



## EJN CONTACT POINTS' MEETING: EU AND WESTERN BALKAN REGION

### I. EXTRADITION

#### 1. What is the legal basis for the cooperation?

- CoE 1957 Convention
- Other multinational conventions?
- [Bilateral agreement?](#)
- Based on national law (no need for an international agreement)?
- Do you apply reciprocity?

#### 2. Direct contacts

- Are direct contacts between competent authorities possible and does it work in practice?

#### 3. Simplified extradition

- Do you use simplified extradition (e.g. based on the 3rd Protocol to the 57 Convention)? How does this work in practice?

#### 4. What are the main issues regarding the cooperation?

- Suspected persons are not detected/arrested in the potential receiving country
- Extradition of own nationals?
- Quality of translations?
- Ways of communication (email, fax, postal service, police channels?)
- Request for extradition not clear enough? Do you use a standard form?
- Lengthy procedures? Why does it take time?
- Lack of necessary documents or excess of documents of no/less relevance or unclear documents?<sup>1</sup>

---

<sup>1</sup> E.g. in a recent case a question arose as regards the interpretation of an arrest warrant, where the Supreme Court of an EU MS found that this could not be seen as a detention order. (It was stated in one of the documents provided that no application for a detention order had been made).



- Difficult to find a counterpart to consult/discuss with?
- Requests for additional information? E.g. guarantees
- Requests from the receiving country regarding evidence supporting the request?
- Conditions in detention facilities and prisons?
- Ongoing criminal investigation in the receiving country or procedures based on a request for asylum by the requested person?
- Difficulties to organise the actual surrender of the requested person?

#### 5. Taking over the investigation in case of refusal to extradite (*Aut dedere aut judicare*)

- Do you have national legislation or a mechanism in your State for applying the principle *Aut dedere aut judicare*?

## II. TRANSFER OF PROCEEDINGS

### 1. What is the Legal basis for the cooperation?

- CoE 1972 Convention
- CoE 1959 Convention (Art.21)
- Other multinational conventions?
- [Bilateral agreement?](#)
- Based on national law/Jurisdiction?

### 2. What are the main issues regarding the cooperation?

- Different views on the feasibility to transfer the proceedings?
- Translations: quality of translations / the need for a translation of the whole file / (high) cost for translations
- Channels of communication?
- Internal organization of actors in the field of international judicial cooperation?
- Clarity of request? Do you use a standard form for the request?<sup>2</sup>

---

<sup>2</sup> A standard form provided by CoE:

<http://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168048bce8>



- Lengthy procedures?
- Lack of necessary documents or excess of documents of no/less relevance or unclear documents?
- Difficulties in find a counterpart to consult/discuss with?
- Conditions in detention facilities and prisons in the receiving State?
- Refusal to take over the case?
- Other?

### III. MUTUAL LEGAL ASSISTANCE

#### 1. What is the Legal basis for the cooperation?

- CoE 1959 Convention
- Other multinational conventions?
- [Bilateral agreement?](#)
- Based on national law?
- Do you apply reciprocity?

#### 2. Direct contacts

- Are direct contacts between competent authorities possible and does it work in practice?

#### 3. What are the main issues regarding the cooperation?

- Translations: quality of translations
- Channels of communication (email, fax, postal service, police channels?)
- Clarity of request? Do you use a standard form?
- Lengthy procedures? Why does it take time?
- Lack of necessary documents or excess of documents of no/less relevance or unclear documents?
- Difficult to find a counterpart to consult/discuss with?
- Requests for additional information? e.g. guarantees
- Costs?



- Refusals (whole or partial)?
- Other?

#### 4. Joint Investigative Teams (JITs) and other specific measures

- What is your experience of JITs (see 2<sup>nd</sup> Protocol to CoE 1959 Convention) or parallel investigations?
- What is your experience of Controlled deliveries or other measures based on the 2<sup>nd</sup> Protocol of the CoE 59 Convention?

#### **IV. EXPERIENCE WITH INTEROPERABILITY BETWEEN JUDICIAL AND POLICE AUTHORITIES IN DIFFERENT COOPERATION PROCEDURES**

- How is your cooperation with the Police? Is the Police involved in the drafting and subsequent sending of requests at judicial level?
- Do you gather information through International Police Cooperation in the preparation of a request for extradition, transfer of proceedings or mutual legal assistance?
- Is it clear when to use Police Cooperation and Judicial Cooperation, respectively? If not, give examples.

#### **V. FREEZING AND CONFISCATION**

- What are the main challenges regarding freezing and subsequent confiscation of property?
- Best practices?



## ANNEX

### [The European Convention 1957 on Extradition](#) and its 4 protocols

The Convention 1957 has been ratified by all 47 CoE States. Purpose is to agree on uniform rules for extradition cooperation. Conditions for extradition. Grounds for refusal. Procedure. Provisional arrest.

#### Protocols to the Convention

[1<sup>st</sup> Protocol 1975](#) – Political crimes regarding crimes against humanity etc. (+ ne bis in idem also regarding judgments in a third State) (ratified by ?)

[2<sup>nd</sup> Protocol 1978](#) – Judgments in absentia and extended definition of fiscal offences (+amnesty) (ratified by ?)

[3<sup>rd</sup> Protocol 2010](#) – Simplified extradition based on consent. Decision within 20 days and execution of the decision within 10 days (ratified by ?)

[4<sup>th</sup> Protocol 2012](#) (Ratified by ?)

- Statute-barred in the requested State is not a ground for refusal anymore
- Diplomatic channels in principle abolished (see also 2<sup>nd</sup> Additional protocol, article 5)
- Rule of Speciality – Request for Consent shall be handled within 90 days, Possibility of detention if the State that extradited the suspect is notified

### [The European Convention 1959 on Mutual Assistance in Criminal Matters](#) and its 2 protocols

#### Protocols to the Convention

[1<sup>st</sup> Protocol 1978](#) – limits fiscal offence as ground for refusal, includes the service of documents concerning the enforcement of a sentence and similar measures, adds provisions relating to the exchange of information on judicial records.

[2<sup>nd</sup> Protocol 2001](#) – Direct contacts, JITs Video- and Telephone Conference, Controlled Delivery, Exchange of spontaneous information, Temporary transfer of detained persons, Cross-border Observations, Covert Investigations etc.,

### [The European Convention 1972 on Transfer of Proceedings](#)

[Guidelines on practical measures to improve co-operation in respect of transfer of proceedings, including a model request form](#)