

International Co-Operation LEGAL ASSISTANCE

What is Legal Assistance:

- Providing or obtaining assistance / support in
- measures in investigation or prosecution procedures
- obtaining (exchange) information
- based on legal agreements / contracts / conventions
- between states
- purpose of criminal prosecution / investigation

Requirements:

- Agreement between states (bilateral or multilateral) that regulates the mutual assistance in criminal matters (legal base), additionally permit by national law

Purpose:

- mutual assistance in investigations or court proceedings
- enhance the exchange of information
- to combat criminal activities
- and / or confiscation / seizure of proceedings

Legal Definition of Mutual Legal Assistance:

“Mutual Legal Assistance is the provision of assistance on a formal legal basis, usually in the gathering and transmission of evidence, by an authority of one country to an authority in another, in response to a request for assistance. "Mutual" simply denotes the fact that assistance is usually given in the expectation that it would be reciprocated in like circumstances, although reciprocity is not always a precondition to the provision of assistance”

Mutual Legal Assistance

- provision of assistance on a formal legal basis
- in the gathering and transmission of evidence
- by authorities of countries
- in response to a request for assistance.
- by usually promised reciprocity

What is basically possible?

- Taking evidence or statements from persons
- Assisting in the availability of detained persons or others to give evidence or assist in investigations
- Effecting service of judicial documents
- Executing searches and seizures
- Examining objects and sites
- Providing information and evidentiary items
- Providing relevant documents and records

What is basically not possible, or has to be / is usually regulated additionally?

- arrest or temporary detention of person with a view to extradition
- enforcement of criminal judgments imposed in the requesting State except as permitted by law in the requested State
- transfer of persons in custody to serve sentences
- transfer of proceeds in criminal matters

Formal requirements:

- request / or spontaneously
- usually in written form / template
- transferred by mail / email / fax /
- under the national regulations (channel / administration / agencies / Ministry /....)
- judicial order / warrant / searches /... - if necessary in the requesting state

Formal requirements:

- translation into language of requested state
- detailed description of the criminal activities
- detailed description of the measures / information requested for
- with judicial order / warrant / searches

Formal requirements:

- if needed, request for participation in measures in requested state
- designation of competent investigator or / and prosecutor
- listing of contact details
- if needed, concept of time / perspective / wish of day of the execution

What happens after request was send abroad:

- request will be approved (worst case rejected) by the competent authority – message back
- execution will be allocated to the competent (in best case) law enforcement agencies
- preparation and pre-investigation in case of request for criminal procedures
- determination of time of execution (in case of participation of requesting investigator – contact)

In the requested state (if necessary):

depends on national legislation / law !

- involvement of a judge / court for approval of criminal measures such as warrant order, search order,

The Day(s) (of execution):

- execution of requested measures
- collection of data
- seizure of proceeds if requested and approved (allowed under the agreement)
- seizure of evidence
- arrests and statements,
- report of execution is usually written

The Day(s) (of execution):

In case of participation within the execution,
be aware of:

- basically you will have no „rights“
- to give orders
- to do searches
- to ask questions
- you are just and observer / adviser

BUT !!!

The Day(s) (of execution):

Investigators / colleagues abroad will usually be more than thankful for support

as

- it is not their own case
- they obviously do not have the necessary information background
- they don't want to do more than needed in case of a lack of information

The Day(s) After:

- termination of the request procedure is prepared
- report, evidence, information, will be prepared for transmission
- If needed judge is involved
- time of complaint – if possible – against measures (has to be awaited before transmission is allowed)

Following the transfer / exchange of information:

Transmission and transmission report usually includes:

- description of executed measures / procedures storyboard
- list of evidence
- witness statements if requested for
- description of the allowed use of information

Any Questions???

I've been afraid of that!!!!!!



Thank you kindly for your
attention!