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# **EUROMED JUSTICE Training of Trainers Documents**

## *Assessment of Training Needs in Mutual Legal Assistance in Criminal Matters Findings Report*

*EuroMed Justice Expert: Dragomir Yordanov, Former Director  
of the Bulgarian National Institute of Justice (Bulgaria)*

Lead Firm / Chef de file



**AUTHOR(S):**

This Training of Trainers Document has been written by Dragomir Yordanov, Former Director of the Bulgarian National Institute of Justice (Bulgaria), in collaboration with: Abdelhnine Touzani, Director of Studies, Research, and Cooperation at the Moroccan Institut Supérieur de la Magistrature (Morocco), José María Fernández Villalobos, Liaison Magistrate (Spain), and Rasha Hammad, Director of the Palestine Judicial Institute (Palestine).

**EDITOR AND COORDINATOR:**

Virgil Ivan-Cucu, EuroMed Justice Key Expert, EIPA Senior Lecturer.

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## **ASSESSMENT OF TRAINING NEEDS IN MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS**

### **FINDINGS REPORT**

#### **I. METHODOLOGY**

##### **1. General description**

Two questionnaires have been prepared by the experts and sent to the CrimEx members in the respective countries.

In addition to the questionnaires the training needs were discussed at the 7<sup>th</sup> CrimEx session held on 19-21 June 2018 in Luxembourg.

The materials and documentation produced by EuroMed Justice<sup>1</sup> have also been used to assess the training needs of the countries from the region.

The draft report on TNA has been presented and discussed at the EuroMed Justice Training of Trainers activity held on 16-18 October in Malta.

##### **2. Main (qualitative) questionnaire**

###### **2.1. Description**

The first (main) questionnaire follows an institutional approach. It intends to collect detailed qualitative information on broad number of issues related to judicial training, particularly in the field of training on MLA in criminal matters and to the whole organization of the MLA in criminal matters in the respective countries, both on the current situation and in prospect. The questions are with open answers and give possibility to the respondents to provide detailed explanations.

###### **2.2. Results**

Eight replies have been received from six countries (Morocco and Palestine sending replies from both the training institution and the Prosecution Office).

Different countries have taken different approach on how much detailed information to share. Many of the questions are answered in a very short and general manner or not answered at all. The qualitative information obtained is completed by and corroborates with the results of the second (quantitative) questionnaire and other sources.

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<sup>1</sup> CrimEx Docs and Digital Evidence Manual



### **3. Synthesized (quantitative) questionnaire**

#### **3.1. Description**

The second questionnaire (the synthesized one) focuses on subject-matter topics for training on MLA in criminal matters and issues related to organization and methodology of training on MLA in criminal matters in prospect. Small part of it addresses the current state of play of the training on MLA in criminal matters in the respective countries. Questions are mainly with closed answers, rated in accordance to their relevance to the professional activities and training needs of respondent countries and/or institutions in the field of MLA in criminal matters. The rating scale is from 1 to 10, with 1 being the least relevant and 10 being the most relevant topics and issues.

#### **3.2. Results**

Nine replies have been received from seven countries (Morocco and Palestine sending replies from both the training institution and the Prosecution Office).

All the answers to the questionnaires (to the possible extent) have been transferred to a single summary questionnaire with the respective country abbreviations according to UN/LOCODE.

For the purpose of the horizontal analysis of the training needs the answers have been divided into three main categories according to their relevance for the professional activities and training needs of the respondent countries and/or institutions:

- High relevance, marked in green

These are questions and issues that have been rated with grades 8-10 by more than four out the seven respondent countries and/or five out of the nine respondent institutions.

- Medium relevance, marked in yellow

These are questions and issues that have been rated with grades 5-7 by more than four out the seven respondent countries and/or five out of the nine respondent institutions.

- Low relevance, marked in white

The remaining questions and issues that have been rated with grades 1-4 by most respondent countries and/or respondent institutions.



The scattered answers to a certain number of questions (around 10%), showing great diversity in the interest of the countries and/or institutions assessed led to the introduction of two intermediate categories:

- High/medium relevance, also marked in green

These are questions and issues that have been rated predominantly with grades 5-10 but with no clear majority from the respondent countries and/or institutions (five questions)

- Medium/low relevance, also marked in yellow

These are questions and issues that have been rated predominantly with grades 1-7 but with no clear majority from the respondent countries and/or institutions (eight questions)

In the majority of cases the responses indicated a clear (predominant) pattern in the training needs of the assessed countries and/or institutions from the region.

## **II. GENERAL SITUATION CONCERNING MLA IN CRIMINAL MATTERS AND JUDICIAL TRAINING ON THE SUBJECT**

Main sources of information on these issues are the aggregated answers to the quantitative questionnaire and the EuroMed Justice materials and documentation.

### **1. Judicial training in general and training on MLA in criminal matters**

In all responding countries there exist public institutions in charge of training judicial professionals. However there are no specialized institutions or departments/sections for the training on MLA in criminal cases. In different countries this type of training is delivered by different institutions, depending on the judicial organization and the type of legal system. Because of these differences training of Judges, Prosecutors and MoJ officials is often delivered by different providers belonging to different branches of Government (Judicial and/or Executive).

The budget for training is generally considered as insufficient to cover all training needs. In no country there is a budget specifically dedicated to training on MLA in criminal cases.

Training of Judges and Prosecutors on MLA in criminal cases is delivered both in Continuous and Initial Training (where the latter does exist). In Initial training it is dispersed in different legal subjects (for example Criminal Law, Criminal Procedure, International law, Human Rights, etc.) or different judicial functions (Judge, Prosecutor, Investigative Judge, etc.). In Continuous



Training it is delivered in trainings of different length/duration usually specifically focused on the topic. In some countries MLA is included in common training sessions with other related topics.

Training of MoJ officials working on MLA in criminal cases is delivered in Continuous Training, either by a training institution or on the job.

Trainers on MLA in criminal cases are usually legal practitioners, mainly Judges, Prosecutors and MoJ officials (in different proportion depending on the country and its system) involved in MLA proceedings, hired on a part-time basis because of their practical experience. In some countries training sessions are also delivered by foreign experts under international projects.

Training needs, including on MLA in criminal cases, are periodically assessed (usually once per year), generally with the participation of the parties and institutions involved in the proceedings. Applicable international legal instruments of the European Union, the Council of Europe and the United Nations as well as regional and bilateral legal instruments are also considered.

Training sessions, including on MLA in criminal matters, are usually evaluated at their end as well as some time later in order to assess their relevance to the current training needs of the participants and to provide information on their future training needs.

Participation of legal practitioners (Judges, Prosecutors and MoJ officials) in training on MLA in criminal matters is voluntary (non-mandatory). It depends on their interest, on available training sessions and places and on the allocated financial resources and is generally considered to be insufficient. Participation in this type of training is considered for but not directly related to their career development.

Among other factors contributing to the insufficient training on MLA in criminal matters are mentioned:

- Lack of specific experience in this type of training, including lack of specific training programs and specific training methodology and training plans
- Lack of qualified team of experts, specifically trained to be trainers on the subject
- Excessive workload and lack of support from superiors to attend trainings
- Lack of sufficient information
- Language barriers

There is no systematic or sufficient training on MLA in criminal matters at international level (with the exception of one country). Sporadic training initiatives on the matter are organized,



mainly on cooperation with European institutions and organizations as well as with some UN bodies and other donors.

## **2. Organization of MLA in criminal matters**

The organization of MLA in criminal matters in different countries is structured in different manners, depending on the judicial organization and the type of legal system. Cases are dealt by either the courts, or by the prosecution offices or by the MoJ as central authority or by several of those institutions. In some countries there are specialized units within the competent institutions. Generally the number of legal practitioners (Judges, Prosecutors and MoJ officials) directly involved MLA in criminal matters in each country is relatively low.

Because of these differences the target group for training at regional level remains heterogeneous, although the respondents are generally positive about different variations of joint training involving Judges, Prosecutors, MoJ officials and other practitioners, according to the answers to the systematized questionnaire (see further below).

Respondents indicate among the main difficulties they face in their work on MLA in criminal matters:

- The differences between legal systems (civil law / common law)
- Lack of information about the legal framework on the matter in other countries
- Lack of direct communication with counterparts from other countries
- Low knowledge of international legal framework of all kinds (multilateral and/or bilateral)
- Noncompliance of the national legal framework with the international agreements in some countries
- Gaps in the national legal framework on the matter in some countries
- Attitude of some countries to impose conditions non foreseen in the international regulatory framework (often linked to the three previous items)
- Inconsistent drafting and wording of MLA requests
- Difficulties in collecting and preserving evidence
- Difficulties in freezing and confiscating assets and proceeds of crime
- Low knowledge of EU and CoE standards on capital punishment and life-long imprisonment
- Low knowledge of and insufficient training in foreign languages, with few exceptions (on this issue see also the answers to the systematized questionnaire further below)





Respondents suggest various ways to overcome the indicated difficulties, including but not limited to:

- Enhancing the specialization within the institutions involved in MLA in criminal matters (specialized sections/units and/or specialized officials)
- Conducting more specialized training sessions
- Publication of guidelines (handbooks, manuals) on MLA in criminal matters
- Setting up different tools and mechanisms facilitating the MLA in criminal matters like networks, IT platforms, online trainings, etc.
- Easy access to international legal framework in force
- Setting up a core pool of trainers on MLA in criminal matters
- Appointment of focal or contact points
- Extension of the number of liaison judges/magistrates
- Revision of the existing international legal framework in line of the new types of criminal activity
- Enhancing the informal cooperation

### **III. TRAINING NEEDS ASSESSMENT**

Main sources of information on these issues are the aggregated answers to the qualitative (systematized) questionnaire.

#### **1. Subject-matter topics related to the MLA in criminal cases**

According to the results of the synthesized questionnaire, the predominant estimation of the relevance of the subject-matter topics for training is the following:

##### **1.1. High relevance**

- Controlled deliveries
- Gathering cross-border digital/e-evidence from Internet and Communication Service Providers
- Covert investigation
- Electronic evidence
- Freezing and Confiscation of the Proceeds of Crime
- Joint investigation Teams
- Obtaining computer evidence
- Obtaining Banking evidence



- Search and Seizure
- Special Investigation Techniques (Including communication interceptions)
- Hearings by videoconference
- Extradition requests (active or passive)
- Transfer of sentenced persons requests (active or passive)
- Transfer of proceedings requests (active or passive)
- Techniques for drafting a request for mutual legal assistance in criminal matters
- Techniques for drafting an extradition request
- Execution of foreign sentences
- Judicial cooperation in terrorist offenses and countering violent extremism
- International cooperation against transnational organized crime
- International cooperation on countering violent extremism
- International cooperation against drug trafficking
- International cooperation against cybercrime
- International cooperation against trafficking in human beings
- International cooperation against child exploitation
- International cooperation against illegal immigration
- International cooperation against money laundering
- International cooperation against corruption
- Case law of the European Court of Human Rights (Strasbourg) on certain aspects of international cooperation in criminal matters
- Case law of the Court of Justice of the European Union (Luxembourg) on certain aspects of international cooperation in criminal matters
- Case law of other foreign or international courts concerning certain aspects of international cooperation in criminal matters
- European good practices on certain aspect of international cooperation in criminal matters
- The tasks and procedures of Interpol
- The functions of Europol and the rules governing the exercise of its functions
- International human rights law
- International humanitarian law

## 1.2. Medium relevance

- Obtaining Criminal Records
- Sending and service of procedural documents
- Ships at sea



- Taking evidence or statements from persons (Including witnesses and prisoners)
- Recognition of foreign criminal judgments
- Techniques for drafting cooperation conventions and protocols

### 1.3. Low relevance

There are NO subject-matter topics related to the MLA in criminal cases that are considered to be of low relevance

### 1.4. Conclusion

It could be seen from the answers that the majority of the countries consider most of the forms and tools of international cooperation in criminal matters, as well as most aspects of the criminal proceeding and evidence gathering to be of high relevance for their professional activities and training needs. It is interesting to note the particular interest shown in Human Rights and International Humanitarian Law as well in the jurisprudence of European and International courts. This conclusion is supported by the aggregated answers to the main (qualitative) questionnaire.

## 2. Training in foreign languages

It appears from the answers that training in English is considered by the responding countries and/or institutions to be of high relevance for their professional activities and training needs. Training in French is considered of medium relevance. As for the other languages generally their relevance is considered to be medium/low. This conclusion is supported by the answers to the main (qualitative) questionnaire.

## 3. Training in technological skills

Training in new technologies related to MLA in criminal matters is unanimously considered to be of high relevance. This conclusion is supported by the answers to the main questionnaire.

## 4. Other topics related to MLA in criminal matters

Individual countries and/or institutions suggest particular topics of interest for training, such as:

- Different tools and organizations set up to facilitate MLA (liaison judges/magistrates, platforms, networks, etc.)
- Major problems in MLA (existing differences between legal systems ...)
- The EuroMed CrimEx docs.
- The EuroMed Manual on digital evidence



- Partner organizations (Eurojust, European Judicial Network ...)
- Communications among countries in the field of international judicial cooperation
- Activate international judicial cooperation networks

#### IV. ORGANIZATION AND METHODOLOGY OF TRAINING ON MLA IN CRIMINAL MATTERS

Main sources of information on these issues are the aggregated answers to the qualitative (systematized) questionnaire.

##### 1. Current situation

###### 1.1. Accessibility of training on MLA in criminal matters

It appears from the answers that training on MLA in criminal matters is considered to be accessible to prosecutors at a high/medium level.

Accessibility of training for judges and MoJ officials is considered to be at medium/low level.

Training is generally considered insufficient in terms of number of training sessions/days as well as in terms of coverage of all relevant topics.

###### 1.2. Availability and accessibility of support tools (sources of law, publications, IT applications) for the MLA in criminal matters

National legislation, international conventions and bilateral agreements are generally available and accessible to the practitioners in MLA at a high degree.

Jurisprudence of national and foreign courts is available and accessible at medium level while jurisprudence of international courts is available and accessible to a medium/low degree.

Publications on MLA in criminal matters (including analyses of the jurisprudence) are available and accessible to Judges, Prosecutors and MoJ officials to a medium/low level.

IT applications for the monitoring, implementation and evaluation of MLA procedures in criminal matters are generally available at low level (with the exception of one country). Training of practitioners on how to use these applications is also at low level (with the exception of the same country).

###### 1.3. Command of foreign languages



The general command of foreign languages by the professionals (Judges, Prosecutors, and MoJ officials) involved in MLA in criminal matters is generally considered to be at good level concerning English, medium/low level concerning French and poor concerning all other languages of reference.

## **2. Appropriate audience for training on MLA in criminal matters**

The respondents are generally in favor of all forms of combining the audiences:

- Judges, Prosecutors, and MoJ officials separately
- Judges and Prosecutors together
- Judges, Prosecutors, and MoJ officials together
- Judges, Prosecutors, and MoJ officials together with others (police, penitentiary, etc.)

## **3. Appropriate type of training on MLA in criminal matters at national level**

The respondents are mostly in favor of conventional face-to-face training sessions (rated at high level).

Other types of training such as videoconferencing, distance learning (e-learning) and blended learning are rated at medium level.

The appropriate duration for the face-to-face training sessions at national level is generally considered to be three or more days.

## **4. Appropriate methodology for the face-to-face training sessions on MLA in criminal matters**

Most of the respondents prefer practical and interactive forms of face-to-face training, all of which were rated high in the answers:

- discussion
- case-studies
- practical exercises
- role plays
- small group workshops
- study and observation visits to national institutions involved in MLA

Lecturing is the only method generally rated medium.

## **5. Appropriate trainers on MLA in criminal matters**



The respondents clearly prefer to have public sector practitioners, mostly prosecutors and to some extent judges and MoJ officials as trainers on MLA in criminal matters. International experts are also highly rated. Lawyers and academics are clearly rated at low level.

At the 7<sup>th</sup> CrimEx session the idea of having the **national contact points as trainers on MLA in criminal matters gained broad support**.

#### 6. **Appropriate supporting materials for the training on MLA in criminal matters**

Most of the respondents rated highly all kinds of support materials for the training on MLA in criminal matters:

- Conventions, agreements, treaties
- National legislation
- Jurisprudence of national courts
- Jurisprudence of foreign courts
- Jurisprudence of international courts
- Forms related to respective MLA procedures
- Text of the lectures and presentations
- Reports of international bodies

Only the academic and applied research are rated at medium level.

#### 7. **Appropriate type of training on MLA in criminal matters at international level**

The conventional face-to-face training sessions are highly rated by almost all respondents.

The other highly rated types of training are the internships, study and observation visits to foreign and/or international institutions involved in MLA.

Videoconferencing, distance learning (e-learning) and blended learning are rated at medium level.

### V. **CONCLUSION**

Despite the differences between the countries regarding their legal systems and institutional setting, the survey identified many common points between them concerning the MLA in criminal matters and the training on the issue.



**There is a high demand of training in MLA in criminal matters which can be seen from the prioritization of the suggested training topics in the questionnaires: 85 % of them were considered to be of high relevance, only 15 % of medium relevance and NONE of them has been generally considered as of low relevance to the work and the training needs of the respondents.**

The survey shows the general interest of all countries from the region in training on:

- all forms of MLA in criminal matters,
- MLA in all stages of criminal proceedings with particular emphasis on collecting evidence, especially on electronic/digital evidence,
- MLA in countering all main [and modern] types of criminal activity,
- all relevant legal and technical knowledge and skills necessary for the MLA in criminal matters.

Particular interest is shown on European standards and the jurisprudence of European courts concerning Human rights and their impact on MLA in criminal matters as well as on the European mechanisms and institutions for MLA in criminal matters.

There is a unanimous understanding that the training on MLA in criminal matters should be of very practical nature, conducted by practitioners in the field, using a methodology that stimulates the participation of and the personal exchange between all professionals involved in MLA proceedings.

It could also be concluded from the survey that the respondents realize the necessity to develop the culture of cooperation and to increase the mutual trust between professionals and institutions from different countries working in the field of MLA in criminal matters and consider the training as a powerful tool to achieve those objectives. There is a clear demand in raising the knowledge and understanding of foreign legal systems and the common international and bilateral legal basis for MLA in criminal matters. Training in foreign languages is also highly praised as a way to enhance communication between practitioners from different countries. The most preferred forms of training are the ones that stimulate personal contacts and communication like face-to-face events, workshops, study-visits and internships.

These commonalities in the training needs and the perception about training on MLA in criminal matters represent a solid ground for further cooperation and common activities in this field.



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