

COUNCIL OF EUROPE



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**EUROPEAN COMMITTEE ON CRIME PROBLEMS**  
**(CDPC)**

**COMMITTEE OF EXPERTS**  
**ON THE OPERATION OF EUROPEAN CONVENTIONS**  
**ON CO-OPERATION IN CRIMINAL MATTERS**  
**(PC-OC)**

**COMPILATION OF THE REPLIES TO A QUESTIONNAIRE REGARDING THE PREFERRED  
OPTION TO PROVIDE A LEGAL BASIS TO CO-OPERATION WITH THE EUROPEAN PUBLIC  
PROSECUTOR'S OFFICE UNDER THE EUROPEAN CONVENTION ON MUTUAL ASSISTANCE  
IN CRIMINAL MATTERS AND THE ADDITIONAL PROTOCOLS THERETO**

**Document prepared by the Secretariat**

In accordance with the [decisions](#) taken by the PC-OC in November 2022, and in order to obtain a clear picture regarding the preferences of the Parties, delegations of the PC-OC were invited by its Chair to reply to the following question sent on 21 December 2022:

***Given past discussions and options considered by the PC-OC as set out in the attached document (PC-OC (2022) 07), if the decision were to be taken to provide a long-term solution for the co-operation with the European Public Prosecutor's Office (EPPO) under the European Convention on Mutual Assistance in Criminal Matters, with a new Council of Europe instrument setting out an explicit legal basis for this co-operation, which of the following options would be preferable:***

- 1. Amending the MLA Convention to specifically provide for co-operation with the EPPO and accession by the EU;***
- 2. Negotiating a self-standing legal instrument to provide for a legal basis for co-operation with the EPPO.***

***If neither of these options is acceptable, please elaborate on what would be the preferred alternative.***

The following is a compilation of replies received as of 21 February 2023.

\* \* \* \* \*

## **Czech Republic**

We would prefer negotiating a self-standing legal instrument to provide for a legal basis for co-operation with the EPPO.

It would be a short document and could enter into force after a small number of ratifications. The question is whether such an instrument could be negotiated within the Council of Europe.

## **Finland**

Finland is not in favor neither of Option 1 nor of Option 2. At this point Finland considers that it is not worth to start negotiating an amending protocol to the MLA Convention or a self-standing legal instrument. Preparation of such instruments would require a lot of resources and it is not clear how many states would ratify the future instrument. Instead, we think that it would be better to get more experience about cooperation with EPPO based on unilateral declarations and national laws. We should study more concretely what kind of problems there are in cooperation with EPPO.

## **Georgia**

If the decision were to be taken to provide a long-term solution for the co-operation with the European Public Prosecutor's Office (EPPO) under the European Convention on Mutual Assistance in Criminal Matters, with a new Council of Europe instrument setting out an explicit legal basis for this co-operation, Georgia would prefer negotiating a self-standing legal instrument.

## **Germany**

In line with the reply which has probably already reached you from the Swedish EU-Council Presidency we welcome the study to assess the feasibility of negotiating a binding legal instrument. As soon as the study is finalised we are ready to discuss the outcome of the study and support a viable way forward based on further discussions on the most appropriate solution.

## **Greece**

The position of Greece is echoed in the common position that the Swedish Presidency submitted in the name and on behalf of the EU member states.

## **Iceland**

Reference is made to Iceland's earlier reply to the PC-OC on 10 July 2022. As stated there Iceland is willing to cooperate with EPPO and we will not need a special legal instrument to do so. However, we do understand the obstacles other countries are facing in this regard. Therefore, Iceland does not oppose putting in work to secure the legal basis for cooperation with the EPPO and would prefer option C in the document from the CDPC dated 19 December 2022 (option 2 here below), i.e. negotiating a new self-standing legal instrument. This would of course also strengthen the legal basis for Iceland's cooperation with EPPO and in light of it being the option that would be faster to negotiate it is Iceland's preferred choice.

## **Ireland**

Ireland considers option 2 – Negotiating a self-standing legal instrument to provide for a legal basis for co-operation with the EPPO – to be preferable at this stage. This option appears to provide a pragmatic solution for facilitating co-operation with EPPO, given that it could be negotiated quickly and enter into force following a small number of ratifications. However, we remain open to considering and supporting any suitable option arising as a result of the study to assess the feasibility of negotiating a binding legal instrument regarding the application of the European Convention on Mutual Assistance in Criminal Matters on the relations with EPPO.

## **Republic of Korea**

Under relevant domestic laws, and according to relevant treaties and conventions to which Korea is a party, Korea is able to seek/provide mutual legal assistance to/from a "country." Therefore, MLA to/from the EU/EPPO, in principle, would need an amendment to the Convention.

However, Korea does not object to the second option if many of the parties agree to a self-standing instrument, including a form of "agreement."

## **Latvia**

In the opinion of the Competent authority in Latvia, the second proposal should be supported - Negotiations on an independent legal instrument to ensure a legal basis for cooperation with the EPPO, as a new, simple, and understandable model of cooperation is needed, without confusing it with the existing MLA regulation. This solution would be more practical, faster and then simpler from the point of view of interpretation during the application of the new norms. In addition, the development of the regulation should proceed smoothly, which will probably be more difficult by reworking the existing regulation.

## **Liechtenstein**

For Liechtenstein, both option 1 and option 2 would be a viable option. However, for reasons of a faster implementation, we would prefer option 2.

## **Republic of North Macedonia**

Republic of North Macedonia appreciates the consultations and has the opinion that it is crucial to facilitate cooperation with EPPO.

With regards to different options provided by the PC-OC, after careful consideration we believe that second option is better than the first.

It allows faster negotiation and entering into force.

Republic of North Macedonia wants to emphasize that this does not exclude the possibility to cooperate under unilateral declarations made by the EU member states either as an only option or until new legal instrument is negotiated. “

## **Republic of Moldova**

Taking into consideration the fact that the majority of EU member States have made unilateral declarations establishing the EPPO as a national judicial authority, in our opinion there is no need for an additional protocol to the European Convention on Mutual Assistance in Criminal Matters or a new treaty on this subject.

If unilateral declarations are considered not sufficient for cooperation with the EPPO, from our point of view a self-standing legal instrument is more preferable.

## **Norway**

Norway does not strictly need a new legal binding instrument in order to cooperate with the European Prosecutor's Office (EPPO). However, if a decision were to be taken to provide such a long-term solution for the cooperation with the EPPO under the European Convention on Mutual Legal Assistance, Norway would prefer option 2. This is the option of negotiating a self-standing legal instrument.

## **The Netherlands**

Please be informed that option 2, negotiating a self-standing legal instrument to provide for a legal basis for co-operation with the EPPO, is our preferred option.

## **Poland**

Option C. (a self-standing instrument) seems to be the most effective solution - simplest and relatively quick to implement. Before the new legal instrument enters into force the only possibility for the cooperation with EPPO for some of non EU participants of the Convention is option A. (no new legal instrument) based on unilateral declarations of participating EU Member States designating the EPPO as a national judicial authority.

## **Portugal**

The preferred option is negotiating a self-standing legal instrument to provide for a legal basis for co-operation with the EPPO (option 2).

## **Slovak Republic**

Please let me revoke the previous message, the Slovak Republic supports the common response of the EU member states that will be submitted by Sweden as the Presidency of the Council of the European Union.

## **Sweden (on behalf of the EU Member States)**

Sweden, as the Presidency of the Council of the European Union, on behalf of the EU Member States, submits the following response to the questionnaire sent on 21 December 2022 to the PC-OC delegations of State Parties to the European Convention on Mutual Assistance in Criminal Matters.

The EU Member States,

- welcome the study to assess the feasibility of negotiating a binding legal instrument regarding the application of the European Convention on Mutual Assistance in Criminal Matters with respect to the European Public Prosecutor's Office;
- are ready to discuss the outcome of the study and consider and support a viable way forward based on further discussions on the most appropriate legal solution.
- thank the PC-OC Chair for these questions. They stand at your disposal for any further questions and look forward to the continued discussion.

## **Switzerland**

Switzerland prefers option two, i.e. negotiating a self-standing instrument, as we believe it would be the most straight forward solution and feasible within reasonable time. We further believe that only the EU itself and those State Parties of the MLA Convention in need of an explicit legal basis for the cooperation with EPPO would need to accede to that new instrument.

Of course, option one, amending the MLA Convention, would also be acceptable to Switzerland. We however fear that this process would be more time-consuming and technically as well as politically quite difficult. In any case, an amendment to the Convention would require more time to enter into force than option two.

## **Türkiye**

Türkiye, as a candidate state for the European Union (EU), has been working with EU member states primarily through the Council of Europe Mutual Legal Assistance Convention (MLA Convention) and its additional protocols in criminal matters. We acknowledge the valuable efforts of the European Public Prosecutor's Office (EPPO) in investigating and prosecuting crimes that harm the financial interests of the EU, as well as the work of the PC-OC in facilitating further cooperation with EPPO under the MLA Convention framework.

Considering the recent questionnaire received and the discussions held during PC-OC meetings, as well as the potential technical and legal challenges associated with concluding a new self-standing agreement and drafting a protocol to the MLA Convention, we believe that the most appropriate approach for non-EU member states willing to cooperate with the EPPO is through unilateral declarations made by participating EU member states designating the EPPO as a national judicial authority.

While we recognize that these declarations may not be entirely compatible with treaty law and that contracting states may have the right to refuse cooperation with the EPPO, we view it as the optimal solution for cooperation between EPPO and non-EU member contracting states willing to cooperate. On the other hand, it should be noted that Türkiye currently does not have a legal basis in its national law that would allow such cooperation.

We would like to reiterate our eagerness to review and discuss this matter further in the light of contributions and future platforms. This issue is of great importance to us, and we would like to continue to explore all possible avenues for resolution.

## **United Kingdom**

The UK preference is that we would not be adverse to a standalone agreement/arrangement with the EPPO (option 2 in the commission email from the Secretariat dated 21 December 2022 below, option C in PC OC 2022 (07) paper attached above) rather than any amendments to the 1959 MLA Convention itself.

The UK interprets the existing MLA Convention sufficient to allow for co-operation with the EPPO by virtue of declarations made by EU Member States under Article 24 of the Convention designating the EPPO as a judicial authority. We do note however previous arguments made in the forum of the PC OC for an agreement between the EU and State Parties to the Convention on the application of the Convention for co-operation with the EPPO.

## **Ukraine**

We examined the additional Questionnaire, the advantages and disadvantages of all options, foreseen in the document PC-OC (2022) 07 “Co-operation with the EPPO under the European Convention on Mutual Assistance in Criminal Matters: state of discussions and options for a future framework”, and based on this we consider the option of “negotiating a self-standing legal instrument to provide for a legal basis for a co-operation with the EPPO” as a preferable for a long-term solution for a co-operation with the EPPO.

“We also inform that on March 18, 2022 the Working Arrangement on cooperation between the Prosecutor’s General Office of Ukraine (PGO) and European Public Prosecutor’s Office (EPPO) was concluded, with the purpose to facilitate judicial cooperation in criminal matters and exchange of information, for gathering evidence or obtaining extradition of person sought, as well as for other forms of judicial cooperation.

Please also see the answers of Ukraine on the first Questionnaire on co-operation with the EPPO.