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## DIGITALIZATION OF MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS

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### Abstract

The use of electronic means to handle requests for mutual legal assistance in criminal matters has become an efficient practice of cooperating states. This practice has also been legally formalized through the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters, even more so now with the proposal for a third additional protocol. Through qualitative methods, this article unfolds the main instruments that improve and modernize the mutual assistance process, which also resolve shortcomings identified by legal practitioners. The article deals with Eurojust's role as the coordinator of international judicial cooperation in the context of measures for the EU's Digital Criminal Justice platform. In particular, this article analyzes the standards of the relevant Albanian legislation and bilateral agreements on mutual assistance, and presents secondary data on cases from practice. The article concludes with the finding that integrating digitalization in the mutual legal assistance process facilitates international judicial cooperation significantly, and in this regard, it recommends that the Albanian system adopt both existing and future standards.

**Keywords:** *digitalization; mutual legal assistance in criminal matters; protocol; videoconference; Albania*

### Introduction

The unified international response against cross-border crime needs to be adapted to rapid technological developments, which, at the same time, are utilized for sophisticating the criminal elements. The digitalization of judicial cooperation, from a practice dictated by efficiency, seems to have justified establishing it in national and international legal frameworks.

The system modernization began in 2001 with the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters, which alternatively allowed electronic channels of communication between countries for transmitting mutual legal assistance (MLA) requests and taking evidence through tele- or videoconference. These instruments have been used extensively by national authorities due to multiple benefits, in particular for significantly less processing time and costs compared to traditional methods. Support has been so strong that the proposal for a third additional protocol to the Convention, which could be considered as the "Digitalization Protocol", aims to turn digital tools from alternative means to the preferred means in MLA.

Parallel to the Council of Europe standard, the tendency toward digitalisation is apparent in the EU model as well. Eurojust is now leading the initiative for Digital Criminal Justice, aiming to improve the agency's capacities for coordinating judicial cooperation and those of Member States' practitioners.

Albania is not behind in this regard, it is integrating and applying in practice the international digitalization standard of the process, but it is also supplementing the latter through bilateral agreements on mutual assistance.

## 1. The need for digitalization of the process

Over the centuries and into the present, relations between countries have been created through letters: agreements are signed on paper, and on paper, official correspondence is exchanged. Letters have always represented the most formal and serious means of official communication, in some cases also holding legal power. Naturally, this is also the case in the context of international cooperation in criminal matters. However, clearly a verbal note is not the same as a written extradition request or an MLA one.

Practice has shown that taking evidence from another state via post or fax requires quite some time, is accompanied by higher costs and does not always guarantee information security. This is even more relevant when different states dictate criteria and special legal formalities for admitting evidence such as sworn translations, notarizations and other admissibility elements (Council of Europe, 2013, 37). The bureaucratization of procedures in this case contradicts the need for effective and timely investigations, especially when the latter are suspended awaiting evidence from abroad. Gravitating toward alternative methods in this regard has been both imperative and inevitable.

Keeping pace with technological developments has enabled a gradual change in the means for requesting mutual assistance, moving from letters by physical mail and fax to electronic mail (email), and to even efforts for keeping official encrypted communications through secure IT systems. Facilities have been enabled as regards tools for collecting evidence with the rise in use of videoconferencing for taking testimony remotely.

## 2. International standards for the digitalization of the process

Mindful of the variety of legal traditions among states, the international community has proposed and adopted multilateral legal instruments over the years aiming to harmonize MLA state practices, not leaving aside modernization and facilitation measures as well.

Key measures in this regard are providing electronic channels of communication and electronic testimony.

### 2.1 *Electronic channels of communication*

From the Council of Europe, in November 2001, the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters (Second Additional Protocol) revised the channels of communication between central authorities and directly between judicial ones, enabling the opportunity to transmit MLA requests and other communications through “any electronic or other means of telecommunication”, provided that the requesting party is prepared, upon request, to produce a written record of it and the original. Main electronic means include facsimiles and email used to request different administrative and investigative actions, such as service by post, spontaneous exchange of information, taking of multiple evidence, interception of communications, search and seizure, special investigative measures, joint investigation teams, and others.

However, the Second Additional Protocol permits declarations by states to set certain conditions for granting and executing requests through electronic channels. According to Treaty Office data, apart from Sweden declaring that it accepts requests via electronic channels upon agreement in the particular case, conditions set out by states include:

- subsequently or simultaneously delivering the original written request by post, as soon as possible or within the period specified by the requested state (Azerbaijan, Czechia, Israel, Netherlands, North Macedonia, Norway, Moldova, Romania, Ukraine, United Kingdom, Georgia, Slovakia);
- proving the authenticity of documents if deemed necessary, or when their authenticity is undisputed (Bulgaria, Cyprus, France, Georgia, Slovakia);
- in urgent or extremely urgent (Georgia, Slovakia, Israel).

The draft Third Additional Protocol, proposed in November 2024 and based on the 4 February 2025 version, provides, *inter alia*, for substituting the phrase “any electronic or other means of telecommuni-

cation” with “secure electronic means of communication, referring to IT systems for encrypted communications, as the most efficient method compared to email, fax and paper (Council of Europe, 2025b, 2).

Other novelties are the recognition of electronically signed documents and a stipulation stating that: “Other means of communication which provide evidence in writing may be used” (Council of Europe, 2025a, 2), thereby excluding verbal exchange. Even under this draft Protocol, states will have the opportunity to present declarations on the conditions for addressing requests through electronic means.

According to the draft Explanatory Report of the draft Protocol, the drafters acknowledge that electronic channels of communication will become the preferred means in all MLA cases (Council of Europe, 2025b, 2). Their priority and benefits are also noted by the CoE Parliamentary Assembly in its Opinion on the matter (Council of Europe, 2025c, 1). However, in respecting national legislation rules, the text has retained the obligation for parties to submit, upon request, the originals or certified copies of documents – an obligation made easier by allowing electronically signed documents.

Electronic channels of communication in the MLA context are also recognized by treaties of different subjects, e.g., Article 35 of the Warsaw Convention (2005), which permits electronic transmission or by any other means of telecommunication; Article 21 of Ljubljana-The Hague Convention (2023) on secured electronic means; and in particular, the Second Additional Protocol to the Budapest Convention (not in force), referring only to requests in electronic form, and even verbal requests in Article 9. In addition, under the UN framework, Article 18(14) of the Palermo Convention (2000) provides, when possible, making MLA requests by any means capable of producing a written record, in a language acceptable to the requested party, and under conditions allowing the latter to establish authenticity. The same stipulation is present in Article 46(14) of the UN Convention against Corruption (2004).

The EU model is known by the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union (the EU Convention), adopted in 2000, a year before the Second Additional Protocol, along with its Protocol. Under Article 6 of the EU Convention, MLA requests and spontaneous exchanges of information shall be made in writing, or similarly to the Palermo Convention and the UN Convention against Corruption.

Directive 2014/41/EU (EIO Directive), as amended, establishes the European Investigation Order (EIO), a more efficient kind of letter rogatory among EU Member States based on the principle of mutual recognition. Under Article 7, the EIO can be transmitted in the same way as in the EU Convention, also following the form set out in Annex A of the Directive. Moreover, paragraph 4 of Article 7 states that the issuing authority may transmit EIOs via the telecommunications system of the European Judicial Network (EJN).

Member states may also utilize the support resources of Eurojust to coordinate their communications and solve issues related to EIOs. Article 22a of Regulation 2018/1727 on the European Union Agency for Criminal Justice Cooperation (Eurojust), added by Regulation 2023/2131, provides that communications between competent national authorities and Eurojust shall be carried out through the decentralized IT system, connected to the case management system, and in case of the unavailability of the decentralized IT system, communications shall be carried out by the swiftest, most appropriate alternative means, ensuring reliability and an equivalent level of security and data protection.

Another sophisticated system within the EU is “SIENA” by Europol, used extensively for the secure exchange of classified and sensitive data between law enforcement agencies, similar to the “e-MLA” system of Interpol, the latter being a recognized communication channel by the Second Additional Protocol and the EU Convention. Efforts for creating a similar system are being made by Eurojust in the framework of the Digital Criminal Justice platform, seeking to ensure the appropriate means for combating serious cross-border crime and enhancing judicial cooperation.

While no general MLA convention exists at the UN level, the latter contributed in 1990 with the Model Treaty on Mutual Assistance in Criminal Matters, as amended, as a framework for bilateral agreements between states, and again in 2007 with the Model Law on Mutual Assistance in Criminal Matters, amended in 2022, supporting national legislation. Of note from the Model Treaty is the footnote recommending modern means of communication, including, in particularly urgent cases, verbal requests that are confirmed in writing forthwith.

## 2.2 Electronic testimony

Digitalization of the MLA process also includes the possibility of taking testimony and statements via technological means, without the physical presence of the witness.

The Second Additional Protocol provides for this under Articles 9 and 10, respectively, concerning the procedure and guarantees to hear a person located abroad, as a witness or expert, through videoconference and teleconference, the latter only with the consent of the person and when prescribed by national law.

As regards testimony by videoconference, its use must be dictated by reasonable circumstances that make it not desirable or possible for the person to be present, including the suspect or accused person. Furthermore, the requested party shall agree to testimony by videoconference provided that its use is not incompatible with fundamental principles of its law and on condition that it possesses the necessary technical infrastructure for videoconferencing, otherwise the latter can be offered by the requesting party. The same rules related to the right not to testify and perjury apply to testimony by videoconference.

Virtually identical provisions are found in Articles 10 and 11 of the EU Convention, and testimony taken by video link and other modern communication means is recommended by the UN Model Treaty.

Revisions to videoconferencing are proposed with the draft Third Additional Protocol, notably by eliminating the need to prove the inability of the person to be present. This way, testimony by videoconference is treated as a primary choice, recognizing its utility as an efficient tool providing solutions to several logistical challenges such as long distance between countries, costs of travelling, security concerns, or reduced mobility of witnesses and experts (Council of Europe, 2025b, 3). The proposal includes adding a provision to permit replacing or supplementing the provisions through agreements or arrangements between states.

Following the EU Convention model, Article 24 of the EIO Directive foresees issuing an EIO in order to hear a witness or expert via videoconference or other audiovisual transmission, including the suspect or accused person, the latter only with their consent. However, unlike the EU Convention, in this case, the element of the inability to be present is absent, but it applies under Article 25 on telephone conference.

Videoconferencing is provided in Article 18(18) of the Palermo Convention, Article 46(18) of the UN Convention against Corruption, Article 34 of the Ljubljana-The Hague Convention, and Article 11 of the Second Additional Protocol to the Budapest Convention.

### 3. The Albanian case

Albania stands out for its tendency toward digitalization, notably due to the fact that 95 per cent of public services are now offered only electronically, and electronically signed official documents find widespread application.

As regards mutual assistance, multilaterally, Albania has ratified by law all the relevant UN and CoE conventions, including the Second Additional Protocol in 2002, and has acceded to the Second Additional Protocol to the Budapest Convention in October 2022. On the former, unlike other states, Albania has not made any declarations with respect to channels of communication, therefore the general rules apply.

Multilateral instruments are supplemented and facilitated by bilateral ones, where between states the 2008 Agreement with Italy and the 2012 Agreement with Kosovo should be set apart, the latter based on the UN Model Treaty.

Article 4(1) of the Italy Agreement states that: “1. Requests for mutual legal assistance are made in writing or by any other means capable of producing a written record under conditions enabling the party whose assistance is required to verify authenticity.” This stipulation facilitates the Convention’s application since choosing electronic channels is not contingent on also sending the originals.

However, the same cannot be said about Articles 7 and 8 on electronic testimony. Article 7 contains the same provisions as the Second Additional Protocol, whereas if the Agreement’s aim to facilitate application would have been followed, the stipulation for the inability of the witness to be physically present

should have been removed. On the other hand, it provides the opportunity to question defendants and other parties in proceedings. Article 8 surprisingly adds a new stipulation, by making the use of telephone hearings contingent upon the availability of an audiovisual link first, which is a logical condition, albeit one is missing from the Second Additional Protocol.

On the Agreement with Kosovo, Article 3(4) states that the request and accompanying documents, either original or certified copies (para. 3), are transmitted by mail service, diplomatic channels, “or any other appropriate technical means, provided that receipt is confirmed.”

With regard to electronic testimony, Article 11 groups the methods under the title “Hearings via telecommunication tools”. Similar rules apply to those of the Second Additional Protocol, although there is no provision on questioning the accused or the consent of the person.

In the framework of Albania-EU member state cooperation, apart from Title VII of the 2006 Stabilization and Association Agreement, it is clear that the EU Convention and the EIO Directive are not applicable. However, Albania itself states that its legislation is partially aligned with the EU Convention (European Commission, 2023, 87).

On the other hand, worth mentioning is the fact that cross-border cooperation is facilitated owing to several bilateral agreements that Albania implements with EU Agencies, notably those with Eurojust and the European Public Prosecutor’s Office (EPPO).

Under Article 10 of the 2018 Agreement with Eurojust, information may be exchanged using several channels, but mainly through the Albanian Liaison Prosecutor, on duty since 2021. Furthermore, paragraph 2 of Article 10 foresees that: “2. Nothing precludes Parties from reaching an agreement to use other means of information exchange in special cases.”

According to the 2022 Working Arrangement between the Prosecutor General’s Office and the EPPO and the 2023 Working Arrangement on the cooperation between the EPPO and SPAK, the respective Articles 13 provide that parties shall cooperate directly at operational level, and communicate by any means whereby a written record can be produced, including through secured means of electronic communication.

In this regard, a case from last year is presented where the EPPO had forwarded to the Prosecutor General’s Office via electronic channels the MLA request of the EPPO regional office in Rome, related to a criminal fraud case with EU funds, that was then relayed to the Tirana Prosecution Office to execute (Prosecutor General’s Office, 2025, 171).

Moreover, these agreements contain constant references for the application of multilateral instruments such as the Second Additional Protocol, the Palermo Convention, the UN Convention against Corruption, the Warsaw Convention, and others.

From the domestic legal framework, the 1995 Code of Criminal Procedure and the Law No. 10193, dated 3.12.2009 “On jurisdictional affairs with foreign authorities in criminal matters” (MLA Law), both last amended in 2021, apply.

Means of communication are not explicitly foreseen in Title X, Chapter II “International letters rogatory” of the Code. However, Article 5(5) of the MLA Law provides the same procedure as the one in the Agreement with Kosovo.

Based on Article 5(3) of the MLA Law, records show that in July 2024, a joint instruction of the Ministry of Justice, the General Prosecutor and the head of the Special Prosecution Office “On laying down detailed rules on the request form, procedure and translation of documents in jurisdictional affairs with foreign authorities in criminal matters” was adopted, (General Prosecutor’s Office, 2025, 170), albeit not yet publicly accessible.

Several provisions on electronic testimony are present in the Code of Criminal Procedure, added in 2004 in the context of implementing the Second Additional Protocol, starting with Article 167/a titled “Remote questioning of a defendant in joint proceedings or sentenced abroad”, which provides that: “A defendant in joint proceedings, investigated or sentenced abroad on another criminal offense, and whose extradition

is refused, may be questioned remotely via audiovisual link, according to international agreements, provided that the foreign country guarantees the presence of the defendant's lawyer at the place where the questioning is conducted." Evidently, the use of this tool is contingent upon the extradition outcome. The term "international agreements" encompasses both multilateral and bilateral agreements.

Article 361 on the rules for questioning witnesses, in paragraph 7 permits conducting it remotely, in line with the provisions of international agreements and the Code's. In particular, Article 361/b extends the application of these rules for questioning government witnesses, infiltrated and undercover persons, protected and secret witnesses, for whom the court, if possessing the technical means, may rule for their remote questioning via audiovisual link.

Regarding the types of letters rogatory under Article 13, it also includes "questioning the suspect, defendant, witness and expert, even by conducting hearings via telephone or audiovisual links;". Furthermore, Article 20 titled "Hearings via telephone or audiovisual link" contains similar provisions as the Second Additional Protocol, including the inability for physical presence stipulation, and in paragraph 4 foresees that: "4. Remote witness or expert questioning shall be carried out by national judicial authorities in line with international agreement rules and Code of Criminal Procedure provisions.". However, it should be noted that other subjects listed in Article 13(ç) of the MLA Law and Article 167/a of the Code, e.g., the defendant, are not mentioned here, therefore it would be prudent to add them to ensure harmonization.

As regards the costs under Article 25, it is explicitly stated that national judicial authorities bear no obligation to pay costs related to executing foreign letters rogatory for conducting hearings via telephone or audiovisual link.

Electronic testimony has evidently found widespread application in Albanian practice, which now possesses the technical infrastructure, resulting in a significant increase during 2024 of granting successful requests from foreign authorities for testimony via videoconference, 34 cases compared to 13 in 2023 (General Prosecutor's Office, 2025, 171; 2024, 172). This figure is also related to the overall increase in the number of international or passive letters rogatory, where according to the respective annual reports, for the general jurisdiction 599 letters rogatory have been received in 2024 compared to 431 in 2023, a 39 per cent increase, mainly from Germany and Kosovo, whereas for the special jurisdiction, 70 letters rogatory in 2024, up from 48 in 2023, mainly from Italy, Germany and Belgium. Equally high is the number of active letters rogatory.

While no data is available on how many of these requests have been transmitted using electronic channels and how many traditionally, no serious obstacles have been presented in this regard either.

#### **4. Conclusions and recommendations**

Digitalization of the MLA process is now a universally accepted reality, owing to the solutions it provides for bureaucratic delays and cross-border investigation costs. Its elements include the electronic channels of communication and the use of audiovisual links for taking testimonies – both modern methods recognized by the international standards of the UN, EU, and the CoE, notably with the Second Additional Protocol and even more so with the proposed Third Additional Protocol, but also by bilateral agreements for supplementing and facilitating the former. The modernization is apparent even in the electronic means themselves, gradually moving from fax and email to secure IT systems.

An integral part of this practice is the Albanian one, trust in whom keeps increasing in the international arena, demonstrated by even more MLA requests, and due to the harmonized national legal framework and instruments that facilitate cooperation, from which the work of the Albanian Liaison Prosecutor at Eurojust should be set apart.

Nevertheless, Albania must continue to remain updated with evolving best practices, notably by anticipating the draft Third Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters, by further modernizing the channels of communication and treating electronic testimony as the first and unconditional choice.

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