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**EUROPEAN COMMITTEE ON CRIME PROBLEMS (CDPC) /**  
**COMITÉ EUROPÉEN POUR LES PROBLÈMES CRIMINELS (CDPC)**

**COMMITTEE OF EXPERTS ON THE OPERATION OF EUROPEAN CONVENTIONS**  
**ON CO-OPERATION IN CRIMINAL MATTERS (PC-OC) /**  
**COMITÉ D'EXPERTS SUR LE FONCTIONNEMENT DES CONVENTIONS EUROPÉENNES**  
**SUR LA COOPÉRATION EN MATIÈRE PÉNALE (PC-OC)**

**COMPILATION OF REPLIES TO THE QUESTIONNAIRE: CONFIDENTIALITY IN THE CONTEXT OF  
THE MLA PROCESS /**

**COMPILATION DES REPONSES AU QUESTIONNAIRE : LA CONFIDENTIALITE DANS LE CADRE  
DU PROCESSUS D'ENTRAIDE**

*Document prepared by the Secretariat*  
*Document préparé par le Secrétariat*

Article 25 (confidentiality) of the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters states as follows:

*“The requesting Party may require that the requested Party keep confidential the fact and substance of the request, except to the extent necessary to execute the request. If the requested Party cannot comply with the requirement of confidentiality, it shall promptly inform the requesting Party states.”*

This questionnaire seeks to assess how states party to the 1959 European Convention on Mutual Assistance in Criminal Matters (“1959 MLA Convention”) implement this provision relating to confidentiality, informed by their domestic law. Responses will assist all States Parties, in their role as requesting states, to build an understanding of how incoming MLA requests are managed by requested States Parties. It also seeks to help operational agencies in determining what information is needed in an MLA request to ensure it can progress and be dealt with effectively and swiftly while complying with confidentiality provisions in the requested State.

**Questions:**

*Requirements/process relating to the subject of the MLA request*

1. If no specific confidentiality requirement is set out by the requesting State in an incoming MLA request, is there a legal obligation in your State to allow access to the file of the subject of the request (e.g. the MLA request and/or the evidence to be shared) at any time following your receipt of the request if the subject of the MLA request or another party to the proceedings asks to see this information?
2. Where a domestic court order is required to action a measure requested via MLA, is there a requirement under your domestic legislative framework to disclose the proceedings to the subject of the MLA request to authorise the measure?
3. If yes to either question 1 or question 2 or both, at what stage of your state’s MLA process is any access granted to the subject of the request or another party to the proceedings? Is there a mechanism to postpone access being granted, or the ability for the requesting state to negotiate a postponement (for example in order not to prejudice the investigation whilst it is ongoing)?
4. Does your state apply different confidentiality requirements to MLA requests dependent upon the type of request(s) made (e.g. for searches/seizure, banking information or publicly available information)?
5. What governs how confidentiality applies to an MLA request (e.g. constitution, domestic legislation, operational policy, judicial precedent, other)?
6. Is there any publicly available information or guidance setting out how your state’s confidentiality provisions are applied to MLA requests from states party to the 1959 MLA Convention? (This could include national guidance to foreign authorities on the operation of the respective States’ MLA process.)

*Requirements relating to third-party requests*

Should a third party enquire about an MLA request (e.g. journalist, legal counsel representing anyone other than the subject of the request, a pressure group, member of the public) how would you respond to this request?

\* \* \* \* \*

L'article 25 (confidentialité) du deuxième Protocole additionnel à la Convention européenne d'entraide judiciaire en matière pénale stipule ce qui suit :

*« La partie requérante peut demander à la Partie requise de veiller à ce que la requête et son contenu restent confidentiels, sauf dans la mesure où cela n'est pas compatible avec l'exécution de la requête. Si la Partie requise ne peut pas se conformer aux impératifs de la confidentialité, elle en informe sans tarder la Partie requérante. »*

Ce questionnaire vise à évaluer la manière dont les États parties à la Convention européenne d'entraide judiciaire en matière pénale de 1959 (« Convention d'entraide de 1959 ») mettent en œuvre cette disposition relative à la confidentialité, à la lumière de leur droit interne. Les réponses aideront tous les États parties, en tant qu'États requérants, à comprendre comment les États parties requis gèrent les demandes d'entraide judiciaire qui leur parviennent. Elles visent également à aider les agences opérationnelles à déterminer quelles informations sont nécessaires dans une demande d'entraide pour qu'elle puisse avancer et être traitée efficacement et rapidement tout en respectant les dispositions de l'État requis en matière de confidentialité.

### **Questions :**

#### *Exigences/processus relatifs à la personne faisant l'objet de la demande d'entraide*

7. Si l'État requérant n'a formulé aucune demande de confidentialité spécifique dans une demande d'entraide reçue, existe-t-il dans votre État une obligation légale d'autoriser l'accès au dossier de la personne faisant l'objet de la demande (par exemple, à la demande d'entraide et/ou aux éléments de preuve à partager) à tout moment après la réception de la demande si la personne faisant l'objet de la demande d'entraide ou une autre partie à la procédure demande à voir ces informations ?
8. Lorsqu'une décision judiciaire nationale est nécessaire pour mettre en œuvre une mesure demandée par le biais de l'entraide, votre cadre législatif national prévoit-il l'obligation de divulguer la procédure à la personne faisant l'objet de la demande d'entraide afin d'autoriser la mesure ?
9. Si vous avez répondu par l'affirmative à la question 1, à la question 2 ou aux deux, à quel stade de la procédure d'entraide l'accès est-il accordé à la personne faisant l'objet de la demande ou à une autre partie à la procédure dans votre État ? Existe-t-il un mécanisme permettant de retarder l'octroi de l'accès ou la possibilité pour l'État requérant de négocier un report (par exemple pour ne pas nuire à l'enquête en cours) ?
10. Votre État applique-t-il des exigences de confidentialité différentes aux demandes d'entraide en fonction du type de demande (par exemple, pour des perquisitions/saisies, des informations bancaires ou des informations accessibles au public) ?
11. Qu'est-ce qui régit l'application de la confidentialité à une demande d'entraide (par exemple, la constitution, la législation nationale, la politique opérationnelle, la jurisprudence, etc.) ?
12. Existe-t-il des informations ou des orientations accessibles au public expliquant comment les dispositions de votre État en matière de confidentialité sont appliquées aux demandes d'entraide émanant d'États parties à la Convention de 1959 sur l'entraide ? (Il peut s'agir d'orientations nationales à l'intention des autorités étrangères sur le fonctionnement de la procédure d'entraide de l'État concerné).

#### *Exigences relatives aux demandes de tiers*

Si un tiers s'enquiert d'une demande d'entraide (par exemple, un journaliste, un conseiller juridique représentant une personne autre que celle faisant l'objet de la demande, un groupe de pression, un membre du public), comment répondriez-vous à cette demande ?

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## **ANDORRA / ANDORRE**

1. If no specific confidentiality requirement is set out by the requesting State in an incoming MLA request, is there a legal obligation in your State to allow access to the file of the subject of the request (e.g. the MLA request and/or the evidence to be shared) at any time following your receipt of the request if the subject of the MLA request or another party to the proceedings asks to see this information?

The parties have the right to access the information of the letters rogatory under articles 40 and 46 of the Andorran Criminal Procedure Code (CPC):

Regarding the above, article 40 of the Andorran CPC establishes that the Judge may decide by reasoned order the total or partial secrecy of the preliminary proceedings initiated, up to a maximum duration of one month in the case of minor crimes and three months in the case of major crimes. Collection of evidence that may affect the integrity

or privacy of persons requires a prior reasoned judicial order and compliance with the legal requirements established by this Code for the investigation phase. Likewise, article 46 of the Andorran CPC specifies that the parties who have appeared may intervene, at the discretion of the investigating judge, if they so request, in all proceedings of the summary procedure or in the preliminary proceedings. They may also have knowledge of the proceedings and may obtain a copy at their own expense, unless the secrecy of the proceedings has been decided.

Even with secrecy, it cannot be temporally unlimited so the parties will be able to access to the information eventually if the request it.

2. Where a domestic court order is required to action a measure requested via MLA, is there a requirement under your domestic legislative framework to disclose the proceedings to the subject of the MLA request to authorise the measure?

There is no specific requirement.

3. If yes to either question 1 or question 2 or both, at what stage of your state's MLA process is any access granted to the subject of the request or another party to the proceedings? Is there a mechanism to postpone access being granted, or the ability for the requesting state to negotiate a postponement (for example in order not to prejudice the investigation whilst it is ongoing)?

From the moment the request for judicial assistance is received and, in the event, that the confidentiality of the procedure has not been requested, the interested party may have access to the information and documentation provided by the requesting State, if requested.

There is a possibility to temporarily order the secrecy of the proceeding for a maximum term of 6 + 6 months (depending of the kind of procedure and the type of crimes).

There is no legal mechanism in our system that provides the possibility of adjourning or postponing this matter, since the way to avoid harming the ongoing investigation is to request the secrecy of the proceedings, measure that must be decided by reasoned order from the judge.

4. Does your state apply different confidentiality requirements to MLA requests dependent upon the type of request(s) made (e.g. for searches/seizure, banking information or publicly available information)?

No, it does not. The same legal secrecy regime applies to all kind of MLA requests (depending on the kind of procedure and the type of crime under investigation).

5. What governs how confidentiality applies to an MLA request (e.g. constitution, domestic legislation, operational policy, judicial precedent, other)?

In cases of confidentiality requests in relation to an MLA request, domestic legislation applies, specifically Law 32/2021 of November 22, on the consolidated text of international judicial cooperation in criminal matters, as well as the Qualified Law amending the Andorran Code of

## Criminal Procedure, of December 10, 1998.

6. Is there any publicly available information or guidance setting out how your state's confidentiality provisions are applied to MLA requests from states party to the 1959 MLA Convention? (This could include national guidance to foreign authorities on the operation of the respective States' MLA process.)

No, there is not.

### Requirements relating to third-party requests

1. Should a third party enquire about an MLA request (e.g. journalist, legal counsel representing anyone other than the subject of the request, a pressure group, member of the public) how would you respond to this request.

Third parties are not allowed to obtain any kind of information from judicial authorities concerning MLA request, regardless the power of the judicial inspection service (SIAJ; i.e., an internal service of the judicial administration) in the exercise of this duties and the general statistical information that could be provided in the context of annual reports of other general information documents.

## **ARMENIA / ARMENIE**

*For para 1.* The issue is that there is no a precise clause on confidentiality requirement set out in Armenian domestic legislation on the MLARs. Taking into consideration the Art. 25 of the 2AP to the CoE Convention on MA in CM, we rely on principle (precondition) of "Inadmissibility of publication of investigation data" which is within the general terms of the pre-trial proceedings according to our Criminal Procedural Code.

Mainly, the publication of pre-trial investigation data is prohibited if it may block the normal course of pre-trial proceedings; become a reason for commission of a crime; endanger the rights or legitimate interests of the participants in the proceedings or other persons; lead to the publication of a secret protected by law.

From entire requirement of law, which ensures the right of the accused to be immediately informed (in his/her language) about the factual circumstances and legal evaluation of the accusation presented to him/her; or the right of the witness to find out by which procedure s/he is summoned, or the rights of the lawyer to know what the defendant is suspected of, the access to the file (MLAR) will be usually granted.

*For para 2.* It depends of the action produced by the court order. If it is e.g., search of the house, or freezing of property, s/he will be notified.

*For para 3.* No another party may be notified about the MLAR. (e.g. personal data protection and inadmissibility of investigation data sharing)

*For para 4.* (see *For para 1*, in part of no a precise clause on confidentiality requirement).

*For para 5.* (see *For para 1*, in part of principle of "Inadmissibility of publication of investigation data").

*For para 6.* No such a guideline, however would be very welcomed if any party of the plenary may share this kind practical information.

## **AUSTRIA / AUTRICHE**

**1. If no specific confidentiality requirement is set out by the requesting State in an incoming MLA request, is there a legal obligation in your State to allow access to the file of the subject of the request (e.g. the MLA request and/or the evidence to be shared) at any time following your receipt of the request if the subject of the MLA request or another party to the proceedings asks to see this information?**

According to the Austrian Federal Law on Extradition and Mutual Legal Assistance in Criminal Matters, the Austrian laws on criminal procedure govern the execution of a request. The suspect and any person directly and personally affected by the execution of an MLA request has, therefore, the right to access to the file. The right to access to the file may only be restricted insofar as particular circumstances lead to the concern that immediate notice of specific files may jeopardize the purpose of the investigations. After the execution of certain intrusive measures sought in the MLA request, the person concerned will have to be notified thereof and given the opportunity to make objections because of violation of rights. This will typically involve the disclosure of the MLA request in full and the evidence that is to be transmitted. Thus, at that moment, the person affected by the MLA measure (who may be identical with or linked to the person under investigation in the requesting State) will take note of the contents of the request. This notification can be put off if particular reasons exist to assume that investigation is jeopardized; in any case, the person concerned has to be informed once the investigation is finalized. Special rules exist e.g. for searches where the person concerned has to be informed immediately upon execution or at least within 24 hours after the search.

**2. Where a domestic court order is required to action a measure requested via MLA, is there a requirement under your domestic legislative framework to disclose the proceedings to the subject of the MLA request to authorise the measure?**

No. In principle the Criminal Procedure Code does not foresee the disclosure of investigative measures to the person concerned before the court authorization.

**3. If yes to either question 1 or question 2 or both, at what stage of your state's MLA process is any access granted to the subject of the request or another party to the proceedings? Is there a mechanism to postpone access being granted, or the ability for the requesting state to negotiate a postponement (for example in order not to prejudice the investigation whilst it is ongoing)?**

Access will usually be granted as soon as the person(s) affected have been clearly identified and the specific measures have been executed (i.e. the evidence collected). If necessary, this can be coordinated with the needs of the foreign criminal proceedings. Communication between the central authorities/competent authorities involved is necessary in such situations. In suitable cases, a non-disclosure can be helpful is possible if a specific risk exists that the investigation could be jeopardized. For instance, a bank can be ordered not to disclose the existence of an MLA request aiming at the production of banking documentation to the account holder. However, such orders are time-limited and in any case, the order will have to be lifted at one point because the right to be heard and to a legal remedy still has to be granted to the persons concerned. In any case, such restrictions must be lifted once the investigation is finalized.

**4. Does your state apply different confidentiality requirements to MLA requests dependent upon the type of request(s) made (e.g. for searches/seizure, banking information or publicly available information)?**

Yes. For example, banks and other financial institutions are obliged to treat the fact that they have been ordered to disclose information about bank accounts or bank transactions confidential vis a vis customers and third parties. Providers of telecommunication services can be ordered not to disclose the fact that the surveillance of communication or the disclosure of data concerning transmission of messages has been ordered.

**5. What governs how confidentiality applies to an MLA request (e.g. constitution, domestic legislation, operational policy, judicial precedent, other)?**

The Federal Act on Extradition and Mutual Assistance in Criminal Matters (ARHG) governs the execution of the request but the procedural rules of the Austrian Code of Criminal Proceedings have

to be applied wherever the ARHG does not stipulate otherwise.

**6. Is there any publicly available information or guidance setting out how your state's confidentiality provisions are applied to MLA requests from states party to the 1959 MLA Convention? (This could include national guidance to foreign authorities on the operation of the respective States' MLA process.)**

The Austrian Federal Law on Extradition and Mutual Assistance in Criminal Matters (ARHG) is available under [www.ris.bka.gv.at](http://www.ris.bka.gv.at) (also in its English translation).

Requirements relating to third-party requests

**1. Should a third party enquire about an MLA request (e.g. journalist, legal counsel representing anyone other than the subject of the request, a pressure group, member of the public) how would you respond to this request?**

Austria would generally confirm the existence of the request. However, the third person has no right of access to the file, unless such a right is specifically guaranteed according to the Criminal Procedure Code (e.g. for victims and their legal counsels).

## **AZERBAIJAN / AZERBAIDJAN**

Requirements/process relating to the subject of the MLA requests

1. If no specific confidentiality requirement is set out by the requesting State in an incoming MLA request it is requested from the requesting State to obtain and provide additional assurances/non-disclosure order to ensure that the data provided in proof of the execution of MLA may not be forwarded to third parties, other States or organizations without prior approval of the relevant authorities of the Republic of Azerbaijan.
2. According to the Criminal Procedural Code of the Republic of Azerbaijan as a rule, a court decision shall be required in order to conduct the following investigative procedures such as:
  - a) examination, search or seizure and other investigative procedures in residential, service or industrial buildings;
  - b) the body search of a person other than a detained or arrested person against his/her will;
  - c) the arrest of property;
  - d) the confiscation of postal, telegraphic or other messages;
  - e) the interception of conversations held by telephone or other means and of information sent via communication media and other technical means;
  - f) the obtaining of information about financial transactions, bank accounts or tax payments and private life or family, state, commercial or professional secrets.
3. According to the Law on Mutual Legal Assistance in criminal matters of the Republic of Azerbaijan when a request for the provision of legal assistance is made regarding an ongoing criminal case investigation or judicial review in the Republic of Azerbaijan requested State reserves the right to temporarily postpone or reject the execution of the said request.
4. The requesting State is accordingly notified that the personal data transmitted may be used solely for the purpose for which they were transmitted and that the data provided in proof of the execution of request may not be forwarded to third parties, other States or organizations without prior approval of the relevant authorities of the Republic of Azerbaijan.
5. Confidentiality principles are regulated and protected by the constitution and specific legislation of the Republic of Azerbaijan.
6. Legislation in the field of personal data consists of the Constitution of the Republic of Azerbaijan, international agreements to which the Republic of Azerbaijan is a party, Law on Personal Data of the Republic of Azerbaijan, as well as other legal acts.

## *Requirements relating to third-party requests*

1. In accordance with the requirement of the 1959 European Convention on Mutual Legal Assistance in Criminal Matters, acceptance of the request for legal assistance in a criminal case under investigation is possible only according to the enquiry of the relevant investigative body of the requesting party.

## **BELGIUM / BELGIQUE**

### Requirements/process relating to the subject of the MLA request

**1.1. If no specific confidentiality requirement is set out by the requesting State in an incoming MLA request, is there a legal obligation in your State to allow access to the file of the subject of the request (e.g. the MLA request and/or the evidence to be shared) at any time following your receipt of the request if the subject of the MLA request or another party to the proceedings asks to see this information?**

In relation to MLA's concerning seizures, there is an obligation to inform the person harmed by the seizure. This is the only obligation specific to the MLA process. "Except when the confidentiality of an investigation would be compromised, the Belgian executing authority, at the time of seizure or thereafter, provides a notice to the person harmed by the seizure, whether or not at the request of the latter. This notice includes: The requesting foreign authority; The location, date, and qualification of the facts that led to the seizure..."

### **Access to the administrative file**

The Belgian Federal Public Service of Justice is under an obligation to allow access to documents and information to the public. The obligation only concerns administrative documents in the possession of the FPS Justice with the exclusion of documents that form part of a judicial file. In other words, when Belgium has a file on person who is the subject of an MLA, the MLA itself and other judicial documents do not fall under the obligation to allow access. Access can be allowed to those judicial documents only with the authorization of the competent judicial authority.

First of all, to access the administrative documents, the person requesting access has to show an interest. Only the subject of the MLA will be deemed to have this interest. Once an interest is established, there are multiple grounds of refusal that can be invoked to deny access, including privacy, legal obligation of secrecy, secrecy of consultations of the federal government, international relations, *ordre public* and national security, ongoing investigation or prosecution, ...

### **Access to the Judicial file**

There is no general right in Belgium to have access to a judicial file pertaining to an MLA

In Belgium's Criminal Code, every person with a direct interest can request access to a criminal file during an ongoing investigation. However, the Belgian criminal code only applies to Belgian investigations. This means that the right to request access does not come into play when Belgium is executing an MLA. It does come into play when there is already an existing investigation or when because of the MLA a domestic investigation is started.

In relation to the right to request to access a domestic criminal file, a person with a direct interest includes the suspect, the accused, the civil party and persons who did a declaration of injured person. The Kings Prosecutor or the Investigative judge will decide whether to (partially) grant or (partially) deny the request on the basis of a limited list of grounds of refusal. The requesting person can appeal to the Chamber of Indictment.

Lastly, when a judicial investigation is finalized and the case will be brought before the Council Chamber, the civil party, the accused and persons who did a declaration of injured person have access to the file.

It must be reiterated that the preceding paragraphs only concern domestic files. Consequently, the right

to access a criminal file would only entail access to an MLA request if there exists a parallel domestic criminal case.

**1.2. Where a domestic court order is required to action a measure requested via MLA, is there a requirement under your domestic legislative framework to disclose the proceedings to the subject of the MLA request to authorize the measure?**

Requests for confiscations in Belgium have to be authorized by the correctional tribunal of first instance. Before authorizing the confiscation, the Court will hear the persons against who the confiscation was pronounced. The persons concerned will be summoned to the hearing and they will therefore be aware of the procedure necessary to execute the confiscation pronounced against them. The persons concerned can participate in person to the hearing or can provide written comments upon receiving the summons.

**1.3. If yes to either question 1 or question 2 or both, at what stage of your state's MLA process is any access granted to the subject of the request or another party to the proceedings? Is there a mechanism to postpone access being granted, or the ability for the requesting state to negotiate a postponement (for example in order not to prejudice the investigation whilst it is ongoing)?**

The answer to this question is included in the answer to question 1. There is in principle no access to an MLA file. In seizure cases, basic information will be communicated to any person harmed by the seizure (requesting country, facts) and only if this does not compromise the secrecy of the investigation.

**1.4. Does your state apply different confidentiality requirements to MLA requests dependent upon the type of request(s) made (e.g. for searches/seizure, banking information or publicly available information)?**

No, in general the FPS Justice is very reluctant to provide information when there is no legal obligation to do so (see question 1.1). Belgium is also bound by European and domestic legislation concerning data protection. While this concerns not the concept of confidentiality as typically involved in MLA context, data protection does impose rules on the extent to which (kind) of information has to be protected from various hazards (unauthorized access, disclosure, purpose limitation, ...)

**1.5. What governs how confidentiality applies to an MLA request (e.g. constitution, domestic legislation, operational policy, judicial precedent, other)?**

Domestic legislation and operational policy.

**1.6. Is there any publicly available information or guidance setting out how your state's confidentiality provisions are applied to MLA requests from states party to the 1959 MLA Convention? (This could include national guidance to foreign authorities on the operation of the respective States' MLA process.)**

No such information is not available. [Requirements](#)

[relating to third-party requests](#)

**2.1. Should a third party enquire about an MLA request (e.g. journalist, legal counsel representing anyone other than the subject of the request, a pressure group, member of the public) how would you respond to this request**

Such requests are treated case by case. In general, the FPS Justice is very reluctant to provide information when there is no legal obligation to do so (see question 1.1). In exceptional cases, basic information might be disclosed, for example in response to a request for information of a victim or a question of a member of parliament to the Minister of Justice.

## **CROATIA / CROATIE**

**1. If no specific confidentiality requirement is set out by the requesting State in an incoming MLA request, is there a legal obligation in your State to allow access to the file of the subject of the request (e.g. the MLA request and/or the evidence to be shared) at any time following your receipt**

**of the request if the subject of the MLA request or another party to the proceedings asks to see this information?**

There are no special provisions on this situation in Croatian Act on international legal assistance in criminal matters (further: Act). According to domestic law, that is Criminal Procedure Act, there are provisions on the right to inspect the file.

**Article 184.**

(1) The parties have the right to inspect the file.

...

**Article 184.a**

(1) If there is a danger that the inspection of part or the whole file will jeopardize the purpose of the investigation by making it impossible or difficult to collect important evidence, or this would endanger the life, body or property of a large scale, the defendant may be denied the right to inspect part or the whole file for a maximum of thirty days from on the day of delivery of the decision on conducting the investigation. When an investigation is not carried out, the denial of access to a part or the whole file can be determined due to endangering life, body or property on a large scale for a maximum of thirty days from the delivery of the notification from Article 213, paragraph 2 of this Act.

(2)...

(3) If the disclosure of evidence in the proceedings for particularly serious forms of criminal offenses from Article 334, points 1 and 2 of this Act could cause damage to the investigation in the same or another proceeding conducted against the same or other defendants, or if their disclosure would endanger life other persons, at the request of the state attorney, the judge of the investigation may, by decision, and until the end of the investigation at the longest, deny the defendant access to certain parts of the files that contain information about these pieces of evidence.

(4) A defendant who is in investigative prison cannot be denied access to a part of the file that is important for assessing the existence of a reasonable suspicion that he has committed a criminal offense and the existence of circumstances on which the decision to determine or extend investigative prison is based.

**2. Where a domestic court order is required to action a measure requested via MLA, is there a requirement under your domestic legislative framework to disclose the proceedings to the subject of the MLA request to authorise the measure?**

**According to Article 21 of the Act on international legal assistance in criminal matters**

(1) At the request of the foreign judicial authority, the Ministry of Justice and the domestic judicial authority shall keep the request for international legal assistance and its content confidential, except to the extent required for its enforcement.

(2) If the requirement of confidentiality from paragraph 1 of this Article cannot be complied with, the Ministry of Justice or the domestic judicial authority shall without any delay inform the foreign judicial authority accordingly.

There is no special requirement to disclose the proceedings to the subject of the MLA request to authorise the measure.

The right to inspect the file is governed by the provisions of the Criminal Procedure Act (as stated in previous response).

**3. If yes to either question 1 or question 2 or both, at what stage of your state's MLA process is any access granted to the subject of the request or another party to the proceedings? Is there a mechanism to postpone access being granted, or the ability for the requesting state to negotiate a postponement (for example in order not to prejudice the investigation whilst it is ongoing)?**

Answers under 1 and 2.

**4. Does your state apply different confidentiality requirements to MLA requests dependent upon the type of request(s) made (e.g. for searches/seizure, banking information or publicly available information)?**

According to the Act on international legal assistance in criminal matters:

**Article 22**

Third parties who prove their legal interest may participate in the procedure of international legal assistance and have the right to review the file, except:

1. If that is in the interest of the criminal proceeding being conducted abroad.
2. For the protection of important interests of the foreign state, at its request.

3. For the nature or urgency of the measure being taken.
4. For the protection of the parties' justified interests in the procedure.
5. If in the interest of a criminal proceeding conducted in the Republic of Croatia.

According to the Criminal Procedure Act, proceedings during the inquiries are secret.

**Article 213.**

...

(4) The authority that conducts the research can determine the secrecy of the research or any part of it due to the reasons stated in Article 388 of this Act if the public release of the data would harm the progress of the research. The authority that undertakes the action will warn the persons participating in the evidentiary action in relation to which secrecy has been determined that revealing the secret is a criminal offence. All persons who learn the content of a procedural action that was carried out during a secret investigation or a part of an investigation are obliged to keep the facts or information they learned on that occasion a secret.

**Article 231.**

(1) The investigation is not public. The authority undertaking the evidentiary action will warn the persons participating in the action that the unauthorized disclosure of the content of investigative and evidentiary actions conducted during the closed preliminary procedure with the aim of making them available to the public is a criminal offence.

(2) The authority conducting the investigation may, by decision, determine the secrecy of all or part of the investigation for the reasons stated in Article 388 of this Act if the public publication of data from the investigation would harm the progress of the proceedings. The authority taking the action will warn the persons participating in such an investigation that it is a criminal offense to disclose a secret. All persons who learn the content of the procedural action that was carried out during such an investigation are obliged to keep the facts or information that they learned on that occasion as a secret.

**5. What governs how confidentiality applies to an MLA request (e.g. constitution, domestic legislation, operational policy, judicial precedent, other)?**

Domestic legislation.

**6. Is there any publicly available information or guidance setting out how your state's confidentiality provisions are applied to MLA requests from states party to the 1959 MLA Convention? (This could include national guidance to foreign authorities on the operation of the respective States' MLA process.)**

No.

***Requirements relating to third-party requests***

**1. Should a third party enquire about an MLA request (e.g. journalist, legal counsel representing anyone other than the subject of the request, a pressure group, member of the public) how would you respond to this request?**

The answer to the request for providing information about the case can only be of a very general nature, not revealing personal information or specific information about the case. It is possible to provide brief information about the stage of the procedure as well as information about the relevant legislation that regulates a certain matter.

**CYPRUS / CHYPRE**

***Requirements/process relating to the subject of the MLA request***

- 1) There is no legal obligation in our State to allow access to the file of the subject of the Request. If at any time the subject of the MLA request or another party to the proceedings asks to see this information, we refer to the State which has sent us the MLA, to get their consent.
- 2) When a domestic court order is required to action, a measure requested via MLA, there is no requirement under our domestic legislative framework to disclose the proceedings to the subject of the MLA request to authorize the measure. However, if an objection is filed in Court, then a copy of the investigator's application/oath, can be given to the lawyer of the investigative site, by the Court. Also note that in our law we can action an MLA request by a letter.

- 3) Since our answer to question 1 and 2 is No, the only mechanism to postpone not the access, but the execution of the MLA, is in case that a criminal case is investigated in our country, for the same person, or legal entity.
- 4) Our State apply the same confidentiality requirements to all requests. If any issues of confidentiality arise (service of an ex-parte application), then we coordinate with the issuing State.
- 5) All the mentioned legal tools in this question can be used according to the specific case for applying confidentiality.
- 6) No, there are no publicly available information or guidance settings.

**Requirements relating to third-party requests**

- 1) No, we are not giving any information/response to a third party.

**CZECHIA / TCHEQUIE**

*Requirements/process relating to the subject of the MLA request*

**1. If no specific confidentiality requirement is set out by the requesting State in an incoming MLA request, is there a legal obligation in your State to allow access to the file of the subject of the request (e.g. the MLA request and/or the evidence to be shared) at any time following your receipt of the request if the subject of the MLA request or another party to the proceedings asks to see this information?**

*First of all, it is quite usual that in the incoming MLA requests that Article 25 of the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters (hereinafter "The Protocol") is invoked, either literally with a reference to it or materially by requesting confidentiality or non-disclosure in a loose wording. The same is recommended by the Czech Republic also for the outgoing MLA requests that are consulted with the Czech Republic.*

*Generally speaking, regardless whether Article 25 of the Protocol is invoked in the incoming MLA request, there is no obligation to disclose an incoming MLA request to its subject according to the applicable domestic legal framework (Act No. 104/2013 of Coll., on international judicial cooperation in criminal matters, as amended - hereinafter "IJC Act" - and by Act No. 141/1961 Coll., Code of Criminal Procedure, as amended - hereinafter "CCP").*

*Basically, the only way the subject of the incoming MLA request may be informed about the requested procedural action or measure is if their personal cooperation (e. g. an interview) is needed or if the specific action or measure require providing certain information to the affected person (e. g. to serve a warrant on home search to the resident of the home at the beginning of the search). In the case of an interrogation, each person being questioned must, of course, be informed about the criminal matter (in this case, the one referred to in the MLA request) in which he or she is testifying, but this information about the subject matter of the interrogation takes place only at the start of the interrogation.*

*As already mentioned, there are certain specific investigation measures that by law require informing the involved person on certain details. These include e. g. home searches and searches of other premises and lands, which as a rule require the involved person to be interviewed before the actual search and to allow his/her presence during the search; or wiretapping and recording of telecommunication traffic, which require that the intercepted person is informed as a rule after the termination of the case of the fact that he/she was intercepted back then (however, such information could only take place after consultation with the requesting authority). These information duties are constructed primarily for the domestic investigations and apply on the execution of incoming MLA requests only by the virtue of the equality before law. None of them extends also to any other details such as the underlying or preceding information which led to the taking of such a procedural action or measure, such as the content of the MLA request.*

*It is also worth adding that even though the incoming MLA requests are never disclosed to their subjects, they are not treated in a classified regime unless the requesting authority sends its request under a bilateral treaty with the Czech Republic in the classified information regime by diplomatic channels. In practice, however, this situation is very rare.*

**2. Where a domestic court order is required to action a measure requested via MLA, is there a**

**requirement under your domestic legislative framework to disclose the proceedings to the subject of the MLA request to authorise the measure?**

*As explained in answer to question 1., there is no uniform special regulation relating to a disclosure of executing incoming MLA requests. Whenever a judicial warrant, permission, consent or another form of judicial authorization is needed for a certain procedural action or measure demanded by an incoming MLA request, the authorization procedure is basically the same as if the action or measure was needed in domestic criminal proceedings.*

*Generally speaking, all such authorization procedures are non-public and done without the knowledge or presence of the concerned person as well as of the subject of the MLA request/ the defendant in the domestic proceedings. These procedural actions and measures include home searches, searches of other premises and lands, wiretapping and recording of telecommunication traffic, obtaining data on such a traffic, secret surveillance breaching the inviolability of home, correspondence and documents kept in privacy, monitoring of bank accounts, deploying an undercover agent, opening and exchanging parcels and examination of mental state. During the pre-trial proceedings, obtaining past banking information, seizing property, withholding and surveying parcels, personal searches and secret surveillance during which privacy is not breached but audiovisual material is taken require only a prosecutor's warrant or permission, but otherwise the conclusion is the same – the involved person and the subject of MLA request are not informed about the authorization procedure.*

*As already mentioned in the answer to question 1., this concerns only the authorization procedure, but in the case of wiretapping and recording of telecommunication traffic as well as obtaining data thereon, there is a special obligation to inform the involved person on a later date about the duration and respective reference number. It is worth mentioning that this obligation relates only to the person whose phone or any other electronic communication device was affected, who doesn't necessarily have to be the subject of the MLA request. If these are two different people, the subject of MLA request is not informed. We reiterate that even in this case, if the person were to be subsequently informed of the interception, this information would only be provided to the person after consultation with the requesting authority.*

**3. If yes to either question 1 or question 2 or both, at what stage of your state's MLA process is any access granted to the subject of the request or another party to the proceedings? Is there a mechanism to postpone access being granted, or the ability for the requesting state to negotiate a postponement (for example in order not to prejudice the investigation whilst it is ongoing)?**

*As already mentioned in answers to questions 1. and 2., there is generally no obligation to inform its subject that an incoming MLA request was executed. He/she will learn about it only if he/she is required to provide certain assistance for the successful execution, and even then the whole content of the MLA request is not disclosed to him/her, but only whatever information is necessary in the given context (e. g. if he/she needs to be interviewed, the object and scope of the interview is suggested to him/her at the beginning of the interview).*

**4. Does your state apply different confidentiality requirements to MLA requests dependent upon the type of request(s) made (e.g. for searches/seizure, banking information or publicly available information)?**

*No, the general legal regime described above encompasses all sorts of MLA requests. There is no adversarial judicial proceedings with full participation of the defendant when deciding on executing incoming MLA requests demanding any sort of procedural action or measure or when deciding to deploy the requested investigation measures.*

**5. What governs how confidentiality applies to an MLA request (e. g. constitution, domestic legislation, operational policy, judicial precedent, other)?**

*As mentioned above, the general legal regime is governed by the IJC Act in connection with the CCP, which don't lay down any specific notification duty, duty to inform or duty to decide on the execution only upon a court hearing with the presence of the involved person.*

**6. Is there any publicly available information or guidance setting out how your state's confidentiality provisions are applied to MLA requests from states party to the 1959 MLA Convention? (This could include national guidance to foreign authorities on the operation of the**

respective States' MLA process.)

*There is not such a guidance. Article 25 of the Protocol is known to all state parties thereto and its wording is unambiguous. As the general legal regime maintains a very high standard of non-disclosure regardless of whether Article 25 of the Protocol was invoked in the particular MLA request, a specific guidance to other state parties is not deemed necessary.*

#### Requirements relating to third-party requests

**1. Should a third party enquire about an MLA request (e.g. journalist, legal counsel representing anyone other than the subject of the request, a pressure group, member of the public) how would you respond to this request?**

*These enquires are treated on a case-by-case basis. In general, they mustn't lead to a disclosure of the file materials (see above). If they are formulated broadly and not specifically (typically journalists' questions about certain MLA agenda as a whole, state of cooperation with a concrete state etc.), they are answered in a very general manner without giving details of any individual case. The individual facts of a case may nevertheless lead to a different individual response.*

### **DENMARK / DANEMARK**

#### **Requirements/process relating to the subject of the MLA request**

- 1. If no specific confidentiality requirement is set out by the requesting State in an incoming MLA request, is there a legal obligation in your State to allow access to the file of the subject of the request (e.g. the MLA request and/or the evidence to be shared) at any time following your receipt of the request if the subject of the MLA request or another party to the proceedings asks to see this information?**

According to Danish law any person can request access to documents in a criminal case – including a case regarding mutual legal assistance. A such request is processed in accordance to different legal provisions depending on the status of the requesting person, e.g. it is easier to be given access to documents in a criminal case for a party to the case, such as the suspect or a victim, than for a person with no exact interest in the case. However, the said law also includes access to decline a request for access to documents, e.g. in the interest of foreign authorities or the investigation of the case.

Also, in some cases, where the suspect has the right to be informed of different investigative measures against him or her. However, also in these cases the said law includes access to cut of the suspect of this information – at least for a period.

- 2. Where a domestic court order is required to action a measure requested via MLA, is there a requirement under your domestic legislative framework to disclose the proceedings to the subject of the MLA request to authorise the measure?**

In accordance to Danish law, depending on the said measure, in some cases, at least the court decision will be disclosed to the suspect. E.g., as a main rule, in case of a search and seizure the suspect will be informed about the court order, and have the right to be present during the search. However, regarding other types of covert measures, e.g. surveillance or interception of telecommunication, the suspect is not informed till after the measure has been conducted. And in some cases this obligation to inform the suspect can be postponed further by decision of the court.

- 3. If yes to either question 1 or question 2 or both, at what stage of your state's MLA process is any access granted to the subject of the request or another party to the proceedings? Is there a mechanism to postpone access being granted, or the ability for the requesting state to negotiate a postponement (for example in order not to prejudice the investigation whilst it is ongoing)?**

At what stage of the MLA process an access is granted to the subject of the request or another party to the proceedings, depends on the type of measure involved, and on the category of party to the proceedings.

Yes, in some cases the obligation to inform the suspect of can be postponed further by decision of the court.

**4. Does your state apply different confidentiality requirements to MLA requests dependent upon the type of request(s) made (e.g. for searches/seizure, banking information or publicly available information)?**

Yes. See answers to the previous questions.

**5. What governs how confidentiality applies to an MLA request (e.g. constitution, domestic legislation, operational policy, judicial precedent, other)?**

The Danish national legislation on confidentiality and access to documents in criminal cases also governs how confidentiality applies to an MLA request.

**6. Is there any publicly available information or guidance setting out how your state's confidentiality provisions are applied to MLA requests from states party to the 1959 MLA Convention? (This could include national guidance to foreign authorities on the operation of the respective States' MLA process.)**

No there exists no separate publicly available information or guidance setting out how confidentiality provisions are applied to MLA requests from states party to the 1959 MLA Convention.

Requirements relating to third-party requests

**1. Should a third party enquire about an MLA request (e.g. journalist, legal counsel representing anyone other than the subject of the request, a pressure group, member of the public) how would you respond to this request?**

According to Danish law any person can request access to documents in a criminal case – including a case regarding mutual legal assistance. A such request is processed in accordance to different legal provisions depending on the status of the requesting person, e.g. it is easier to be given access to documents in a criminal case for a party to the case, such as the suspect or a victim, than for a person with no exact interest in the case. However, the said law also includes access to decline a request for access to documents, e.g. in the interest of foreign authorities or the investigation of the case.

In general, no third party is given access to documents in a criminal case, until the case is completed.

## **ESTONIA / ESTONIE**

**1. If no specific confidentiality requirement is set out by the requesting State in an incoming MLA request, is there a legal obligation in your State to allow access to the file of the subject of the request (e.g. the MLA request and/or the evidence to be shared) at any time following your receipt of the request if the subject of the MLA request or another party to the proceedings asks to see this information?**

There is no legal obligation under Estonian law to grant the subject of an incoming MLA request or any other party access to the content of that request or to the evidence transmitted in response to it. Any request in this regard is forwarded to the requesting country for consideration.

However, in the case of specific investigative measures, some information may be disclosed to the person affected, either during or after the execution of the measure. See answer to question 4.

**2. Where a domestic court order is required to action a measure requested via MLA, is there a requirement under your domestic legislative framework to disclose the proceedings to the subject of the MLA request to authorise the measure?**

The need for a court order does not trigger any obligation to inform the subject in advance. The court proceedings for such authorisations are confidential.

However, in the case of specific investigative measures, some information may be disclosed to the person involved during or after the execution of the investigative measure. See answer to question 4 for details.

**3. If yes to either question 1 or question 2 or both, at what stage of your state's MLA process is any access granted to the subject of the request or another party to the proceedings? Is there a mechanism to postpone access being granted, or the ability for the requesting state to negotiate a postponement (for example in order not to prejudice the investigation whilst it is ongoing)?**

There is no general right of access to the MLA request. However, in the case of specific investigative

measures, some information may be disclosed to the person involved during or after the execution of the investigative measure. See answer to question 4 for details.

**4. Does your state apply different confidentiality requirements to MLA requests dependent upon the type of request(s) made (e.g. for searches/seizure, banking information or publicly available information)?**

Estonia does not explicitly differentiate confidentiality rules based on the type of MLA request. However, operational practice and the specific details of different investigative measures require some parts of the MLA to be disclosed. For example,

- **Search** – the search warrant must include the reasoning of the search, which means that part of the MLA request must be referenced there. Search warrant must be presented to the person at whose premises the search is conducted prior to the start of the search.
- **Surveillance** - in the case of covert investigative measures (e.g. interception of communications), the affected person must be notified of the measure once the authorisation expires. The Prosecutor's Office may delay notification for up to one year. Thereafter, further postponement must be authorised by a court. Once the person is notified, they may appeal the measure, and in the context of judicial review, limited access to the MLA request may be granted.
- **Freezing of property** – after the order is made, the person is notified of the freezing and may appeal. The freezing order may include elements of the MLA request.

Thus, even though Estonian Code of Criminal Procedure itself does not impose differentiated confidentiality, the confidentiality regime is practically shaped by the substantive legal basis of the investigative act and the rights affected.

**5. What governs how confidentiality applies to an MLA request (e.g. constitution, domestic legislation, operational policy, judicial precedent, other)?**

The legal basis for confidentiality in the context of MLA requests in Estonia is regulated in the Estonian Code of Criminal Procedure (§ 214, 433(4)) and in the Public Information Act.

**6. Is there any publicly available information or guidance setting out how your state's confidentiality provisions are applied to MLA requests from states party to the 1959 MLA Convention? (This could include national guidance to foreign authorities on the operation of the respective States' MLA process.)**

Estonia does not publish any formal national guidance for foreign authorities on the confidentiality of MLA requests. However, the Prosecutor General's Office and the Ministry of Justice can provide informal guidance or practical information via direct channels or bilateral contacts. The default process is that the confidentiality is applied for MLA requests, even if not formally requested.

In case of specific situations, the requesting authority must generally rely on bilateral communication to understand how confidentiality is treated in practice.

**7. Should a third party enquire about an MLA request (e.g. journalist, legal counsel representing anyone other than the subject of the request, a pressure group, member of the public) how would you respond to this request?**

If a third party seeks access to information about an MLA request, the response will typically be a refusal, based on:

- **Code of Criminal Procedure § 214** (secrecy of pre-trial investigation) and **§ 433(4)** (confidentiality in international cooperation)
- **Public Information Act § 35(1)** (restriction on release of information relating to criminal proceedings)
- **State Secrets and Classified Information of Foreign States Act**, if the request involves classified cooperation

Only in exceptional cases, such as when the MLA request becomes part of court proceedings accessible to the public (e.g., during a trial), may parts of the information become accessible. In this case the prior agreement of the requesting country is asked.

Public institutions are required to withhold confirmation of the existence or content of an MLA request. This is done to preserve the secrecy of pre-trial criminal proceedings, and the confidentiality of international cooperation.

## **FINLAND / FINLANDE**

**1. If no specific confidentiality requirement is set out by the requesting State in an incoming MLA request, is there a legal obligation in your State to allow access to the file of the subject of the request (e.g. the MLA request and/or the evidence to be shared) at any time following your receipt of the request if the subject of the MLA request or another party to the proceedings asks to see this information?**

If no specific confidentiality requirement is set out by the requesting State, confidentiality will be governed by the Act on the Openness of Government Activities and depending on the matter also other related Acts, for example the Criminal Investigation Act or Coercive Measures Act.

In general, the party of a criminal investigation has the right to obtain information on matters that could have affected the consideration of his or her matter. However, a party does not have this right before the conclusion of the criminal investigation, if providing the information could jeopardise the investigation or if non-provision of the information is necessary in order to secure a very important public or private interest.

In practice, these access requests are not common, but the competent authority would usually ask for the requesting state to give its opinion to the access request.

**2. *Where a domestic court order is required to action a measure requested via MLA, is there a requirement under your domestic legislative framework to disclose the proceedings to the subject of the MLA request to authorise the measure?***

In general, the subject has the right to access information from documents that could have influenced the handling of their case. The publicity of the parties may be restricted by law or by a court decision. This applies especially when covert coercive means are requested.

**3. *If yes to either question 1 or question 2 or both, at what stage of your state's MLA process is any access granted to the subject of the request or another party to the proceedings? Is there a mechanism to postpone access being granted, or the ability for the requesting state to negotiate a postponement (for example in order not to prejudice the investigation whilst it is ongoing)?***

Regarding criminal investigation, access to the subject is granted once the criminal investigation has been initiated, unless providing the information is restricted, which usually applies to MLA requests. It is also possible to postpone the access in order not to prejudice the ongoing investigation. See also question 1 and 5.

**4. *Does your state apply different confidentiality requirements to MLA requests dependent upon the type of request(s) made (e.g. for searches/seizure, banking information or publicly available information)?***

Regarding all MLA requests, it is considered, whether providing the information could jeopardise the investigation or if there is a very important private or public interest to be secured. Additional provisions apply to requests concerning covert coercive measures and their publicity.

**5. *What governs how confidentiality applies to an MLA request (e.g. constitution, domestic legislation, operational policy, judicial precedent, other)?***

Confidentiality is regulated by domestic legislation. It would be advisable for the requesting Party to state in their request if they would like to keep the matter confidential.

(In situations where the requesting country is Finland, there is also a specific provision in the Act on International Legal Assistance in Criminal Matters stating that the provisions in a treaty in force between Finland and the foreign State and the conditions set by the foreign State shall apply on secrecy, confidentiality, restrictions on the use of information and the return or destruction of the material provided by the requested State.)

**6. *Is there any publicly available information or guidance setting out how your state's confidentiality provisions are applied to MLA requests from states party to the 1959 MLA Convention? (This could include national guidance to foreign authorities on the operation of the respective States' MLA process.)***

No.

Requirements relating to third-party requests

***Should a third party enquire about an MLA request (e.g. journalist, legal counsel representing anyone other than the subject of the request, a pressure group, member of the public) how would you respond to this request?***

The competent authority decides, considering domestic legislation, whether information or documents relating to the MLA request can be provided. In general, documents relating to MLA requests are confidential until the case proceedings have concluded. Finland's international relationships or its ability to participate in international co-operation is also considered. The requesting State's case status may also affect the decision to disclose information or documents. Basic information, such as the case number and general statistical data, are mostly public.

If a document is not entirely confidential but contains sensitive or confidential information, partial disclosure may be considered. In such cases, the document can be provided after redacting the confidential information. When providing information or documents, regulations concerning the protection of personal data must be considered, particularly outside of media context.

## **FRANCE**

1. If no specific confidentiality requirement is set out by the requesting State in an incoming MLA request, is there a legal obligation in your State to allow access to the file of the subject of the request (e.g. the MLA request and/or the evidence to be shared) at any time following your receipt of the request if the subject of the MLA request or another party to the proceedings asks to see this information?

When the MLA request is executed by a prosecutor, there is no legal obligation to initially allow access to the MLA request and the evidence.

However, article [77-2 of the French criminal procedure](#) code allows the prosecutor to grant access to the file, including the MLA request and evidence.

The same article allows the suspect to request access to the file (including the MLA request and evidence) if the suspect was interrogated or his home searched more than one year before the request, or if the name of the suspect was disclosed by the press. The prosecutor may postpone the access to the file for 6 months.

When the MLA request is executed by an investigating judge, there is no legal obligation to initially allow access to the MLA request and the evidence. This access is not necessary for most of the investigation. However, as soon as the charges are notified to the suspect by the judge (ex: interrogatory of the investigating judge), access to the MLA request and evidence must be granted to the suspect as soon as it is registered in the procedure ([art. 114 of the French criminal procedure code](#)).

2. Where a domestic court order is required to action a measure requested via MLA, is there a requirement under your domestic legislative framework to disclose the proceedings to the subject of the MLA request to authorise the measure?

The MLA requests are executed either by a prosecutor or by an investigating judge, depending on the investigation acts requested for.

In the latter case, there is no legal obligation to initially allow access to the MLA request and the evidence. This access is not necessary for most of the investigation.

However, as soon as the charges are notified to the suspect by the judge (ex: interrogatory of the investigating judge), access to the file, including the MLA request and evidence must be granted to the suspect.

3. If yes to either question 1 or question 2 or both, at what stage of your state's MLA process is any access granted to the subject of the request or another party to the proceedings? Is there a mechanism to postpone access being granted, or the ability for the requesting state to negotiate a postponement (for example in order not to prejudice the investigation whilst it is ongoing)?

See above for the stages at which the access to the file must be granted.

When the MLA request is executed by a prosecutor and the access to the file is requested (art. 77-2 of the penal procedure code), the prosecutor may postpone the access to the file for 6 months.

When the MLA request is executed by an investigating judge, when the charges are notified to the suspect by the judge (ex: interrogatory of the investigating judge), access to the file must be granted and cannot be postponed. However

In both cases, if the MLA request states that it should not be disclosed, the prosecutor or investigating judge can contact the issuing state to discuss this matter before executing the MLA request.

4. Does your state apply different confidentiality requirements to MLA requests dependent upon the type of request(s) made (e.g. for searches/seizure, banking information or publicly available information)?

No.

5. What governs how confidentiality applies to an MLA request (e.g. constitution, domestic legislation, operational policy, judicial precedent, other)?

Domestic legislation.

6. Is there any publicly available information or guidance setting out how your state's confidentiality provisions are applied to MLA requests from states party to the 1959 MLA Convention? (This could include national guidance to foreign authorities on the operation of the respective States' MLA process.)

The French criminal procedure code is available online ([Code de procédure pénale - Légifrance \(legifrance.gouv.fr\)](http://legifrance.gouv.fr)).

There are however no publicly available information or guidance specifically designed to explain how confidentiality provisions are applied to MLA requests.

Requirements relating to third-party requests

1. Should a third party enquire about an MLA request (e.g. journalist, legal counsel representing anyone other than the subject of the request, a pressure group, member of the public) how would you respond to this request?

Article 11 of the French penal procedure code states that the investigations are to be kept secret. This secrecy extends to the MLA request.

Third party would therefore receive no answer to such a request, or a reply stating that due to the secrecy, the judicial authority cannot answer the question and cannot confirm or deny the existence of such a MLA request.

## **GEORGIA / GEORGIE**

**1. If no specific confidentiality requirement is set out by the requesting State in an incoming MLA request, is there a legal obligation in your State to allow access to the file of the subject of the request (e.g. the MLA request and/or the evidence to be shared) at any time following your receipt of the request if the subject of the MLA request or another party to the proceedings asks to see this information?**

Under Georgian law, the subject of the incoming MLA and another person of the proceedings do not have the right to access to the file at any time following the receipt of the request. Namely, at the initial stage, when the request is submitted to the Central Authority of Georgia, but no action is taken yet for its execution, the mentioned persons are not allowed to get the access to the content of the MLA request. Afterwards, when Georgian judicial authorities start its execution, the affected persons have the right to get familiarized with the request to the extent that does not prejudice the ongoing

investigation in the requesting state. Such persons are also entitled to get the copies of those procedural documents which were drawn up following the conduct of the requested investigative actions with their participation. To give an example, a witness is allowed to get the copy of the protocol of his/her interview/interrogation. Besides, a person, whose premises have been searched, has the right to receive the protocol containing information about the seized items. Different rules apply when the covert investigative measures (e.g. interception of communication) are sought by the requesting authorities. In such cases, the data subject is entitled to get the notification about the covert investigative measures carried out against him/her after the expiration of 12 months starting from the moment when the conduct of such measures has been completed. For the reason not to prejudice the ongoing investigation, the relevant Georgian authorities can address the court and request to permit the postponement of such notification to the data subject up to 48 months and in some cases, even for a longer period of time depending on the gravity of the crime and the interests of the investigation.

Furthermore, as far as the defendant of the case covered by the MLA request is concerned, the latter has the right to get the access to the request and the executed materials after the investigative actions sought by the foreign authorities have already been conducted. In the latter case, before disclosing such information to the defendant, the Georgian authorities always hold prior consultations with their foreign counterparts.

**2. Where a domestic court order is required to action a measure requested via MLA, is there a requirement under your domestic legislative framework to disclose the proceedings to the subject of the MLA request to authorise the measure?**

Under Georgian law, where a domestic court order is required to action a measure requested via MLA, there is no legal obligation for the Georgian authorities to make a prior disclosure of the proceedings to the subject of the MLA request in order to authorise the measure. The obligation of such disclosure arises after obtaining the court order and conducting requested investigative measure. The aim of such disclosure is to give the possibility to the affected person to challenge the conducted investigative measure before the higher instance court.

**3. If yes to either question 1 or question 2 or both, at what stage of your state's MLA process is any access granted to the subject of the request or another party to the proceedings? Is there a mechanism to postpone access being granted, or the ability for the requesting state to negotiate a postponement (for example in order not to prejudice the investigation whilst it is ongoing)?**

As mentioned above, at the initial stage, when the request is submitted to the Central Authority of Georgia and no measure is taken yet for its execution, neither the subject of the request nor any other person of the proceedings is allowed to get the access to the content of the MLA request. Such persons are not also entitled to receive the information about the receipt of the request. Later, when the request reaches the stage of execution, the subject of the request has the right to get the access to the content of the request to the extent it concerns him/her. The subject of the request is also entitled to get the copies of those procedural documents which were drawn up as a result of the conducted investigative actions. However, those rights are granted to the subject of the request only after conducting the requested actions. Different rules are applicable when the covert investigative measures are requested by the foreign authorities. In the latter case, the affected person is notified about the cover investigative actions conducted against him/her after the expiration of 12 months or a longer period of time as described above in more details.

If the access to MLA request and the executed materials is requested by the person who is a defendant in the criminal proceedings conducted by the foreign authorities and those materials are still at the disposal of the judicial authorities or Georgia, he/she has the right to get the access to such materials only after the execution of the request. In such cases, before disclosing such materials to the defendant, the Georgian authorities always hold prior consultations with their foreign counterparts.

**4. Does your state apply different confidentiality requirements to MLA requests dependent upon the type of request(s) made (e.g. for searches/seizure, banking information or publicly available information)?**

At the initial stage, when the MLA request is submitted to the Central Authority of Georgia and no action is taken yet for its execution, confidentiality rule applies to all types of request. At the time of execution, different rules are applicable to each type of request. For instance, when the

interview/interrogation of the witness is requested, the subject of the request gets the access to the request during the process of interview/interrogation. When the conduct of search, seizure or freezing is requested, the affected person gets the access to the MLA after the conduct of such measures. However, when covert investigative measures (e.g. interception of communication) are requested, the affected person is notified about the conduct of such measures only after the expiration of certain period of time (for more details, see the answer to question 1).

**5. What governs how confidentiality applies to an MLA request (e.g. constitution, domestic legislation, operational policy, judicial precedent, other)?**

Application of confidentiality with respect to MLA request is governed by the provisions of different legal acts of Georgia. Those legal acts are as follows: the Constitution of Georgia, the Law of Georgia on Data Protection (2023), the Criminal Procedure Code of Georgia (2010) and the Law of Georgia on International Cooperation in Criminal Matters (2010).

**6. Is there any publicly available information or guidance setting out how your state's confidentiality provisions are applied to MLA requests from states party to the 1959 MLA Convention? (This could include national guidance to foreign authorities on the operation of the respective States' MLA process.)**

There is no publicly available information or guidance setting out how Georgia's confidentiality provisions are applied to MLA requests from states party to the 1959 MLA Convention. The relevant law provisions governing the application of confidentiality with respect to MLA requests are envisaged by different legal acts of Georgia mentioned above.

*Requirements relating to third-party requests* Should a third party enquire about an MLA request (e.g. journalist, legal counsel representing anyone other than the subject of the request, a pressure group, member of the public) how would you respond to this request?

Under Georgian law, the third party representatives are not allowed to get any information about the fact and the substance of the MLA request submitted by the foreign authorities. Therefore, in case they seek information about the request, the Georgian judicial authorities will not share such information to them. The only exception from the mentioned rule is the right of the Ombudsman of Georgia, who is entitled to get the information about the status of the request, but not the details about the requested investigative measures.

## **ITALY / ITALIE**

- If no specific confidentiality requirement is set out by the requesting state in an incoming MLA request, is there a legal obligation in your state to allow access to the file of the subject of the request (e.g. the MLA request and/or the evidence to be shared) at anytime following your receipt of the request if the subject of the MLA request or another party to the proceedings asks to see this information?

*When there is not any specific requirement set out, confidentiality related to MLA follows the general rules foreseen for criminal proceedings. According to Italian legal framework the preliminary investigation phase is protected by the investigative secrecy, and the parties are entitled to have access to information of the proceedings only during activities that are invasive of their rights. Namely, the defendant has the right to be assisted by a lawyer during the execution of a seizure or a search, if he/she is readily available.*

*In addition, in the case of an act affecting the freedom or property/possession rights of the subject, he/she has the right to challenge it with access to the acts that justified it, identified and disclosed by the public prosecutor when submitting the request to the judge.*

- Where a domestic court order is required to action, a measure requested via MLA, is there a requirement under your domestic legislative framework to disclose the proceedings to the subject of the MLA request to authorise the measure?

*No, we do not have such a requirement to disclosure, as above specified.*

- Does your State apply different confidentiality requirements to MLA requests dependent upon the type of request(s) made (e.g. for searches/seizure, banking information or publicly available information)?

*The different level of confidentiality is regulated by law depending only on the stage of the criminal proceedings (preliminary investigation phase or trial phase) and the invasive nature of the act with regards fundamental rights of the subject.*

- What governs how confidentiality applies to an MLA request (e.g. constitution, domestic legislation, operational policy, judicial precedent, other)?

*The confidentiality related to criminal proceedings is regulated by primary law also with reference to information that can be disclosed to the media.*

- Is there any publicly available information or guidance setting out how your state's confidentiality provisions are applied to MLA requests from states party to the 1959 MLA Convention? (This could include national guidance to foreign authorities on the operation of the respective states MLA process)

*We do not have any guidelines on this issue since are applicable the general rules set up by law for criminal proceedings.*

Requirements relating to Third Party requests.

1. Should a third party enquire about an MLA request (e.g. journalist, legal counsel representing anyone other than the subject of the request, a pressure group, member of the public) how would you respond to this request?

*We cannot disclose information to persons not entitled according to our law on criminal proceedings, also considering the investigative secrecy.*

## **LATVIA / LETTONIE**

1. In this situation the MLA request is treated with the same rule of confidentiality as any domestic criminal proceedings, namely – the general rule of confidentiality is in place, that is stated in Article 375 (1) of the Criminal Procedure Law of Latvia. According to that, during criminal proceedings, the materials located in the criminal case shall be a secret of the investigation, and the officials who conduct the criminal proceedings, as well as the persons to whom the referred to officials present the relevant materials in accordance with the procedures provided for in this Law, shall be permitted to familiarise themselves with such materials. Therefore, there is no legal obligation to allow access to the MLA request and/or to the evidence to be shared to the subject of the request.
2. Depends on the requested measure. For example, if a search is requested, the court authorisation is needed. According to the Latvian Criminal Procedure Law, the court decision should be presented to the person whose premises or other objects should be searched. In the court decision the grounds for the measure should be indicated. The MLA request should not be presented.
3. A person is not granted the access to the MLA request.
4. The Criminal Procedure Law
5. No
6. The content of MLA request will not be disclosed.

## **REPUBLIC OF MOLDOVA / REPUBLIQUE DE MOLDOVA**

*Requirements/process relating to the subject of the MLA request*

1. Under provisions of the Article 6 of the Law on international legal assistance in criminal matters the Republic of Moldova, within the limits of the law, will ensure, at the request of the requesting State, the confidentiality of requests for legal assistance and the documents annexed thereto. If the condition of confidentiality cannot be ensured, the Republic of Moldova will notify the foreign State on this.

Moreover, as prescribed in the Article 212 of the Criminal Procedure Code, the materials of the criminal proceedings may be made public only with the authorization of the person who is conducting the criminal proceedings and only to the extent that he/she deems it possible, with due respect for the presumption of innocence, and so as not to affect the interests of other persons and the interests of the criminal proceedings under the Law on the protection of personal data.

Furthermore, according to the same article, if it is necessary to preserve confidentiality, the person who conducts the criminal prosecution shall inform the witnesses, the injured party, the civil party, the civilly liable party or their representatives, the defender, the expert, the specialist, the interpreter, the translator and other persons assisting to the proceedings that they are not allowed to disclose information concerning the criminal prosecution. These persons shall give a written statement that they have been warned about the liability they will bear under specific articles of the Criminal Code.

According to the Criminal Procedure Code, the suspect/defendant does not have access to the materials of the criminal case, except for those in which he/she participates. Consequently, if he/she requests to be acquainted with the MLA application or other documents attached to it, the person will be denied access to them. There is an exception to this rule. If the hearing of the defendant is requested, a copy of the indictment must be handed, or a copy of a document containing information about the alleged offenses, as well as the legal provisions incriminating these acts.

2. According to the latest amendments to the Criminal Procedure Code, where a special investigative measure\* has been carried out, after the end of the period for which the special investigative measure was authorized or when the special investigative measure has ceased to be carried out, the prosecutor shall, within 15 days to inform the persons who were subject to the special investigative measure of this fact.

From the moment of the information referred to above, the person subject to the special investigative measure shall have the right to acquaint himself/herself with the acts of disposition concerning the ordering, authorization and extension of the special investigative measure, the minutes recording the results of the special investigative measure and the information on the electronic storage device, and shall be provided, upon request, with copies of them, except electronic storage devices that may reveal the secret means / devices of carrying out the special investigative measures.

\* Special investigative measures:

- 1) *with the authorization of the investigating judge:*
  - a) *search of the residence, use and/or installation therein of devices providing photography or surveillance and audio and video recording;*
  - b) *technical surveillance;*
  - c) *interception and recording of communications and/or images;*
  - d) *seizure, search, handing over or the collection of postal items;*
  - e) *monitoring or controlling financial transactions and/or access to financial information;*
  - f) *collecting information from electronic communications service providers;*
  - g) *accessing, intercepting and recording computer data;*
- 2) *with the authorization of the prosecutor:*
  - a) *identification of the subscriber or user of an electronic communications network;*
  - b) *control of the transmission or receipt of money, services or other material or non-material value demanded, accepted, extorted or offered;*
  - c) *controlled delivery*
  - d) *controlled acquisition*
  - e) *undercover investigation;*
  - f) *visual surveillance;*

3. *(for the second question)* The prosecutor, may postpone, but not later than the end of the criminal prosecution, the informing of the person subject to the special investigative measure in cases where this could lead to: interfering or jeopardize the proper conduct of the criminal prosecution as well as endanger the safety of the victim, the injured party, the civil party, the witness or their family members.
4. Thus, as mentioned in questions 2 and 3, there are specific regulations that apply to MLA requests for special investigative measures.
5. Domestic legislation.
6. There is no publicly available information or guidance on the subject.

Requirements relating to third-party requests

1. A third-party request referring to an MLA request will be refused, based to the Article 212 of the Criminal Procedure Code *(please see the information related to the first question, mentioned above)*.

**MONACO**

1. Si l'État requérant n'a formulé aucune demande de confidentialité spécifique dans une demande d'entraide reçue, existe-t-il dans votre État une obligation légale d'autoriser l'accès au dossier de la personne faisant l'objet de la demande (par exemple, à la demande d'entraide et/ou aux éléments de preuve à partager) à tout moment après la réception de la demande si la personne faisant l'objet de la demande d'entraide ou une autre partie à la procédure demande à voir ces informations ?

**Non.**

**La seule obligation en droit monégasque est celle prévue à l'article 596-13 du Code de procédure pénale selon lequel : « (...) Le procureur général communique alors aux avocats des personnes qui font l'objet de mesures exécutées en application d'une demande d'entraide, et qui ont formé recours, copie des pièces de procédure correspondant aux actes d'exécution, ainsi que la liste des mesures sollicitées par l'autorité mandante. »**

**L'accès au dossier intégral de la procédure, dans le cadre d'une demande d'entraide pénale internationale, n'est pas prévu dans la législation monégasque.**

2. Lorsqu'une décision judiciaire nationale est nécessaire pour mettre en œuvre une mesure demandée par le biais de l'entraide, votre cadre législatif national prévoit-il l'obligation de divulguer la procédure à la personne faisant l'objet de la demande d'entraide afin d'autoriser la mesure ?

**Non.**

3. Si vous avez répondu par l'affirmative à la question 1, à la question 2 ou aux deux, à quel stade de la procédure d'entraide l'accès est-il accordé à la personne faisant l'objet de la demande ou à une autre partie à la procédure dans votre État ? Existe-t-il un mécanisme permettant de retarder l'octroi de l'accès ou la possibilité pour l'État requérant de négocier un report (par exemple pour ne pas nuire à l'enquête en cours) ?

**Non pertinent.**

4. Votre État applique-t-il des exigences de confidentialité différentes aux demandes d'entraide en fonction du type de demande (par exemple, pour des perquisitions/saisies, des informations bancaires ou des informations accessibles au public) ?

**Non.**

5. Qu'est-ce qui régit l'application de la confidentialité à une demande d'entraide (par exemple, la

constitution, la législation nationale, la politique opérationnelle, la jurisprudence, etc.) ? La confidentialité est appliquée de fait dès lors que le dossier de procédure n'est accessible ni aux parties, ni aux tiers sauf à ce qu'un recours soit formé.

**Le cas échéant, seules les pièces réalisées en exécution de la demande d'entraide et la mission sont transmises aux avocats des personnes qui ont formé ledit recours.**

6. Existe-t-il des informations ou des orientations accessibles au public expliquant comment les dispositions de votre État en matière de confidentialité sont appliquées aux demandes d'entraide émanant d'États parties à la Convention de 1959 sur l'entraide ? (Il peut s'agir d'orientations nationales à l'intention des autorités étrangères sur le fonctionnement de la procédure d'entraide de l'État concerné).

**Non.**

*Exigences relatives aux demandes de tiers*

1. Si un tiers s'enquiert d'une demande d'entraide (par exemple, un journaliste, un conseiller juridique représentant une personne autre que celle faisant l'objet de la demande, un groupe de pression, un membre du public), comment répondriez-vous à cette demande ?

**Au regard de la législation nationale monégasque, il paraît peu probable qu'un tiers puisse s'enquérir d'une demande d'entraide.**

**Si tel était le cas, une éventuelle réponse serait apportée au cas par cas.**

## **NETHERLANDS / PAYS-BAS**

Requirements/process relating to the subject of the MLA request

1. If no specific confidentiality requirement is set out by the requesting State in an incoming MLA request, is there a legal obligation in your State to allow access to the file of the subject of the request (e.g. the MLA request and/or the evidence to be shared) at any time following your receipt of the request if the subject of the MLA request or another party to the proceedings asks to see this information?

*Under Dutch law, as a basic principle, MLA requests are considered as confidential, as they are part of international diplomatic communication and part of a criminal investigation. This basic principle of confidentiality has been recognized in court rulings, both in the field of criminal law and in administrative law when it comes to transparency of government information.<sup>1</sup>*

*Under criminal law, the contents of an MLA request are not disclosed automatically, but (the lawyer of) the subject of an MLA request might request for the disclosure of information from the file. Only in such cases the responsible public prosecutor or a judge (depending on the type of request) will decide which information from the file shall remain confidential. It is standard practice that public prosecutors and judges do not decide to disclose information from an MLA request, without consulting the Netherlands Central Authority and the requesting foreign authority first. The importance of confidentiality of MLA requests is, as a reminder, also pointed out in the letters used by the Netherlands Central Authority to forward MLA requests to the competent Public Prosecutor's Office. In case the public prosecutor or the judge is of the opinion that information from an MLA request should be disclosed to the subject of the request, the requesting foreign authority will be informed and has the option to object to such disclosure, or even to withdraw the MLA request.*

*This is without prejudice to the fact that some information from an MLA request will be disclosed by simply executing the request. For example, if the MLA request aims at hearing a suspect in a Dutch court, it is unavoidable that the suspect will be informed about the nature of the accusation against that person during the hearing. In such cases, lawyers sometimes request information about the nature of the accusation prior to the hearing for the preparation of the defense. It is usually not a*

<sup>1</sup> District Court of The Hague 21 January 2020, published on [www.rechtspraak.nl](http://www.rechtspraak.nl) with reference number ECLI:NL:RBDHA:2020:571. Decisions of investigative judges in criminal law usually remain unpublished.

*problem to disclose that information, since the MLA request seeks to inform the suspect about the*

*nature of the accusation anyway. Other examples of measures that almost cannot be executed without the subject of the MLA request noticing it, are seizures and searches.*

2. Where a domestic court order is required to action a measure requested via MLA, is there a requirement under your domestic legislative framework to disclose the proceedings to the subject of the MLA request to authorise the measure?

*If a court order is required to execute an MLA request, it does not necessarily mean that the contents of the MLA request will have to be disclosed. It is, however, more likely that (the lawyer of) the subject of an MLA request will request for the disclosure of information from the file when a court proceeding is upcoming. In such cases the responsible judge will decide which information from the file shall remain confidential. It is standard practice that the Netherlands Central Authority and the requesting foreign authority are consulted prior to a decision to disclose information from an MLA request.*

3. If yes to either question 1 or question 2 or both, at what stage of your state's MLA process is any access granted to the subject of the request or another party to the proceedings? Is there a mechanism to postpone access being granted, or the ability for the requesting state to negotiate a postponement (for example in order not to prejudice the investigation whilst it is ongoing)?

*The (lawyer of the) subject of an MLA request might request disclosure of information at any stage of the process. In such case, the Netherlands Central Authority and the requesting foreign authority will be consulted prior to the decision of the judge. If there are reasons why the disclosure of information should be refused or postponed, this information will be forwarded to the public prosecutor or judge taking the decision on confidentiality. Generally, public prosecutors and judges do not decide to disclose information without the prior consent of the requesting foreign authority.*

*The only known current examples where judges have decided that information should be disclosed, concern the hearing of a suspect in a Dutch court. In such cases lawyers have requested to be informed in advance about the nature of the accusation against their client, in order to be able to prepare the defense. The judges proposed to disclose prior to the hearing the indictment and the foreign articles of law regulating the criminal offense. In all these cases the requesting State agreed to the disclosure of this information. In one case, the requesting authorities decided to withdraw the MLA request and it was never disclosed for that reason.*

4. Does your state apply different confidentiality requirements to MLA requests dependent upon the type of request(s) made (e.g. for searches/seizure, banking information or publicly available information)?

*Under Dutch law, the framework specified above applies to all types of MLA requests. However, as also stated before, at the execution stage some requests will be more visible to the subject than others. It is, for example, almost unavoidable that the subject of an MLA request will notice searches and seizures.*

5. What governs how confidentiality applies to an MLA request (e.g. constitution, domestic legislation, operational policy, judicial precedent, other)?

*As stated before, it is a basic principle of Dutch law, confirmed by case law, that MLA requests are considered to be part of international diplomatic communication and are therefore deemed confidential. In addition, measures taken within the framework of a criminal investigation are usually confidential until the case is brought to court. This applies to MLA requests as well. Therefore, in practice public prosecutors and judges will not decide easily to disclose information from an MLA request. There are multiple judicial precedents available, as also referred to in the answer to the first and third question.*

6. Is there any publicly available information or guidance setting out how your state's confidentiality provisions are applied to MLA requests from states party to the 1959 MLA Convention? (This could include national guidance to foreign authorities on the operation of the respective States' MLA process.) *There is no other public information available than the published court ruling referred to in the answer to the first question.*

Requirements relating to third-party requests

1. Should a third party enquire about an MLA request (e.g. journalist, legal counsel representing anyone other than the subject of the request, a pressure group, member of the public) how would you respond to this request.

*Under Dutch law, access to files from a criminal case is restricted for third parties. This follows from Article 365 of the Dutch Law on Criminal Procedure.*

*Third parties might request, however, that information will be made publicly available based on the Dutch legislation on transparency of government information ("Wet open overheid"). Article 5.1 of this law acknowledges both the interest of international relations and the interest of a criminal investigation as grounds for refusal. It is standing case law that these grounds for refusal also apply to MLA requests, see the ruling referred to in the answer to the first question.*

## **NORTH MACEDONIA / MACEDOINE DU NORD**

### **Questions:**

*Requirements/process relating to the subject of the MLA request*

1. If no specific confidentiality requirement is set out by the requesting State in an incoming MLA request, is there a legal obligation in your State to allow access to the file of the subject of the request (e.g. the MLA request and/or the evidence to be shared) at any time following your receipt of the request if the subject of the MLA request or another party to the proceedings asks to see this information?
  - Once MLA request is received it is treated as national case. All pre investigative and investigative measures are secret, there is no provision that separates MLA from domestic procedures in this regard
2. Where a domestic court order is required to action, a measure requested via MLA, is there a requirement under your domestic legislative framework to disclose the proceedings to the subject of the MLA request to authorize the measure?
  - Court orders that are connected in the investigation with a search of a home and other premises or an examination and search of a person, in such a situation when taking the procedural action by the judicial police, the order must be delivered to the suspect or the person whose property is being searched with the right to have defense attorney at that stage of the procedure, including having to wait two hours for the search to be conducted.
  - When there are special investigative measures than the court order is not shared with the subject.
3. If yes to either question 1 or question 2 or both, at what stage of your state's MLA process is any access granted to the subject of the request or another party to the proceedings? Is there a mechanism to postpone access being granted, or the ability for the requesting state to negotiate a postponement (for example in order not to prejudice the investigation whilst it is ongoing)?
4. Does your state apply different confidentiality requirements to MLA requests dependent upon the type of request(s) made (e.g. for searches/seizure, banking information or publicly available information)?
  - no
5. What governs how confidentiality applies to an MLA request (e.g. constitution, domestic legislation, operational policy, judicial precedent, other)?  
It is according to national law mainly law on criminal procedure. I
6. Is there any publicly available information or guidance setting out how your state's confidentiality provisions are applied to MLA requests from states party to the 1959 MLA Convention? (This could include national guidance to foreign authorities on the operation of the respective States' MLA process.)  
No, only the Law on International cooperation in criminal matters  
<http://ldbis.pravda.gov.mk/PregledNaZakon.aspx?id=55651>

*Requirements relating to third-party requests*

1. Should a third party enquire about an MLA request (e.g. journalist, legal counsel representing anyone other than the subject of the request, a pressure group, member of the public) how would you respond to this request?
  - At Ministry of justice, we only communicate with judicial authorities, with the exception in cases of transfer of sentenced person.
  - At Public prosecutor's Office only when is proscribed in national legislation

Addition to the questionnaire

**Article 289**  
**Secrecy of the pre-investigative procedure**

Any actions taken during the pre-investigative stage by the public prosecutor or the police shall be regarded as secret.

**Article 299**  
**Secrecy of the investigation procedure**

- (1) If so required by the interests of the criminal procedure, the need to keep a secret or to protect the suspect and the family life of the suspect or the injured party, the public prosecutor shall order the person who is being examined, who is present during the investigative action or who reviews the case files, to keep certain information as secret and he or she shall also forewarn the person about the consequences of any disclosure of such a secret.
- (2) The order referred to in paragraph 1 of this Article shall be entered into the record separately, i.e. it shall be noted in the files that are being reviewed, with a personal signature of the person who has been forewarned about the duty of keeping a secret.

**Article 296**  
**Participation of the suspect, defense counsel and the injured party in the investigation procedure**

- (1) The public prosecutor shall be obliged, in a convenient manner, to inform the defense counsel, the injured party and the suspect about the time and location of the investigative actions that they may be present at, except if there is a danger of procrastination. If the suspect has a defense counsel, as of a rule, the public prosecutor shall inform the defense counsel only.
- (2) If the person who has been informed about the investigative action is not present, the action may be performed in his or her absence.
- (3) Any persons, present during the investigative actions may suggest to the entity conducting the procedure to ask the suspect and the expert certain questions that might clarify the issues, and if approved by the entity conducting the procedure, they may also ask them direct questions. These individuals shall also have the right to ask for their remarks regarding the performance of certain actions to be put on the record

**Article 302**  
**Notifying the suspect about the completion of the investigation procedure**

- (1) Prior to the expiry of the deadline as referred to in Article 301, the public prosecutor shall be obliged to deliver a notification of completion of the investigation procedure to the suspect and his or her counsel.
- (2) Prior to the completion of the investigation procedure, the public prosecutor shall be obliged to examine the suspect, if he or she has not done that earlier.
- (3) The notification shall contain a short description of the criminal offense that was the subject of the proceedings, the legal qualification, with an indication that all files from the investigation procedure conducted have been handed over to the records office at the Public Prosecution Office for safekeeping and that the suspect and his or her counsel shall have the right to review the files and evidence and copy them respectively.
- (4) The notification shall contain a legal advice that within a period of 15 days from the receipt of the notification, the suspect has the right to file any documents, or other evidence and defense action files, or to request from the public prosecutor to collect certain evidence.
- (5) The public prosecutor shall be obliged to disclose to the defendant all the evidence that was

collected during the investigation procedure against him or her, as well as any exculpatory evidence that might be useful to the defense.

- (6) In the event when, upon request by the suspect or his or her defense counsel, the public prosecutor is collecting certain evidence, this shall have to be completed within a period of 30 days from the day of submission of the request.

## **POLAND / POLOGNE**

1. *If no specific confidentiality requirement is set out by the requesting State in an incoming MLA request, is there a legal obligation in your State to allow access to the file of the subject of the request (e.g. the MLA request and/or the evidence to be shared) at any time following your receipt of the request if the subject of the MLA request or another party to the proceedings asks to see this information?*

Polish regulations do not contain legal norms imposing an obligation to allow access to the file of the subject of the request. As a rule, requests for legal assistance are executed in accordance with the Polish law, with permissible exceptions provided that they do not conflict with the principles of the Polish legal system (Article 588 par. 4 Code of Criminal Procedure).

In Polish criminal proceedings at the trial stage, the principle of open court applies (Article 45(1) of the Constitution of the Republic of Poland, Article 355 of the Code of Criminal Procedure – with restrictions resulting from the Act), while at the pre-trial stage, the principle of secrecy of proceedings within the limits specified by law applies (Article 156(5) of the Code of Criminal Procedure and Article 241(1) of the Criminal Code). This means that the parties to the proceedings, defense lawyers, and representatives are given access to the files on the basis of a decision of the person conducting the proceedings and are allowed to make copies or transcripts, unless there is a need to secure the proper course of the proceedings or protect an important interest of the State. With the consent of the prosecutor, in exceptional cases, the files may be made available to other persons. In any case, the decision on whether to make the files available rests with the prosecutor.

As regards a request for legal assistance, in accordance with the aforementioned national regulations, before allowing access to the content of the request or the evidence gathered as a result of its execution, in a situation where the confidentiality requirement has not already been specified in advance in the content of the request, it would be necessary to obtain the consent of the competent authority drawing up the request in the requesting state for the disclosure of information.

2. *Where a domestic court order is required to action a measure requested via MLA, is there a requirement under your domestic legislative framework to disclose the proceedings to the subject of the MLA request to authorise the measure?*

Polish legislation does not impose an obligation on the executing authority to disclose information from the proceedings to the person concerned by the request *ex officio*. A court ruling is required for surveillance and telephone tapping (Article 239(2) of the Code of Criminal Procedure), and the announcement of the decision to monitor and record telephone conversations to the person concerned may be postponed for as long as necessary in the interests of the case. A court decision is also required if it is necessary to waive banking secrecy. The national legal framework does not impose an obligation to grant access to the proceedings to the person concerned by the request in such a situation.

3. *If yes to either question 1 or question 2 or both, at what stage of your state's MLA process is any access granted to the subject of the request or another party to the proceedings? Is there a mechanism to postpone access being granted, or the ability for the requesting state to negotiate a postponement (for example in order not to prejudice the investigation whilst it is ongoing)?*

Not applicable

4. *Does your state apply different confidentiality requirements to MLA requests dependent upon the type of request(s) made (e.g. for searches/seizure, banking information or publicly available information)?*

Polish criminal procedure does not provide for different confidentiality requirements depending on the type of request, as it is the requesting authority that classifies the request as confidential, and the executing authority is only required to comply with the requirements specified by the requesting Party, provided that they do not conflict with national law.

5. *What governs how confidentiality applies to an MLA request (e.g. constitution, domestic legislation, operational policy, judicial precedent, other)?*

There are no specific regulations concerning the application of confidentiality with regard to MLA requests. The provisions concerning national criminal proceedings apply: the Constitution of the Republic of Poland (publicity of proceedings at the court stage) and the Code of Criminal Procedure.

6. *Is there any publicly available information or guidance setting out how your state's confidentiality provisions are applied to MLA requests from states party to the 1959 MLA Convention? (This could include national guidance to foreign authorities on the operation of the respective States' MLA process.)*

There is no publicly available information or guidelines explicitly setting out how Poland applies confidentiality rules to MLA requests from countries that are parties to the 1959 MLA Convention.

#### **Requirements relating to third-party requests**

1. *Should a third party enquire about an MLA request (e.g. journalist, legal counsel representing anyone other than the subject of the request, a pressure group, member of the public) how would you respond to this request?*

In the case of inquiries from third parties not covered by the MLA request, as indicated above, the procedure set out in Article 156 of the Code of Criminal Procedure applies. It seems possible to provide general information that does not cover specific issues related to the subject matter of the request. In order to disclose detailed information, it seems necessary to obtain the opinion of the competent authority in the country requesting legal assistance.

### **PORTUGAL**

1. If no specific confidentiality requirement is set out by the requesting State in an incoming MLA request, is there a legal obligation in your State to allow access to the file of the subject of the request (e.g. the MLA request and/or the evidence to be shared) at any time following your receipt of the request if the subject of the MLA request or another party to the proceedings asks to see this information? *In principle a Portuguese authority would consult the requesting authority before allowing access to the file, in any case. However if the defence is able to demonstrate that the case, in the requesting State is not covered by a secrecy principle, the access to the file can be allowed.*

2. Where a domestic court order is required to action a measure requested via MLA, is there a requirement under your domestic legislative framework to disclose the proceedings to the subject of the MLA request to authorise the measure? *In the Portuguese system, in the investigation phase, in cases where the Prosecutor does not have competence to decide on a specific measure, there will be no intervention of a Court. A Judge of Instruction will intervene to allow, or not, the measure to be enforced. In such cases, in principle, the proceeding will not be disclosed to the subject of the MLA.*

3. If yes to either question 1 or question 2 or both, at what stage of your state's MLA process is any access granted to the subject of the request or another party to the proceedings? Is there a mechanism to postpone access being granted, or the ability for the requesting state to negotiate a postponement (for example in order not to prejudice the investigation whilst it is ongoing)? *In principle there is not such a mechanism nor practice to negotiate a postponement. If the requesting authority informs that the file should remain confidential, in cases as the one related on 1. The requested authority may agree with the requesting authority on the non execution of the request, in cases where there might be prejudice to the investigation.*

4. Does your state apply different confidentiality requirements to MLA requests dependent upon the type of request(s) made (e.g. for searches/seizure, banking information or publicly available information)? *Again we don't have that concept of confidentiality; either the procedure is secreto r not, it does not depend on the type of measure. Portuguese authorities may agree however on specific plans of execution according to which some measures should precede or not other ones.*

5. What governs how confidentiality applies to an MLA request (e.g. constitution, domestic legislation, operational policy, judicial precedent, other)? *The Criminal Procedural Code that is subsidiary to the domestic legislation on international cooperation in criminal matters.*

6. Is there any publicly available information or guidance setting out how your state's confidentiality provisions are applied to MLA requests from states party to the 1959 MLA Convention? (This could include national guidance to foreign authorities on the operation of the respective States' MLA process.)

No.

Requirements relating to third-party requests 1. Should a third party enquire about an MLA request (e.g. journalist, legal counsel representing anyone other than the subject of the request, a pressure group, member of the public) how would you respond to this request? *We would consult the requesting authority in order to clear how far we can go (generic information: yes, no MLA has been received from such State; more specific information: purpose of the request, executing authority...)*

## **SLOVAK REPUBLIC / REPUBLIQUE SLOVAQUE**

**1. If no specific confidentiality requirement is set out by the requesting State in an incoming MLA request, is there a legal obligation in your State to allow access to the file of the subject of the request (e.g. the MLA request and/or the evidence to be shared) at any time following your receipt of the request if the subject of the MLA request or another party to the proceedings asks to see this information?**

*In accordance with the provisions of Section 482 Subsection 2 of the Criminal Code of the Slovak Republic, the Slovak authorities shall not disclose or further provide information or evidence obtained from a foreign authority on the basis of a request received or sent pursuant to or in connection with this part, nor shall they use it for purposes other than for which it has been sent or requested, if they are bound to do so by an international treaty or if the information or evidence has been provided only on the basis of a promise to fulfill this condition; this does not apply if the foreign authority grants consent to the disclosure or other use of the information or evidence.*

*In the case of a request by the subject concerned, the information from the request or the evidence obtained would be provided to it only after consultation with the requesting party, and only if the national law of the Slovak Republic allows the provision of such information or evidence in similar national proceedings and it would not jeopardize the relevant criminal proceedings.*

**2. Where a domestic court order is required to action a measure requested via MLA, is there a requirement under your domestic legislative framework to disclose the proceedings to the subject of the MLA request to authorize the measure?**

*No, there is no such requirement in our legislation.*

**3. If yes to either question 1 or question 2 or both, at what stage of your state's MLA process is any access granted to the subject of the request or another party to the proceedings? Is there a mechanism to postpone access being granted, or the ability for the requesting state to negotiate a postponement (for example in order not to prejudice the investigation whilst it is ongoing)?**

*See the answer to question no. 1. The Slovak national law does not contain a special provision regarding the right of the person concerned to make available information from a request or evidence obtained as part of judicial cooperation.*

**4. Does your state apply different confidentiality requirements to MLA requests dependent upon the type of request(s) made (e.g. for searches/seizure, banking information or publicly available information)?**

*All requests for legal assistance are subject to professional secrecy. Special protection is also provided to information that are subject to, e.g. banking or tax secrecy. If the subject of the request for legal assistance are actions requiring the issuance of a court or prosecutor's order, they are subject to secrecy within the same level of secrecy. The orders that are issued to perform the requested actions are also classified.*

**5. What governs how confidentiality applies to an MLA request (e.g. constitution, domestic legislation, operational policy, judicial precedent, other)?**

*The general legal regulation is contained in Act no. 215/2004 Coll. on the protection of classified information and on the amendment of certain laws. Editing of classified facts in relation to judicial cooperation can be found e.g. in the Order of the Prosecutor General No. 34/2024 of 29 May 2024 on the definition of classified facts within the competence of the Prosecutor's Office of the Slovak Republic.*

**6. Is there any publicly available information or guidance setting out how your state's confidentiality provisions are applied to MLA requests from states party to the 1959 MLA Convention? (This could include national guidance to foreign authorities on the operation of the respective States' MLA process.)**

*No, there is no such regulation.*

Requirements relating to third-party requests

**1. Should a third party enquire about an MLA request (e.g. journalist, legal counsel representing anyone other than the subject of the request, a pressure group, member of the public) how would you respond to this request?**

*Provision of Section 6 of the Criminal Procedure Code of the Slovak Republic applies to the provision of information on the activities of Slovak authorities within judicial cooperation in criminal matters: Section 6*

*Providing information on criminal proceedings*

*(1) The law enforcement authorities and the court shall inform the public on the criminal proceedings under this Act by providing information to the media. However, such information must observe the protection of classified information, trade secrecy, banking secrecy, tax secrecy, postal secrecy, and telecommunications secrecy.*

*(2) When providing information, the law enforcement authorities and the court are entitled to conceal such facts that might obstruct or hinder the clarification and investigation of the case. At the same time, they are obligated to observe the principle of presumption of innocence; they shall observe that protected personal information or facts of a private nature, especially on family life, home and correspondence, directly not related to the criminal activity are not disclosed. In particular, they shall observe the interests of minors, juveniles and victims that their personal information shall not be disclosed.*

*(3) In proceedings before the court, the extent of the disclosed information results from the principle of publicity. During the court proceedings, the preparation of written notes or drawings may not be prohibited unless such activity interrupts the course of the proceedings.*

*(4) If the provision of information violates or endangers the interests referred to in Subsection 1 or 2, the law enforcement authorities and the court shall refuse to provide information.*

*(5) If the law enforcement authorities provide information from the criminal proceedings to EU Member State authorities who are authorized based on their national law to prevent and detect criminal activity, to identify offenders of criminal offences, and to investigate criminal offences, to exercise their powers and to take enforcement measures in relation to such acts under a special regulation, Subsection 1, 2 and 4 shall apply accordingly.*

*(6) For a criminal offence committed in connection with attendance at a public event which was a sporting event, the administrator of the information system securing safety at sporting events under a special Act shall be notified by the court of the conviction to the extent under the special Act.*

## **SPAIN / ESPAGNE**

*Article 25 (confidentiality) of the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters states as follows:*

*"The requesting Party may require that the requested Party keep confidential the fact and substance of the request, except to the extent necessary to execute the request. If the requested Party cannot comply with the requirement of confidentiality, it shall promptly inform the requesting Party states."*

*This questionnaire seeks to assess how states party to the 1959 European Convention on Mutual Assistance in Criminal Matters ("1959 MLA Convention") implement this provision relating to confidentiality, informed by their domestic law. Responses will assist all state parties, in their role as requesting states, to build an understanding of how incoming MLA requests are managed by requested party states. It also seeks to help operational agencies in determining what information is needed in an MLA request to ensure it can progress and be dealt with effectively and swiftly while complying with confidentiality provisions in the requested state.*

### **Questions:**

*Requirements/process relating to the subject of the MLA request*

1. *If no specific confidentiality requirement is set out by the requesting state in an incoming MLA*

*request, is there a legal obligation in your state to allow access to the file of the subject of the request (e.g. the MLA request and/or the evidence to be shared) at anytime following your receipt of the request if the subject of the MLA request or another party to the proceedings asks to see this information?*

*The Spanish judicial authorities always consider that confidentiality is the general rule when executing MLA and maintain confidentiality, and only in the event that, after a consultation procedure initiated with the issuing authority, we are informed that there is no problem in communicating the content of the MLA to the person concerned and that the issuing authority allows confidentiality to be lifted, the content is communicated or a copy of the received documents is provided to the concerned person. However, this general rule has exceptions, and these depend on the kind of the measure requested. Some measures require that the person concerned be informed in advance (for example, for blood sampling or for hearing a witness), while others require that the person concerned be informed at the time the measure is executed (for example, entry and search) and a third group of measures (for instance, interception of telecommunications) allow the person concerned to be informed after execution, which means that in many cases the right to challenge the investigative measure can be exercised only when the evidence has been sent to the issuing State in the main proceedings.*

*2. Where a domestic court order is required to action a measure requested via MLA, is there a requirement under your domestic legislative framework to disclose the proceedings to the subject of the MLA request to authorise the measure?*

*Not always. It depends on the kind of the measure requested.*

*3. If yes to either question 1 or question 2 or both, at what stage of your state's MLA process is any access granted to the subject of the request or another party to the proceedings? Is there a mechanism to postpone access being granted, or the ability for the requesting state to negotiate a postponement (for example in order not to prejudice the investigation whilst it is ongoing)?*

*As stated in previous responses, it completely depends on the type of measure requested.*

*Confidentiality and secrecy of proceedings are two different concepts.*

*According to Art 301 CPC:*

*"The proceedings shall be reserved and shall not be made public until the opening of the hearing, with the exceptions determined in the present Law.*

*The lawyer or attorney of any of the parties who unduly discloses the contents of the summary proceedings shall be liable to a fine of 500 to 10,000 euros.*

*The same fine shall be imposed on any other person who, not being a public official, commits the same offence.*

*The public official, in the case of the preceding paragraphs, shall incur the liability that the Criminal Code indicates in its respective place".*

*The secrecy of the proceedings is regulated in Art 302 of the CPC according to which:*

*"The parties may take knowledge and intervene in all the proceedings.*

*However, if the crime is public, the Examining Magistrate, at the proposal of the Prosecutor's Office, of any of the parties or ex officio, may declare it, by order, totally or partially secret for all the parties, for a period not exceeding one month when it is necessary in order to:*

- a. avoid a serious risk to the life, liberty or physical integrity of another person; or*
- b. to prevent a situation that could seriously compromise the outcome of the investigation or proceedings.*

*The secrecy of the investigation must necessarily be lifted at least ten days prior to the conclusion of the investigation.*

*The provisions of this article are without prejudice to the provisions of the second paragraph of article 505, paragraph 3."*

*The purpose of the secrecy of the proceedings is to prevent the knowledge and intervention of the investigated party in the proceedings from giving rise to interferences or manipulations tending to hinder the investigation, constituting a limitation of the right of defense that does not imply defenselessness because it does not prevent the affected party from exercising it fully when the secrecy is lifted, once its purpose has been fulfilled.*

*Therefore, confidentiality of the proceedings is the general rule. Regarding secrecy of the proceedings , in case the issuing authority request that , the Spanish executing authority will maintain the secrecy of the proceedings as long as it is compatible with Spanish legislation, since sometimes notification to the person concerned is absolutely necessary to guarantee the recognition of the right to intervene in the proceedings, if deemed convenient, by appearing in person together with a lawyer and legal representative, and to exercise all available legal remedies against the decision of the Spanish executing authorities.*

4. *Does your state apply different confidentiality requirements to MLA requests dependent upon the type of request(s) made (e.g. for searches/seizure, banking information or publicly available information)?*

*Yes. For example, regarding the obligation to provide access to an MLA in which the interview of a person as a suspect is requested, in accordance with the essential principles of our law, and the right to a “due process at law” information must be given to the person concerned about the facts on the basis of which the rogatory letter was issued, without necessarily transferring all the received documentation, and always without prejudice to exempting this practice in cases where the requesting authority has expressly asked for confidentiality. In practice, information is provided about the facts and the crime that is charged to the investigated and that has motivated the opening of the judicial procedure.*

*If it involves a search warrant and the person is under detention, it is absolutely necessary for him/her to be present during the search procedure .*

*On the other hand, it is not necessary to notify the concerned person for obtaining banking information. In the case of police surveillance, interception of communications, bugging, .....or any other measure where the knowledge of its execution by the investigated would frustrate its purpose, our legislation allows the person concerned to be informed after execution, which means that in many cases the right to challenge the investigative measure can be exercised only when the evidence has been sent to the issuing State in the main proceedings.*

5. *What governs how confidentiality applies to an MLA request (e.g. constitution, domestic legislation, operational policy, judicial precedent, other)?*

*Domestic legislation.*

6. *Is there any publicly available information or guidance setting out how your state’s confidentiality provisions are applied to MLA requests from states party to the 1959 MLA Convention? (This could include national guidance to foreign authorities on the operation of the respective states MLA process)*

*No. Only the legal regulation contained in the articles mentioned in the previous answers.*

*Requirements relating to Third Party requests*

7. *Should a third party enquire about an MLA request (e.g. journalist, legal counsel representing anyone other than the subject of the request, a pressure group, member of the public) how would you respond to this request?*

*Apart from the persons directly concerned by the execution of the measure, no information is provided to any third party without the prior and express consent of the issuing State.*

## **SWITZERLAND / SUISSE**

1. **If no specific confidentiality requirement is set out by the requesting State in an incoming MLA request, is there a legal obligation in your State to allow access to the file of the subject of the request (e.g. the MLA request and/or the evidence to be shared) at any time following your receipt of the request if the subject of the MLA request or another party to the proceedings asks**

## **to see this information?**

Any person directly and personally affected by the execution of an MLA request has the constitutional right to be heard and to make representations. After the execution of the specific measures sought in the MLA request, said person will have to be approached and given the opportunity to make a statement. This possibility must be granted whether the person asks for it or not. This will typically involve the disclosure of the MLA request in full and the evidence which is to be transmitted. Thus, at that moment, the person affected by the MLA measure (who may be identical with or linked to the person under investigation in the requesting State) will take note of the contents of the request. Only once the person affected had an adequate opportunity to make representations can the executing authority issue the final decision on granting MLA. This decision is appealable under Swiss law by the person(s) affected by the MLA measure (if there are any such persons).

### **2. Where a domestic court order is required to action a measure requested via MLA, is there a requirement under your domestic legislative framework to disclose the proceedings to the subject of the MLA request to authorise the measure?**

The relevant question in Switzerland is not if a court is involved, but it is the type of the measure. Measures that cause the affected person a disadvantage that cannot be easily remedied are independently contestable. In these cases, the person may be granted access to the file (cf. above) already at an earlier stage. However, in all cases, the affected person, if any, will be granted that right before the final decision is issued.

### **3. If yes to either question 1 or question 2 or both, at what stage of your state's MLA process is any access granted to the subject of the request or another party to the proceedings? Is there a mechanism to postpone access being granted, or the ability for the requesting state to negotiate a postponement (for example in order not to prejudice the investigation whilst it is ongoing)?**

Access will usually be granted as soon as the person(s) affected have been clearly identified and the specific measures have been executed (i.e. the evidence collected). In many cases, this access (and therefore, the issuance of the final decision on granting MLA) can be coordinated with the needs of the foreign criminal proceedings. Communication between the central authorities/competent authorities involved is key. In suitable cases, a non-disclosure can be helpful. For instance, a bank can be ordered not to disclose the existence of an MLA request aiming at the production of banking documentation to the account holder. However, such orders are time-limited (usually six months, extendable to one year). And in any case, the order will have to be lifted at one point because the right to be heard still has to be granted so the procedure can continue. The procedure can normally not advance without the person(s) affected being given the opportunity to state their position as to the MLA request.

In exceptional cases, namely when the foreign procedure concerns a case of terrorism or organized crime, and if confidentiality is to be maintained, evidence may be transmitted on a provisional basis (and only for intelligence purposes) without the person(s) affected being contacted previously. However, the right to be heard must be granted afterwards, as soon as the foreign procedure allows.

### **4. Does your state apply different confidentiality requirements to MLA requests dependent upon the type of request(s) made (e.g. for searches/seizure, banking information or publicly available information)?**

No.

### **5. What governs how confidentiality applies to an MLA request (e.g. constitution, domestic legislation, operational policy, judicial precedent, other)?**

The Federal Act on International Mutual Assistance in Criminal Matters (IMAC, SR 351.1) governs the procedure in detail in art. 80h ff. However, the right of access to a court in Switzerland is contained in art. 29a of the Federal Constitution of the Swiss Confederation (SR 101).

### **6. Is there any publicly available information or guidance setting out how your state's confidentiality provisions are applied to MLA requests from states party to the 1959 MLA Convention? (This could include national guidance to foreign authorities on the operation of the respective States' MLA process.)**

Check our MLA-Guidelines:

<https://www.rhf.admin.ch/dam/rhf/en/data/strafrecht/wegleitungen/wegleitung-straftsachen-e.pdf.download.pdf/wegleitung-straftsachen-e.pdf>, in particular 3.3.2.

#### Requirements relating to third-party requests

**1. Should a third party enquire about an MLA request (e.g. journalist, legal counsel representing anyone other than the subject of the request, a pressure group, member of the public) how would you respond to respond to this request?**

Switzerland will generally confirm the existence of the request. However, the third person has no right of access to the file.

### TURKIYE

Requirements/process relating to the subject of the MLA request

**1. If no specific confidentiality requirement is set out by the requesting State in an incoming MLA request, is there a legal obligation in your State to allow access to the file of the subject of the request (e.g. the MLA request and/or the evidence to be shared) at any time following your receipt of the request if the subject of the MLA request or another party to the proceedings asks to see this information?**

There is no specific regulation on this issue in our legislation.

**2. Where a domestic court order is required to action a measure requested via MLA, is there a requirement under your domestic legislative framework to disclose the proceedings to the subject of the MLA request to authorise the measure?**

There is no specific regulation on this issue in our legislation.

**3. If yes to either question 1 or question 2 or both, at what stage of your state's MLA process is any access granted to the subject of the request or another party to the proceedings? Is there a mechanism to postpone access being granted, or the ability for the requesting state to negotiate a postponement (for example in order not to prejudice the investigation whilst it is ongoing)?**

Article 25 titled "Confidentiality" of Additional Protocol No. 2 to the European Convention on Mutual Legal Assistance in Criminal Matters stipulates that; if requested by the requesting country, the fact and substance of the request shall be kept confidential by the fulfilling country to the Contracting Parties. The said regulation has the force of domestic law pursuant to Article 90 of the Constitution.

Article 5 of the Law No. 6706 on International Judicial Cooperation in Criminal Matters stipulates that; "In cases where there are no provisions in this Law and other laws, the provisions of the Criminal Procedure Code dated 4/12/2004 and No. 5271 shall apply."

Article 157 of the Criminal Procedure Code No. 5271 stipulates that; "Without prejudice to the cases where the law rules other provisions, and provided that it does not prejudice the rights of defense, the procedural procedures during the investigation phase are confidential." Pursuant to this provision, the investigation phase is conducted on the basis of confidentiality.

**4. Does your state apply different confidentiality requirements to MLA requests dependent upon the type of request(s) made (e.g. for searches/seizure, banking information or publicly available information)?**

Please see the above response for Question 3.

**5. What governs how confidentiality applies to an MLA request (e.g. constitution, domestic legislation, operational policy, judicial precedent, other)?**

Please see the above response for Question 3.

- 6. Is there any publicly available information or guidance setting out how your state's confidentiality provisions are applied to MLA requests from states party to the 1959 MLA Convention? (This could include national guidance to foreign authorities on the operation of the respective States' MLA process.)**

There is no guidance on this issue.

#### **Requirements relating to third-party requests**

- 1. Should a third party enquire about an MLA request (e.g. journalist, legal counsel representing anyone other than the subject of the request, a pressure group, member of the public) how would you respond to this request?**

Please see the above response for Question 3.

#### **UKRAINE**

1. *If no specific confidentiality requirement is set out by the requesting state in an incoming MLA request, is there a legal obligation in your state to allow access to the file of the subject of the request (e.g. the MLA request and/or the evidence to be shared) at anytime following your receipt of the request if the subject of the MLA request or another party to the proceedings asks to see this information?*

*According to Para 4 of Article 4 of the Criminal Procedural Code of Ukraine (hereinafter -CPC), the provisions of this Code apply while performing certain procedural actions on the territory of Ukraine at the request of competent authorities of foreign states within the framework of international cooperation.*

*In this regard, access to the materials of a foreign request for mutual legal assistance, that are part of the criminal proceedings, is regulated, in particular, by the provisions of Article 222 of the CPC, which stipulates that pre-trial investigation information may be disclosed only with the written permission of the investigator or prosecutor and to the extent they deem possible.*

*According to Para 3 of Article 221 of the CCP the familiarisation with the pre-trial investigation materials contained in the pre-trial investigation information and communication system shall be carried out by providing access to them or providing electronic copies or copies of such materials.*

*Pursuant to Article 317 Para 2 of the CPC of Ukraine, after the case is scheduled for trial, the presiding judge must provide the participants in the court proceedings with the opportunity to review the criminal case file if they request it. During the familiarisation, the participants in the court proceedings have the right to make the necessary extracts and copies from the materials.*

*The application of confidentiality to requests for mutual legal assistance is regulated by Article 556 of the CPC.*

2. *Where a domestic court order is required to action a measure requested via MLA, is there a requirement under your domestic legislative framework to disclose the proceedings to the subject of the MLA request to authorise the measure?*

*According to Article 562 Para 1 of the CPC (procedural actions requiring special permission), if the execution of a request from a competent authority of a foreign state requires a procedural action that can only be performed in Ukraine with the permission of a prosecutor or court, such action is carried out only upon obtaining the appropriate permission in the manner stipulated by this Code. In particular, certain procedural actions are carried out exclusively based on a court ruling.*

*The Law of Ukraine "On Access to Court Decisions" stipulates that court decisions are open and must be published in electronic form no later than the next day after their preparation and signing. The State Judicial Administration of Ukraine ensures the maintenance of the Unified State*

*Register of Court Decisions for access to court decisions of general jurisdiction courts.*

*Court decisions entered into the Register are open for free 24/7 access on the official web portal of the judiciary of Ukraine.*

*At the same time, the Procedure for Maintaining the Unified State Register of Court Decisions provides for the possibility of restricting (delaying) general access to the electronic resources of the Register in the manner stipulated by the laws of Ukraine "On Access to Court Decisions," "On State Secrets" and this Procedure.*

*General access to court decisions (access to images of the Register's information resources) are opened for general access no later than the next working day after processing and anonymizing the relevant information resources of the Register, except for images of information resources specified in paragraph 4 of section II of this Procedure. General access to such images of the Register's information resources is provided one year after their registration in the Register or within another period established by law.*

*Paragraph 4 of section II of the Procedure:*

*For each electronic copy of a court decision and a separate opinion of a judge, the judge (reporting judge) who made the court decision, forms the following information using the automated court document management system:*

- *the need to delay for the period established by law, the provision of general access to the images of the Register's information resources for:*
- *rulings on permission to search a dwelling or other property of a person, refusal to satisfy a request for a search of a dwelling or other property of a person, permission to conduct a covert investigative (search) action, refusal to satisfy a request for a covert investigative (search) action;*
- *other court decisions, the procedure for restricting access to which in the Register is established by law.*

*Additionally, Article 556 of the CPC grants the authorized (central) body of Ukraine the right to take additional measures to ensure the confidentiality of the fact of receiving a request for international legal assistance, its content, and the information obtained as a result of its execution. If necessary, the conditions and terms for maintaining the confidentiality of the information obtained as a result of the request's execution are agreed upon.*

*Considering the above, Ukrainian legislation defines a mechanism for restricting access to court decisions obtained for the execution of foreign requests that contain confidentiality reservations.*

*However, it should be noted that the CPC of Ukraine requires the presentation of the court decision, based on which the procedural action is carried out, to the person specified in such a decision, for example, as the owner of the items and documents to which access is required. Additionally, a copy of such a decision is also handed to this person.*

*Therefore, in such a case, the information specified in the court decision, general access to which is restricted (delayed), becomes known to the relevant person.*

*If the foreign party requests confidentiality, access to such information is not provided to third parties.*

3. *If yes to either question 1 or question 2 or both, at what stage of your state's MLA process is any access granted to the subject of the request or another party to the proceedings? Is there a mechanism to postpone access being granted, or the ability for the requesting state to negotiate a postponement (for example in order not to prejudice the investigation whilst it is ongoing)?*

*Ukrainian legislation does not specify at what stage of the international legal assistance process access is granted to the subject of the request or to the other party to the proceedings. The general rules of criminal procedural law apply.*

4. *Does your state apply different confidentiality requirements to MLA requests dependent upon the type of request(s) made (e.g. for searches/seizure, banking information or publicly available information)?*

*Ukrainian legislation does not establish separate requirements for applying confidentiality to requests for mutual legal assistance depending on their type (e.g., searches/arrests, banking information, or publicly available information).*

Compliance with confidentiality requirements is ensured in the general manner for all requests that contain the corresponding request from the initiators. This issue is regulated by Article 556 of the CPC, which states that at the request of the requesting party, the authorized (central) body of Ukraine has the right to take additional measures to ensure the confidentiality of the fact of receiving a request for international legal assistance, its content, and the information obtained as a result of its execution. If necessary, the conditions and terms for maintaining the confidentiality of the information obtained as a result of the request's execution are agreed upon.

At the same time, as already mentioned, the procedure for maintaining the confidentiality of requests varies depending on the type of requested actions and the requirements of Ukrainian legislation regarding their conduct (interrogation of a person, obtaining banking information, obtaining information from state registers, etc.). For example, during a search, the relevant court decision is handed to the interested person. This makes it impossible to ensure the confidentiality of requests for which such procedural actions are carried out. At the same time, obtaining banking information also involves handing the court ruling to a third party, but the executor of the foreign request can require the bank employee to maintain confidentiality.

5. What governs how confidentiality applies to an MLA request (e.g. constitution, domestic legislation, operational policy, judicial precedent, other)?

- Criminal Procedural Code of Ukraine (CPC)
- Instruction on the Procedure for International Cooperation on Mutual Legal Assistance, Extradition, Transfer (Taking over) of Sentenced Persons, Execution of Sentences and Other Issues of International Judicial Cooperation in Criminal Proceedings during Court Proceedings, approved by the Order of the Ministry of Justice of Ukraine No. 2599/5 dated 19.08.2019.

The application of confidentiality to requests for mutual legal assistance is regulated by Article 556 of the CPC. According to Part 1 of this Article, at the request of the requesting party, the authorized (central) body of Ukraine has the right to take additional measures to ensure the confidentiality of the fact of receiving a request for international legal assistance, its content, and the information obtained as a result of its execution. According to Part 2, if necessary, the conditions and terms for maintaining the confidentiality of the information obtained as a result of the request's execution are agreed upon.

6. Is there any publicly available information or guidance setting out how your state's confidentiality provisions are applied to MLA requests from states party to the 1959 MLA Convention? (This could include national guidance to foreign authorities on the operation of the respective states MLA process)

The provisions of the CPC of Ukraine, including Article 556 (confidentiality), are open for access on the official website of the Verkhovna Rada of Ukraine at the link: <https://zakon.rada.gov.ua/laws/show/4651-17#Text>

Additionally, this issue is regulated by the Instruction on the Procedure for International Cooperation on Mutual Legal Assistance, Extradition of Offenders, Transfer (Taking over) of Sentenced Persons, Execution of Sentences, and Other Issues of International Judicial Cooperation in Criminal Proceedings during Court Proceedings, which is also available for viewing at the link: <https://zakon.rada.gov.ua/laws/show/z0956-19#Text> and on the website of the Ministry of Justice of Ukraine at the link:

[https://minjust.gov.ua/international\\_legal\\_cooperation\\_in\\_civil\\_and\\_criminal\\_matters](https://minjust.gov.ua/international_legal_cooperation_in_civil_and_criminal_matters).

Paragraph 13 of the Instruction: "Information about the fact of receiving or sending a request in the order of international cooperation in a criminal case, about the content of the request and the progress of its processing is not public information. The decision to provide information regarding the request to persons not related to the criminal proceedings in which assistance is requested is made exclusively by the authority that initiated the respective request, except in cases where consent is given by the competent authority in whose proceedings the criminal case is pending."

Paragraph 14 of the Instruction: "Materials of requests received from a foreign state in the order

*of cooperation in criminal matters, and/or related documents are provided for review at the premises of the Ministry of Justice or the relevant interregional authorities upon request of the person concerned by the request, or their lawyer. This right may be limited in the case of a corresponding request from the requesting foreign state for confidentiality.”*

*Para 32 of the Instruction: “If the request contains a plea for confidentiality regarding the fact or content of the request, the court of Ukraine is obliged to ensure its observance. For this purpose, the court of Ukraine also warns other persons and bodies involved in the execution of the request about the inadmissibility of disclosing the relevant information or using the documents, materials.”*

#### *Requirements relating to Third Party requests*

7. *Should a third party enquire about an MLA request (e.g. journalist, legal counsel representing anyone other than the subject of the request, a pressure group, member of the public) how would you respond to this request?*

*Information about the fact of receiving or sending a request in the order of international cooperation in a criminal case, about the content of the request and the progress of its processing is not public information. The decision to provide information regarding the request to persons not related to the criminal proceedings in which assistance is requested is made exclusively by the authority that initiated the respective request, except in cases where consent is given by the competent authority in whose proceedings the criminal case is pending.*

*In such a case, the response to the third party is provided taking into account the provisions of Ukrainian legislation mentioned in the responses to items 1 and 6 of the Questionnaire.*

## **UNITED KINGDOM / ROYAUME-UNI**

### *Requirements/process relating to the subject of the MLA request*

- 1. If no specific confidentiality requirement is set out by the requesting State in an incoming MLA request, is there a legal obligation in your State to allow access to the file of the subject of the request (e.g. the MLA request and/or the evidence to be shared) at any time following your receipt of the request if the subject of the MLA request or another party to the proceedings asks to see this information?**

It is longstanding policy in the UK, applicable across all three UK jurisdictions (England and Wales, Scotland, and Northern Ireland), for central and executing authorities to neither confirm nor deny the existence of an MLA request and not to disclose (except to the extent necessary to execute the request) any of its content outside government departments, government agencies, the courts or enforcement agencies in the UK without the consent of the requesting authority.

In any given case principles of transparency and open justice may require disclosure of an MLA request or part of the request (but not the whole request) – this would be discussed on a case-by-case basis with the requesting authority to establish what they would be content to disclose and whether and why any disclosure may prejudice the domestic investigation. In some cases, it may be necessary to disclose to an affected party a general understanding of the request if the matter is to progress. For example, an MLA request is made to interview a witness or a suspect they would be entitled to know why they are being called to give evidence including when summoned in front of a court or via a video link. Therefore, they would need to know at least the substance of the investigation and the fact of why a request has been made. It will normally be the case that the requesting authority will be given the opportunity to withdraw the request, before any disclosure to a third party is made.

The UK does not routinely disclose ILORs to the UK Court but if it is required to approve an Order (see further detail in response to Question 2 below) the relevant UK Central Authority may agree to provide the ILOR to the Court but not to any other party without the consent of the requesting authority.

The UK has legal precedent which frames the confidentiality of International Letters of Request (ILORs) but it is not absolute. For example, if a legal challenge is made which seeks disclosure of an ILOR, the

Court may decide to disclose it.

**2. Where a domestic court order is required to action a measure requested via MLA, is there a requirement under your domestic legislative framework to disclose the proceedings to the subject of the MLA request to authorise the measure?**

There are two main types of Orders in the UK to action measures requested via a MLA request – a search warrant and a Production Order.

Where there is a need for the UK to seek a search warrant, to action a measure requested via MLA, an application will need to be made and even if an ILOR is not provided to the Court, facts from the ILOR will be used in support of the application. Following execution of the search warrant affected parties (including the subject of the MLA request) can request sight of the application submitted to the Court and it is then their right to see the application to determine whether they wish to challenge the legality of the search warrant by way of a judicial review. Where challenged the defence (relevant affected party/parties) will be entitled to sufficient information to allow them to challenge the application. This may not require the ILOR itself and may not even require the application in full but these do remain a possibility. The relevant UK authority will usually engage with the requesting authority to see if a redacted version of the application (if redactions can be sustained) can be provided.

Where an application for a UK Production Order is required to action a measure requested via MLA generally only the subject of the Production Order will be aware of the application but there could be occasions when the subject of the MLA request is notified of the application. Where the Production Order is made on notice it is a requirement of the Criminal Procedure Rules to notify parties affected by the application so the subject of an MLA is likely to be informed of the fact that the Order is being applied for and could seek to oppose it. In this situation, this might not require the ILOR itself to be disclosed but sufficient information about the application would need to be provided. In such cases, the UK would ask if the requesting authority wanted to proceed with the MLA request. It is worth noting, if very sensitive information needs to form part of the application for a UK Production Order that can be included within a sensitive schedule which would not be shared with the subject.

For information, in the case of applications for a restraint Order those affected will need to be made aware after the Order is approved.

**3. If yes to either question 1 or question 2 or both, at what stage of your state's MLA process is any access granted to the subject of the request or another party to the proceedings? Is there a mechanism to postpone access being granted, or the ability for the requesting state to negotiate a postponement (for example in order not to prejudice the investigation whilst it is ongoing)?**

Please see the detail provided in Questions 1 and 2 above.

**4. Does your state apply different confidentiality requirements to MLA requests dependent upon the type of request(s) made (e.g. for searches/seizure, banking information or publicly available information)?**

The UK does not apply a different standard. The UK's approach to all types of MLA requests depends on the facts of the case and the context in which disclosure arises. Examples include:

- The type of application to the Court required to action the request (search warrant or Production Order)
- If the MLA request from a requesting authority is for a suspect interview the suspect will need to be advised at least of the existence of a request and some detail to decide if that person wishes to consent to the request.
- If a UK search warrant is required to action a measure requested via MLA it will be obtained ex parte but the subject of the request (suspect) will be advised of the search and will be entitled to a certain amount of information to be able to challenge if this is required.

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

**5. What governs how confidentiality applies to an MLA request (e.g. constitution, domestic**

## legislation, operational policy, judicial precedent, other)?

It is longstanding UK Government policy which governs the confidentiality of MLA requests, even if not sought by a requesting authority, to neither confirm nor deny the existence of an MLA request and not to disclose (except to the extent necessary to execute the request) any of its content outside government departments, government agencies, the courts or enforcement agencies in the UK without the consent of the requesting authority.

This UK approach, which has been upheld by UK courts to date, ensures the confidentiality of the MLA process and maintains the confidence of requesting authorities. It is worth noting that the UK courts have a discretion on a case-by-case basis in relation to MLA requests and the position of the Court has been that each case depends on its own facts, relevant obligations under international law and the stance of the requesting authority (case law references <sup>2</sup> ). The UK also has jurisprudence which is supportive of the confidentiality of ILORs but as set out in our response to Question 1 is not absolute.

The above UK policy approach is applied mindful of any relevant obligations under international law (for example those provided for under the 1959 MLA Convention and its Additional Protocols).

## **6. Is there any publicly available information or guidance setting out how your state's confidentiality provisions are applied to MLA requests from states party to the 1959 MLA Convention? (This could include national guidance to foreign authorities on the operation of the respective States' MLA process.)**

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<sup>2</sup> R (on the application of River East Supplies Ltd) v Crown Court at Nottingham [2017] EWHC 1942 (Admin), [2017] 4 WLR 135, [2017] 2 Cr App Rep 384, [2018] Crim LR 172, [2017] All ER (D) 58 (Aug)  
National Crime Agency v Abacha and others [2016] 1 WLR 4375  
Regina (Terra Services Ltd) v National Crime Agency and others [2021] 1 WLR 1

The UK has public MLA guidance for authorities outside the UK (link [here](#)) located on the gov.uk website. This guidance sets out information on how confidentiality provisions are applied in the context of incoming MLA requests from states party to the 1959 MLA Convention.

### Requirements relating to third-party requests

## **7. Should a third party enquire about an MLA request (e.g. journalist, legal counsel representing anyone other than the subject of the request, a pressure group, member of the public) how would you respond to this request?**

It is standard UK Government and operational policy for central or executing authorities to neither confirm nor deny the existence of an MLA request, and not to disclose any of its content outside government departments, government agencies, the courts or enforcement agencies in the UK without the consent of the requesting authority (except to the extent necessary to execute the request).

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

In reference to Freedom of Information requests relating to MLA requests there are relevant exemptions in the UK which can be applied but they are not absolute and they therefore require the requested party to weigh up the various competing interests on a case-by-case basis.

## **ISRAEL**

1. There is no legal obligation to allow access.
2. No, with the exception of execution of requests for seizure of assets (asset recovery), the court ordered-seizure of the asset must be disclosed within ten days to the subject of the request (if it is an ex parte hearing due to concerns of dissipation of the asset).

In addition, regarding execution of requests to seize and transfer as evidence objects with proprietary value, a court hearing must take place in the presence of the claimant

before the court can order the transfer of said object. It should be noted that the initial seizure of said object will take place in an ex parte forum, and the aforementioned hearing regards, as mentioned above, the transfer of said seized object as evidence. Furthermore, all requests that require court orders to execute the request will take place in an ex parte forum.

3. See answer 2 above.
4. See answer 2 above .
5. Domestic legislation+ judicial precedent
6. No.
7. Israel does not provide information regarding MLA requests- including the existence thereof, to third parties.