JUDICIAL COOPERATION IN CRIMINAL MATTERS
Convention on Mutual Legal Assistance in Criminal Matters between Member States of the European Union and its protocols (MLA 2000) and Joint Investigation Teams

MINISTRY OF JUSTICE AND PUBLIC ADMINISTRATION
SECTOR FOR THE JUDICIARY AND INTERNATIONAL COOPERATION
DEPARTMENT FOR INTERNATIONAL LEGAL ASSISTANCE IN CRIMINAL MATTERS

11 December 2013
Convention on Mutual Legal Assistance in Criminal Matters
between Member States of the European Union and its protocols (MLA 2000)
Official Journal C 197 of 12 July 2000

LEGAL FRAMEWORK

• Constitution of the Republic of Serbia

• Law on International Legal Assistance in Criminal Matters

• Bilateral agreements with 24 states (23 agreements) + 2 just signed (with Slovenia and Belarus),

• Multilateral agreements

• Criminal Procedure Code
Contains provisions of importance for providing international legal assistance (methods for submitting documents, procedure for executing certain processing activities, such as hearings of the defendants, hearing of witnesses and forensic experts, covert surveillance of communications, covert tracking and recording, provision of simulated work, computer search of data, controlled deliveries, engagement of undercover agents…)
- **Criminal Code**

- **Law on the Organization of Courts**

- **Law on Organization and Jurisdiction of Government Authorities in Suppression of Organized Crime, Corruption and other Severe Criminal Offences**
  Formation, organization, competence and authorizations of government authorities and special organizational units of government authorities in order to discover, prosecute and bring to trial criminal offences as determined by said law.

- **Law on Organization and Competence of Government Authorities in War Crimes Proceedings**
  Formation, organization, competence and authorizations of government authorities and their organizational units in order to discover, prosecute and bring to trial criminal offences as determined by said law.

- **Law on Seizure and Confiscation of the Proceeds from Crime**
  Regulates the provision of legal assistance in locating assets/objects obtained by means of the commission of a criminal offence and the proceeds from crime, prohibition of disposing with, and temporary or permanent seizure of property.
INSTITUTIONAL FRAMEWORK

Competent institutions:

- Ministry of Justice and Public Administration
- Courts
- Prosecution
- Ministry of Foreign Affairs
- Ministry of Interior
Division of competences:

• Ministry of Justice and Public Administration of the Republic of Serbia
  Central body for the processes of international legal assistance in criminal matters. Requests by domestic courts and public prosecution for legal assistance in criminal matters are submitted to foreign bodies through the Ministry of Justice of the Republic of Serbia. Requests by foreign bodies for legal assistance to local competent bodies are submitted the same way.
  Undertakes certain activities during the process of providing ILA (provides opinion on the existence of certain conditions for providing international legal assistance, provides opinions or agreement upon request by the competent bodies of the requesting state for the presence of their representatives in executing the requested legal assistance activity, if envisaged by international agreement).

• Ministry of Foreign Affairs
  Delivery of documents to domestic citizens with residence abroad, delivery of documents to persons enjoying diplomatic and consular immunity in the Republic of Serbia, forwarding of requests by diplomatic channels if envisaged by certain international agreements.
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- Ministry of Interior
  In urgent cases, if there is mutuality, requests for legal assistance may be submitted through the Ministry of Interior (International Criminal Police Organization – INTERPOL), with the original request subsequently to be submitted to the central body.
  Undertakes the control and determining of citizenship status and permanent/temporary residence address of a person in regards to whom international legal assistance is sought, submits data as per the request for obtaining data from the penal records, etc.

- Courts
  Complete and act upon requests for international legal assistance

- Prosecution
  Complete and act upon requests for international legal assistance

There is a certain degree of intertwining of competences between the actions of courts and public prosecution.

Primacy is held by the courts, since in accordance with the provisions of the Law on International Legal Assistance in Criminal Matters, courts adopt decisions on providing other types of international legal assistance, i.e. determine whether the conditions are met for providing international legal assistance. Since the new Criminal Procedure Code introduced prosecutorial investigation instead of court investigation, requests for legal assistance for implementing certain investigatory acts are acted upon by the prosecution, while these actions require a court decision.
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<th>Provision of the Acquis</th>
<th>Provisions in the national legislation</th>
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<tr>
<td>Article 3. of MLA 2000</td>
<td><strong>The Law on ILA Article 3 paragraph 2</strong> – Mutual assistance shall be exercised in a proceeding instigated before the administrative authorities for crimes punishable under the legislation of the requesting party or the requested party, in such case where a decision of an administrative authority may be the grounds for instituting criminal proceedings. <strong>Aligned</strong></td>
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<td>Proceedings in connection with which mutual assistance is also to be afforded</td>
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<tr>
<td>Article 4 of MLA 2000</td>
<td><strong>The Law on ILA Article 90</strong> – As an exception from Article 12 of this law, upon a request of the competent authority of the requesting party, mutual assistance shall be provided in a manner foreseen in the legislature of the requesting party, unless contrary to basic principles of the legal system of the RS. The time limits for acting upon requests are not precisely defined. <strong>Partially aligned</strong></td>
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<tr>
<td>Formalities and procedures in the execution of requests for mutual assistance</td>
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<td>Article 5 and 6 of MLA 2000</td>
<td><strong>The Law on ILA Article 6</strong> – general provision for submission of letters rogatory and annexed documents</td>
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<td>Sending and service of procedural documents</td>
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<td>Transmission of requests for mutual assistance</td>
<td><strong>The Law on ILA Article 100</strong></td>
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<tr>
<td>Transmission of requests for mutual assistance</td>
<td><strong>Partially aligned</strong></td>
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<td>Provision of the Acquis</td>
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<td>Article 7 of MLA 2000</td>
<td>The Law on ILA Article 98 – Under the condition of reciprocity, national judicial authorities may transmit, without letter rogatory, information relating to known criminal offences and perpetrators to the competent authorities of the requesting party if this is considered to be of use to criminal proceedings conducted abroad. Only if it does not hinder criminal proceedings conducted in the RS. <strong>Aligned</strong></td>
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<td>Spontaneous exchange of information</td>
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<tr>
<td>Article 9 of MLA 2000</td>
<td>The Law on ILA Article 83 paragraph 4 – temporary surrender of a person in custody for the purpose of examination by the requesting party’s competent body <strong>Partially aligned</strong></td>
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<tr>
<td>Temporary transfer of persons held in custody</td>
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<tr>
<td>Article 10 and 11 of MLA 2000</td>
<td>The Law on ILA Article 83 paragraph 3 – use of audio and video-conference calls <strong>Partially Aligned</strong></td>
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<td>Hearing by videoconference/by telephone conference</td>
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<tr>
<td>Article 12 of MLA 2000</td>
<td>The Law on ILA Article 83 paragraph 2 The conditions for determining and implementation are regulated by the Criminal Procedure Code. <strong>Aligned</strong></td>
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<td>Controlled deliveries</td>
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<td>Provision of the Acquis</td>
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<td>Article 13 of MLA 2000</td>
<td>The Law on ILA Article 96 – If the circumstances of the case justify it, joint investigative teams may be formed by an agreement between the competent authorities of the Republic of Serbia and foreign country. Partially aligned</td>
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<td>Joint investigation teams</td>
<td>Aligned</td>
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<tr>
<td>Article 14 of MLA 2000</td>
<td>The Law on ILA Article 83 paragraph 2 – The conditions for determining and implementation are regulated by the Criminal Procedure Code. Aligned</td>
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<td>Covert investigations</td>
<td>Aligned</td>
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<tr>
<td>Article 18, 19 and 20 of MLA 2000</td>
<td>The Law on ILA Article 83 paragraph 2 – surveillance and tapping of telephone and other conversations or communication, photographing or videotaping of persons, The Criminal Procedure Code prescribes the conditions for determining and implementation. Aligned</td>
</tr>
<tr>
<td>Requests for interception of telecommunications</td>
<td>Aligned</td>
</tr>
<tr>
<td>Article 23 of MLA 2000</td>
<td>The Law on ILA Article 9 – It is the duty of state authorities to safeguard confidentiality of information obtained during the execution of requests for mutual legal assistance. Personal data may be used solely in criminal or administrative proceedings in respect of which letters rogatory have been submitted Partially aligned</td>
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| Article 1, 2 and 3 of the Protocol | Criminal Procedure Code allow for the control of accounts and suspicious transactions if there are grounds for suspicion a person owns accounts or undertakes transaction, while being **suspected of a criminal offence envisaging a prison sentence of a maximum period of at least four years or for the criminal offence of displaying, obtaining and owning pornographic materials and exploiting underage persons for pornography and corruptive criminal offences.** The Law on Seizure and Confiscation of the Proceeds from Crime - the public prosecutor may order a bank or other financial organization to submit data on the status of business and personal accounts and safes of the owner.  
**Partially aligned** |
| Article 8 of the Protocol Fiscal offences | Not a ground for refusal  
**Aligned** |
| Article 9 of the Protocol Political offences | The Law on ILA **Article 7 paragraph 4** – Precondition to the execution of requests for mutual assistance is that the request does not refer to a political offence or an offence relating to a political offence.  
**Not aligned** |

ASSESSMENT OF THE DEGREE OF HARMONIZATION

Partially Harmonized

Required:

- Amendments to the Law on International Legal Assistance in Criminal Matters
IMPLEMENTATION MECHANISMS

The incorporation of the CELEX in the judicial system of the Republic of Serbia requires:

• Amendments to the Law on International Legal Assistance in Criminal Matters, MEDIUM TERM
• Employee training in judicial bodies and the Ministry of Justice and Public Administration (in cooperation with the Judicial Academy), LONG TERM
• Improvement of technical resources in the field of information technologies, networking and accessibility of databases, LONG TERM
• Raising the professional, technical and operational capacities of both judicial bodies, as well as the Ministry of Justice and Public Administration as the central body for international legal assistance. LONG TERM
ADMINISTRATIVE CAPACITIES FOR THE APPLICATION OF REGULATIONS

- The Ministry of Justice and Public Administration of the Republic of Serbia – Department of International Legal Assistance in Criminal Matters – employs 10 persons, 7 public servants and 3 administrative workers,
- Court personnel and bearers of judicial functions
- Prosecution personnel,

The infrastructure and equipment are relatively satisfactory.

Planned activities:

Specialization and professional development of bearers of judicial functions in judicial bodies and other court staff regarding acting upon requests for international legal assistance.
Measures will be undertaken to improve administrative capacities aimed at implementing and applying the CELEX.
RESULTS OF THE APPLICATION

• The Ministry of Justice and Public Administration of the Republic of Serbia annually receives approximately 8000 requests for international legal assistance in criminal matters (for general forms of international legal assistance).

• Statistical indicators for the period between 1 January and 1 November 2013

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<tr>
<td>Incoming requests for ILA</td>
<td>2190</td>
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<tr>
<td>Outgoing requests for ILA</td>
<td>3465</td>
</tr>
<tr>
<td>Total</td>
<td>5655</td>
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</table>

• Cooperation is most intensive with countries in the region, followed by Germany, Austria, Hungary, Romania, Switzerland, Italy and the Netherlands. It is on-going with all European countries, as well as a number of non-European countries, in regards to all forms of legal assistance in criminal matters.

• Regarding crimes requiring international legal assistance, there is an increase in the number of requests for legal assistance for criminal offences of organized crime.

• In regards to certain forms of international legal assistance, there is a noticed increase in legal assistance through hearing of persons through videoconferencing, the application of surveillance measures and recording of telephone and other conversations or communications, searches of facilities and persons and temporary seizure of assets.
LEGAL FRAMEWORK

- Constitution of the Republic of Serbia
- Law on International Legal Assistance in Criminal Matters
- Bilateral agreements
- Multilateral Agreements


- Criminal Procedure Code
- Law on Police
INSTITUTIONAL FRAMEWORK

Competent institutions:

• Ministry of Justice and Public Administration
• Prosecution
• Ministry of the Interior

Division of competences:

• Ministry of Justice and Public Administration of the Republic of Serbia
• According to the Law on International Legal Assistance in Criminal Matters, joint investigation teams are formed by agreement of the minister competent for the judiciary and the competent body of the foreign state.
• Prosecution and other competent bodies authorized, pursuant to domestic regulations, to make decisions, and/or implement certain measures in specific cases.
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<td>Article 1 of the Council Framework Decision of 13 June 2002 Joint Investigation Teams</td>
<td>The Law on ILA Article 96 – If the circumstances of the case justify it, joint investigative teams may be formed by an agreement between the competent authorities of the Republic of Serbia and foreign country Partially aligned</td>
</tr>
<tr>
<td>Articles 2 and 3 of the Council Framework Decision of 13 June 2002</td>
<td>Criminal and civil legal responsibility of officials of one state during the implementation of measures within the territory of another state as part of a joint investigation team are not clearly regulated, but the rules from the Second Additional Protocol to the European Convention on Mutual Legal Assistance in Criminal Matters are applicable, i.e. the provisions of the Agreement on Setting Up the Joint Investigation Team.</td>
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ASSESSMENT OF THE DEGREE OF HARMONIZATION

Partially Harmonized

The Republic of Serbia does not have relevant regulations that precisely define the field of work of the joint investigation team – regarding the purpose and conditions of work, timeframe, position of members of the joint investigation team, competences, operating procedures and logistics.

All issues are regulated by the agreement on legal assistance, or are regulated by the agreement on forming the joint investigation team for the specific case.

The full implementation of the CELEX in the judicial system of the Republic of Serbia requires:

• Amendments to the Law on International Legal Assistance in Criminal Matters. MIDDLE TERM

By joining the EU, the Republic of Serbia will respect all Council recommendations and resolutions regarding the model agreement for setting up joint investigation teams.
ADMINISTRATIVE CAPACITIES FOR THE APPLICATION OF REGULATIONS AND IMPLEMENTATION MECHANISMS

The administrative capacities (prosecution, police and other competent bodies) provide a **satisfactory base** for the setting up and efficient operation of joint investigation teams.

**Planned activities:**
- Education, professional development and training of employees in bodies with representatives participating in the work of joint investigation teams in order to raise professional and operational capacities,
- Improvement of technical resources in the field of information technologies.

**RESULTS OF THE APPLICATION**

The extremely rare signing of joint investigation team agreements leads to a lack of experience in the application of this type of international legal assistance. Currently, the Republic of Serbia has a signed agreement on setting up a joint investigation team with the Netherlands.
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Thank you for your attention

QUESTIONS