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NOTE

from: General Secretariat of the Council

to: Working Party on Cooperation in Criminal Matters

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Subject: Questionnaire in preparation for the workshop on the application of the mutual legal assistance (MLA) and extradition agreements between the European Union and the United States of America (Eurojust, 25-26 October 2012)






Delegations will find attached the replies received to the questions set out in 13425/12 COPEN 190 USA 26 JAIEX 64.

WORKSHOP ON THE APPLICATION OF THE MLA AND EXTRADITION AGREEMENTS BETWEEN THE EU AND THE US

COMPILATION OF REPLIES FROM THE MEMBER STATES TO COUNCIL DOC. 13425/12














Question 1.

- a. Please provide the number of requests issued to the USA from 1 February 2010 until 31 August 2012 in relation to MLA in criminal matters in general

Member State	Replies and Observations – 1a
 AT	
 BE	
 BG	<p>61 MLA requests from Bulgaria to USA N.B. 1. The number of requests via the Ministry of Justice is the following: - 2010 – 10 requests by the Supreme Prosecutors' Office of Cassation; - 2011 – 4 requests by the Supreme Prosecutors' Office of Cassation, 3 incoming extradition cases (bank information on fraud); - 2012 – 3 requests by the Supreme Prosecutors' Office of Cassation, 3 incoming extradition cases. The total number of MLA requests in Criminal Matters issued by the Bulgarian courts is 12 (for 2010 – 4, for 2011 – 1). 2. The data in the attached tables in Bulgarian language are provided by the Supreme Prosecutors' Office of Cassation, Department of International Legal Cooperation.</p>
 CY	17 requests
 CZ	98 requests











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 DK	Please be informed that the numbers provided reflects a manual assessment of information in the Ministry's content management system and is not to be viewed as actual statistical data. The Danish Ministry of Justice has issued 23 MLA requests to the USA from 1 February 2010 until 31 August 2012.
 DE	For technical reasons it is not possible in the field of general mutual legal assistance in criminal matters to separate outgoing requests (to the United States) from incoming requests (from the United States), nor is it possible to provide sample figures for set dates. In 2010, 2011 and 2012, however, a total of 471 general legal assistance requests were recorded in relations with the United States.
 EE	24
 ES	315
 FI	23
 FR	148 (110 requests for international judicial assistance issued by the courts; 38 requests for investigation from the public prosecutor's office)
 EL	171 MLA requests in criminal matters were issued to the US from 1 February 2010 to 31 August 2012, in general
 HU	53
 IE	Seventy nine (79) requests to US since 1 January 2010.
 IT	78
 LT	80 MLA requests have been issued to the US in the period indicated (76 initiated in pre-trial stage, 4 – in trial stage).
 LU	From February 2010 to August 2012, the office of the examining magistrate in Luxembourg, consisting of 13 examining magistrates, sent seven MLA requests to the American authorities for cases involving cybercrime, as well as general and financial law. There were no specific requests for tracing or seizure of assets or of property of any kind. No requests for extradition to the United States were received.
 LV	In trial stage according to the statistics of the Division of Courts Cooperation of the Department of Judicial Cooperation of the Ministry of Justice for year 2011, to the US competent institutions were sent 2 mutual legal assistance requests in criminal matters. Till August 31, 2012 the Ministry of Justice has sent 2 requests. The

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	<p>statistics in criminal matters for previous years are not collected.</p> <p>In pre-trial stage according to the statistics available of the General Prosecutor office of the Republic of Latvia for year 2010, to the US competent institutions 22 sent and from the US 10 received mutual legal assistance requests; there has not been any extradition requests sent to the US or received from the US. In 2011, to the US competent institutions 17 sent and from the US 12 received mutual legal assistance requests. Also, there have been 2 extradition requests from the US</p>
	7 plus 2 for transfer of sentenced persons
	<p>From 1 February 2010 until 31 August 2012, the Netherlands:</p> <ul style="list-style-type: none"> • Received 274 MLA-requests from the US • Sent 658 MLA-requests to the US
	<p>8 at the trial stage and 286 at the preparatory proceedings stage</p> <p>Total - 294</p>
	
	<p>Between 2010 up to present, Romania requested the US authorities' assistance in relation with investigations and trials conducted by the Romanian prosecution offices and courts for a range of offences, including (and mostly) cybercrime, corruption, drug trafficking, trafficking of human beings/migrants.</p> <p>In the investigation stage, 37 MLA requests have been addressed in relation with the investigation of cyber crimes and 29 MLA requests in relation with the investigation of other serious offences. In the trial stage, Romania addressed around 100 MLA requests mostly for the service of documents (notification of victims of crimes) and obtaining of data, information and documents.</p>
	From 1 February 2010 until 31 August 2012 144 requests were issued to the US.
	51
	35
	256 outgoing MLA requests were issued by the UK Central Authority to the US over time period specified. Of these requests, 57 included a request for banking evidence, asset recovery etc.
	No data.

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- a.1. Please provide the number of requests issued to the USA from 1 February 2010 until 31 August 2012 in relation to Asset recovery (identification of assets including bank information requests, freezing and/or confiscation)**

Member State	Replies and Observations – 1 a.1
 AT	
 BE	
 BG	4 cases
 CY	1 MLA request in criminal matters from MOKAS by which we requested banking information
 CZ	12 bank information requests. There have been no freezing and/or confiscation requests. (Freezing request has been considered in one case, but due to response that there were no funds on the requested bank account, the request for freezing was not realized).
 DK	5 of the requests concerned asset recovery.
 DE	It is not possible to answer this question on the basis of the electronically gathered data because these data do not include information on the specific type of assistance concerned.
 EE	None.
 ES	20
 FI	1
 FR	Data not available
 EL	During the aforementioned period, there were no requests concerning bank information, freezing and/or confiscation.
 HU	4
 IE	Two (2) could be categorised as asset recovery
 IT	20







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 LT	We were able to identify 4 MLA requests that were related with the issues concerned, however, the numbers are not precise due to the fact that the filter on the related criterion within the Informational Prosecution System has been introduced only recently.
 LU	<p>Within the MLA framework, the criminal police acted upon 15 mutual-assistance requests from Washington. Difficulties were experienced with three requests, namely:</p> <p>a) A search at a Luxembourg bank covering almost all of the clients. A great many documents had to be gathered in a large-scale search that took a very long time.</p> <p>b) A search at a private individual's home. The request was eventually suspended at the request of the American authorities, as the individual in question claimed to be an informer for the American authorities.</p> <p>c) A request for mutual assistance that is too broad and insufficiently targeted, making it impossible to carry out the requested seizure measures at present.</p> <p>In general, investigators are very hard to contact with any questions that arise when acting on these requests. It should be standard practice for the investigators' telephone numbers and e-mail addresses to be provided for any practical questions about the execution of the request.</p> <p>There was one request for mutual assistance during the period that involved seizing a significant amount of funds. No difficulties were experienced in carrying out the seizure.</p>
 LV	
 MT	NIL
 NL	The Netherlands issue approximately five requests on an annual basis to the US. Requests from the US are even more limited. In recent years, only two requests have been made.
 PL	0
 PT	

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 RO	Between 2010 up to present, 7 MLA requests for identification of assets, bank information and freezing of assets have been addressed to the US.
 SE	No information available.
 SI	0
 SK	3 (bank information)
 UK	/
 HR	At least one.

b. Please provide the number of requests issued to the USA from 1 February 2010 until 31 August 2012 in relation to Extradition

Member State	Replies and Observations – 1.b.
 AT	
 BE	
 BG	1 case only
 CY	0 requests
 CZ	22 cases
 DK	The Danish Ministry of Justice has issued 3 requests for extradition.
 DE	In 2010, 2011 and 2012, 21 requests for extradition were sent to the United States
 EE	from Estonia to US – none; from US to Estonia - 9
 ES	21
 FI	1
 FR	6 formal extradition requests (+2 requests for provisional arrest sent between justice ministries but not followed up in the absence of formal extradition requests)
 EL	1 extradition request was issued to the US from 1 February 2010 to 31 August
 HU	5







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 IE	No extradition requests sent to US in the period
 IT	5
 LT	8 requests for extradition were submitted to the US by Lithuania in the period indicated (5 initiated in pre-trial stage, 3 in trial stage)
 LU	Luxembourg examining magistrates do not use the standard forms of request.
 LV	In pre-trial stage according to the statistics of the General Prosecutor office of the Republic of Latvia for year 2010, there has not been any extradition requests sent to the US or received from the US. In 2011, there have been 2 extradition requests from the US.
 + MT	NIL
 NL	From 1 February 2010 until 31 August 2012, the Netherlands: <ul style="list-style-type: none">• Received 82 requests for extradition from the US• Sent 6 requests for extradition to the US
 PL	29 at the trial stage and 18 at the preparatory proceedings stage Total - 47
 PT	
 RO	Between 2010-up to present, 30 requests for extradition have been addressed to US. In 90 % of cases, extradition was sought for the enforcement of the final judgments (with a sentence between 3 and 10 years), most of them delivered in the absence of the persons sought. From this total number of requests, only 2 have been executed.
 SE	From 1 February 2010 until 31 August 2012 six requests were issued to the US.
 SI	4
 SK	3
 UK	17 extradition requests have been made from the UK to the US in this time period.
 HR	Two requests for extradition, one request for provisional arrest




Question 2:

- a. Please describe any legal or practical obstacles and best practices identified by the competent authorities in your country in the cooperation with the US authorities in relation to MLA requests in general**

Member State	Replies and Observations – 2.a.
 AT	
 BE	
 BG	US authorities require that they do not execute MLA request with financial interest under 5000USD.
 CY	No legal or practical obstacles were encountered in our cooperation with the US Authorities.
 CZ	Obstacles are observed when considering the length of time of the whole procedure (from issuance of a request to its execution). It is needed to take into account a necessity of translation of a request and its sending by central authorities. This may cause practical problems, especially in urgent cases (e.g. freezing of a bank account). Best practices consist namely in good cooperation, direct contact with employees of central authority or with prosecutors in charge of execution of a request. Bilateral case consultations between the central authorities of our countries takes place every year, which is occasion to meet ourselves and discuss problematic issues in depth
 DK	In general the cooperation with the U.S. works well. If problems arise these are dealt with informally and solved by direct contact to the American authorities. In general there is a good cooperation between Denmark and the U.S. Any problems which might arise are dealt with informally and by direct contact to the American authorities.



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 DE	<p>Our cooperation with the United States pursuant to the bilateral MLA treaty is founded on mutual trust and is effective.</p> <p>Legal difficulties from the German perspective (in particular: death penalty, special and military tribunals, data protection in telecommunications monitoring) are solved by means of use restrictions imposed by the German authorities or assurances provided by the US authorities. Incoming requests for account details and bank documents are simplified by the possibility of submitting an account enquiry to the German Federal Financial Supervisory Authority (BaFin).</p> <p>Outgoing requests for seizure (of evidence, including electronic data in particular) are often difficult in practice. Because of the American probable cause requirement, particular attention must be paid to providing a detailed statement of facts without conclusions. It is often impossible for the German authorities to demonstrate a probable connection between the evidence to be seized and the underlying offence at the time confirmation of such connection is required by the United States in order to grant the MLA request. This is because the connection can only be judged following an assessment of the evidence to be seized.</p> <p>Aside from direct communication (by telephone or email) with the Office of International Affairs of the US Department of Justice, regular consultations held on selected issues are of particular significance for our cooperation in practice.</p>
 EE	/
 ES	<p>MLA requests in general. Concerning MLA the main problems identified are the following:</p> <p>"De minimis" requests: the United States, attending their limited resources, does not execute requests for assistance when they consider the patrimonial loss is minimal, when the offence on which the request is based has not had serious consequences, or the scope of the assistance sought is disproportionate in relation to the possible sentence that may be imposed. These requests are denied by the US even though such denial reasons are not specified in the Treaty.</p> <p>Another practical obstacle found is concerning the execution of requests seeking e mail content information, since according to their system very detailed information has to be provided by the Spanish judge. The problem is that, in most cases, the request is sent to the US in a pre trial investigation, and so the Spanish judge hasn't still got very detailed information to provide.</p> <p>With the US, however, the communication between central authorities is very fluid by e mail, so that urgent</p>






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	requests can be advanced by mail in order to speed up its execution or any question related to an MLA can be requested and answered by e mail in very short time. This good relation between both central authorities reveal very useful and help to strengthen cooperation between both countries.
	No legal or practical obstacles, standard practices.
	<p>With good practices in mind, it may be noted that the almost daily contact between the French central authority (the Office for International Mutual Assistance in Criminal Matters of the Ministry of Justice) and the central US authority (Office of International Affairs - Justice Department) means that any problems likely to arise in connection with mutual assistance can be anticipated or resolved in the context of what are often constructive exchanges. This dialogue is enhanced and continued through the French and US liaison magistrates and makes it possible to speed up response times, provide clarification, resolve problems and forestall any misunderstandings.</p> <p>There are some recurring problems, however:</p> <ul style="list-style-type: none">– onerous requirements in terms of the drafting of mutual-assistance requests, especially the evidence requirements (concept of "probable cause"). This problem particularly arises in the obtaining of electronic data (requests for mutual assistance aimed at obtaining contents);– requests for mutual assistance in connection with public defamation or public insult which are almost never successful owing to the First Amendment to the US Constitution enshrining freedom of expression, except in very specific cases ("incitement to hatred" that is blatant, especially in connection with terrorism, and likely to lead to actual deeds);– the fact that the US does not have minimum retention periods for electronic data. The rules on data retention depend on each US company, and foreign judicial authorities have no clear view of these periods. Also, the subsidiaries or representations of such companies in France decide for themselves whether the conditions of a particular case enable a favourable response to be given to requests by French investigation services acting under the authorisation of the judicial authority, and they very often refer the French authorities back to the parent company in the United States (which means the judicial authorities have to draw up a request for mutual judicial assistance, whose implementation is uncertain and whose implementation time is sometimes too long given the demands of the ongoing investigation).









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	Besides, in order to deal with requests, US companies require a minimum of factual material concerning the ongoing investigation, which can pose problems for the French authorities because of the principle of investigation secrecy in French law.
 EL	The most common obstacle is that the majority of requests issued from Greece to the US, regarding the offences of defamation, libel, insulting/ slanderous speech, which are considered criminal offences under Greek Law in contrast to US domestic Law, cannot be executed by the US Authorities, due to the fact that the First Amendment of the US Constitution prohibits criminal prosecution of speech. An additional obstacle is that the US authorities classify some criminal cases as less serious (de minimis) on the grounds of prioritizing the large volume of requests, thus resulting to the rejection of already submitted requests.
 HU	In the majority of the cases the US authorities does not accomplish our requests, or they accomplish the requests considerably later.
 IE	No particular problems encountered. We deal with US on a Central Authority to Central Authority basis and meet regularly to review cases and procedures. As compared to EAW, extradition proceedings can be very slow.
 IT	In general, thanks to a very effective cooperation with the U.S. Department of Justice (especially by the U.S. Attaché of the U.S. Embassy in Rome), the Italian Central Authority does not have met particular problems in the cooperation with the US authorities.
 LT	<p>Obstacles:</p> <ul style="list-style-type: none">- US applies a threshold of 10 000 US dollars towards the Lithuanian MLA in fraud cases.- The execution of Lithuanian MLA request is hindered by the factor that stored computer data is being retained for a limited time.- Despite the well maintained contacts with US officers, there is no reaction received as regards few of the MLA requests (e.g. since 2010 four requests on service of documents were provided in one case, reminders sent, but no reaction received.) <p>Best practice: The Central Authority of Lithuania responsible for judicial cooperation carefully checks the domestic requests referred to the US, so that they included all necessary information and annexes, and rejects the ones that seem to be unreasonable in view of the sentence expected upon conviction or when the offence on which the request is based does not have serious consequences. As a result of this few MLA requests are returned for additional information or non-compliance with the requirements set to the form and content of the MLA. Moreover, one of the factors that could be described as best practice is that the officers responsible for MLA</p>

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	from both sides have had a possibility to meet in person and talk over the issues concerned. It helped to build and maintain contacts. The US officers responsible for MLA are well – accessible via e-mail for informal help or consultations on MLA related issues.
	Cybercrime. Until 2011, there were long delays in executing requests for mutual assistance in the field of cybercrime. Sometimes no response was received. However, cooperation has improved and the last request, for the seizure of computer disks and data, was given the necessary attention.
	
	The only difficulty, which given the volume of work the US authorities are constrained to deal with, is the length of time it takes to execute a request. In recent months the time frame has improved considerably given the direct contact with the Dept of Justice which our central authority, the Attorney General's Office, enjoys
	The Netherlands work closely with the US since 1981, when the bilateral treaties entered into force. These treaties were amended by the provisions from the EU-US agreements. The bilateral cooperation is frequent and efficient. There are daily contacts between Dutch and US central authorities by e-mail and telephone. Also working with our liaison officers helps to speed up the process of executing requests.
	<ul style="list-style-type: none"> • long lasting execution of requests; • refusals of execution if the damage value is less than 5000 USD or if the case is found as "de minimus" – "low priority" according to the US unilateral opinion (no legal ground for this kind of refusal); • refusals of execution of some requests concerning Internet crimes. <p>US proposal is to deal with IC3 (Internet Crime Complaint Center) in these cases.</p>
	
	In general, there are delays in replying to the MLA requests addressed. Another issue faced in relation with the US regards the question of the proportionality / de minimis test that the US central authority is making in respect with the assistance required.
	In some cases where Swedish courts have requested assistance to hear a witness referred to by the defence, US authorities have claimed that such request does not fall under the scope of the MLA-agreement. The request has therefore been denied because “the witness participation is being requested for the sole benefit of a defendant”. Swedish prosecutors have experienced that even though providing their US counterparts with extensive material, their requests have been denied due to lack of probable cause.

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 SI	<ul style="list-style-type: none">• best practices: prompt response of the central authority (Department of Justice) to the transmitted requests; prompt feedback of the central authority (explanations, additional information) to the transmitted requests; assistance with possible supplementations of our requests so that they meet the necessary standards demanded by the US law for specific investigative measure; transmission of MLA requests through electronic means, which helps economizing as well as accelerating the procedure;• practical obstacles: principle of de minimis as a ground for refusal; time consuming MLA procedure; specificity of the regulation of specific investigative measure.
 SK	<p>Obstacles</p> <ul style="list-style-type: none">- The main obstacle identified in the cooperation with the US authorities is the time between receiving and executing of a request. The MLA requests are rarely executed in a period shorter than one year, even in urgent cases (e.g. custodial cases).- A number of MLA requests are still sent through diplomatic channels due to non-existence of a comprehensive MLA bilateral treaty between the Slovak Republic and the US. It is an unfortunate consequence of a non-comprehensive EU-US MLA agreement.- Difficulties have been encountered in MLA requests aiming to obtain assistance in cases of hate speech. A problem is related to the First Amendment to the US Constitution, which provides a legal protection to such speeches under the protection of freedom of speech.- Due to differences in legal systems, difficulties exist in cases where a hearing of the accused is requested from the US authorities.- U.S. authorities rarely follow the formalities and requirements for hearings of persons (such as witnesses or witnesses – injured). The U.S. authorities usually provide a written statement of a witness (sometimes unsigned). A statement does not contain the information whether and to what extent a person was notified about rights under the law of a requesting state (Slovakia). In some cases it is unknown whether an identity of a person interviewed was verified. <p>Best practice</p> <ul style="list-style-type: none">- The use of e-mail communication with colleagues from the US (after the request is delivered to the US) is one of the most positive improvements in the practical cooperation with the US from recent years. Although there are still cases where no information is provided in due time, in most cases effective e-mail communication is available.- Seminars and conferences organized for participants from the Member States and the US (and support from the EU authorities for organizing such events).- Model form of a request for MLA (form have to reflect specificities of Member States due to the fact of existence of bilateral legal instruments between most of EU Member States and the US)

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 UK	The UK and US each have a Liaison Prosecutor/Legal Attaché based in the other jurisdiction who are responsible for facilitating the provision of MLA between the two countries. Their assistance is invaluable in reviewing draft requests, advising on law and procedure, resolving difficulties and overcoming obstacles for requests in both directions.
 HR	Request for MLA are being done through consular offices of the Republic of Croatia in the United States of America. Requests are related only to the serious crime, and are being executed on the bases of reciprocity.

a.1. Please describe any legal or practical obstacles and best practices identified by the competent authorities in your country in the cooperation with the US authorities in relation to Asset Recovery

Member State	Replies and Observations – 2.a.1.
 AT	
 BE	
 BG	/
 CY	No legal or practical obstacles were encountered in our cooperation with the US Authorities.
 CZ	As in the Czech Republic does not exist a centralised system of banking information, the prosecutors must address the requests to each bank separately, which is time-consuming and may prolong the execution of the request in case when (if) the Czech Republic is the requested state. There has been no request from the Czech Republic for freezing or confiscation till this time.
 DK	/
 DE	
 EE	/




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 ES	There is no specific questions related to these kind of requests
 FI	No legal or practical obstacles, standard practises.
 FR	The US authorities make frequent use of the civil procedure in this area, which means that it has to be determined, often with difficulty, whether this measure is directly linked to the execution of the request for mutual legal assistance made by the French authorities in a criminal context, or whether the execution measures that are implemented form part of a separate legal framework. This issue particularly arises when France makes seizure requests for the return of works of art.
 EL	
 HU	They take more time to be executed in relation to non Anglo-Saxon countries. Generally 3-5 years.
 IE	No particular problems encountered. We deal with US on a Central Authority to Central Authority basis and meet regularly to review cases and procedures. As compared to EAW, extradition proceedings can be very slow.
 IT	In general, thanks to a very effective cooperation with the U.S. Department of Justice (especially by the U.S. Attaché of the U.S. Embassy in Rome), the Italian Central Authority does not have met particular problems in the cooperation with the US authorities.
 LT	/
 LU	There is no joint investigation team with the American authorities.
 LV	
 MT	In view of previous reply not applicable
 NL	As pointed out in the introductory remark, Dutch and US legislation and practice of criminal (procedural) law is divergent. This also applies to confiscation. In the US, a connection between the seized object and the criminal offence is needed for seizure, whereas under Netherlands law seizure can also take place of all values/assets that belong to a person who was convicted, including the assets that can not be directly linked to a crime. The possibilities of tracing assets that were obtained by means of crime are under US laws more restricted than in the Netherlands. Also in cases of money laundering following tax evasion, freezing and confiscation in the US is not always possible, as under US law tax evasion is not a "predicate offence" for money laundering.
 PL	No data available.
 PT	
 RO	/
 SE	No information available
 SI	/

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 SK	
 UK	The UK and US each have the ability, in many cases, to quickly identify whether there are any assets remaining in a specified bank account. This facility enables each jurisdiction to filter out at an early stage asset recovery requests where no assets in fact exist in the requested country.
 HR	/

b. Please describe any legal or practical obstacles and best practices identified by the competent authorities in your country in the cooperation with the US authorities in relation to Extradition

Member State	Replies and Observations – 2.b.
 AT	
 BE	
 BG	1 case only.
 CY	No legal or practical obstacles were encountered in our cooperation with the US authorities.
 CZ	The Czech Republic has generally good cooperation with U.S. As mentioned above there are annual case consultations and apart from that we have direct contact to the officers at the U.S. Department of Justice responsible for extradition requests from the Czech Republic with whom we may consult each case before sending the official request to U.S. also during the year. De minimis rule applies also to the Czech Republic and the amount required for proceeding our extradition requests is \$ 10 000.
 DK	/
 DE	Our cooperation with the United States on the basis of the bilateral extraditions treaty is founded on mutual trust and is effective. Legal difficulties and obstacles to extradition from the German perspective (in particular: death penalty, differing rules on life sentences) are solved by means of assurances provided by the US authorities. With outgoing requests for extradition for the purposes of criminal prosecution, particular attention must be paid to providing a detailed statement of facts. This even applies (albeit with less stringent requirements) to requests for provisional arrest, which are of particular significance because, for constitutional reasons, the United States does not accept Interpol red notices as the basis for an arrest to secure a







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	<p>potential extradition. In requests for extradition for the purposes of criminal prosecution, the US authorities require not only the final and binding judgment but also the arrest warrant, information for identification purposes and a short summary of the course of the proceedings ideally in the form of a judicially attested statement. Aside from direct communication (by telephone or email) with the Office of International Affairs of the US Department of Justice, regular consultations held on selected issues are of particular significance for our cooperation in practice. This also applies in particular to mutual legal assistance.</p>
 EE	/
 ES	<p>Arrest warrants issued by Spanish judicial authorities are forwarded (at requirement of United States) directly to the central authority, even though they have to be sent also through diplomatic channels. However, arrest warrants issued by the United States are always sent only through diplomatic channels. This circumstance, (different ways to forward the documents directly or through diplomatic channels) is not always useful and can create some confusion in the practical handling of the arrest warrants.</p> <p>On the basis of extradition requests from the Spanish judicial authorities, the US often request additional identity information (photograph or fingerprint of the person sought), for its location.</p> <p>According to the US System, The US requests, in extradition cases, to evidence the possible guilt of the person sought, including evidence of having committed the offence. As in MLA matters, in many cases when extradition is requested, the Spanish Court is at an early stage of the procedure, and has still no clear evidence. This matter can make the arrest of the person requested more difficult.</p> <p>It is also usual that the authorities of the United States request more documents than those required by the usual rules of extradition, both for the issuance of the arrest warrants or to attend Spanish extradition requests.</p> <p>However it is very useful that the relationship between central authorities of both countries in extradition matters are very fluid and effective. On the last years, there have been several meetings between both central authorities in order to solve practical problems that may arise in the field of cooperation in criminal matters and for tracking the status of files relating to extradition and MLA.</p>
 FI	No legal or practical obstacles, standard practices.










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 FR	<p>Regarding US requests for provisional arrest, France reacts quickly in the case of very urgent requests (within a few hours or days, when the person concerned is scheduled to be on a flight arriving in France, for example), mainly as a result of the transmission of advance copies in electronic form.</p> <p>The central authority notes that:</p> <ul style="list-style-type: none">– the onerous requirements in terms of proof, resulting from the concept of "probable cause" in US law, can lead to a significant lengthening of extradition procedures vis-à-vis the US authorities owing to the extra documents that have to be produced;– the US does not make provisional arrests on the basis of a request for provisional arrest transmitted via Interpol (the European arrest warrants issued in Interpol areas by way of requests for provisional arrest are deemed insufficient);– there are problems with the interpretation of the EU-USA Agreement's Article 5 on the certification and authentication of documents in the extradition procedure.
 EL	/
 HU	Generally 3-5 years.
 IE	No particular problems encountered. We deal with US on a Central Authority to Central Authority basis and meet regularly to review cases and procedures. As compared to EAW, extradition proceedings can be very slow.
 IT	As to the difficulties on the extradition procedures, in case of provisional arrest, U.S. Authorities do not consider sufficient the red notice alert by Interpol, but require a formal request for provisional arrest.
 LT	The main obstacle is excessively long extradition procedure, in certain cases jeopardizing the expiry of the statutory limitation. Moreover, after the Protocol to the application of the Agreement on Extradition Treaty between Government of the Republic of Lithuania and the Government of the United States of America has come into force, the extradition request and all related documents addressed to the US competent receiving institution must bear the seal of the Ministry of Justice of the Republic of Lithuania. The same provision applies towards the supplementary information. Taking into consideration the fact that preparation of the extradition requests for the suspects who have absconded from the pre-trial investigation is the competence of the Prosecutor General's Office, the formerly used practice when the extradition requests and supplementary information was sent directly by the Prosecutor General's office was more convenient and time-saving.




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 LU	
 LV	Latvia and US has good cooperation under the Extradition Treaty between the Government of the Republic of Latvia and the Government of the United States of America (in force since April 15, 2009)
+  MT	In view of previous reply not applicable
 NL	The Netherlands receive an average of 20-30 requests for extradition each year. Generally these requests are granted. If a requests needs clarification, the everyday direct contacts between central authorities ensure that the required information is quickly available. Requests for extradition from the Netherlands to the US are limited to 2-3 cases per year. So far most persons claimed by The Netherlands give there consent to their extradition to the Netherlands.
 PL	<ul style="list-style-type: none"> • very often the USA authorities supersede extradition procedure by deportation procedure. • the US authorities very often require additional documents to amend or supply the original extradition request made by the Polish court or the documents attached to it. These requirements often go beyond the applicable extradition treaty and are based on the US internal law or practice. Often it is a problem for Polish courts that are of the opinion that only documents or information stipulated by the treaty may be provided.
 PT	
 RO	There are a few issues that make extradition problematic in relation with US. The first one comes from the fact that the extradition process is governed by the US national law in terms of the positive and procedural law requirements. This leads to major differences in approaching the extradition process comparing with the one that Romania has. The requirement of probable cause and the admissibility of evidence are the key of this process.
 SE	Since a request for extradition needs to be sent through diplomatic channels, it is first sent to the State Department. In some instances, it has taken a long time for a Swedish request for extradition to be handed over to the US Justice Department.
 SI	<ul style="list-style-type: none"> • best practices: prompt response of the central authority (Department of Justice) to the transmitted extradition requests; prompt feedback of the central authority (explanations, additional information) to the transmitted requests; assistance with possible supplementations of our requests so that they meet the necessary standards demanded by the US law • practical obstacles: time consuming extradition procedure which usually ends with a deportation of the accused; extensiveness of the necessary extradition documentation (difficulties to provide the necessary information, documentation for the establishment of the probable cause as well as identity of the accused).

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 SK	<p>Obstacles Due to the fact that Slovak Republic has old cases from point of the US and in most of them it is not possible to arrange extradition, Slovak Republic solves this issue via deportations. There is also a problem with the difference in legal systems because some requirements of the US are related to confirmation of some facts which are not possible under our legal system (for example confirmation of the credibility of a witness).</p> <p>Best practice Cooperation with the US is based on personal contacts with US officials and therefore the success of cooperation also depends on this fact. From this reason we appreciate supporting activities from EU related to improvement of these contacts for national experts.</p>
 UK	<p>The UK/US Treaty was considered by the Independent Review of the UK's extradition, chaired by Sir Scott Baker. The government is giving careful consideration to the Panel's recommendations and will make a further statement to Parliament detailing what action the Government proposes to take shortly. It is not possible to comment further until the government has responded to the review.</p>
 HR	<p>Request for extradition are dealt with in accordance to bilateral treaty which needs to be improved and modernised.</p>

Question 3.








Do the competent authorities in your country use the existing standard form for requests under Article 4 of the EU-US MLA agreement to request bank information?

- a. If so, what benefits or difficulties, have the competent authorities in your county encountered when using the form?**
- b. If not, why is the form not used?**

Member State	Replies and Observations – 2
 AT	
 BE	
 BG	We use the free form for MLA request.










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 CY	The executing authorities use the forms as identified as Annex in the Agreement.
 CZ	The Supreme Prosecutor's Office as one of two central authorities in the Czech Republic responsible for judicial cooperation in criminal matters, which is because of the stage of the criminal proceeding mainly competent for these issues, has instructed the local prosecutors to use the standard forms. The forms are included, both in the English and Czech version, into the attachment of the "Instruction of General Nature of the General Prosecutor's Office", which is binding for prosecutors. The Czech Republic has not encountered difficulties with filling the form, however, the length of execution of the request was problematic. The Czech Republic has issued only two requests under Article 4 till this time. In both cases the requests were sent to the FinCen via the FBI liaison officer. The length of execution in these cases was 7 months and 3 months.
 DK	The Danish Ministry of Justice adheres to the requirements set out in article 4. However, there are no statistical data available on MLA requests send pursuant to article 4.
 DE	No. Because the applicable bilateral MLA treaty does not foresee the use of such form.
 EE	In some MLA cases from US the US authorities has used existing standard forms, but in all cases. Estonia has not used these forms so far.
 ES	At the moment, requests for bank information are sent with no specific form, since there seem to be no problem in providing the information requested even though the specific form is not used. Many times it seems more difficult for the judiciary to get used to a different form, than to continue requesting it by a normal MLA request.
 FI	Redundant, a request is formulated as a self-standing request.










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 FR	<p>The use of the EU-USA Agreement Article 4 form can be very useful in overcoming the United States' lack of a centralised system of the FICOBA type (<i>Fichier national des comptes bancaires et assimilés - National register of bank and similar accounts</i>), but problems have still arisen in cases where French requests for mutual assistance sought both the identification of accounts and other measures (supply of bank documents, other mutual assistance measures, etc.).</p> <p>Because of the specific route followed by requests for the identification of accounts, the French judicial authorities sometimes have to make two separate requests for this purpose (EU-USA Agreement Article 4 form on the one hand, and a request for mutual assistance on the other), which adds to the workload of the French courts.</p> <p>Also, France has adjusted these forms to the requirements of the treaties in force and its own domestic law, particularly with regard to the death penalty. The US authorities have sometimes taken a negative view of the legal constraints that make these adjustments necessary.</p>
 EL	Not worth mentioning obstacles.
 HU	We have no details. The request for mutual legal assistance contained the request for bank information itself.
 IE	No request for bank information received to date. We have received requests for evidence relating to bank accounts and these are dealt with as any other request for evidence.
 IT	No, because it is not known. The Central Authority is taken action to promote the use of the form by domestic judicial Authority.
 LT	No practice available so far.
 LU	
 LV	
 MT	To date no banking information was requested N/A

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 NL	As has been stated time and again when the forms were established, the Netherlands would not use the forms given its efficient working relationship with the USA.
 PL	No data available on the use of such forms.
 PT	
 RO	No.
 SE	No information available.
 SI	Competent authorities of the Republic of Slovenia are acquainted with the existing form, however so far we did not have any MLA request for the transmission of the bank information as well as bank transactions
 SK	The Slovak authorities do not use a standard form for requests under Article 4 by means of direct transmission to the US administrative authorities. The standard form is attached to the MLA request addressed to the US judicial authorities. The Slovak authorities cannot use the standard form in the recommended way (if the addressee is an administrative authority). Such procedure would make it impossible to use information as evidence before the court.
 UK	<p>Article 4 of the EU-US MLA agreement is implemented by Article 16 bis of the UK-US MLA Treaty. However, Article 16 bis is limited to "money laundering and terrorist activity punishable under the laws of both the Requesting and Requested Parties, and with respect to such other criminal activity as to which they may notify each other". The nature of this Article is somewhat unusual for the UK as it falls somewhere between an intelligence request and a Letter of Request. As such, Article 16 bis may only be used to inform a subsequent Letter of Request to the UK.</p> <p>The UK does not require the forms to be used in MLA requests for bank information and in practice they are not used when sending requests to the FBI (under Article 16 bis).</p>
 HR	No. The Republic of Croatia is not member of the EU-US MLA agreement.

Question 4.

If the competent authorities in your country have dealt with cybercrime cases involving US authorities:






a. Do they cooperate

- on the basis of the Council of Europe Convention on Cybercrime (and if so, have they made use of the 24/7 network of contact points in cybercrime established by this Convention)?
- or another legal basis?

Member State	Replies and Observations – 4.a.
 AT	
 BE	
 BG	Yes, on this Convention.
 CY	<p>Yes, Cyprus has signed and ratified the Cybercrime Convention. The Cyprus Police has a designated contact point in the Office for Combating of Cyber Crime. The cooperation with the USA authorities continues to commit via the Ministry of Justice and Public Order.</p> <p>For police cooperation matters, communication is provided directly to the requesting authority. Also, cooperation is affected via the US legal attaché .</p>
 CZ	<p>No.</p> <p>The Czech Republic co-operates with U. S. only on the basis of the bilateral MLA Agreement.</p>
 DK	<p>Yes.</p> <ul style="list-style-type: none"> - The European Convention on Cybercrime of 23 November 2001 entered into force in Denmark on 10 January 2005. The Additional Protocol to the European Convention on Cybercrime, concerning the Criminalization of Acts of a Racist and Xenophobic Nature committed through Computer Systems of 28 January 2003 entered into force in Denmark on 3 January 2006. However, the Danish authorities have not yet referred to the above mentioned convention of 23 November 2001 and the additional protocol of 28 January 2003 in the practical cooperation with the US authorities. - The Danish authorities use the Agreement on Mutual Legal Assistance between the European Union and the







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	United States of America of 19 July 2003, and the Treaty between the United States and Denmark on Mutual Legal Assistance in Criminal Matters of 1 February 2010. However reference has also been made to the principles of the European Convention on Mutual Legal Assistance of 20 April 1959.
 DE	Germany and the United States (especially the US Department of Justice) do cooperate on the basis of the Convention on Cybercrime. This usually involves cases with regards to Article 16 of the Convention on Cybercrime. Besides that the Federal Criminal Police Office works with US Law Enforcement on the basis of German national law (e.g. law for the Federal Criminal Police Office (BKAG) or the German Code of Criminal Procedure.
 EE	Some MLA requests are issued on the basis of CoE Cybercrime Convention, some on the basis of bilateral MLA agreement between Estonia and US.
 ES	On the bilateral treaty basis.
 FI	Cybercrime Convention
 FR	<ul style="list-style-type: none">– Judicial cooperation can be granted on the basis of the bilateral treaty, the EU-USA Agreement, and the Council of Europe Convention on Cybercrime.– The 24/7 network is used by France to seek the freezing of data prior to a request for mutual judicial assistance. It may be noted that, while the US authorities allow French investigators the possibility of going straight to the companies located in the US, the authority officially designated under the 24/7 network for the freezing of data continues to be, in the case of the US, the Computer Crime and Intellectual Property Section of the US Department of Justice. – The legal framework for the collection of evidence under police cooperation alone seems not to be clearly established, given the international instruments as they exist at present.







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 EL	Greece has not ratified the Council of Europe Convention on Cybercrime. Greece cooperates on the basis of the "Agreement between the Government of the Hellenic Republic and the Government of the United States for mutual legal assistance in criminal matters", signed in Washington on May 26 th , 1999 and ratified by our Country by the Law 2804/ 03-03-2000, in conjunction with the Protocol to the Convention "for mutual legal assistance in criminal matters" between the Hellenic Republic and the United States, ratified by our Country by the Law 3771/2009.
 HU	The Hungarian authorities cooperate based on the bilateral Treaty between the Government of the United States of America on extradition signed in Budapest on 1 December 1994.
 IE	No cybercrime requests received from US to date. Many of the Irish requests to the US relate to internet content in relation to accounts stored in the US. No particular problems encountered. We have yet to encounter a "cloud" case. Irish criminal legislation is silent in relation to content stored "in the cloud". In general, Irish law enforcement can only obtain evidence (e.g., content) stored in Ireland. Otherwise, a formal request for evidence to obtain the data must be sent to the country where it is stored.
 IT	Yes, on the basis of the general MLA agreement (Rome, 2006)
 LT	Following the Agreement on Mutual Legal Assistance in Criminal Matters between the Government of the United States of America and the Government of the Republic of Lithuania ratified by Protocol on the Application of the Agreement on Mutual Legal Assistance in Criminal Matters between the Government of the United States of America and the European Union to the Treaty on Mutual Legal assistance in Criminal Matters between the Governments of the Republic of Lithuania and the United States of America.
 LU	
 LV	Either on the basis of the bilateral agreement between Latvia and the US and on the Council of Europe Convention on Cybercrime
 MT	Yes. No reason to use the network has arisen so far.




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	<p>The scope of the term ‘cybercrime’ in this question is not always clear. Cybercrime can include all criminal offences for/during which the internet or e-mail was used, but it can also be interpreted more restrictively. Our bilateral MLA-Treaty offers a wide range of possibilities for cooperation in all criminal cases, and therefore also in cybercrime issues. Since both the Netherlands and the US are party to the Cybercrime convention for urgent requests, the 24/7 network of contact points is used accordingly.</p>
	<p>Poland didn’t ratify COE Convention on Cybercrime. Legal basis for cooperation with US authorities in such cases are:</p> <ol style="list-style-type: none">1) PL-US Treaty on Mutual Legal Assistance in Criminal Matters, July 10th, 1996;2) Agreement on Mutual Legal Assistance EU-US, June 25th, 2003.
	
	<p>The cooperation between RO and the USA is usually taking place based on the MLA Bilateral Treaty. Still, in some of the cybercrime cases, taking into account the type of request, CoE Convention on Cybercrime can be invoked in conjunction with the MLA Treaty and sometimes in conjunction with UNTOC. Cybercrime Convention was invoked solely as regards spontaneous exchange of information.</p> <p>The 24/7 network established by the Convention has been used, mostly for data preservation requests.</p>
	<p>Sweden has not yet acceded to the Council of Europe Convention on cybercrime. Swedish prosecutors have requested assistance on the basis of the 2003 EU-USA MLA agreement as well as the bilateral MLA agreement between Sweden and USA from 2001.</p>
	<p>According to the available information only three requests were based on the Council of Europe Convention on Cybercrime, the requests were transmitted through the central authorities. Principle of Reciprocity.</p>

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 SK	The Council of Europe Convention on Cybercrime provides the legal basis for cooperation between the Slovak Republic and the US in cases related to cybercrime. For the purposes of application of Articles 29 and 35 of the Cybercrime Convention, the 24/7 network of contact points is used.
 UK	The UK does not record the legal basis on which an MLA request is made. However, all MLA requests between the UK and US are made on the basis of the UK/US MLA Treaty. The 24/7 network is utilised by law enforcement agencies to obtain informal co-operation in advance of MLA.
 HR	MOI has established 24/7 contact point. Principle of reciprocity.

b. How many requests has your country issued to the US?

Member State	Replies and Observations – 4.b.
 AT	
 BE	
 BG	2 cases.
 CY	In 2010 7 requests In 2011 1 request, and in 2012 none
 CZ	6
 DK	The Danish Ministry of Justice has issued 2 requests for legal assistance. Both the requests concerned threats made on Facebook.
 DE	It is not possible to answer this question on the basis of the electronically gathered data, because these data do not include information on the specific type of assistance concerned. However the United States is one of the main partners for the Federal Criminal Police Office with regards to fighting cybercrime. Therefore during every week several requests are being forwarded to the United States.
 EE	All the MLA requests concerning cybercrime matters are issued by US authorities, No requests so far issued by Estonia.
 ES	69
 FI	1




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 FR	No statistics available, given that there is no precise legal definition of "cybercrime", which is broadly understood to include all ordinary offences in which the Internet is used.
 EL	134 requests
 HU	We have issued 2 requests to the US.
 IE	No cybercrime requests received from US to date. Many of the Irish requests to the US relate to internet content
	in relation to accounts stored in the US. No particular problems encountered. We have yet to encounter a "cloud" case. Irish criminal legislation is silent in relation to content stored "in the cloud". In general, Irish law enforcement can only obtain evidence (e.g., content) stored in Ireland. Otherwise, a formal request for evidence to obtain the data must be sent to the country where it is stored.
 IT	10
 LT	Since the beginning of 2011 we were able to identify 9 MLA requests that at certain extent were related with cybercrime cases involving US authorities have been submitted to US. The data for the previous period cannot be presented, as this kind of data has been stored and analysed only since 1 Jan 2011.
 LU	
 LV	
 MT	6
 NL	We do not specify request related to "cybercrime", whatever its scope is, separately in our statistics.. Therefore no precise data can be provided. As an indication we offer that in cybercrime and other criminal cases requests are made to obtain the subscriber from an ISP. The Netherlands makes between 100-150 such requests annually to the US.
 PL	No data concerning particular kinds of crimes available.
 PT	
 RO	Around 70 % of the requests issued by RO to US are referring to cybercrime cases
 SE	No information available.
 SI	28

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 SK	<p>2010 – 6 requests for preservation of data (under Articles 29, 35 of the Convention) 2010 – 3 MLA requests based on the Cybercrime Convention (following the request for preservation of data) 2011 – 7 requests for preservation of data 2011 – 5 MLA requests based on the Cybercrime Convention (following the request for preservation of data); in one case a reference was also made to the Slovak-US Legal instrument on MLA) 2012 (1 January – 31 August 2012) – 20 requests for preservation of data 2012 (1 January – 31 August 2012) - 4 MLA requests based on the Cybercrime Convention (following the request for preservation of data); in one case a reference was also made to the Slovak-US Legal instrument on MLA)</p>
 UK	<p>148 outgoing MLA requests, which included a request for internet data, were issued by the UK Central Authority to the US from 1 February 2010 until 31 August 2012.</p>
 HR	<p>There's no exact data.</p>

c. Please describe any legal or practical obstacles and best practices identified.

Member State	Replies and Observations – 4.c.
 AT	
 BE	
 BG	<p>Some obstacles occur when the USA authorities need additional information.</p>
 CY	<p>In some requests there is a delay in their execution.</p>
 CZ	<p>The U.S. authorities (as requested state) asked the Czech prosecutors for supplementary information in several cases, where the MLA request did not include sufficient facts to obtain the records. The Czech central authority prepared “model requests” for use of the local prosecutors, which helps them to describe the facts of the case sufficiently.</p> <p>Sometimes offences relating to a support and/or promotion of racism, genocide etc., by means of the Internet occurs. The U.S. authorities usually refuse the cooperation in such cases referring to the U.S. Constitution.</p>
 DK	<p>/</p>








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 DE	<p>Judicial cooperation:</p> <p>With regard to requests for content data from email accounts see our response to question 2.a. on the issue of probable cause.</p> <p>Regarding subscriber and traffic data from email accounts, German authorities have recently started approaching American providers directly with the express authorisation of the US Department of Justice and with the aim of data being supplied on a voluntary basis.</p> <p>Where possible, the subscriber and traffic data received are then used to substantiate requests for content data.</p> <p>Police cooperation:</p> <p>In police cooperation there are no practical obstacles. The short term exchange of experts combined with the exchange of liaison officers were identified as best practice.</p>
 EE	No answer.
 ES	The only obstacle would be the same one described in question 2.a concerning MLA requests for e mail information.
 FI	No legal and practical obstacles.
 FR	<p>The use of the 24/7 network makes it possible to request the freezing of data. The French central authority very often suggests this to the French judicial authorities before a request for mutual judicial assistance is sent.</p> <p>However, the lack of any data-retention requirement makes the obtaining of electronic data a very uncertain business. The problem is accentuated by the fact that the data-retention policies of US companies vary, as do their requirements when it comes to providing such data to French investigation departments through their subsidiaries or representations in France.</p> <p>Consequently, many requests for mutual legal assistance in obtaining content data are not executed, on the grounds that the data no longer exists.</p>
 EL	As mentioned in section 2a.
 HU	We have no legal or practical obstacles experienced.






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 IE	No cybercrime requests received from US to date. Many of the Irish requests to the US relate to internet content in relation to accounts stored in the US. No particular problems encountered. We have yet to encounter a "cloud" case. Irish criminal legislation is silent in relation to content stored "in the cloud". In general, Irish law enforcement can only obtain evidence (e.g., content) stored in Ireland. Otherwise, a formal request for evidence to obtain the data must be sent to the country where it is stored.
 IT	Please see sub 2.
 LT	One of the obstacles is to provide the public ID address, as Lithuanian authorities in most cases have only the information of private IP address and are unable to provide its public IP address. Another problem is differences of legal regulation of both countries concerning information stored in Internet servers. The US institutions ask to provide with the sufficient facts to establish that a crime was committed and that the records sought are relevant and material to the investigation, and according to national legislation we do not have an obligation to establish the link between the crime and the data stored in server. In many cases we do not have information about the content of the records sought and hope that the information found could assist in disclosing the case. Bearing in mind this requirements of US, Lithuania tries to provide with as much facts as possible, however, sometimes this information is till insufficient for the US.
 LU	
 LV	
 MT	On one occasion a person charged had sent various mails to third parties who were not yet identified as suspects
	in the ongoing proceedings. The identity of the persons communicating with the accused was requested but was refused and hence it was impossible to pursue the investigations further.
 NL	Overall there is a close and efficient cooperation between law enforcement authorities in the Netherlands and the US. There can be differences in national law/competence, but when problems occur there are daily contacts between law enforcement (liaison) officers as well as frequent consultations between the central authorities.

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 PL	<p>– long lasting execution of requests; – refusals of execution of some requests concerning Internet crimes. US proposal is to deal with IC3 (Internet Crime Complaint Center) in these cases.</p>
 PT	
 RO	<p>Legal obstacles may occur taking into account the different legal background of the two countries (common vs. continental law). Practical obstacles are usually related to taking victims' statements.</p> <p>There have been developed best practices related to direct contact, expedited means of communication, spontaneous exchange of information and there are regular consultations held in order to enhance the bilateral cooperation in this field.</p>
 SE	<p>Swedish prosecutors have experienced that it may take a long time for a US reply for legal assistance and that they are not provided with sufficient information on the status of the request during its execution. Further, when an investigation is on-going in both countries, it seems to be difficult to receive information from US authorities that may be used in the Swedish investigation.</p>
 SI	<ul style="list-style-type: none">• best practices: prompt response of the central authority (Department of Justice) to the transmitted extradition requests; prompt feedback of the central authority (explanations, additional information) to the transmitted requests; assistance with possible supplementations of our requests so that they meet the necessary standards demanded by the US law; transmission of MLA requests through electronic means, which helps economizing as well as accelerating the procedure• practical obstacles: principle of de minimis as a ground for refusal, time consuming MLA procedure; specificity of the regulation (division between the MLA requests and requests for the preservation of data)














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 SK	<p>Obstacles:</p> <ul style="list-style-type: none"> - In some cases no response has been provided on data preservation. In other cases responses were not provided in due time. It is, for instance, one of the reasons why only 4 MLA requests followed after 20 requests for data preservation in 2012. - In a number of cases, information that some action has been taken on the basis of a request for preservation of data is provided by the US 24/7 contact point. Unfortunately, in numerous cases the information whether data has been preserved on the basis of a request under Articles 29, 35 of the Cybercrime Convention, is not provided. This information is, however, necessary for further action to be taken in the requesting state, in particular, for a preparation of MLA request. - In some cases, after a request for preservation of data was obtained by a provider in the US (for instance by Google), the provider directly asked the Slovak authorities for further legal action to be taken in the requesting state. Such practice does not seem to be appropriate. <p>To improve the situation, it should be agreed as a matter of best practice (if there are no legal obstacles in the U.S. for such procedure), that after receiving a request for preservation of data, the requested state will provide two kinds of information:</p> <ul style="list-style-type: none"> a) information as to whether the requested data exists or not, b) information as to whether the requested data has been preserved, the date of preservation and the unique code assigned to data in the US for the use of a code in the subsequent MLA request). <p>Such a mechanism would allow the states to use their resources effectively (it is clear that there is no reason to make a MLA request if no data exists; consequently there is no need to spend money on a translation of request).</p>
 UK	<p>The UK Liaison Prosecutor has produced a guide to obtaining email/internet data from the US, which is used by UK prosecutors when drafting MLA requests and ensures that, as far as possible, the requests comply with US law and procedure.</p>
 HR	<p>In many cases requested data are not available without ILOR.</p>

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d. Have they exchanged information concerning e-mail or internet use by suspects (traffic data and/or content data, including encrypted content data)? What was their experience with the cooperation?

Member State	Replies and Observations – 4.d.
 AT	
 BE	
 BG	Yes.
 CY	Yes. Specifically traffic data concerning the suspect's internet use.
 CZ	Yes. From six requests sent to the U.S. two of them have been executed till now. The competent Czech prosecutors were very satisfied with the received evidence. They obtained from FBI a full list of IP addresses used at Facebook, then the history of communication on each profile on Facebook, etc. The results of the mutual legal assistance from the USA helped them to make further steps in the criminal proceedings.
 DK	With regard to the 2 cases mentioned under 4.b., the Danish authorities have requested Facebook Inc. to provide the necessary information concerning the IP addresses which have been accessing the Facebook profiles in question. Furthermore, requests for exchange of information concerning e-mails, internet use, traffic data and content data with regard to other criminal cases not involving cybercrime, have been made.
 DE	Requests for disclosure of subscriber and traffic data are usually met without further issue. However, we have experienced problems with requests for content data (see 2.a. above). Nevertheless, these data have been disclosed in some cases.
 EE	No answer.
 ES	No answer.
 FI	Cooperation was smooth and efficient.
 FR	Yes, sometimes. The US requirements in terms of "probable cause" make it very difficult to obtain content data (e-mail).
 EL	No answer.
 HU	We have not received any answer concerning our requests yet.

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 IE	No cybercrime requests received from US to date. Many of the Irish requests to the US relate to internet content in relation to accounts stored in the US. No particular problems encountered. We have yet to encounter a "cloud" case. Irish criminal legislation is silent in relation to content stored "in the cloud". In general, Irish law enforcement can only obtain evidence (e.g., content) stored in Ireland. Otherwise, a formal request for evidence to obtain the data must be sent to the country where it is stored.
 IT	As a rule, the U.S. have not exchanged information concerning e-mail or internet use, due to the barrier of U.S. Constitution.
 LT	No.
 LU	
 LV	
 MT	What was their experience with the cooperation? Yes. Normally data is exchanged when the persons indicated as accused/suspects are the object of the investigation.
 NL	The Netherlands has good experiences in the procurement of subscriber records and traffic data. The US are willing to find solutions in accordance with the Treaty and it's national law.
 PL	– long lasting execution of requests; – refusals of execution of some requests concerning Internet crimes. US proposal is to deal with IC3 (Internet Crime Complaint Center) in these cases.
 PT	
 RO	Usually the MLA requests refer to traffic data and to a lesser extent to content data. There is a good cooperation in this respect. Usually there is a data preservation request issued and simultaneously a request for disclosure of these data. Otherwise, the disclosure request may come subsequently.
 SE	Yes, such information has been exchanged.
 SI	According to the available information the competent US authorities executed the requests and provided the requested data, however since in MLA cases the Ministry of Justice and Public Administration has merely administrative role and is responsible for smooth cooperation and transmission of the requests in active as well as passive assistance, we are not familiar with the exact content of the replies and transmitted information.
 SK	We did not identify significant problems related to the above mentioned issue
 UK	The UK and US have each executed many requests for email/internet data, including content, generated by suspects. Co-operation is generally good provided requests comply with the strict legal requirements to obtain such data.

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 HR	No, because MOI can't get such data without ILOR.
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- e. **Have they been confronted with cases where suspects stored data “in the cloud” (data is not stored in a local hard drive, but in an off-site storage system/external server that can be accessed via the Internet)? How did the competent authorities in your country obtain or transmit such data?**

Member State	Replies and Observations – 4.e.
 AT	
 BE	
 BG	We do not have such case.
 CY	Not applicable.
 CZ	We have no information concerning this issue.
 DK	<p>None of the 23 MLA requests which were issued by the Danish Ministry of Justice to the USA in the period from 1 February 2010 until 21 August 2012 concerned suspects who were under suspicion of storing data “in the cloud”.</p> <p>With regard to the general aspect of the question, the Danish Ministry of Justice can inform that Section 786, Subsection 4, of the Danish Administration of Justice Act, orders every operator of telecommunication networks or other similar services to undertake registration and storage of information until 1 year after the information was first registered. In accordance with the United Nations Convention on Suppression of the Financing of Terrorism and the United Nations’ Security Council’s resolution no. 1373 of 2001, this provision aims at facilitate and make the criminal investigation process more efficient.</p> <p>In addition it follows from Section 786a of the Danish Administration of Justice Act that data and other electronic evidence can be seized immediately by order if it is considered to be important to the investigation of the case.</p>










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 DE	We have not experienced any problems until now. However we are aware of the fact that this might occur at any given time.
 EE	/
 ES	/
 FI	No.
 FR	No data available.
 EL	/
 HU	We have no details.
 IE	No cybercrime requests received from US to date. Many of the Irish requests to the US relate to internet content in relation to accounts stored in the US. No particular problems encountered. We have yet to encounter a "cloud" case. Irish criminal legislation is silent in relation to content stored "in the cloud". In general, Irish law enforcement can only obtain evidence (e.g. content) stored in Ireland. Otherwise, a formal request for evidence to obtain the data must be sent to the country where it is stored.
 IT	No.
 LT	No practice available.
 LU	
 LV	
 + MT	No such cases have been encountered so far

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







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 NL	The Netherlands has not received MLAT requests concerning data stored in the cloud. According to Dutch law, acquiring such data would require the consent of the same authority as, for example, data stored on a server within a webhosting company. As long as there is a Dutch party that can be considered to have lawful access to data, it does not matter if that data is stored locally, (partially) abroad or in the cloud.
 PL	No detailed data concerning cases where suspects stored data "in the cloud" available.
 PT	
 RO	Yes. There have been cases of this type and MLA requests have been submitted in this sense. The main difficulty resides in the lengthy procedures for obtaining a response.
 SE	No information available.
 SI	No.
 SK	We did not identify any particular difficulties with the MLA requests related to cloud computing. In fact, we have received no information from the US authorities as to whether or not data has been stored "in the cloud". In addition to that we did not record any refusal based on the fact that data is stored "in the cloud". We have no experience with this issue. For obtaining data necessary for criminal proceedings, general provisions of the Code of Criminal Procedure are applied. There is no specific provision related to data stored in an off-site storage system
 UK	/
 HR	There were no such cases.

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f. Does your domestic legislation require cloud providers to provide information stored in a server in another country?

Member State	Replies and Observations – 4.f.
 AT	
 BE	
 BG	No.
 CY	Regarding our national law no. 183 (I)/200, the ISPs are obliged to maintain traffic data of their customers for six months (not content data, ex conversation etc.)
 CZ	Generally, the providers are obliged to provide information upon a court order issued in criminal proceedings.
 DK	With regard to the nature of this question, the Danish Ministry of Justice can inform that Section 804 of the Danish Administration of Justice Act provides non-suspects to be ordered to disclose documents and other evidence of which the person in question has in his/her control and which is concerned to be important to the investigation.
 DE	The German legislation does not provide any explicit (particular) regulations for the disclosure of information transfer of data to law enforcement authorities by cloud providers - in contrast to telecommunications providers.
 EE	/
 ES	No answer.
 FI	Yes, the Coersive Measures Act contains a provision to that effect
 FR	/
 EL	/








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 HU	We have no details.
 IE	No cybercrime requests received from US to date. Many of the Irish requests to the US relate to internet content in relation to accounts stored in the US. No particular problems encountered. We have yet to encounter a "cloud" case. Irish criminal legislation is silent in relation to content stored "in the cloud". In general, Irish law enforcement can only obtain evidence (e.g., content) stored in Ireland. Otherwise, a formal request for evidence to obtain the data must be sent to the country where it is stored.
 IT	The Italian legislation requires internet providers to provide information, wherever information is stored.
 LT	There is no specific regulation concerning the cloud providers. However, following the general rule of the Criminal Procedure of the Republic of Lithuania, if the cloud provider is registered within the territory of the Republic of Lithuania, than they have an obligation to provide information stored in a server.
 LU	
 LV	
 MT	There is no such requirement in our legislation. The only obligations held by local service providers relate to traffic data and disallow the providers to keep and/or give content data to the Police. In the case of information held in the "cloud" this would probably be interpreted as content data, hence we are not able to request it.
 NL	Dutch law does not differentiate between domestically stored data and data stored abroad. As long as there is a Dutch party that can be considered to have lawful access to data, it does not matter if that data is stored locally, (partially) abroad or in a cloud.
 PL	There is no specific domestic legislation requiring cloud providers to provide information stored in a server in

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	another country. Information from the providers economically active in Poland could be obtained on the ground of Code of Criminal Procedure (Article 218) and Telecommunication Act (Article 180c /180 d).
 PT	
 RO	No specific provisions exist in this respect. As previously mentioned, MLATs are used for getting this kind of information.
 SE	Swedish providers may under certain conditions be required to provide Swedish law enforcement authorities with such data in relation to an on-going national criminal investigation.
 SI	Yes, but only in general terms (not explicitly about cloud computing providers - more for IT service providers, which they are a part of), if the matter and they are under the jurisdiction of the judiciary of the Republic of Slovenia. In such a case, special attention of judiciary would most probably be directed in explaining the jurisdiction, proportionality and minimisation of processing of personal data (no "fishing expeditions").
 SK	We have no particular legislation on providing information stored in servers in another country. For the time being, no difficulties have been signalled by judicial authorities concerning this issue
 UK	/
 HR	We don't have special legislation concerning cloud providers.

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Question 5.



















Have the competent authorities in your country participated or sought to participate in joint investigation teams (JITs) with the US authorities? If so, can you please indicate:

- a. The legal basis used for the set up of the JIT**
- b. Number of JITs your authorities participated in**
- c. Number of JITs your authorities sought to participate in**
- d. Problems and best practices encountered**

Member State	Replies and Observations – 5
 AT	
 BE	
 BG	<p>Yes. Article 5 of the Agreement on MLA Assistance between EU and USA and Article 2 of Bilateral Agreement between Bulgaria and USA for some aspect of Mutual legal assistance in criminal matters.</p> <p>a. the same as previous;</p> <p>b. 1 JIT;</p> <p>c. no;</p> <p>d. In the case of JIT we do not have any problems with the US Authorities.</p>
 CY	Cyprus has not participated and has no experience with regards to JITs.
 CZ	No. Due to different approaches (police and judicial cooperation tool, admissibility of evidence), the JIT with the U.S. authorities is considered as not feasible.
 DK	/
 DE	No.
 EE	No.
 ES	According to Spanish law, the Ministry of Justice is part of the JITS concerning offences that are not competence of the National Court (Audiencia Nacional). Such court knows offenses related to terrorism or organized crime so, on those cases the Ministry can not be part of the JIT. Currently, the Ministry of Justice has not signed any JIT with the US
 FI	So far there have been no JITs with the US authorities

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 FR	No. Despite the possibility provided for in the EU-USA Agreement, it has not been possible to set up any joint investigation team; the US authorities have indicated that, as things stand, there are constitutional obstacles to this in terms of proof under US law ("disclosure" obligation). A legal basis does exist in France's domestic law (Article 695-10 of the Criminal Procedure Code).
 EL	Protocol to the Convention "for mutual legal assistance in criminal matters" between the Hellenic Republic and the United States, ratified by our Country by the Law 3771/2009.
 HU	We have no details.
 IE	We have not participated in any formal JITs with US.
 IT	No. Italy has not implemented neither the Framework Decision on the Joint Investigation Team, nor the European Convention on Mutual Assistance in criminal matters between the Member States of E.U. (Bruxelles, 2000).
 LT	No practice available so far.
 LU	
 LV	JIT between Latvia and the USA has not been developed yet, however there has been certain implications from the US to develop it in order to fasten the procedure regarding the mutual legal assistance requests from Latvia.
 MT	No.
 NL	So far there has not been any JITs between the Netherlands and the US.
 PL	Polish authorities have not participated or sought participation in JITs with the USA.
 PT	
 RO	No. The cases are solved mainly by means of coordination and cooperation based on MLA requests.
 SE	No information available.
 SI	No.
 SK	We have no experience concerning JITs involving the US authorities
 UK	a. Article 16 ter of UK-US MLA treaty / Article 5 of EU-US MLA Agreement b. None. c. None d. N/A
 HR	/