

REQUESTING MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS FROM IRELAND

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1. BASIS FOR COOPERATION

In Ireland, the main legislative basis for the provision and receipt of Mutual Legal Assistance (MLA) is the [Criminal Justice \(Mutual Assistance\) Act 2008](#).

For instance, to obtain specified evidential material to be produced by a person or organisation (Production Orders), [Section 75](#) "Search for particular evidence for use outside State", will be invoked. This may include, for example, requests for content data from an online service provider falling within Irish jurisdiction.

Furthermore, Ireland is a party to a number of multilateral conventions and bilateral treaties (see [Annex 1](#)).

Ireland **did not** take part in the adoption of the [EU Directive regarding the European Investigation Order in criminal matters](#) and therefore, does not accept European Investigation Orders (EIOs).

Any request for the execution of an EIO received by the Central Authority will be kept on hold until:

- The request is sent as a standard MLA request, including a formal Letter of Request and any other documentation necessary for the execution of the request, at which point the Central Authority can take steps to provide the assistance required; or
- The request is formally withdrawn, at which point the original EIO documentation will be returned to the requesting authority.

Ireland is also **not** a State Party to the [Council of Europe Convention on Cybercrime](#) (also known as the Budapest Convention) and therefore, will not cooperate under the auspices of this treaty.

EU Member States may also consult the [European Judicial Network website](#) for information on whether or not Ireland operates specific EU legal instruments for cooperation.

In exceptional circumstances, requests made on the basis of reciprocity can be considered on a case by case basis.

2. REQUIREMENTS FOR REQUESTS

A- GENERAL REQUIREMENTS

According to Section 6(4) of the *Criminal Justice (Mutual Assistance) Act 2008*, requests shall:

- a. be addressed to the Central Authority, unless the relevant international instrument provides otherwise,
- b. where appropriate, indicate the relevant international instrument under which the request is being made, and
- c. be in writing or in any form capable of producing a written record under conditions allowing their authenticity to be established.

In addition, pursuant to Section 6(6) of the *Criminal Justice (Mutual Assistance) Act 2008*:

A request and any supporting or related documents, if not in Irish or English, shall be accompanied by a translation into either of those languages.



Data Location

Note that, in order to request electronic data, Irish legislation requires such data to be physically located (available) in Irish territory.

B- SPECIFIC REQUIREMENTS

Requests for specified evidential material to be produced by a person or organisation (Production Orders) from an EU Member State must meet **at least one** of the following (**minimum sentences**) criteria:

- The conduct giving rise to the request is punishable under the law of both Ireland and the requesting EU Member State by

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imprisonment for a maximum period of at least 6 months; or

- The conduct giving rise to the request is punishable under the law of both Ireland and the requesting EU Member State by virtue of being an infringement of the rules of law which is being prosecuted by the administrative authorities and where the decision may give rise to proceedings before a court having jurisdiction in particular in criminal matters; or
- The request has been made for the uplifting of material in connection with a request made for freezing, confiscation and forfeiture of property¹ for the freezing of evidence and which is for an offence which may be punished in the requesting EU Member State by imprisonment for a term of not less than 3 years.

Please note that for **requests from non-EU** Member States, the dual criminality criteria must be met (i.e. the conduct giving rise to the request must be punishable under the law of both the requesting State and Ireland).

It is essential for the requesting EU Member State or non-EU Member State to provide an extract of the legislation which specifies the offence(s) being investigated or prosecuted in the requesting jurisdiction which outlines the maximum sentence(s) applicable, accompanied by a professional translation in English or Irish. Providing these extracts of legislation assists the Central Authority in making their assessment as to whether or not the request meets the requirements set out in the *Criminal Justice (Mutual Assistance) Act 2008*.

C- REQUIRED INFORMATION

Requests for Production Orders shall **include the following information**:

- The name and address of the person or organisation that holds the specified material;
- Account numbers or similar identifiers which will allow the organisation to produce the relevant material;
- Specific dates, or a date range, which apply to the material required (requests for information

without these specifics will be considered “trawls” and will not be carried out);

- The reason for seeking the particular evidential material specified in the request;
- The relevance the material has to the underlying offence;
- The basis for suspicion of the underlying offence; and
- The basis for believing the person or organisation from whom the material is sought has possession of said evidence.

It is the responsibility of the requesting authority to ensure that **preservation of the data has been arranged** with the holder of the requested material and to secure a relevant preservation reference number which verifies that the data has been preserved. **This reference number must be included in the request.** Failure to secure and maintain preservation on the part of the requesting authority may result in loss, corruption or deletion of the data.

Furthermore, requests for Production Orders **must include assurances** in relation to the purposes for which the evidential material provided is to be used, the return of material when no longer required for the purposes set out in the Letter of Request and the right to challenge the evidence obtained in court. A letter of “Assurance from Requesting Authority required under Section 75 of *Criminal Justice (Mutual Assistance) Act 2008*” (see [ANNEX II](#)) must be signed, dated and stamped by a competent authority in order to confirm that the required assurances are being given.

Note that, **failure to provide the required information or assurances** will prevent the Central Authority from being able to issue a direction letter to An Garda Síochána (the Irish police) to make the application to court to obtain the order needed to secure the evidential material requested².



Specific Template

It is desirable for the requesting state to fill in a specific “Letter of request for mutual legal assistance involving the production of evidential material for the purpose of a criminal investigation”, available at:

¹ Part 4 of the Criminal Justice (Mutual Assistance) Act 2008.

² In certain circumstances, the Central Authority may agree to waive the requirement that the evidence be returned. If such an

exception is required, the reasons therefor should be outlined in the Letter of Request.

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[ca10cb8b-4f61-4fc9-9b82-343d894f6056.pdf](#)
(www.gov.ie)

This template is designed to help requesting authorities provide all of the information required under Irish national legislation and by the court when deciding on issuing production orders.

3. GROUNDS FOR REFUSAL

According to Section 3 of the *Criminal Justice (Mutual Assistance) Act 2008*, assistance shall be refused:

a. if the Minister considers that providing assistance would be likely to prejudice the sovereignty, security or other essential interests of the State or would be contrary to public policy (ordre public),

b. if there are reasonable grounds for believing—

I. that the request concerned was made for the purpose of prosecuting or punishing a person on account of his or her sex, race, religion, ethnic origin, nationality, language, political opinion or sexual orientation,

II. that providing assistance—

i. may prejudice a person's position for any of those reasons, or

ii. may result in the person being subjected to torture³ or to any other contravention of the European Convention on Human Rights,

c. if the request is not in accordance with the relevant international instrument, or

d. if, and for as long as, the provision of assistance would prejudice a criminal investigation, or criminal proceedings, in the State,

and may be refused on any other ground of refusal of assistance specified in the relevant international instrument.

4. CONFIDENTIALITY OF REQUESTS

The contents of a Letter of Request or the fact that a request has been made will not normally be disclosed outside of the official bodies in Ireland concerned with the execution of the request or Ireland's National Member at Eurojust.

It is an offence under Section 100 of the Criminal Justice (Mutual Assistance) Act 2008 for any person to make any disclosure in relation to a mutual

³ In Section 3, "torture" has the meaning given to it by the [Criminal Justice \(United Nations Convention against Torture\) Act](#)

assistance request made in connection with a criminal investigation which might prejudice the investigation being conducted in the State or abroad.

If confidentiality requirements make it difficult or impossible to execute a request, the requesting authority will be consulted by the Central Authority.

5. CENTRAL AUTHORITY

The Minister for Justice acts as the Irish Central Authority for Mutual Assistance.

Original hard copies of MLA requests must be addressed to:

Central Authority for Mutual Assistance
Department of Justice
51 St. Stephen's Green
Dublin 2, D02 HK52
Ireland

Alternatively, MLA requests can be emailed to:
marequests@justice.ie

Queries can be addressed via:

Phone: +353 1 859 2295

E-mail (general queries unrelated to a specific case):
mutual@justice.ie

E-mail (for all correspondence concerning existing requests): marequests@justice.ie

Requests sent through diplomatic channels may also be accepted.



Additional Resources Regarding MLA Process Towards Ireland

For more information on the MLA process towards Irish authorities, visit:

<https://www.gov.ie/en/policy-information/e5f87-mutual-legal-assistance/>

Please note, however, that the material at this website link requires to be reviewed and updated following its transition from the justice.ie website to the gov.ie website.

[2000](#) (Criminal Justice (Mutual Assistance) Act 2008, Section 3(2)).

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ANNEX I

REQUESTS UNDER INTERNATIONAL CONVENTIONS

Ireland is a party to the following Conventions/Agreements/Framework Decision or can give assistance in accordance with the relevant provisions of these Conventions/Agreements/Framework Decision⁴:

- [The Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union](#) (2000) and its [Protocol](#) (2001).
- [The Council of Europe Convention on Mutual Assistance in Criminal Matters](#) (1959), its [Additional Protocol](#) (1978) and [Second Additional Protocol](#) (2001).
- [The United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances](#) (1988).
- [The Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime](#) (1990).
- [The Agreement between the EU and the Republic of Iceland and the Kingdom of Norway on the application of certain provisions of the 2000 EU Convention on Mutual Assistance in Criminal Matters](#) and its 2001 Protocol (2003).
- Articles 49 (excluding paragraph (a) which has been repealed) and 51 of the [Convention, signed in Schengen on 19 June 1990, implementing the Schengen Agreement](#) of 14 June 1985.
- Title III of the [Co-operation Agreement between the European Community and its member states and the Swiss Confederation to combat fraud and any other illegal activity to the detriment of their financial interests](#) (2004).
- [Chapter IV of the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism](#) (2005).
- Articles 13, 14, 18, 19 and 20 of the [United Nations Convention against Transnational Organised Crime](#) (2000).
- Articles 46, 49, 50 and 54 to 57 of the [United Nations Convention against Corruption](#) (2003).
- The 2003 [Agreement on Mutual Legal Assistance between the EU and the US and the related Treaty on Mutual Legal Assistance in Criminal Matters between Ireland and the US](#).

⁴ Information regarding international instruments is available on the websites of the depositaries of such treaties, for example the [Council of Europe Treaty List](#).

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ANNEX II

TEMPLATE LETTER FOR ASSURANCE FROM REQUESTING AUTHORITY

Criminal Justice (Mutual Assistance) Act 2008

Section 74 and 75

1. Any evidence that may be supplied in response to the request will not, without the Minister's prior consent, be used for any purpose other than that permitted by the relevant international instrument or specified in the request,
 2. any evidence will be returned when no longer required for the purpose so specified (or any other purposes for which such consent has been obtained) unless the Minister indicates that its return is not required,
- and
3. a defendant will be able to challenge any evidence supplied by the Irish authorities if the material is to be used at his/her trial in the requesting state.

On behalf of the Requesting Authority, I hereby give the above assurances.