

FIFTH MEETING OF MINISTERS OF JUSTICE
OR OF MINISTERS OR ATTORNEYS GENERAL
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RECOMMENDATIONS
MEETING OF CENTRAL AUTHORITIES AND OTHER EXPERTS ON MUTUAL LEGAL
ASSISTANCE IN CRIMINAL MATTERS

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Central authorities and other experts on mutual legal assistance in criminal matters of the OAS Member States, met in Ottawa, Canada, between April 30 to May 2, 2003, in accordance with the recommendations adopted in the Fourth Meeting of Ministers of Justice or of Ministers or Attorneys General of the Americas (REMJA-IV), held in Port of Spain, Trinidad and Tobago, in March 2002, which were endorsed by the OAS General Assembly resolution AG/RES. 1849 (XXXII-O/02).

The purpose of the meeting was to develop recommendations to strengthen and consolidate mutual legal assistance in criminal matters among the States of the Americas in order to combat transnational organized crime, money laundering and terrorism.

Upon the conclusion of its deliberations, the meeting adopted the following recommendations to be presented for consideration by the Fifth Meeting of Ministers of Justice or of Ministers or Attorneys General of the Americas (REMJA-V):

1. That the States that have not yet done so, as soon as possible, take measures that are necessary for the following objectives:
 - a) Sign and ratify, ratify, or accede to, as appropriate, the Inter-American Convention on Mutual Assistance in Criminal Matters and its Optional Protocol.
 - b) Adopt legislation and other measures that are required within the legal framework of each of the States to facilitate and ensure the application of the treaties on mutual legal assistance in criminal matters and to provide effective, efficient and expeditious assistance.
2. That the States, if they have not yet done so, take the necessary measures in order to establish and make functional the central authorities for mutual legal assistance in criminal matters and ensure that they can fulfill their mandates effectively, efficiently and expeditiously. With this objective, it is especially recommended that States:
 - a) Establish a single central authority, in order to undertake its State's international obligations in accordance with the applicable treaties in force, for the transmittal and reception of mutual legal assistance requests.
 - b) Provide contact information for the central authority to other central authorities and to competent agencies as required by treaty or arrangement.
 - c) Assign to the central authorities the human, material and financial resources, including training, that they require for the effective, efficient and expeditious fulfillment of their functions.

1. This document was approved during the plenary session held on May 2, 2003, within the framework of the Meeting of Central Authorities and Other Experts on Mutual Legal Assistance in Criminal Matters, held through April 30 to May 2, 2003, in Ottawa, Canada.

- d) Facilitate, within the framework of their constitutional order, direct channels of communication and permanent contact among central authorities, as well as technical cooperation among them.
 - e) Where the use of other channels, such as diplomatic or judicial, is required by the framework of its constitutional order, ensure that such channel is effective, efficient and expeditious.
3. That the States adopt measures as necessary in order to accelerate procedures and reduce or eliminate factors that contribute to delay in transmission and execution of requests, as well as to ensure the most effective and efficient mutual legal assistance in criminal matters. To this end, it is recommended that States undertake the following measures, if they have not yet done so, among others:
- a) Eliminate non-essential bureaucratic formalities or procedures.
 - b) Establish checklists and other measures that aim to ensure that requests for assistance prepared by States contain all required information, in particular information that is sufficient to establish the link between the alleged offense and the investigative measure requested.
 - c) Establish a priority for the execution of mutual legal assistance requests when urgent execution is requested and justified, in particular concerning requests dealing with transnational organized crime, money laundering or terrorism.
 - d) Establish registration systems for files in relation to mutual legal assistance requests that are transmitted and received, in order to facilitate follow-up on said files.
4. That the States adopt measures to ensure, in accordance with their constitutional order and applicable treaties, the availability of a wide range of measures of mutual legal assistance in criminal matters. To this end, it is recommended that States undertake the following measures, if they have not yet done so, among others:
- a) Consider adopting, within the framework of its legal order, the legal reforms as required in order to enable States to carry out a wide range of measures of assistance, including:
 - i) Compelling the taking of statements and documents from witnesses;
 - ii) Taking of testimony through live video conference;
 - iii) Obtaining either a sample of a bodily substance, or the results of a DNA or other scientific analysis of such sample, solely for the purposes specified in the request;
 - iv) Compelling expeditious preservation of electronic data; and
 - v) Transferring of detained persons to assist in an investigation or proceeding.

- b. Eliminate or reduce, as appropriate, the dual criminality requirement for mutual legal in the fight against crimes, especially those related to transnational organized crime, money laundering and terrorism.
 - c. Provide the broadest scope of measures of mutual legal assistance in criminal matters in the identification, tracing, freezing, seizure and, forfeiture of proceeds or instrumentalities of crime, including terrorism offenses. States should also consider taking the measures necessary to enforce directly foreign orders for the freezing, seizure and forfeiture of such proceeds and instrumentalities.
 - d. Take measures, including where necessary, the elaboration of bilateral or multilateral agreements, to allow the sharing of forfeited property with other Member States.
 - e. Execute the request in the manner specified by the requesting State, in order to facilitate its use and admissibility in the requesting State.
5. In compliance with the mandates of the Third Summit of the Americas, the recommendations of REMJA-IV and OAS General Assembly resolution AG/RES. 1781 (XXXI-O/01) and taking into account its usefulness and importance, that advancement should continue in order to consolidate and improve the information exchange network for mutual legal assistance in criminal matters. To this end, in particular, the following is recommended:
- a) That, under the leadership of the initial working group in relation to this network, comprised of Argentina, the Bahamas, Canada and El Salvador, and with the support of the OAS General Secretariat, all relevant activities be pursued for the expansion of said network, in the shortest possible time, to all the States of the Americas.
 - b) That in order to attain the objective stated above, States that have not yet done so, identify a contact person for this purpose and provide the required information so that it may be disseminated on the public website of the network, in accordance with the agreed upon timetables set by the Working Group.
 - c) That progress be made to include additional information on the public website, with respect to other areas related to mutual legal assistance in criminal matters.
 - d) That a private and secure network be provisionally established for the exchange of information among the central authorities on mutual legal assistance in criminal matters and a pilot phase be implemented that will allow an assessment of its results.
6. That the central authorities of Member States and other experts on mutual legal assistance in criminal matters continue to meet periodically, at least once between REMJAs, in order to consider the implementation of REMJA recommendations, assess measures with respect to the strengthening of cooperation, and propose any additional recommendations that may be necessary. It is therefore recommended that, within the framework of future meetings, the following issues, *inter alia*, be considered:
- a) Follow-up of the progress in implementing the information exchange network for mutual legal assistance in criminal matters.

- b) Consideration of particular areas in which there should be common approaches at the Hemispheric level for the improvement of mutual legal assistance in criminal matters, including those related to the requirement of dual criminality and the sharing of property forfeited as the proceeds or instrumentalities of transnational organized crime, money laundering and terrorism offenses.
 - c) Definition of a common Hemispheric glossary of terms to be used for mutual legal assistance in criminal matters, based on the information provided by the States to this end.
 - d) Consideration of eventual reform proposals to the existing Hemispheric legal instruments or of model legislation to facilitate and strengthen mutual legal assistance in criminal matters.
 - e) Examination of ways to ensure that unnecessary requests for mutual legal assistance are not made.
 - f) Preparation of model forms or templates to facilitate and expedite the processing of requests for mutual legal assistance in criminal matters.
 - g) Identification of common criteria for determining, interpreting and processing mutual legal assistance requests that are expressed as being urgent.
 - h) Examination of types of problems with respect to the execution of requests for mutual legal assistance in criminal matters, and the development of best practices to address those problems.
 - i) Participation of judicial, prosecutorial or other authorities in the execution of a request for mutual legal assistance in criminal matters in the requested State.
 - j) Consideration of technical cooperation projects or initiatives, among others, to train the staff of the central authorities and other executing agencies, and facilitate information exchange and the understanding of best practices in this field among them.
 - k) Coordination of the developments in this field within the REMJA process with those occurring in other bodies such as MERCOSUR, CARICOM, the Andean Community, the Central American Integration System, the Commonwealth, the Ibero-American Associations of Ministries of Justice and of the Ministerios Publicos and the agencies of the United Nations.
7. That the OAS General Secretariat continue to provide technical support to the hemispheric meetings of central authorities and other experts on mutual legal assistance in criminal matters.
8. That, consistent with the above recommendations, future complimentary developments be undertaken to strengthen hemispheric legal cooperation in other areas, such as extradition, and to advance a hemispheric plan of action on legal and judicial cooperation

in the fight against transnational organized crime, money laundering and terrorism, in accordance with the recommendations of REMJA-IV.

Ottawa, Canada, May 2, 2003