation of this data is the first priority. The disclosure of this data is then decided upon based on need against the available legal mechanisms such as MLA or EIO.

### Procedures in place

- Step 1: Recording of the request and assigning case number by 24/7 contact point
- Step 2: Confirmation of receipt by e-mail delivery/opening report (if requested by sender)
- Step 3: Confirmation of technical details listed in the request and corresponding lawful basis (based from criminality).
- Step 4: Relevant CSP/DSP/ISP is approached and requested to preserve data.
- Step 5: If CSP/DSP/ISP confirms data preservation, requesting authority will be notified accordingly and requested to use the case number when requesting the data via MLA.
- Step 6: If preservation is not available due to CSP/DSP/ISP reluctance requesting country contacted with options presented based on crime type and severity. 24/7 contact point may utilise local legislation to obtain data (Section 60A(4)(c) of the Investigatory Powers Act 2016)
- Step 7: Requesting authority will be contacted and disclosure via an agreed legal mechanism

*All requests where possible are dealt with within 24 hours, urgent requests are prioritised and actioned as required.*

## 3. Procedures for mutual legal assistance

### 3.1 Requests for stored computer data: subscriber, traffic, content data (Art. 31)

#### General remarks

As mentioned above, UK law does not distinguish, for the purposes of MLA requests between the different kinds of cyber data.

The UK legislation that underpins the processing of Mutual Legal Assistance (MLA) requests in the UK is the Crime (International Co-operation Act) 2003, notably for Article 31(1) - Article 14 Powers to arrange for evidence to be obtained and for Article 31 (1-2) Article 19 Seized evidence. This can be found here:

<https://www.legislation.gov.uk/ukpga/2003/32/contents>

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For EU states (excluding Denmark and Ireland) the European Investigation Order is used. The domestic legislation which underpins use of the EIO is the Criminal Justice (European Investigation Order) Regulations 2017 here:

<https://www.legislation.gov.uk/uksi/2017/730/contents/made>

MLA Guidance on the making of requests can be found here:

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/415038/MLA\\_Guidelines\\_2015.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/415038/MLA_Guidelines_2015.pdf)



Go to [Subscriber information](#) | [Traffic Data](#) | [Content Data](#)

## ► Requests

### General remarks

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The UK does not have different contact points for the different kinds of data. The information below applies to all MLA requests made to the UK.

### Competent Authorities

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The legal competence to begin and direct criminal investigations and obtain evidence belongs to the police and other specified law enforcement agencies.

Requests for evidence from abroad may be made to the UK by a judicial authority or a designated prosecuting authority, e.g. the Crown Prosecution Service. The UK does not require requests to come via diplomatic channels.

Central authorities are content to receive requests directly. *However, the requesting authority will need to comply with its own domestic laws relating to the transmission of requests.*

### Relevant contact points

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Requests for MLA must be sent to the relevant central authority. The United Kingdom has three central authorities. Each central authority deals with different types of requests as follows.:

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***For England, Wales and Northern Ireland*** the relevant authority (with the exception of criminal matters related to tax and fiscal customs – see below) is:

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**UK Central Authority Home Office**

Email: [UKCA-ILOR@homeoffice.gsi.gov.uk](mailto:UKCA-ILOR@homeoffice.gsi.gov.uk)

Email for specific policy queries: [mlapolicy@homeoffice.gsi.gov.uk](mailto:mlapolicy@homeoffice.gsi.gov.uk)

Tel: +44 20 7035 4040

Fax: +44 20 7035 6985

*Or if not possible by email:*

UKCA

Home Office

2nd Floor Peel Building

2 Marsham Street

London SW1P 4DF

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***For MLA requests seeking assistance only from Scotland*** the relevant authority is:

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**The Crown Office**

Email: [coicu@copfs.gsi.gov.uk](mailto:coicu@copfs.gsi.gov.uk).

Tel: +44 131 243 8152

Fax: +44 131 243 8153

International Co-operation Unit

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Crown Office

25 Chambers Street

Edinburgh EH1 1LA.

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***For MLA requests relating to tax and fiscal customs matters in England, Wales and Northern Ireland*** the relevant authority is:

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**HM Revenue and Customs**

Email: [mla@hmrc.gsi.gov.uk](mailto:mla@hmrc.gsi.gov.uk)

Fax: +44 3000 589792

Criminal Law Advisory Team

HM Revenue and Customs Solicitor's Office

First Floor Bush House SW Wing

The Strand

London WC2B 4RD

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**TO BE AWARE:** The Crown Dependencies (Bailiwicks' of Guernsey and Jersey, and the Isle of Man), and the UK Overseas Territories (Anguilla, Bermuda, British Virgin Islands, Cayman Islands, Falklands, Gibraltar, Montserrat, St Helena, Turks and Caicos Islands, and Pitcairn) are not part of the UK. The Crown Dependencies and the Overseas Territories are wholly responsible for executing requests within their own jurisdictions.

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## Prior consultations

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MLA is generally used for obtaining material that cannot be obtained on a law enforcement (police to police) to basis, particularly enquiries that require coercive means. Prior consultation is **highly recommended** before sending a formal MLA request.

Police and other law enforcement officers in a requesting state may ask for the assistance of law enforcement agencies in the UK to gather information for an investigation. This can be an easier and quicker way to obtain intelligence and evidence, as it does not require a formal MLA request/EIO.

In many countries' legal systems, information collected by UK law enforcement agencies is directly admissible as evidence in criminal trials abroad (*with the permission of UK law enforcement*). For example, countries which do not require evidence to be sworn by witnesses in a court under their domestic law can consider using law enforcement cooperation to request information to be used as evidence.

If direct contact between a foreign police force and a UK police force has not already been established, the National Crime Agency (NCA) should be contacted with the request. The NCA acts as the UK Interpol gateway for all incoming and outgoing police enquiries. The NCA will forward requests through the Interpol network to the relevant police force or other law enforcement agency who will then execute the request, subject to any data sharing agreement.

The following UK law enforcement agencies can receive enquiries directly from law enforcement officers in foreign jurisdictions (*in some cases this will be subject to a data sharing agreement or memorandum of understanding*):

- UK Liaison Bureau at Europol via the NCA
- Interpol via NCA
- UK Visas & Immigration
- HMRC
- Police Services
- Financial Intelligence Units
- Asset Recovery Offices.

## Accepted legal basis / mechanisms

### For MLA requests

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The UK can provide MLA to any country or territory in the world, whether or not that country is able to assist the UK, and whether or not there is a bilateral or multilateral agreement. However, where an agreement imposes specific conditions or procedures, the UK expects these to be adhered to.

The legal instruments/mechanisms listed below are applicable to mutual legal assistance requests as legal basis:



- Convention on Cybercrime (“Budapest Convention”)
- European Convention on Mutual Assistance in Criminal Matters and Additional Protocols
- Relevant bilateral treaties
- 1959 Convention on Mutual Assistance in Criminal Matters and Additional Protocols
- 2011 Commonwealth Scheme for Mutual Assistance (“Harare Scheme”)

#### Domestic legislation

- The Crime International Cooperation Act 2003
- Investigatory Powers Act 2016 (for entity data which includes subscriber data, events data which includes traffic data, interception of content data, collection of real time traffic (data (i.e defined in the UK in events data)
- Police and Evidence (PACE) Act 1984 (stored content data sought via an order under PACE)

*To note in regards **reciprocity**:* The UK does not generally require reciprocity but would expect assistance from countries which are parties to relevant bilateral or international agreements with the UK. The UK would also expect reciprocity from countries to which we give assistance without a treaty or an international agreement. Reciprocity is required in all requests for assistance in tax matters.

## For European Investigation Orders

The legal instruments/mechanisms listed below are applicable to requests via the European Investigation Order as legal basis:

- Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters

#### Domestic legislation

- Criminal Justice (European Investigation Order) Regulations 2017

## Content of the request

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- Details of the authority making the request, including the name, telephone number and email address (where available) of a contact person
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- Purpose for which assistance is sought
  - The type of assistance requested and any additional information that is required for requests for this type of assistance (see Section 3 of the MLA guidelines)
  - A description of the offences charged or under investigation and sentence or penalty
  - A copy of the legislation that criminalises the conduct in the requesting country and gives information on the offence, penalty and rights a person may be afforded
  - A summary of the facts giving rise to the request and connection to the UK
  - Details of the person or persons (including legal persons) named in the request including, where available, address/location, date of birth and nationality (if confidential this can be sent separately to the request)
  - Whether the person(s) named in the request are witnesses, suspects or victims

- Whether the evidence requested is exculpatory
- The connection between the evidence requested and the offence under investigation or proceedings. A clear nexus must be established. This goes further than just stating that the requested material is relevant to the case
- Relevant dates e.g. date of court hearing (reason for special urgency or attention should be included in the covering letter of request)
- Details, including the telephone number and e-mail address if available, of any UK law enforcement agency or officers who are familiar with the investigation (including, if relevant, the names of UK based operations which the requesting authority is aware of)
- If applicable, the title of the relevant convention or bilateral treaty under which the request is being made (please see this link for conventions and treaties the UK is party to)
- If applicable, details of any media attention, sensitivities or reasons for high profile interest in the case
- If the death sentence is a possible sentence or penalty for the offence under investigation, an assurance that such a sentence will not be carried out or will be commuted
- If applicable, the reference numbers of any linked requests.

Please see our MLA guidance for examples of request templates in section 3.1 above under general remarks.

*For European Investigation Orders* please complete Annex A to the European Investigation Orders Directive

*Failure to provide the fullest information possible may result in delays or in a request not being executed in whole or in part.*

***To note relating to the format of the request:***

- Requests must always be made in writing. A request should be sent electronically (e.g. in a 'pdf' format via email), though an original hardcopy may be requested
- Headed notepaper of the issuing authority must be used
- For requests not made in the English language; one signed version of the non-English request and one translation of the request into English
- The original request must be signed by the issuing authority.

## **Applicable legal requirements**

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As mentioned before, it is ***highly recommended*** that prior consultation be made before sending a formal MLA request to the UK.

*The Investigatory Powers Act (IPA) 2016* sets out various safeguards and requirements that must be satisfied before the powers in that Act (e.g. interception, acquisition of communications data, equipment interference, etc) can be used. These requirements generally require investigatory powers to be authorised by the Secretary of State in the case of interception, by the Investigatory Powers

Commissioner in the case of communications data, and by the chief constable in the case of equipment interference conducted by a police force. Different provisions apply where the subject of interest is known or believed to be outside the UK.

*The Police and Criminal Evidence (PACE) Act 1984* sets out various safeguards and requirements that must be satisfied before the powers in that Act (e.g acquisition of stored content data) via a Production Order can be used.

An example is in reference to section 9/Schedule 1 to PACE and how it applies to special procedure material.

- ▶ It allows police to apply to a circuit judge for a Production Order to obtain data that is held in confidence by an innocent third party bank and which comprises records of transactions for an account managed and operated by an individual suspected of fraud offences and the data to which the Order relates is relevant evidence of the offence(s) in question
- ▶ It includes procedural safeguards to ensure that the judge hearing the application must be satisfied that that the Order is necessary and justified.

The following gives an indication of provisions for acquisition of data types:

*Live content of messages* can be obtained under interception powers in the IPA, but also under other powers. The various types of lawful authority for obtaining content is described in section 6 of the IPA.

*Non-live content* can be obtained under equipment interference provisions in the IPA (Part 5) as well as via other powers, including the PACE.

*Communications Data including entity and events data* can be obtained under interception and equipment interference powers in the IPA as well as, mainly, under Part 3 of the IPA.

***To note requests under Mutual Legal Assistance can only relate to premises or people outside of the UK. Investigatory Powers Act 2016 section 40 – special rules for certain mutual legal assistance warrants.***

## Confidentiality requirements

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It is usual policy for Central or Executing Authorities to neither confirm nor deny the existence of an MLA request, nor disclose any of its content outside government departments, agencies, the courts or enforcement agencies in the UK without the consent of the requesting authority, except where disclosure is necessary to obtain the co-operation of the witness or other person concerned.

Where public statements are made by an overseas authority about the assistance it is requesting from the UK, the central authority should be notified so that they may respond appropriately to any media or public enquiries.

In general, requests are not shown or copied to any witness or other person, nor is any witness informed of the identity of any other witness.

In the event that confidentiality requirements make execution of a request difficult or impossible, the central authority will consult the requesting authorities. In cases where disclosure of a request or part of a request is required by UK domestic law in order to execute the request, it will normally be the case that the requesting authority will be given the opportunity to withdraw the request before disclosure to third parties is made.

From time to time the Home Office releases statistical data on the number of MLA requests sent and received. Such data is only released where to do so would not breach the confidentiality of any individual request.

## Urgent requests

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The process for making an urgent MLA requests will be set out in the relevant treaty and we will endeavour to expedite the request as appropriate.

## Translation

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All requests should be in English. If an English translation is not provided, is incomplete, or is not carried out to a high professional standard, the request will be sent back to the requesting authority.

## Limitations

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**COLLATERAL USE** - where a requesting authority wishes to use evidence obtained from the UK for a different purpose to that stated in the original MLA request, or to share the evidence with a third country, **a formal request to do so must be made in writing by the original requesting state to the relevant Central Authority in the UK** (unless otherwise stated in a relevant treaty). The additional request must contain the following information:

- The central authority's reference number for the original request
- What evidence is to be used/shared;
- How this evidence will be used/shared
- Why this evidence is needed in this new/other investigation / court proceedings.

**DE MNIMIS** - UK executing authorities have limited public resources available, and de minimis (trivial or disproportionate) MLA requests may be refused by the Home Office on these grounds if they meet the criteria (or comparable criteria) set out below.

- There has been a financial loss or gain or damage of less than £1,000; or
- The alleged offence was committed more than 10 years ago (and there is no, or insufficient, explanation for the delay in investigation or prosecution).

When considering the criteria the following factors are also taken into account:

- Whether there are any aggravating factors;
- Whether a UK prosecuting authority would send a request in similar circumstances;
- Whether the request is for a 'coercive' measure;
- Whether there are resource implications for a number of executing authorities. Please note that Scotland and HMRC do not apply a de minimis policy.

## ▶ Requests for Traffic Data

### **General remarks**

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See above.

### **Competent Authorities**

### **Relevant contact points**

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### **Prior consultations**

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### **Accepted legal basis / mechanisms for MLA requests**

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### **Content of the request**

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### **Applicable legal requirements**

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### **Confidentiality requirements**

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### **Urgent requests**

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### **Translation**

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### **Limitations**

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▶ Requests for Content Data

**General remarks**

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See above

**Competent Authorities**

**Relevant contact points**

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**Prior consultations**

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**Accepted legal basis / mechanisms for MLA requests**

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**Content of the request**

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**Applicable legal requirements**

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**Confidentiality requirements**

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**Urgent requests**

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**Translation**

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**Limitations**

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3.2 Requests for real time collection of traffic data (Art. 33)

**General remarks**

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See above

## **Competent Authorities**

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## **Relevant contact points**

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## **Prior consultations**

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## **Accepted legal basis / mechanisms for MLA requests**

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## **Content of the request**

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## **Applicable legal requirements**

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## **Confidentiality requirements**

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## **Urgent requests**

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## **Translation**

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## **Limitations**

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### 3.3 Requests for interception of content data (Art. 34)

## **General remarks**

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See above

## **Competent Authorities**

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## **Relevant contact points**

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## **Prior consultations**

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**Accepted legal basis / mechanisms for MLA requests**

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**Content of the request**

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**Applicable legal requirements**

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**Confidentiality requirements**

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**Urgent requests**

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**Translation**

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**Limitations**

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