



MINISTERUL JUSTIȚIEI



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INFORMAL EXPERT MEETING ON INTERNATIONAL COOPERATION IN CRIMINAL MATTERS

**Vienna, Austria
9-11 April 2019**

ROMANIA'S EXPERIENCE



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The **MINISTRY OF JUSTICE OF ROMANIA**
is located in Bucharest, 17 Apolodor Street





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Right in front of the **House of Parliament**
the 2nd largest building in the world after the Pentagon, with 2% larger in volume
than the Great Pyramid of Giza in Egypt





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Human resources and organization of the Ministry of Justice of Romania

- The Ministry of Justice as part of the Romanian Government, contributes to the good functioning of the judicial system ensuring the conditions for achieving the justice as public service, for defending the law order and rights and liberties of the citizens.
- The Ministry of Justice has its own administrative staff, organized in Directorates and Divisions known also as administrative compartments. The directorate dealing with international judicial cooperation within the Ministry of Justice of Romania is **THE DIRECTORATE OF INTERNATIONAL LAW AND JUDICIAL COOPERATION**, lead by – Director Mrs. **Viviana ONACA** and our Head of Unit Mrs. **Dana ROMAN**.
- The Ministry of Justice** is designated by the law as central authority – when dealing with international judicial cooperation in criminal matters during the **trial stage**.



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THE DIRECTORATE OF INTERNATIONAL LAW AND JUDICIAL COOPERATION

DIRECTOR

DIVISION FOR INTERNATIONAL JUDICIAL COOPERATION IN CRIMINAL MATTERS

DIVISION FOR INTERNATIONAL JUDICIAL COOPERATION IN CIVIL MATTERS

TREATY UNIT

SECRETARIAT



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**SERVICE OF DOCUMENTS, TAKING OF EVIDENCE, CONFISCATION
AND DISPOSAL OF CONFISCATED PROCEEDS OF CRIME OR
PROPERTY**



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Romania - United Nations Convention against Transnational Organized Crime

“1. In accordance with Article 16 paragraph 5 (a) of the Convention, Romania considers this Convention as the legal basis for cooperation on extradition with other States Parties to this Convention;

2. In accordance with Article 18 paragraph 13 of the Convention, the central authorities designated to receive the requests for mutual legal assistance are:

- a) The Prosecutor's Office attached to the Supreme Court of Justice, for the requests for mutual legal assistance issued in pre-trial investigation
- b) The Ministry of Justice, for the requests for mutual legal assistance issued during the trial or execution of punishment, as well as for the requests of extradition

3. In accordance with Article 18 paragraph 14 of the Convention, the requests for mutual legal assistance and the enclosed documents submitted to the Romanian authorities shall be accompanied by translations in the Romanian language or in the French or English languages.”



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Romania - United Nations Convention against Corruption

"In accordance with Article 46, paragraph 13, of the Convention, Romania declares that the central authorities responsible for receiving requests for mutual legal assistance are:

- a) the Prosecutor's Office to the High Court of Cassation and Justice for the requests issued in criminal investigation and prosecution;
- b) the Ministry of Justice for the requests issued during the trial and execution of punishment, and for receiving requests for extradition and transfer of sentenced persons."

"Pursuant to article 46, paragraph 14 of the United Nations Convention against Corruption, the Government of Romania acknowledges English, French and Romanian as acceptable languages for the mutual legal assistance requests and supporting documents presented to the Romanian authorities under United Nations Convention against Corruption."



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EXAMPLE – SERVICE OF DOCUMENTS

With regard to the service of documents, RO authorities issued several MLA requests to the attention of the judicial authorities in Australia. The Court was examining a case against several defendants sent to trial for having committed the offences of:

- 1. Organizing a criminal group**
- 2. Computer related offences**
- 3. Fraud against 703 foreign citizens, among which 140 injured parties / civil parties**
- 4. Illegal access to computer systems**

The legal basis of the MLA requests was: the United Nations Convention against Transnational Organized Crime, New York signed on 15th November 2000.

Other examples: in recent years to: Honduras, New Zealand and other states.



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Romanian legislation in respect of confiscation as a form of international judicial cooperation

1. International legal framework applicable by Romania

2. Domestic legislation

3. Practical Examples



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International legal framework applied by RO

UNTOC - Art.13 and 14

- Council of Europe instruments - combination to allow freezing and confiscation
- MLA Convention 1959 - mentions seizure but not confiscation
- Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (ETS 141) - applies to money laundering
- Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and Financing of Terrorism (ETS 198) - applies to money laundering and financing of terrorism
- **EU level: several instruments dealing with confiscation**
- Important - Framework Decision 2006/783/JHA on mutual recognition to confiscation orders
- Bilateral treaties(SUA and Canada)
- Reciprocity



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Domestic legislation

- Law no. 302/2004 on international judicial cooperation
- Criminal Code
- Criminal Procedural Code
- Law 318/2015
- Law 302/2004 contains separate provisions on confiscation in relation to third countries and EU countries that apply the Framework Decision 2006/783/JHA
- In relation with countries that apply UNTOC, CoE Instruments or bilateral treaties concluded with third countries the provisions related to third countries will apply
- Competent to execute confiscation orders are District Courts - each county has a district court.



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Practical aspects

- Important to mention in the request the elements provisions through Art. 18 paragraph 15 together with Art. 13 paragraph 3)
- Important to attach the confiscation order and to mention info on the previous freezing measures
- Important to attach the judgement of conviction - some judges will ask for the translation
- If the confiscation order is recognized with regard to the disposal of confiscated assets/proceeds – the provisions are:



Disposal of confiscated assets

- The Romanian legislation establishes for clear rules - even in the case of third countries.
- The common approach - if there are no specific provisions in this sense and if the applicable treaty does not say otherwise:
 - -under 10 000 EURO the money go to state budget
 - +10 000 EURO-50%-50%
- If assets - they can be sold money distributed in accordance with the rules mentioned, or assets can be transferred
- The Parties can decide otherwise through sharing agreements
- According to new legislation into place-sharing agreements are going to be negotiated by the ANABI(National Agency for Administration of Frozen Assets)



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Practical cases

Outgoing Case confidential – is under investigation in present – it has not been sent to Court therefore is not public

The competent RO authorities are investigating in this case - the initiation of an organised criminal group and computer related offences

A Romanian Bank filed a complaint with the Romanian Police Inspectorate which stated that on a single day the bank in question registered 473 cash withdrawals and purchases in amount of 400.000 EUR both in Romania and abroad.

Following the investigations it resulted that the IP address that was connected to the server of the bank was located in a non-EU country. The Ro authorities have also been able to identify the provider.

The RO authorities addressed on the basis of the UNTOC Convention a request for immediate preservation of data asking for the immediate preservation of data related to that IP address and subsequent communication of preserved data which was sent to the requested state by e-mail and DHL. The request was sent via the MoJ a few days after the date of issuing.



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Practical cases

Incoming case – a case we received via diplomatic channel (after almost 6 months after the date of issuing)

The MLA request was addressed on the basis of art.7 of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances. Vienna, 20 December 1988

A foreign company shipped to RO four containers loaded with bananas. A few weeks later the Romanian police conducted a seizure of 2 tons and $\frac{1}{2}$ of cocaine hidden in secret places on the floor of the four containers and 6 individuals have been arrested. The Ro authorities have granted the assistance requested. The evidence gathered was essential to determine the modus operandi used by the organisation in the requesting state given that such activities cause a lot of damage and harm to the community, its citizens and the economy.

× Practical cases

- × Another example: **Incoming request:**
- × A person defrauded a regional Hospital abroad of a large amount of money and used the money to buy different goods. The defendant had also bought two vehicles (a BMW and a Harley Davidson) to a Romanian national. Given that the payment of restitution to victims of fraud was mandatory under the legal system of the requesting state, the return money to the victims was a priority.
- × The legal basis of the request (MLA and 2 supplement requests) was the bilateral treaty between the requesting state and RO as well as art.14, para. 2 of the United Nations Convention on Transnational Organized Crime,
- × The competent District Court in RO executed the requests as requested.



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Thank you for your attention!

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