



MUTUAL LEGAL ASSISTANCE AND OTHER FORMS OF COOPERATION BETWEEN LAW ENFORCEMENT AGENCIES

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FOREWORD

Fighting corruption and promoting good governance are among the main priorities of the OECD. The OECD has established anti-corruption standards and good governance principles, and has promoted their implementation by member countries through mutual reviews and elaboration of good practices. It also helps non-members to improve their domestic anti-corruption and good governance efforts by sharing of experience and analysis through regional programmes. The Anti-Corruption Network for Eastern Europe and Central Asia (ACN) is one such regional anti-corruption programme (www.oecd.org/corruption/acn); over the decade it has been the main vehicle for promoting OECD standards and supporting anti-corruption programmes in this region.

The Organization for Democracy and Economic Development (GUAM) is a regional organization of four countries: Georgia, Ukraine, Azerbaijan and Moldova. It was created in 1997 as a consultative forum, transformed into an alliance in 2001, and into an international organisation in 2006. The GUAM Secretariat is in Kyiv, Ukraine. The aim of GUAM is to promote democratic values, ensure stable development, enhance international and regional security and step up European integration. All GUAM countries are members of the ACN and three are members of the Istanbul Action Plan. The GUAM promotes effective, joint programs in the law enforcement area, using capabilities and competences of each member state.

In October 2010, the ACN in cooperation with GUAM, with financial support from the United States Department of State, launched a project for GUAM countries – Georgia, Ukraine, Azerbaijan and Moldova – aimed at support in training and development of analytical and methodological instruments for detection, investigation and criminal prosecution of corruption in GUAM countries. A number of seminars for investigators and prosecutors were held, a training guide on investigation and criminal prosecution of corruption was developed and distributed, a survey on specialisation of the prosecution bodies in anti-corruption issues was conducted, and other supporting materials were prepared within the project framework.

This Overview was prepared within the context of the aforementioned project. Its main objective was to analyse the instruments regulating cooperation of GUAM law enforcement agencies and other instruments applicable in those countries within the context of cases of corruption and money laundering, identify the institutions that can be used in practice, and provide brief methodological recommendations on their application by practitioners of these four countries. The Overview also includes conclusions and recommendations of a general nature developed for the purposes of improvement of the international treaty framework of GUAM member countries. The methodological recommendations for practitioners and recommendations based on the findings may be useful for practitioners and national governments of other Eastern European and Central Asian countries.

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The main author of this Overview is Vitaly Kasko, Council of Europe expert, attorney, former head of the international department of the Prosecutor General's Office of Ukraine. The information on central bodies and the national legislation was provided by the GUAM countries or taken from public sources. The information, facts and statistical data presented in this Overview were last updated in October 2012.

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INTRODUCTION

Corruption and money laundering are among the most complex international problems and have come to the forefront of international crime. They undermine trust in state institutions, inflict lasting damage on the investment climate and prevent successful outcomes of state-led social initiatives. Effectively countering these sorts of international crime is becoming increasingly important for the world community with every passing day.

Case analysis shows that corruption is often committed across several countries, accomplices are of different nationalities and evidence, including proceeds of crime, are being hidden outside the jurisdiction of where they were obtained.

Under such circumstances, the gathering of evidence on criminals involved in transnational corruption and money laundering abroad, using international legal assistance and operational cooperation, as well as activity coordination between law enforcement agencies from different countries is particularly important.

The GUAM member countries – Georgia, Ukraine, Azerbaijan, and Moldova – have developed an international legal framework to fight crimes, including transnational corruption charges, which are analysed in this overview. Specifically, the overview includes an analysis of the following **forms of cooperation** in cases of corruption and money laundering:

- **Operational cooperation** (intelligence sharing, conducting joint operations, cooperation between law enforcement agencies);
- **International legal assistance** in investigative and criminal prosecution (examples: execution of proceedings, extradition, transfer of criminal prosecution);
- **Legal assistance at the stage of legal enforcement** (this concerns, above all, the fulfilment of requests for enforcement of court rulings regarding property confiscation in cases of corruption and money laundering or court rulings on civil forfeiture in jurisdictions where applicable).

The overview will also make an attempt to build on the results of the analysis and present general recommendations for developing new or more efficient ways to use the existing cooperation framework for pooling collective efforts of GUAM member's law enforcement agencies in countering transnational corruption.

PART I. INTERNATIONAL TREATY FRAMEWORK FOR COOPERATION WITHIN GUAM

This part contains a general overview of the international treaty framework of legal cooperation between law enforcement agencies of the Organisation for Democracy and Economic Development (in GUAM) in fighting corruption and money laundering. It is an introduction to a more detailed analysis of different types of cooperation discussed in the next part of this paper, highlighting a number of standards, principles of international legal assistance and other forms of cooperation.

1.1. Legal Framework for Operational Cooperation

The legal framework for operational cooperation between law enforcement agencies of GUAM member countries in fighting corruption and money laundering includes, inter alia, special provisions of the 2003 UN Convention against Corruption and the 2000 UN Convention against Transnational Organised Crime, as well as multilateral agreements within the GUAM framework:

- Cooperation Agreement between the governments of GUAM member countries in the fight against terrorism, organised crime, drug trafficking, and other dangerous crimes dated 20 July 2002 (entered into force on 25.08.2004) and its protocol of 4 December 2008;
- Agreement on establishment of the GUAM Virtual Centre for the fight against terrorism, organised crime, drug trafficking, and other dangerous crimes, and the GUAM Inter-State Information Management System dated 4 July 2003 (entered into force on 08.10.2004);
- Agreement on mutual legal assistance and cooperation in customs matters between governments of GUAM member countries dated 4 July 2003 (entered into force for Azerbaijan and Ukraine on 06.07.2004).

A departmental agreement on cooperation between the prosecutor general's offices of CIS member states in fighting corruption was signed within the framework of the Commonwealth of Independent States on 25.04.2007 and entered into force immediately. It should be noted that Azerbaijan signed this document with a separate opinion and Georgia seceded from the CIS after signing the agreement.

In addition, the legal framework also includes bilateral intergovernmental and inter-agency treaties concluded between relevant bodies of GUAM members, for example:

- Cooperation Agreement between the Interior Ministry of the Republic of Azerbaijan and the Interior Ministry of Georgia of 10.05.1993;
- Cooperation Agreement between the Interior Ministry of the Republic of Moldova and the Interior Ministry of the Republic of Azerbaijan in fighting organised crime of 17.02.1994;
- Agreement on legal assistance and cooperation between the Prosecutor General's Office of Ukraine and the Prosecution Office of the Republic of Azerbaijan of 17.05.1994;

- Cooperation Agreement between the Interior Ministry of the Republic of Moldova and the Interior Ministry of Georgia in fighting crime and ensuring reliable protection of citizens' rights, freedoms and legal interests dated 16.02.1995;
- Agreement on legal assistance and cooperation between the Prosecutor General's Office of Ukraine and the Prosecutor General's Office of Georgia dated 04.07.1994;
- Cooperation Agreement between the Interior Ministry of Georgia and the Interior Ministry of Ukraine in fighting crime dated 20.10.2011;
- Cooperation Agreement between the Interior Ministry of Georgia and the Interior Ministry of Moldova in conduct of operative and investigative activities and information exchange dated 20.10.2011;
- Cooperation Agreement between the Interior Ministry of Georgia and the Interior Ministry of Azerbaijan in conduct of operative and investigative activities and information exchange dated 20.10.2011;
- Cooperation Agreement between the Interior Ministry of the Republic of Moldova and the Interior Ministry of Ukraine in fighting crime and ensuring reliable protection of citizens' rights, freedoms and legal interests dated 03.11.1992.

Law enforcement agencies predominantly cooperate in the form of information exchange based on *requests for support or assistance*, which does not constitute legal assistance. At the same time, the multilateral international framework adopted in recent years under UN and Council of Europe sponsorship, point to a gradual convergence of legal assistance and operational cooperation institutions. This is validated by the inclusion of provisions in traditional international treaties on legal assistance on information exchange, cooperation in conducting covert operations, electronic surveillance, controlled delivery, etc.

1.2. Legal Framework for Provision and Receipt of Legal Assistance

Legal assistance in criminal cases involving corruption and money laundering can be provided and received from abroad by GUAM member countries according to the following international framework¹:

under the United Nations aegis

- United Nations Convention against Corruption (2003);
- United Nations Convention against Transnational Organised Crime (2000);

under the Council of Europe aegis

- European Convention on Extradition (1957);
- Additional Protocol to the European Convention on Extradition (1975);

¹ More detailed information on application of the listed treaties can be found in the Attachment "List of International Instruments".

- Second Additional Protocol to the European Convention on Extradition (1978);
- European Convention on Mutual Assistance in Criminal Matters (1959);
- Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters (1978);
- Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters (2001);
- European Convention on the Transfer of Proceedings in Criminal Matters (1972);
- Convention on Laundering, Search, Seizure and Confiscation of Proceeds of Crime (1990);
- Council of Europe Convention on Laundering, Search, Seizure and Confiscation of Proceeds of Crime and on the Financing of Terrorism (2005);
- Convention on Criminal Responsibility for Corruption (1999);
- Additional Protocol to the Convention on Criminal Responsibility for Corruption (2003);

under the CIS aegis

- Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters (1993 Minsk Convention);
- Protocol to the Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters (1997) (according to available information, effective 1 April 2012 only for Moldova and Ukraine of all the countries covered in the overview);
- Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters of (2002 Chisinau Convention).

The aforementioned European conventions constitute a universal basis for requesting criminal procedures and extradition of offenders between members of the Council of Europe, including GUAM members and proved their practical efficiency. The UN Convention against Corruption and the UN Convention against Transnational Organised Crime play an important subordinate role. Their provisions can be applied in cases when participating states are not bound by mutual legal assistance agreements or if they agree to apply the provisions of the said UN Conventions instead of the provisions of the treaties concluded between them. The Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters (1993) concluded under the CIS sponsorship plays an auxiliary role in relations between GUAM countries, vis-à-vis procedure and the use of language.

In addition, issues of legal assistance in criminal matters are also subjects of bilateral inter-state agreements between GUAM countries. Such agreements currently exist between Moldova and Ukraine (effective 13.12.1993), Ukraine and Georgia (09.01.1995), Georgia and Azerbaijan (8.03.1996).

An example of an inter-departmental treaty on legal assistance in criminal matters between competent authorities of the GUAM countries is the Agreement concluded on 16 July 2010 between the Prosecutor General's Office of Ukraine and the Prosecutor General's Office of the Republic of Moldova in accordance with Article 3 of the Treaty between Ukraine and the Republic of Moldova on legal assistance and relations in civil and criminal matters (13 December 1993). The Agreement coordinated the two countries' prosecutor's offices in legal assistance in criminal matters.

Overall, it should be noted that the legal framework for cooperation between countries in the overview is well developed and facilitates both operational interaction in criminal investigations and mutual legal assistance in all forms: conducting proceedings, extradition and transfer/acceptance of proceedings in criminal matters. At the same time, combatting transnational corruption and money laundering requires a much higher level of synchronization between states. States should counter these negative acts in a prompt, comprehensive and systematic manner, undermine the financial base of corrupt individuals and their accomplices and produce tangible preventive measures. To achieve these goals, legal assistance in corruption cases must be acted upon immediately and in full force, which, in turn, requires further improvement of the mechanisms of international cooperation currently available in the sphere of criminal law.

1.3. Provision and Receipt of Legal Assistance on Treaty-Free Basis

In addition, international legal assistance may be rendered *in the absence of a treaty* on the basis of goodwill in accordance with *the principle of reciprocity* and that it does not run counter to the national laws of relevant states.

Box 1. Provision of Mutual Legal Assistance, Transfer of Criminal Prosecution and Extradition on Treaty-Free Basis in Georgia²

According to Art. 2 (para 2) of the Georgian Law on International Cooperation in the Sphere of Criminal Law, "international cooperation in the sphere of criminal law with a country with which Georgia has no relevant international treaty in certain cases may be exercised on the basis of an ad hoc agreement or the principle of reciprocity." Cooperation based on an ad hoc agreement may be exercised in such matters as extradition, provision of legal assistance, referral of materials in a criminal case, enforcement of a sentence, and transfer of convicted persons to the state of their nationality. As for the principle of reciprocity, the legislation allows the application of the principle of reciprocity in all the aforementioned matters, except extradition and sentence enforcement. In case of international cooperation in the sphere of criminal law based on the principle of reciprocity, the reciprocity conditions should be determined containing minimum guarantees prescribed by this Law, although the setting of higher standards is not ruled out. In keeping with Art. 3 (para 3) of the Georgian Law on International Cooperation in the Sphere of Criminal Law, "in case of international cooperation in the sphere of criminal law based on principles of reciprocity, Georgia uses diplomatic channels."

² The information was provided to the Network Secretariat by Georgia within the framework of response to the questionnaire "Questions on the National Legislation and Practices of Georgia, Azerbaijan and Moldova" of 30.03.2012.

The aforementioned principle is in fact an imperative of international law – jus cogens (Art. 53 of the Vienna Convention on the Law of Treaties of 1969) and means that under certain circumstances, countries that are lacking the relevant regulatory and legal framework may address the problem by demonstrating goodwill and adherence to the principle of fulfilment of international obligations in good faith and grant the request for legal assistance expecting a similar future response from the requesting state. *The sphere of application of this principle in relations between GUAM countries may include requests for provision of legal assistance in forms not envisaged by a treaty on legal assistance established between the states, and requests for the restitution of confiscated assets.*

PART II. APPLICATION OF INDIVIDUAL INSTRUMENTS

This part of the overview contains a more detailed analysis of particular aspects of international legal cooperation, including an analysis of provisions, information on the use of using one treaty over another for practicality given the situation, information on the most advanced modern legal assistance institutions which can be successfully used in corruption cases, descriptions and recommendations on their proper application, possible bottlenecks and means of addressing them. It also highlights issues concerning procedure, scope of legal assistance, central bodies and languages.

2.1. Operational Cooperation

The fight against transnational organised crime today requires more active and efficient measures from state law enforcement agencies. Their prompt interaction ensures precise operational cooperation (operational information exchange, conducting joint operations, receipt of information on request for assistance provision, etc.).

Operational cooperation results are important, first and foremost, for appropriate investigation planning, making a case and for high quality preparation of requests for legal assistance in a criminal case. At the same time, these results cannot be underestimated as sources of evidence in a case, with modern trends in theory and practice of international cooperation in criminal matters taken into account.

Box 2. Evidentiary Value of Facts Gathered in the Process of International Operational Cooperation in Azerbaijan³

The legal system of Azerbaijan envisages the possibility of acceptance of the factual data gathered in the process of international operational cooperation (in response to requests for assistance), i.e. received not within the framework of implementation of requests for legal assistance, as evidence in court. This may be done on the basis of the procedural regulation that the documents obtained by the court or law enforcement agencies and raising no suspicions as regards their source and method of obtaining (specifically, received on the basis of a court ruling, if this is precisely what the law requires) can be used as evidence.

Information gathered as a result of a joint secret operation, electronic surveillance, controlled delivery, conducted on request of Azerbaijani law enforcement agencies by law enforcement agencies of another country on the basis of an international treaty can also be used as evidence in Azerbaijan.

Important regional legal channels for operational interaction of GUAM law enforcement agencies in countering crimes involving corruption and money laundering include the Cooperation Agreement between governments of GUAM members in the fight against terrorism, organised crime and other dangerous crimes (20 July 2002) and its Protocol (4

³ The information was provided to the Network Secretariat by Azerbaijan within the framework of response to the questionnaire "Questions on the National Legislation and Practices of Georgia, Azerbaijan and Moldova" of 30.03.2012.

December 2008); and the Agreement on establishment of the GUAM Virtual Centre for the fight against terrorism, organised crime, drugs trafficking, and other dangerous crime, and the GUAM Inter-State Information Management System (IIMS) (4 July 2003). The Agreement on mutual legal assistance and cooperation in customs matters between GUAM members (4 July 2003) can also be used to a certain extent for operational cooperation (e.g. for obtaining intelligence on the transfer of cash or other valuables across the borders of parties to the Agreement by people involved in corruption).

The Agreement of 04.07.2003 approved the Terms of Reference of the GUAM Virtual Centre for the fight against terrorism, organised crime, drugs trafficking, and other dangerous crime and conceptualized the GUAM Inter-State Information Management System (IIMS).

In accordance with Art. 1 of the Agreement of 20.07.2002, the Parties shall cooperate in fighting economic and financial crimes, including tax evasion, money laundering and corruption. Such interaction within the framework of the Agreement is exercised in bilateral and multilateral formats on the basis of *requests for assistance* aimed at the prevention, detection, restraint, investigation, and liquidation of the consequences of relevant offences. The Agreement sets requirements to the form, content, and methods of filing requests for assistance. It also envisages the possibility for a Party to provide information to another Party on its own initiative if it believes that such information will be of interest to the recipient (Art. 3). As per Art. 5 (para 4) of the Agreement, to coordinate interaction in the fight against corruption, the Parties' competent authorities may delegate their employees to the national territory of another Party. Art. 10 of the Agreement envisages the possibility of using English and Russian as the working languages in the implementation process.

Despite many useful provisions in the Agreement, it is noteworthy that its main function is to focus on interaction in cases of terrorism, illegal trafficking of drugs and weapons and organised crime in general (Art. 2 and Art. 4). In addition, the Agreement contains no provisions regulating an urgent procedure for considering assistance requests in certain cases. It does not stipulate any deadlines for granting requests and does not classify requests into different categories of urgency, which would be very useful. It only prescribes that the Parties take all necessary measures for undelayed completion of the request for assistance in the fight against crimes of a terrorist nature (Art. 2). It is also worth mentioning that according to Art. 5 (paragraph 1) of the Agreement, the Parties shall determine the competent authorities responsible for implementing the provisions of this Agreement. Even if this was done, information on such authorities is not available to the public. The officers of operational agencies of GUAM countries often are unaware of the existence of the Agreement and its opportunities. Accounting for all these factors, practical requests filed for assistance in corruption and money laundering cases on the basis of this Agreement are rare. It seems necessary to organise trainings and raise awareness raising to inform the proper GUAM authorities in greater detail about this framework to ensure operational interaction and to build up the practice of applying this Agreement in corruption money laundering cases. In addition, the question of practicality, expanding and signing of separate multilateral agreements to fight corruption and money laundering under the GUAM sponsorship may be considered as an alternative.

At the multilateral level, prosecutor's offices of CIS countries have reached an Agreement on cooperation between prosecutor general's (prosecution) offices of the Commonwealth of Independent States members in the fight against corruption (25 April 2007). Prosecutor

general's offices of the countries covered by this overview are also parties to this Agreement. Cooperation under this Agreement is also exercised on the basis of assistance requests (Art. 7), the prosecution bodies of the Parties can communicate directly in the process of implementation of the Agreement (Art. 6), and requests must be fulfilled completely and in a timely fashion (Art. 8). It should be mentioned that the sphere of possible cooperation is seriously restricted by Art. 5 of the Agreement and comes down to making collective checks of statements, reports and other information concerning transnational corruption charges and rendering assistance in making those checks. Therefore, cooperation in criminal investigations already underway is excluded from the scope of the Agreement. Moreover, prosecutors are not conducting operational activities. Under certain circumstances, materials obtained in the process of implementing this Agreement can be used criminal investigations into cases of corruption.

In accordance with the Terms of Reference of the GUAM Virtual Centre for the fight against terrorism, organised crime, drugs trafficking, and other dangerous types of crime approved by Agreement of GUAM members (04 July 2003), the Virtual Centre will be used for on-line communications, law enforcement analysis, intelligence exchange and for supporting joint operations and coordinating investigations of major offences.

The Virtual Centre is an association based on protected communication between national centres creating a single databank for law enforcement and is a link between law enforcement bodies of GUAM states that ensures efficient operational cooperation and coordination of investigations of major offences for both international and regional operations, organises expert consultations of different GUAM law enforcement agencies for conducting joint operations. The Centre facilitates the exchange of information and specializes in supporting the fight against individual crime, creates conditions for the development of a GUAM information base with the possibilities for analysis and the use of confidential information for raising the efficiency of law enforcement activities.

The operation of the GUAM Virtual Centre is based on national inter-agency task groups in each GUAM member with the participation of relevant agencies headed by authorised coordinators appointed by participating states. Coordinators of the Virtual Centre and inter-agency task teams will carry out regular information exchange of electronic documents securely within the framework of the newly created Inter-State Information Management System (IIMS).

Box 3. National Virtual Centre SECI/GUAM in Moldova⁴

The SECI/GUAM National Virtual Centre was created in January 2006 by Resolution of the Republic of Moldova No. 93 of 27 January 2006 on Creation of the SECI/GUAM National Virtual Centre for the Fight against Terrorism, Organised Crime, Illegal Drugs Trafficking, and other Grave Crimes for purposes of further development of international cooperation between European law enforcement agencies in fighting transnational crime. The idea of setting up such a centre was generated by the need to improve practical application of a number of international instruments, including the Agreement on establishment of the GUUAM Virtual Centre for the fight against terrorism, organised crime, drugs trafficking, and other dangerous types of crime, and the GUUAM Inter-State Information

⁴ Information is taken from the official website of the Ministry of Internal Affairs of the Republic of Moldova: <http://www.mai.md/ru/seci-guam.ru>.

Management System (IIMS).

The SECI/GUAM National Virtual Centre was created as a specialised inter-agency entity at the Interior Ministry of the Republic of Moldova by reorganisation (merger) of the Regional Office for Information Exchange (RILO) at the Customs Service and the SECI⁵ National Focal Point at the Ministry of Internal Affairs, the purpose of which is information exchange within a single system between national agencies, the SECI centre in Bucharest and similar information management centres of GUAM member countries in the fight against transnational crime, as well as coordination, participation and conducting of operations organised jointly with SECI⁶ and GUAM member countries on the basis of agreements and arrangements between SECI and GUAM member countries.

The national virtual centre SECI/GUAM has a permanent staff of employees delegated from the Ministry of Internal Affairs, the Customer Service, the Information and Security Service, the Border Service, and the Centre for Fighting Economic Crimes and Corruption. Its main lines of activity include:

- Provision of an organisational framework necessary for cooperation and development on the national and international levels of specific actions aimed at preventing and fighting transnational crime and other grave crimes in SECI and GUAM countries;
- Information exchange with law enforcement agencies of SECI and GUAM member countries for preventing and fighting transnational crime;
- Analysis, generalisation and use of the accumulated information for purposes of investigation, prevention and restraint of transnational crime.

In the course of its daily activity the SECI/GUAM National Virtual Centre cooperates with national virtual centres of GUAM member countries, national and international line organisations in countering transnational crime, the South Eastern Europe Law Enforcement Centre, accredited attaches / communication officers of the Republic of Moldova and other countries, and with national and international nongovernmental organisations.

In accordance with the Main Principles of GUAM IIMS, approved by the same Agreement of GUAM member countries on 04 July 2003, the System is intended for ensuring the operation of the GUAM Virtual Centre, off-line and on-line information exchange, equal access to the database and audio/ video conferencing.

The possibilities intelligence exchange in the course of investigating corruption and money laundering cases offered by these GUAM Agreements poses a particular interest from the point of view of interaction speed. E.g. according to the General Standards and Procedures of Information Exchange within GUAM VC (approved at the session of ministers of foreign affairs of the GUAM countries on 28 June 2004), responses to requests for assistance shall be issued within a period of no more than 30 days; in cases of urgent consideration – within the period not more than 15 days; in cases requiring especially urgent consideration – within the period not more than 5 days. The submission of requests for assistance and responses to them shall be completed within 48 hours. Participants of GUAM VC can transfer information that can ultimately be used for fighting corruption at their own initiative.

It is recommended to conduct trainings and take other measures for informing GUAM members authorised agencies about the opportunities offered by the GUAM Virtual Centre

⁵ On 7 October 2011, the SECI centre was transformed into the SELEC centre (South Eastern Europe Law Enforcement Centre).

⁶ The Republic of Albania, Bosnia and Herzegovina, the Republic of Bulgaria, the Republic of Croatia, the former Yugoslav Republic of Macedonia, Greece, Hungary, the Republic of Moldova, Montenegro, Romania, the Republic of Serbia, the Republic of Slovenia, and the Republic of Turkey.

and the Inter-State Information Management System in the context of operational cooperation in investigating crimes involving corruption and money laundering.

In addition, it should be mentioned that operational cooperation between competent bodies of GUAM member countries can be exercised within the framework of the International Criminal Police Organisation (Interpol), of which all countries covered by the overview are members.

A special mention should be made of new forms of operational interaction included recently in legal assistance treaties in criminal matters and specialised agreements on fighting crime.

For example, Art. 50 of the UN Convention against Corruption (2003, Special investigative techniques) stipulates that:

“...in order to combat corruption effectively, each State Party shall, to the extent permitted by the basic principles of its domestic legal system and in accordance with the conditions prescribed by its domestic law, take such measures as may be necessary, within its means, to allow for the appropriate use by its competent authorities of controlled delivery and, where it deems appropriate, other special investigative techniques, such as electronic or other forms of surveillance and undercover operations, within its territory, and to allow for the admissibility in court of evidence derived therefrom. For the purpose of investigating the offences covered by this Convention, States Parties are encouraged to conclude, when necessary, appropriate bilateral or multilateral agreements or arrangements for using such special investigative techniques in the context of cooperation at the international level.”

“In the absence of an agreement or arrangement decisions to use such special investigative techniques at the international level shall be made on a case-by-case basis.” In other words, the Convention provides for the possibility of the requested State Party taking a decision on applying special investigative techniques on its territory on request of another State Party even in the absence of a treaty, guided by the principle of goodwill and reciprocity. It should be kept in mind, however, that the domestic legal system of the requested State Party should regulate the terms and procedures of using special investigative techniques on request of a competent authority of another State Party in great detail.

The most detailed international framework currently regulating the terms and procedures of special techniques as a form of international operational cooperation is the Second Additional Protocol (2001) to the European Convention on Mutual Assistance in Criminal Matters of (1959). The Protocol outlines the possibility and procedures for conducting, on the basis of a relevant request, cross-border observation (Art. 17), controlled delivery (Art. 18), and covert investigations (Art. 19). However, as of 1 October 2012, this Protocol was in effect only in Ukraine out of all the countries in the overview, and in the 27 countries of the Council of Europe. Moreover, while ratifying it, Ukraine made opted out of articles 17 and 19 of this international framework.

Many Council of Europe countries refuse to apply the above provisions of the Protocol due to lack of readiness by the national legislation or reluctance of interference in spheres traditionally regarded as sovereign rights of the state. At the same time, it is obvious that as time goes by, an increasing number of countries will apply to this international operational cooperation framework as it is an efficient measure of countering transnational crime.

The inclusion of new provisions on special operational techniques of cooperation in multilateral international agreements on legal assistance in criminal matters is a manifestation of new approaches to the evidence value of international operational cooperation materials. Therefore, the formerly ruling position that materials gathered as a result of operational cooperation of agencies from different countries (not as part of legal assistance) cannot be used as evidence in a criminal case no longer seems adequate in light of current conditions and framework of international law.

The 2003 UN Convention against Corruption requires that States Parties take measures to admit evidence gathered by use of special investigative techniques in court. It also speaks in favour of the possibility of using such evidence in a criminal case.

It seems that such an approach will conform to current requirements in the struggle against transnational crime and, on the condition that relevant procedural guarantees are prescribed at the national level, will not violate the rights of parties in a criminal case.

2.2. Provision and Forms of International Legal Assistance

2.2.1. Extradition

In the process of a criminal investigation, the investigator and the prosecutor must take timely and effective measures to prevent the suspected or accused person to attempt to evade prosecution and trial, tamper with witnesses, destroy evidence in a case, continue criminal activity and also ensure the enforcement of procedural decisions. This is particularly important in corruption and money laundering cases where the suspects or accused have considerable financial assets and social connections at home and abroad.

If a suspect/accused evades prosecution and trial, it is necessary to establish his possible whereabouts by investigative methods and by issuing instructions for conducting an operational search. If the person is suspected of having gone abroad, he is to be put on an inter-state CIS wanted list or an Interpol international wanted list.

If there is intelligence on the possible whereabouts of a wanted person in another country which needs verification, it is recommended that prior to or simultaneously during the submission of an extradition request, use the available operational cooperation with law enforcement agencies framework of that country (file requests for assistance to border control, police, national security agencies, etc.) for confirmation or denial of such information and to notify them that the person in question is on the wanted list. It is recommended to attach requests filed within the framework of operational cooperation. Also the decisions of courts of the requesting side on detention (arrest, custody) of the wanted person so that in the event of his detection, the competent authorities of the requested side could, if necessary, take prompt measures for his temporary arrest before the extradition request has been received.

The channels and opportunities offered by the GUAM Virtual Centre for the fight against terrorism, organised crime, drugs trafficking, and other dangerous crime set up by Agreement of 4 July 2003, and channels of inter-departmental cooperation between police and security bodies, as well as the Interpol, can efficiently ensure the early reception of such information.

Filing an extradition request to another country without providing any specific details concerning the whereabouts of the wanted person often yields no practical results.

The provisions of Art. 28 of the European Convention on Extradition (1957), shall supersede the provisions of any bilateral treaties, conventions or agreements governing extradition between any two Contracting Parties. The Contracting Parties may arrange between themselves bilateral or multilateral agreements only in order to supplement the provisions of the 1957 Convention or to facilitate the application of the principles contained therein. The said 1957 Convention, its Additional Protocol (1975) and Second Additional Protocol (1978) were ratified and entered into force for all GUAM countries; they comprise the main international legal framework on extradition between those states.

The provisions of the Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters (1993) may be applied in relations between GUAM countries for extradition if they supplement the 1957 Convention on Extradition or facilitate the application of its principles. In practice, GUAM countries apply some provisions of the Minsk Convention for extradition, specifically, in regards to the language of communication (Art. 17), the interaction procedure (Art. 80 in edition of the 1997 Protocol), the institution of temporary extradition (Art. 64) among others.

Art. 27 (para 1) of the Convention on Criminal Responsibility for Corruption (1999) sponsored by the Council of Europe stipulates that the criminal offences established in accordance with this Convention shall be deemed to be included as extraditable offences in any extradition treaty existing between or among the Parties. A situation is not ruled out when an offence indicated in the extradition request is included in the list of the 1999 Convention, but does not meet the qualification requirements envisaged by the European Convention on Extradition of 1957 in terms of extraditability of that deed, which may cause collisions requiring practical resolution. In such cases it is recommended that the deeds covered by the 1999 Convention should, nevertheless, meet the qualification requirements of Art. 2 (para 1) of the 1957 Convention.

The 2003 United Nations Convention against Corruption contains a number of interesting provisions on extradition. Art. 44 (paragraph 2) outlines the possibility of granting extradition for corruption charges established in accordance with this Convention without observing the principle of “dual criminalisation” (provided that the offence for which extradition is sought is punishable under the domestic law of both the requesting State Party and the requested State Party) if the domestic law of such State Party so permits. Each of the offences to which the 2003 UN Convention applies shall be deemed to be included as an extraditable offence in any extradition treaty existing between States Parties by virtue of Art. 44 (paragraph 4). According to the same provision, “a State Party whose law so permits, in case it uses this Convention as the basis for extradition, shall not consider any of the offences established in accordance with this Convention to be a political offence.” According to Art. 44 (paragraph 22) of the Convention, “States Parties may not refuse a request for mutual legal assistance on the sole ground that the offence is also considered to involve fiscal matters.” The Convention also stipulates that before refusing a request, the requested State Party shall consult with the requesting State Party and may request additional information when it appears necessary for the execution of the request in accordance with its domestic law or when it can facilitate such execution (Art. 44 (paragraph 16) of the Convention).

Therefore, it is expedient under certain circumstances for States Parties making requests for extradition to refer as the legal basis for extradition not only to the European Convention on

Extradition of 1957 and its Protocols, but also to the relevant provisions of the aforementioned multilateral framework. For example, the Minsk Convention will enable, when necessary, the use of Russian in extradition requests, a reference to the 2003 UN Convention against Corruption – to avoid the possible qualification of a corruption charge as a political offence and achieve consultations in relation to a concrete extradition request to ensure a more detailed presentation of the case and provision of additional information.

The European Convention on Extradition outlines the possibility of extradition for imposing criminal responsibility or enforcement of a sentence for so-called extraditable offences. This means that extradition shall be granted in respect of offences punishable under the laws of the requesting Party and of the requested Party by detention for a maximum period of at least one year or by a more severe penalty (Art. 2 of the Convention). If the request for extradition includes several separate offences (each of which is punishable under the laws of the requesting Party), some of which do not fulfil the criteria in regard to the amount of punishment rendered, the requested Party shall also have the right to grant extradition for the latter offences. This right shall also apply to offences which are subject only to monetary sanctions (Art. 2 (para 2) of the Convention in edition of the Second Additional Protocol (1978).

Articles 3–11 of this convention describe the circumstances that could prevent extradition: During the assessment of the possible barriers to extradition in the process of preparation and submission of a request to the competent authorities of a certain member country of GUAM, it is necessary to take into account the reservations and declarations made by it during the ratification of relevant treaties on extradition, specifically, the 1957 European Convention and its Protocols.

The 1957 Convention provides for two types of requests: for provisional arrest and extradition.

In urgent cases, the competent authorities of the requesting Party may request a provisional arrest of the person sought. Said request shall inform of the existence of a conviction, a sentence or detention order that is immediately enforceable, an arrest warrant or other order to the same effect. It shall also state for what offence extradition will be requested and when and where the offence was committed and describe the person sought as best as possible. The request shall be sent to the competent authorities of the requested Party either through diplomatic channels, directly through post or telegraph, through the International Criminal Police Organisation (Interpol) or by any other means providing evidence in writing or accepted by the requested Party. The requesting authority shall be informed immediately of the request's result. Provisional arrest may be terminated if, within a period of 18 days after arrest, the requested Party has not received the request for extradition and the supporting documents. It shall not, in any event, exceed 40 days from the date of arrest.

The language of the extradition request and obligatory list of documents attached to it shall be regulated by a relevant international treaty. The 1957 Convention provides for obligatory written format of the request and sets a number of requirements for supporting documentation (Art. 12 (paragraph 2) of the Convention).

Art. 12 (paragraph 2) of the 1957 Convention as formulated by its Second Additional Protocol (1978) stipulates that extradition requests shall be addressed by the Ministry of Justice of the requesting Party to the Ministry of Justice of the requested Party. Other means

of communication may be arranged by direct agreement between two or more Parties. The GUAM countries have established special communicative procedure in Art. 80 of the Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters (1993) in addition to its 1997 Protocol in accordance with which communications related to matters of extradition and transfer of criminal prosecution, shall be exercised by the Prosecutor Generals (Prosecutors) of the States Parties. According to Georgia's declaration during the ratification of the Second Additional Protocol to the Convention on Extradition, the Georgian Prosecutor General's Office⁷ shall be the competent authority of that country's handling of extradition issues.

In accordance with the declaration made by Ukraine during the ratification of the Second Additional Protocol to the Convention on Extradition (1978), extradition requests should be addressed to the Ministry of Justice (court requests) and the Prosecutor General's Office (requests from pre-court investigation bodies).

As for the language of communication, Art. 23 of the European Convention on Extradition (1957) stipulates that documents shall be produced in the language of the requesting or requested Party. The requested Party may require a translation into one of the official languages of the Council of Europe (English or French) of its choice. In practice, the competent GUAM authorities produce extradition requests and supporting documentation in Russian, or attach a Russian translation in reference to Art. 17 of the 1993 Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters. This provision enables the judicial systems of States Parties to communicate with each other during the implementation of the 1993 Convention in their national languages or in Russian and facilitates practical application of provisions of the European Convention on Extradition of 1957 in regards to the language of communication.

Situations where offences may differ due to differences in criminal legislations of states, including those involving corruption and money laundering, require special attention. Specifically, when the qualifying elements of those offences do not coincide. Neither the European Convention on Extradition nor the 1993 Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters outlines such grounds for refusing extradition to the requesting Party. Art. 66 (paragraph 4) of the Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters (2002 - the Chisinau Convention, entered into force only for Azerbaijan among all GUAM members) directly sets that differences in descriptions and terminology of individual offences is not important in deciding whether the deed for the extradition request is subject to criminal liability under internal legislation of the requested and requesting Parties.

It should be mentioned that many treaties on extradition envision the handing over of material evidence and property found in the possession of the person detained for extradition. In particular, Art. 20 of the European Convention on Extradition (1957) permits the requested Party, in so far as its law permits and at the request of the requesting Party (even if extradition cannot be carried out due to the death or escape of the person claimed), to seize and hand over property:

- which may be required as evidence, or

⁷ Since recently, The Prosecutor General's Office of Georgia has become an inseparable part of the Justice Ministry.

- which has been acquired as a result of the offence and which, at the time of the arrest, is found in the possession of the person claimed or is discovered subsequently.

Art. 78 of the Minsk Convention contains similar provisions.

In this connection, it is recommended to raise the question of monitoring and transfer of property in extradition requests for offences involving corruption and money laundering on the basis of the aforementioned provisions, which may be an additional effective means of search and seizure of criminal assets in such cases.

Investigators and prosecutors engaged in investigation and criminal prosecution of transnational corruption and money laundering cases are not always sufficiently informed of the aforementioned legal conditions. It is recommended to conduct specialised trainings for them on these opportunities.

In addition, it is recommended to expedite the signing and ratifying of the Third Additional Protocol to the Convention on Extradition (2010) outlines the possibility of simplified (accelerated) extradition of a person in the event of voluntary consent to extradition and abiding by other conditions. This could also require the introduction of further amendments to the legislation.

2.2.2. Transfer of Criminal Prosecution

Transfers criminal cases proceedings between GUAM countries are regulated by provisions of the Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters (1993), valid for all countries covered by the overview. The European Convention on the Transfer of Proceedings in Criminal Matters (1972) is currently valid only for Moldova and Ukraine out of all the GUAM countries.

Relevant provisions may be contained in bilateral treaties on legal assistance, e.g. in Art. 46–47 of the Treaty between Georgia and Ukraine on Legal Assistance and Legal Relations in Civil and Criminal Matters of 09.01.1995.

According to the contents of Art. 72 of the 1993 Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters, the Parties shall, on instruction of another Party, exercise criminal prosecution against their own citizens suspected of committing an offence on the territory of the requesting Party in compliance with its domestic legislation. The same process covers civil law claims for compensation of damages inflicted. Requirements of the request to conduct criminal prosecution are set out in Art. 73 of the Convention. In particular, the request shall be supported by the criminal prosecution materials made available to the requesting Party, and by evidence. In the event of a transfer of an already proceeding criminal case, its investigation shall be continued by the requested Party in accordance with its domestic legislation. Each of the documents in the case shall be certified by official seal of a competent authority of the requesting Party. According to Art. 17 of the Convention, instructions and supporting documents shall be translated into the national language of the requested Party or into Russian. According to Art. 80 of the Convention (as formulated by its 1997 Protocol), communications in matters of criminal prosecution shall be carried out by Prosecutors General (Prosecutors) of the Parties. The

Party accepting the case shall notify the requesting Party of the verdict. A copy of the verdict shall be sent to the latter on its request.

The 1993 Minsk Convention narrowly interprets the legal basis for the transfer of criminal prosecution – the point at issue is the citizen's nationality. This may cause practical problems. For example, the legislation of Ukraine prohibits the extradition not only of its own citizens but also of stateless persons permanently residing in its territory. Georgia reserves the right to refuse extradition if it may have an unfavourable effect on the state of such individuals. Under such circumstances the extradited are requested for offences involving corruption or money laundering may avoid any repercussions whatsoever. Moreover, conducting such investigations and litigating corruption cases in a country where the suspect and/or his accomplices are staying, main witnesses and material evidence of an offence may be advantageous to the Parties themselves.

It is recommended in this sense to consider the practicality of joining the European Convention on the Transfer of Proceedings in Criminal Matters (1972). As of 1 April 2012, it is in effect only for Moldova and Ukraine out of all the countries covered by the overview. It outlines a wider list of grounds for the transfer of criminal prosecution and enables States Parties to apply this institution of legal cooperation in criminal matters more efficiently. In addition, the necessary provisions may be included in bilateral treaties on legal assistance between GUAM countries. Finally, there is a possibility of accepting criminal prosecution in cases not covered by the Minsk Convention on the basis of the principle of goodwill and reciprocity unless this is directly prohibited by domestic laws of the GUAM countries concerned. However, in the latter case it is necessary to rely on support of the judicial authority and build up legal precedent in this sphere.

Provisions of Art. 47 of the United Nations Convention against Corruption (2003) and the similar Art. 21 of the United Nations Convention against Transnational Organised Crime of 2000 to which all GUAM countries are signatories and which may be referred to in corruption and money laundering cases deserve a special mention. These provisions provide States Parties with the right to consider transfer prosecution proceedings for an offence established in accordance with these Conventions in cases where such a transfer is *considered to be in the interests of the proper administration of justice*, in particular, in cases where several jurisdictions are involved, with the intent of uniting the prosecution. These provisions can also be used to justify requests for the transfer of criminal prosecution in categories of criminal cases involving corruption and money laundering for the more efficient application of the available international framework in countering these offences.

2.2.3. Execution of Proceedings

The importance of the institution of legal assistance in criminal cases involving transnational corruption, international bank transfers of criminal profits and their legalisation abroad for law enforcement authorities of different countries is obvious. In fact, ensuring prompt, full and efficient investigations of many offences of these categories would be impossible without the assistance of foreign colleagues. Under such circumstances, obtaining evidence within the legal framework enables the procedures of relevant requests abroad necessary for the investigation to acquire importance.

At the same time, legal assistance in criminal cases can be considered efficient if it meets *timeliness, completeness* and *quality* as criteria of its provision.

The criteria of timeliness of legal assistance in criminal matters corresponds to the principle of administration of justice within reasonable timelines. The latter, is obligatory for the countries of the overview in accordance with the European Convention on Human Rights and the practice of the European Court of Human Rights. The simplicity of communications during the submission of requests and transfer of materials of a fulfilled request also facilitates the attainment of this criteria.

The criteria of completeness and quality of legal assistance in criminal matters means the execution of *all* requested proceedings, as the evidence obtained is particularly valuable with its comprehensive assessment and compliance of executing proceedings with the legislation in avoidance of situations where evidence may be deemed unacceptable due to procedural violations upon receipt.

The legal basis for filing a request for executing some or other proceedings and gathering the necessary evidence abroad includes multilateral/bilateral treaties on legal assistance valid for both States.

The most important grounds for receiving criminal justice assistance for overview countries are the following ratified multilateral international conventions entered into legal force in those countries: the European Convention on Mutual Assistance in Criminal Matters (1959) and its Additional Protocol (1978), the Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters (1993), and the Convention on Laundering, Search, Seizure and Confiscation of Proceeds of Crime (1990). It should also be taken into consideration that the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of Proceeds of Crime and on the Financing of Terrorism (2005) has entered into force as of 1 April 2012 only for Moldova and Ukraine out of all the GUAM countries. The provisions of the 2003 United Nations Convention against Corruption, the United Nations Convention against Transnational Organised Crime of 2000 and the Convention on Criminal Responsibility for Corruption (1999) concluded under the sponsorship of the Council of Europe also have some significance for countries of the overview in matters of offences involving corruption and money laundering.

In keeping with Art. 26 (para 1) of the European Convention on Mutual Assistance in Criminal Matters (1959), the Convention shall, in respect of those countries to which it applies, supersede the provisions of any treaties, conventions or bilateral agreements governing mutual assistance in criminal matters between any two contracting Parties. At the same time, in keeping with Art. 26 (paragraph 2):

“...this Convention shall not affect obligations incurred under the terms of any bilateral or multilateral international convention which contains or may contain clauses governing specific aspects of mutual assistance in a given sphere.”

In addition, Art. 15 (paragraph 7) and Art. 16 (paragraph 3) of the Convention provide for the direct transmission of requests for assistance and translation of requests and annexed documents between the Contracting Parties and for other arrangements of settling these issues in the bilateral or multilateral agreements or arrangements in force between those Parties.

Art. 82 of the Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters (1993) stipulates that the Convention does not affect the provisions of other international treaties to which Parties to the Convention are signatories. Therefore Art. 5 (in edition of the 1997 Protocol) and Art. 17 (communication procedures and language) have taken precedence in relations between GUAM countries.

It is recommended during the preparation of a request for legal assistance in corruption and money laundering cases to refer, in the request, both to an international framework in general and to a specific treaty if it envisions more effective interaction (e.g. more acceptable communication procedures, communication language, a fuller list of proceedings included in the scope of legal assistance, the duty of the competent authorities of the requested Party to receive the necessary court decisions independently, the possibility of applying additional special measures – blocking assets or property seizure, etc.).

The question whether reference should be made to an additional legal framework and to which one in particular the official (initiator of the request) conducting the investigation depends on the circumstances of a particular case. However, ignoring such possibilities during the preparation of requests for legal assistance in a criminal matter often results in a situation where the investigator does not receive the anticipated result from legal assistance, which, in turn, could have a negative impact on the investigation outcomes.

2.2.4. Freezing, Arrest, Confiscation and Distribution of Assets

The Convention on Laundering, Search, Seizure and Confiscation of Proceeds of Crime (1990) is the most comprehensive and efficient legal basis for adopting measures for freezing criminal assets. Its new edition (2005) is in effect, as of 1 April 2012, only for Moldova and Ukraine out of all the overview countries.

The 1990 Convention outlines the obligation of States Parties to render comprehensive assistance to each other in asset search and detection, income and other property subject to confiscation. Assistance includes the provision and support of the proof of existence, location, movements, nature, legal status or value of such property.

In accordance with Art. 11 of this Convention, a Party, on request of another Party which has initiated criminal confiscation proceedings shall take preliminary measures, such as freezing assets or arrest that could subsequently become a subject of an authorization request for confiscation. Similar measures shall be taken upon receipt of a confiscation request if it contains a relevant petition.

Preliminary measures in the form of freezing or arrest shall be applied in accordance with domestic law of the requested Party in abidance with the procedures disclosed in the request unless they contradict its domestic legislation. Before terminating the preliminary measure that could be applied under the request, the requested Party shall, wherever possible, give the requesting Party the possibility of presenting its arguments in favour of its prolongation.

In accordance with Art. 13 of this Convention, the Party that received a request for confiscation of assets or incomes situated on its territory from another Party shall either ensure the enforcement of the confiscation decision passed by the court of the requesting Party or refer this request to its competent authorities for receiving a confiscation order and, if such a decision was passed, enforce it. To implement the latter, the Party shall be

competent, if necessary, to initiate its own confiscation proceedings via its own domestic legislation.

Box 4. Exercising Procedures Requiring Special Sanctions (of the Court or another Authority) in Azerbaijan⁸

In cases when the exercising of proceedings requires special sanctions of the court or another body according to the legislation of Azerbaijan, proceedings may be exercised on the basis of a court decision or a decision of another authority of the requesting Party attached to the request that must be supported by a court decision. At the same time, the prosecutor's office may appeal to court for obtaining a permit to exercise proceedings.

If the matter in question is the confiscation of an amount in cash equivalent to profits, the Party on whose territory the person's property is located shall, in the event of failure to pay this amount, enforce a claim for any personal property that could be used for such purposes.

The confiscation procedures are regulated by the legislation of the requested Party. The latter should take into consideration the facts as they are presented in the sentence/verdict of the requesting Party or to the extent to which such a sentence or verdict is indirectly based on them.

⁸ The information was provided to the Network Secretariat by Azerbaijan within the framework of response to the questionnaire "Questions on the National Legislation and Practices of Georgia, Azerbaijan and Moldova" of 30.03.2012.

Box 5. Fulfilment by Georgia of GUAM Countries' Requests for Freezing, Arrest and Confiscation of Proceeds of Crime⁹

Georgia has relevant international treaties with GUAM member countries which may be used as the basis for exercising such procedures. In addition, this matter must be considered in two aspects: enforcement of the sentence regarding property confiscation and applying a temporary measure – imposing arrest in cases in respect of which a final decision has not yet been taken.

The general procedure for enforcement of a sentence passed by the court of a foreign state is prescribed by Art. 50 of the Georgian Law on International Cooperation in the Sphere of Criminal Law. As far as property confiscation is concerned, the enforcement of this type of sentences is covered by Art. 52 of this Law.

The imposition of arrest on property is covered by Art. 151 of the Georgian Code of Criminal Procedure. According to this article, arrest may be imposed on property of an accused person, a person financially accountable for his actions and/or a related person. Arrest shall be imposed by the court on the basis of a petition of a State Party.

Proceedings involving personal restraint and restriction of a person's constitutional rights and freedoms shall be exercised if they are sanctioned by the court or another competent authority of a foreign state. Since the imposition of arrest and confiscation of property are in fact actions restricting constitutional human rights, as they restrict the right of property guaranteed by the Constitution, the requesting State shall present a document confirming that the exercise of such actions is sanctioned by competent authorities of that State. If the initiator is precisely the authority that may request this information, it shall be stipulated that the sanction of another competent authority is not envisaged by legislation of the requesting State. If there is no such instruction, the Georgian Ministry of Justice shall be authorised to request additional information. Following that the authority executing the request shall apply to a competent court of Georgia and submit materials in full amount (including materials provided by a foreign state), and the court shall issue a determination on the basis of which concrete proceedings shall be directly exercised.

According to Art. 15 of the Convention, the requested Party shall dispose of the confiscated property in compliance with their legislation unless stakeholder Parties agree otherwise.

The application of measures for freezing, arrest, confiscation and direct return of assets are also covered in detail by Chapter V of the United Nations Convention against Corruption (2003), applicable in all countries in the overview. The application of these provisions during the preparation of requests for such measures is recommended if they outline more efficient interaction between competent authorities in each countries. E.g. Art. 57 of the United Nations Convention against Corruption (2003) outlines a more effective mechanism of obtaining the full amount of confiscated assets for the requesting Parties than Art. 15 of the 1990 Convention.

During the preparation of requests for the freezing or arrest of assets, the initiator shall justify in detail the need to apply such measures, in connection with relevant assets of persons who may be involved in corruption or money laundering. Disregarding this recommendation often results in a loss of time owing the to refusal or delay in providing legal assistance, giving individuals the opportunity to transfer cash to the banks in other

⁹ The information was provided to the Network Secretariat by Georgia within the framework of response to the questionnaire "Questions on the National Legislation and Practices of Georgia, Azerbaijan and Moldova" of 30.03.2012.

countries, convert assets into cash, sell property or take other countermeasures to render preliminary measures ineffective.

The request shall make reference to both provisions of effective international treaties in the sphere of legal assistance and to provisions of specialised international framework on search, arrest and confiscation of assets outlines a wider spectrum of measures or less strict conditions for their application that will be especially efficient in conducting criminal investigations.

In addition, before filing a request for legal assistance, it is recommended to obtain complete information on all immovable property, financial and bank transactions, accounts, other assets of all individuals involved in using international operational cooperation measures, which will make preparation and execution of the request for preliminary measures more efficient.

International cooperation in confiscation and distribution of assets is generally exercised by judicial bodies after passing relevant verdicts in criminal cases and through Justice Ministries of relevant States, and therefore these issues are not covered by the overview in great detail.

2.3. Other Important Modern Institutions of International Cooperation

2.3.1. “Spontaneous Information” Institution

One of the effective mechanisms of international cooperation used to detect offences involving corruption and money laundering is the institution of so-called “spontaneous information,” or voluntarily provided information. This institution allows competent authorities of states to send to their associates abroad, on their own initiative, information or materials which could provide evidence of illegal actions within the jurisdiction of that country.

In practice, circumstances of possible corruption charges or money laundering committed outside the territory of a given state are often discovered in the process of different criminal investigations. Timely referral of information on such facts to competent institutions of other countries may result in the detection of an offence committed there, individuals involved, criminal assets and in the overall success of the criminal investigation. The success of gathering evidence in a case will depend on the timeliness and consistency of the law enforcement authorities’ actions, which will open the opportunity for imposing criminal liability on all individuals involved in acts of corruption or money laundering..

The legal framework for the provision of “spontaneous information” in relations between the overview countries includes Art. 10 of the 1990 Convention on Laundering, Search, Seizure and Confiscation of Proceeds of Crime, Art. 28 of the 1999 Convention on Criminal Responsibility for Corruption, Art. 46 (paragraph 4) and Art. 56 of the 2003 United Nations Convention against Corruption. It should be taken into consideration that these provisions stipulate relevant rights of the Parties, but do not impose relevant liabilities on them.

2.3.2. Hearing Evidence by Telephone or Video Conferencing

The next method of legal assistance available to facilitate cooperation between competent Party authorities is telephone or video conferencing evidence. The possibility of using this form of cooperation is outlined by the Second Additional Protocol (2001) to the 1959 European Convention on Mutual Assistance in Criminal Matters which presently is not applicable to relationships between GUAM countries.

Box 6. Criminal Procedure Code of Ukraine – Article 232. Conducting interrogation or identification in the mode of video conference during pretrial investigation

1. Interrogation of persons, identification of persons or objects during pre-trial investigation may be conducted in the mode of video conference involving transmission from other premises (distant pre-trial investigation), where–
 - 1) certain persons are unable to directly participate in pre-trial proceedings because of their state of health or for other valid reasons;
 - 2) it is necessary to ensure protection of persons;
 - 3) there are other grounds deemed sufficient by the investigator, public prosecutor, investigating judge.
2. A decision to conduct distant pre-trial investigation shall be made by the investigator, public prosecutor or, where an interrogation is conducted in the mode of video conference under Article 225 of this Code, by the investigating judge on his own initiative or on a motion of a party to criminal proceedings or other participants of criminal proceedings. If a party to criminal proceedings or victim object to conducting distant pre-trial investigation, the investigator, public prosecutor, investigating judge, may decide to conduct one by his reasoned resolution (ruling), providing substantiation for such decision. A decision to conduct distant pre-trial investigation, if the suspect is to be in such other premises, may not be taken where the suspect objects to such.
3. Technical equipment and technologies used in distant pre-trial investigation shall ensure adequate quality of image and sound and informational security. Participants in investigative (detective) action concerned shall be ensured the possibility to distantly ask questions and obtain answers from the person participating in the investigative (detective) action and exercise other procedural rights granted to them and perform their procedural duties as provided for by this Code.
4. A person shall be interrogated in distant pre-trial proceedings in compliance with rules set out in Articles 225-227 of the present Code. Persons or objects shall be identified in distant pre-trial proceedings in compliance with rules set out in Articles 228 and 229 of the present Code.
5. If a person who is to be taking part in the pre-trial investigation distantly– pursuant to a decision of the investigator or public prosecutor– stays on the premises located in the territory under the jurisdiction of the body of pre-trial investigation or in the territory of the city where the it is located, an official of such body of pre-trial investigation shall be under the obligation to hand over a leaflet on his procedural rights to such the person, to check on his ID, and to stay near until the end of the investigative (detective) action.
6. If a person who is to be taking part in the pre-trial investigation distantly– pursuant to a decision of the investigator or public prosecutor stays on premises located outside the territory under the jurisdiction of the body of pre-trial investigation or outside the territory of the city where it is located, the investigator, public prosecutor assigns by his resolution and within his competence body of security, body supervising compliance with the tax legislation, unit of the State Bureau of Investigations of Ukraine, in whose territorial jurisdiction such person stays, to carry out the actions specified in the fifth paragraph of this Article. A copy of this resolution may be sent by e-mail, fax or via other means of communication. The official of the requested body, in agreement with the investigator, public prosecutor, who gave the

assignment, shall be required to organize the execution of such assignment as soon as possible.

7. Pre-trial investigation conducted under the decision of the investigating judge shall be carried out in accordance with provisions of this Article and the fourth and fifth paragraphs of Article 336 of this Code.

8. If a person who is to be taking part in the pre-trial investigation distantly is held in custody in a remand prison or penal institution, actions provided for by the fifth paragraph of this Article shall be conducted by an official of such institution.

9. The course and results of investigative (detective) action as conducted in the videoconference mode are fixed with the use of video (audio) technical devices.

10. A person under protection may be interrogated in the videoconference mode with such changes in his outward appearance and voice which make impossible his identification.

11. In order to ensure promptness of criminal proceedings, the investigator, public prosecutor, may conduct the interrogation in the videoconference or telephone conference mode of a person who for reasons of staying in a location remote from the place where the pre-trial investigation is conducted, illness, being busy or for other reasons, is not able to appear on time and without excessive difficulty before the investigator, public prosecutor.

Based on results of interrogation conducted in the videoconference or telephone conference mode, investigator, public prosecutor shall draw up a report in which indicates the date and time of interrogation, data on the interrogated person, identification features of the communication device used by the interrogated person, as well as circumstances which he communicated. If necessary, the interrogation shall be fixed by audio or video recording technical means.

Investigator, public prosecutor shall be required to take measures to establish the identity of the person who has been interrogated in the videoconference or telephone conference mode, and to indicate in the report in what way the interrogated person's identification was confirmed.

Whenever it is necessary to obtain testimonies from interrogated persons, investigator, and public prosecutor shall conduct their interrogation.

As for the international framework in force in the overview countries, the possibility of hearing a witness and an expert with the use of video conferencing is outlined by Art. 18 (paragraph 18) of the United Nations Convention against Transnational Organised Crime (2000) and Art 46 (paragraph 18) of the United Nations Convention against Corruption (2003). The latter provision stipulates that wherever possible and consistent with domestic law, when an individual is in the territory of a State Party and is called upon as a witness or expert by the judicial authorities of another State Party, the first State Party may, at the request of the other, permit the hearing to take place by video conference..

It should also be noted that the provisions of the UN Conventions do not categorise suspected and accused persons as participants in a case who can be questioned by video conferencing, whereas the aforementioned Second Additional Protocol (2001) provides this possibility with their consent. Moreover, Art. 10 of the Protocol allows questioning of a witness or expert by telephone conference. Application of this method is possible if it is permitted by the national legislation of the requesting Party and the witness or expert give their consent to conducting the questioning this way.

2.3.3. Joint Inter-State Investigative Teams

The creation and activity of inter-state investigative teams for investigation of transnational corruption and money laundering charges deserves special attention.

The investigation of complex cases by inter-state groups has a number of important advantages. Groups can successfully gather evidence of criminal activity on the territory of states whose representatives are group members, without the use of traditional legal assistance methods.

In accordance with Art. 49 of the United Nations Convention against Corruption (2003), its States Parties shall consider signing bilateral or multilateral agreements or arrangements that are the subject of investigations, prosecutions or judicial proceedings in one or more States. The competent authorities may establish joint investigative bodies. In the absence of such agreements or arrangements, joint investigations may be undertaken by agreement on a case-by-case basis.

Box 7. Criminal Procedure Code of the Republic of Moldova – Art. 540-2. Joint Investigative Teams

(1) By mutual agreement, the competent authorities of two or more Parties may set up a joint investigation team for a specific purpose and a limited period, which may be extended by mutual consent, to carry out criminal investigations in one or more of the Parties setting up the team. The composition of the team shall be set out in the agreement.

(2) A joint investigation team may, in particular, be set up where:

- 1) a Party's investigations into criminal offences require difficult and demanding investigations having links with other Parties;
- 2) a number of Parties are conducting investigations into criminal offences in which the circumstances of the case necessitate co-ordinated, concerted action in the Parties involved.

(3) A request for the setting up of a joint investigation team may be made by any of the Parties concerned. The team shall be set up in one of the Parties in which the investigations are expected to be carried out.

(4) The request for setting up a joint investigative team shall specify the authority submitting the request, the subject and motive of the request, information on the prosecuted person and his nationality, name, and address of the addressee and, when necessary, proposals for the composition of the team.

(5) The participants in a joint investigative group appointed by the authorities of the Republic of Moldova shall be referred to as "members", while members from other Parties in which the team operates are referred to as "seconded members."

(6) A joint investigation team shall operate in the territory of the Republic of Moldova under the following general conditions:

- 1) the leader of the team shall be a representative of the competent authority participating in criminal investigations from the Party in which the team operates. The leader of the team shall act within the limits of his or her competence under national law;
- 2) the team shall carry out its operations in accordance with the law of the Republic of Moldova. The members and seconded members of the team shall carry out their tasks under the leadership of the person referred to in para 1), taking into account the conditions set by their own authorities in the agreement on setting up the team.

(7) Seconded members of the joint investigation team shall be entitled to be present when investigative measures are taken in the Party of operation. However, the leader of the team may, for particular reasons, in accordance with the law of the Party where the team operates, decide otherwise.

(8) Where the joint investigation team needs investigative measures to be taken in the territory of the requesting

Party, seconded members of the team may request their own competent authorities to take those measures.

(9) A seconded member of the joint investigation team may, in accordance with his or her national law and within the limits of his or her competence, provide the team with information available in the Party which has seconded him or her for the purpose of the criminal investigations conducted by the team.

(10) Information lawfully obtained by a member or seconded member while part of a joint investigation team which is not otherwise available to the competent authorities of the Parties concerned may be used for the following purposes:

- 1) for the purposes for which the team has been set up;
- 2) subject to the prior consent of the Party where the information became available, for detecting, investigating and prosecuting other criminal offences;
- 3) for preventing an immediate and serious threat to public security, and without prejudice to para 2);
- 4) for other purposes to the extent that this is agreed between Parties setting up the team.

(11) If a joint investigative group operates in the territory of the Republic of Moldova, seconded members of the team shall be equalised to members appointed by the Republic of Moldova as regards the investigation of offences committed against them or by them.

Unlike the general wording used in the United Nations Convention against Corruption (2003), Art. 20 of the aforementioned Second Additional Protocol (2001) regulates matters of creation and operation of joint investigative teams in much greater detail: it outlines conditions under which a team may be set up, requirements for setting up the team, team participants roles (leader, team members, etcetera), their investigative powers, the procedure of gathering information, etc.. This once again proves the importance of an international treaty as a legal framework to ensure more effective cooperation between states in the sphere of criminal law.

However, in addition to the adoption of the Second Additional Protocol (2001) to the European Convention on Mutual Assistance in Criminal Matters (1959) in countries of the overview, to ensure maximum use of the opportunities offered by these new institutions in the sphere of legal assistance, detailed guidelines for their application by GUAM national legislatures will also be necessary.

2.4. Central Bodies and Interaction Procedure

In keeping with the provisions of Art. 15 of the European Convention on Mutual Assistance in Criminal Matters (1959), most requests for legal assistance and their responses shall be addressed by the Ministry of Justice of the requesting Party to the Ministry of Justice of the requested Party (except requests for providing excerpts from judicial materials and information, as well as requests for conducting proceedings not involving the receipt of testimony, transfer of material evidence, materials, and documents at the stage of investigation and before presenting charges). According to Art. 15 (paragraph 2) of the Convention, *in case of urgency*, letters requesting information may be addressed **directly** by the judicial authorities of the requesting Party to the judicial authorities of the requested Party. However, they shall be returned together with the relevant documents through the Ministries of Justice of the Parties. According to Art. 15 (paragraph 5), in cases where direct transmission is permitted under this Convention, it may take place through the International Criminal Police Organisation (Interpol).

According to the declaration of the Republic of Azerbaijan of 4 July 2003, made during the ratification of the Convention, the legal authorities for its enforcement are the Ministry of Justice, the Prosecutor General's Office and courts of the Republic of Azerbaijan (except the Constitutional Court). According to a similar declaration made by Georgia on 13 October 1999, Georgia regards the "judicial authorities" for purposes of the Convention, the Constitutional Court, general jurisdiction courts, and the Prosecutor General's Office. The declaration made by Moldova on 04 February 1998, during the ratification of the Convention stipulates that requests for legal assistance shall be addressed to the Ministry of Justice or the Prosecutor General's Office. The "judicial authorities" of Moldova, in accordance with the Convention, includes courts of the first instance, tribunals, the Court of Appeals, the Supreme Court of Justice, the Ministry of Justice, the Prosecutor General's Office and prosecutor's office of the Republic of Moldova. Ukraine stipulated in its declaration of 31 January 2000, that the bodies authorised to enforce the Convention are the Ministry of Justice (regarding court instructions) and the Prosecutor General's Office of Ukraine (regarding instructions of pre-trial investigation bodies). According to the declaration of 11 March 1998, the "judicial authorities" for purposes of the Convention are general jurisdiction courts, prosecutors at all levels, and pre-trial investigation authorities.

Box 8. Exercising Direct Communications by Georgia (not through the Central Authorities) with Law Enforcement Authorities of Other GUAM Countries¹⁰

A request for exercising any proceedings in a criminal case of any category shall be granted with the help of the central competent authorities. An exception is made by cases envisaged by para 2 of Art. 15 of the European Convention on Mutual Legal Assistance in Criminal Matters where direct communication with law enforcement agencies is permitted in cases of urgency. According to Georgia's declaration to the aforementioned European Convention, the Georgian legal authorities include the Main Prosecutor's Office of Georgia, as the successor of the Georgian Prosecutor General's Office, the Constitutional Court of Georgia, and Georgian courts of general jurisdiction. All GUAM countries are members of this Convention. In the cases of direct interaction between legal authorities, a copy of the request for legal assistance shall in any event be addressed to the Ministry of Justice of Georgia.

In addition, the issue of communication is covered by Art. 3 of the Georgian Law on International Cooperation in the Sphere of Criminal Law. In accordance with the said article, international cooperation in the sphere of criminal law shall be exercised with the use of communication channels established by an international treaty or an individual agreement. If such channels are not established direct channels may be used unless other requirements are set by the national law of the foreign state.

On the whole, direct communications are very seldom used in practice, although their existence is justified in case of their need to guarantee timely provision of high quality legal assistance on a case-by-case basis.

It should be mentioned that the above provisions of the 1959 Convention considerably restrict the possibility of direct communication between competent authorities of States Parties, which does not facilitate timely assistance in criminal cases, simplification of relations and effective responses to occurrences of international crime by law enforcement.

¹⁰ The information was provided to the Network Secretariat by Georgia within the framework of response to the questionnaire "Questions on the National Legislation and Practices of Georgia, Azerbaijan and Moldova" of 30.03.2012.

The need to improve the legal assistance framework in criminal proceedings within the European Community called for the expansion and signing of the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Cases by many Council of Europe member countries on 08 November 2011. Art. 15 of the Convention in edition of Art. 4 of its Second Additional Protocol provides for the possibility of *direct* communication between competent authorities of the Parties in *referring both requests and materials resulting from the outcomes of their enforcement*. In addition, this provision in edition of the Protocol does not make the procedure of communication dependent on the urgency of providing legal assistance, does not prohibit communications through the Parties' Central Bodies and reserves the Parties' right to make a declaration under which conditions and in what cases this procedure will be used.

However, as mentioned before, this international treaty entered into force as of 1 October 2012, only for Ukraine out of all overview countries and on 13 March 2012, its Protocol was signed on behalf of the Republic of Moldova. Direct communication procedures and other important legal improvements to which this international framework provides and give access points that lead to the practicality of its signing and ratification by other GUAM states.

Considering that the Second Additional Protocol (2001) to the 1959 Convention is not applicable to relations between the GUAM countries, a reference should be made within the context of communication procedures to Art. 15 (paragraph 7) of the 1959 Convention in accordance with which Art. 15 is not applicable to provisions of bilateral agreements or arrangements in force between its Parties outlining *direct communication of requests* for assistance between their relevant bodies.

An example of implementing such an opportunity is the Treaty on Legal Assistance and Legal Relations in Civil and Criminal Matters between the Republic of Moldova and Ukraine dd. 13.12.1993, Art. 3 (paragraph 3) of which allows the Central Authorities to agree to the effect that the Parties' justice institutions shall *directly* communicate with each other. In pursuance of this provision, an Agreement was signed on 16 July 2010, and entered into force between the Prosecutor General's Office of the Republic of Moldova and the Prosecutor General's Office of Ukraine, outlining a direct communication protocol between regional and their equivalent prosecution offices in Ukraine and the Prosecutor General's Office of Moldova, while implementing the requests for legal assistance in criminal matters and the transfer of criminal prosecution (except cases stipulated by this Agreement).

An example of a positive experience of direct interaction between competent law enforcement agencies of a GUAM country and a neighbour is the years long experience of practical implementation of provisions of the Agreement dated 10.11.1998, between the Prosecutor General's Office of Ukraine and the Ministry of Justice of the Republic of Poland in pursuance of Art. 3 of the Treaty on Legal Assistance and Legal Relations in Civil and Criminal Matters between Ukraine and the Republic of Poland of 24 May 1993. In keeping with this Agreement, starting 1998 the regional prosecution offices of Ukraine and Poland have been communicating directly during the implementation of requests for legal assistance in criminal matters without the participation of authorised representatives of the requesting Party and on transfers of criminal prosecution.

It should be noted that direct communication is also outlined by Art. 5 of the Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters (1993) in edition of its 1997 Protocol. This provision states the competent legal authorities of the Parties

implementing the Convention shall communicate with each other through the central, territorial and other bodies authorised to directly communicate with each other, of which it shall notify the depositary. However, this provision is ineffective in practice between States Parties to the Convention, including GUAM countries. One of the reasons is the fact that most States Parties to the Convention did not submit lists of authorised agencies empowered with the right of direct communication. Moreover, the very wording of this provision is interpreted by the Parties in a differently, which in the absence of an explicit way of direct communication, its application causes problems with its practical enforcement.

Special attention among specialised institutions shall be paid to provisions of Art. 30 of the Convention on Criminal Responsibility for Corruption (1999). Requests for legal assistance in criminal cases of corruption, *which do not involve coercive action*, may be directly transmitted by the competent authorities of the requesting Party to the competent authorities of the requested Party. Therefore testimonies, information and documents not involving coercive actions or interference with human rights may be received directly, with reference to Art. 30 (paragraph 5) of this Convention. The 1999 Convention, as well as the 1959 Convention, outlines the possibility of urgent direct communications, but it directly refers to public prosecutors to authorise such communications. The 1999 Convention does not provide for obligatory return of materials of a fulfilled request through the central authorities, but it stipulates that in an urgent event, directly communicating judicial authorities shall send request copies through the central authorities. The 1999 Convention is ratified by all countries of the overview and has entered into force. No declarations or reservations were made regarding Art. 30 of the Convention during its ratification. In keeping with Art. 29 of the Convention, the Prosecutor General's Office was determined to be the central body for the Convention enforcement in Azerbaijan, the Ministry of Justice and the Prosecutor General's Office in Georgia, the Ministries of Justice (court requests and sentence enforcement) and the Prosecutor General's Offices (at the pre-trial stage) in Moldova and Ukraine. A similar communication procedure is outlined by Art. 24 of the Convention on Laundering, Search, Seizure and Confiscation of Proceeds of Crime (1990), but it concerns measures for assets detection and monitoring.

In some cases the communication of requests through the central authorities may facilitate their more complete, quick and high quality completion . This may concern cases when the requesting Party is unaware of the exercising of other proceedings or there is a need to carry out actions on several administrative territorial units/legal districts outside the jurisdiction of one authority. These situations should be recognised an exception rather than a rule. It is difficult to overestimate the opportunities for competent authorities of the Parties to communicate directly without unnecessary delays in providing of legal assistance in criminal matters involving corruption and money laundering, where the efficiency of investigation often directly depends on the timeliness of receiving the necessary evidence, detection and arrest of criminal assets.

The ratification of the Second Additional Protocol (2001) to the European Convention on Mutual Assistance in Criminal Cases of 1959 and the conclusion of relevant bilateral agreements as a follow-up on its provisions seems to be the most appropriate framework for implementing such opportunities of direct cooperation of the competent authorities of the overview countries.

2.5. Language of Interaction

According to the contents of Art. 16 (paragraph 1) of the European Convention of 1959, except provisions of Art. 16 (paragraph 2) of the Convention, translations of requests and annexed documents shall not be required. However, according to paragraph 2 of the same article, each Contracting Party may stipulate that requests and annexed documents be accompanied by a translation into its own language or into either of the official languages of the Council of Europe (English or French) or into one of the latter specified languages. The other Contracting Parties may ask for reciprocity. According to Art. 16 (paragraph 3) of the Convention, this article is impartial to the provisions concerning the translation of requests or annexed documents contained in the agreements, arrangements in force or to be made between two or more Contracting Parties.

Within this context, Art. 17 of the Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters (1993) in edition of its 1997 Protocol is applied in relations between competent authorities of the overview countries. According to this provision, the judicial authorities of the Parties to this Convention shall communicate with each other during implementation in their national languages or in Russian. When documents are drafted in national languages of the Parties, they shall be supplemented with a certified Russian translation. In practice, requests for legal assistance shall be filed by competent authorities of the GUAM member states predominantly in Russian or shall be supported by translation from the official language of the Party into Russian with reference to Art. 17 of the 1993 Convention or provisions of bilateral inter-state treaties on legal assistance. Relevant investigative instructions shall be prepared with reference to the aforementioned legal provisions. However, considering that requests for legal assistance are being implemented mainly by competent authorities of separate territories and in the territories of GUAM states, the Russian language is gradually becoming less prevalent, to ensure the quickest and most satisfactory fulfilment of the request, it is recommended, if possible, to translate the request and supporting documents into the national language of the requested Party. *In selected cases, it is advisable for the investigation authority initiating the request to coordinate this matter beforehand with competent institutions of the requested Party (and in the absence of direct communications – through central authorities).*

2.6. Requirements to Contents of Requests

In accordance with conventions and treaties effecting the overview countries, a standard request for legal assistance shall contain the following:

- 1) the name of the foreign competent authority to which the request is addressed;
- 2) the name of the authority conducting the investigation and filing the request for assistance;
- 3) reference to provisions of international treaties to which the requesting and requested Parties are signatories. If such a treaty does not exist – make a request for legal assistance on the basis of reciprocity;
- 4) Other details concerning the criminal investigation in the process of which legal assistance is requested;

- 5) information on the circumstances of the committed offence, its qualification, text of a relevant criminal law provision, and information on the amount of damage inflicted by the offence;
- 6) detailed information on the individuals involved and their procedural status;
- 7) an clear list of requested proceedings and the necessary documents, objects and other evidence;
- 8) information on officials of a competent authority of the requesting Party if there is a request for proceedings to be exercised in their presence;
- 9) other materials, depending on the nature of the request, information and documents that will facilitate its implementation.

In international investigation requests, in cases of corruption and money laundering, it is recommended to clearly and completely present the information to connect the investigation of the case with the need to exercise certain proceedings in the territory of another state.

Attempts to obtain information upon the results of the completion of the request not connected with the investigation needs (e.g. when the request contains a solicitation to question the company director or seize its incorporation or bank documents, whereas the case description lacks any details concerning the involvement of this company or person in a criminal scheme) contradict international treaties, and therefore will go fully or partially unfulfilled. In addition, references contained in the request to the availability of intelligence information about a certain person who is suspected of criminal deeds without duly substantiation of this fact or attachment of relevant supporting documents will improve the request.

Moreover, requests for legal assistance in these cases are recommended to be indicated with the most explicit detail of individuals and legal entities sufficient for identification by competent authorities of the requested Party, complete details of bank accounts (name of the bank, number of the bank account, account holder's name), immovable property objects (city, address, owner), etc.

Filing requests for exercising proceedings in the territory of another state in such cases involving persons or with respect to objects about which only cursory information is available (e.g. only the first and/or last name, the name of a company or its location and sphere of activity, etc.) is quite inefficient in practice. In such cases, investigation authorities are recommended to gather all possible information on such persons and/or objects in the process of investigation inside the country and at the same time take measures to obtain such information on them using the mechanisms of international operational cooperation (bilateral, within the GUAM frameworks, as described above, or by Interpol channels). It is advantageous to file legal assistance requests only after such detailed information has been obtained or simultaneously with launching operational cooperation mechanisms (with undelayed forwarding of additional information immediately after its receipt using operational channels). Presumably, the described approach will enable preparation of more adequate requests for legal assistance and result in their more efficient implementation by the requested Party.

If the measures taken fail to produce additional information, it is recommended to draw up the request on the basis of Art. 8 (para 4) of the Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters (1993) outlining the obligation of a competent

authority of the requested Party to take the necessary measures for establishing the whereabouts of the person specified in the request.

Criminal corruption and money laundering cases often involve extensive, complex investigative actions requiring the receipt of financial, bank and corporate documents. Obtaining witnesses testimony and individuals involved in offences in response to requests for legal assistance may require familiarity with materials of the criminal case and the circumstances of events not mentioned in the request itself. In many cases, the presence of officials of the requesting Party during the implementation of the request for exercising proceedings has a positive impact on the quality and entirety of legal assistance provision.

Considering the circumstances of a concrete criminal case, it is recommended, when necessary, to refer in the request to Art. 4 of the European Convention on Mutual Assistance in Criminal Matters (1959), according to which officials and interested parties may be present if the requested Party consents.

The Second Additional Protocol to that Convention (2001), supplementing Art. 4 with paragraph 2 makes this provision more clear-cut. In accordance with paragraph 2, requests for the presence of such officials or interested parties *should not be refused* where presence is likely to render the execution of the request for assistance more responsive to the needs of the requesting Party and, therefore, likely to avoid the need for supplementary requests for assistance. As already mentioned, this Protocol is currently valid only in Ukraine out of all the GUAM countries.

International investigative requests should specify which legislation shall be applied for conducting the requested proceedings. If proceedings need to be exercised in compliance with the criminal procedure code of the requesting Party, the request shall be supported with abstracts from provisions of its legislation regulating their implementation procedures.

The requested Party shall exercise proceedings *on behalf* of the requesting Party. The aforementioned European Convention on Mutual Assistance in Criminal Matters (1959), not prohibiting the Parties to conduct proceedings not outlined by its domestic legislation, sets in its Art. 3 that “the requested Party shall execute in the manner provided for by its law.” However, there currently is a need for new approaches to legal cooperation. The requesting Party often needs to conduct requested, rather than equivalent proceedings. It files a request for specific proceedings with application of a certain procedure at first because it is required by law for purposes of gathering evidence. At the same time, the Parties shall not assume unconditional obligations to exercise proceedings precisely in the manner determined by the requesting Party. Art. 8 of the 2001 Second Additional Protocol to the Convention of 1959 stipulates that “notwithstanding the provisions of Article 3 of the Convention, where requests specify formalities or procedures which are necessary under the law of the requesting Party, even if unfamiliar to the requested Party, the latter shall comply with such requests to the extent that the action sought is not contrary to fundamental principles of its law.” Such approach is more in compliance with the needs of the competent authorities of States Parties to the Convention, which also points to the practicality of the earliest possible accession of the GUAM countries to this international framework.

Box 9. Possibility of Implementing a Request in Georgia in the Manner Requested by the Requesting Party¹¹

In keeping with Art. 5 of the Georgian Law on International Cooperation in the Sphere of Criminal Law, a request for legal assistance filed by a foreign state shall be fulfilled in compliance with the Georgian law. Unless stipulated otherwise by an international treaty or an individual agreement concluded by Georgia or the principle of reciprocity, the legislation of a foreign state – initiator of the request may also be used for providing legal assistance unless it contradicts the Georgian law. In addition, in accordance with Art. 2 (para 8) of the Georgian Criminal Procedure Code, “in the process of implementation of a request of the court or an investigative authority of another state for conducting proceedings on the territory of Georgia, the criminal procedure law of that state may also be applied if this is prescribed by an international treaty concluded by Georgia.”

Situations where requests seeking proceedings involving interference with the rights of individuals and, consequently, preliminary permits or sanctions of the court or another specialised agency remain disputable in practice. The practices designed in relations between some GUAM and CIS member states and the Baltic countries according to which the implementation of a request involving proceedings the exercising of which in accordance with the national law of the requesting Party requires preliminary permits or sanctions, certified copies of such decisions of the competent authorities shall be attached to the request. Specifically, in cases of corruption offences and money laundering, such questions arise in the context of a need to disclose a bank secret, which requires a sanction of the court.

However, this practice presumably contradicts the provisions of effective multilateral international treaties on legal assistance in criminal matters. E.g. Art. 4 of the Convention on Laundering, Search, Seizure and Confiscation of Proceeds of Crime (1990), Art. 12 of the United Nations Convention against Transnational Organised Crime (2000), Art. 23 of the Convention on Criminal Responsibility for Corruption (1999) imposes on the Parties the responsibility of adopting legislative and other measures for authorising their courts and other competent authorities to issue instructions for provision or seizure of bank or financial documents for the purposes of conducting preliminary or confiscatory measures. In addition, the practice of issuing decisions for granting permits to exercise proceedings on a territory outside their jurisdiction by courts of the requesting Party arouses justifiable doubts to its legal consistency.

Box 10. Conducting Proceedings Requiring Special Sanctions (of a Court of another Authority) in Azerbaijan¹²

In cases when under the law of Azerbaijan the requested proceedings require a special sanction of a court or another

¹¹ The information was provided to the Network Secretariat by Georgia within the framework of response to the questionnaire “Questions on the National Legislation and Practices of Georgia, Azerbaijan and Moldova” of 30.03.2012.

¹² The information was provided to the Network Secretariat by Azerbaijan within the framework of response to the questionnaire “Questions on the National Legislation and Practices of Georgia, Azerbaijan and Moldova” of 30.03.2012.

authority, proceedings may be conducted on the basis of a court decision or a decision of another authority of the requesting Party confirmed by a court decision attached to the request. At the same time, the prosecution office may petition to the court for obtaining a permit to exercise proceedings.

In this connection, it seems expedient to harmonise the existing practice with provisions of international treaties in relations between the GUAM countries. *If a request for legal assistance seeks the exercising of proceedings requiring the disclosure of a bank secret, conducting search in a person's private estate or another serious interference with citizens' rights, it shall present all the facts and arguments at the disposal of the investigation authority or the court enabling a competent authority of the requested Party to consider the case on their basis and to pass its own procedural decision on the matter.*

2.7. Scope of Legal Assistance

The scope of legal assistance that can be provided in criminal matters between countries of the Overview is regulated, inter alia, by Art. 1, 3, 7, 11, 13 of the European Convention on Mutual Assistance in Criminal Matters of 1959, Art. 6 of the Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters of 1993 in edition of its 1997 Protocol, Art. 8, 11, 13 of the Convention on Laundering, Search, Seizure and Confiscation of Proceeds of Crime of 1990, Art. 46 (para 3) of the United Nations Convention against Corruption of 2003. According to the latter, mutual legal assistance to be afforded in accordance with this article may be requested for any of the following purposes: taking evidence or statements from persons; effecting service of judicial documents; executing searches and seizures, and freezing; examining objects and sites; providing information, evidentiary items and expert evaluations; providing originals or certified copies of relevant documents and records, including government, bank, financial, corporate or business records; identifying or tracing proceeds of crime, property, instrumentalities or other things for evidentiary purposes; facilitating the voluntary appearance of persons in the requesting State Party; identifying, freezing and tracing proceeds of crime; recovery of assets, etc.

Considering the mercenary nature of corruptive offences and the specifics of investigation and subject of proof in cases of this category, requests for legal assistance should contain, first and foremost, the solicitations of proceedings aimed at:

- tracing abroad the property owned by an accused person or constituting the object of an offence or obtained as illicit benefit or by criminal methods;
- imposing arrest on assets that could be the subject of confiscation or used for compensating for the damage inflicted by the offence;
- confiscating the objects that could be used as material evidence in a case, specifically, money, valuables or other assets gained by criminal methods;
- receiving testimonies, documents, other evidence in support of substantial facts of the matter (e.g. data on the opening of a bank account in a foreign bank and transfer of cash to/from it; purchase of property by an accused person, his transportation or accommodation in a hotel or at a resort at the expense of a person providing illicit

benefit, information on payment for the education of children and other close relatives of an official by a third party, etc.).

During the preparation of a request, it is necessary to closely examine the legal framework for cooperation and accept some or other particular international instrument or instruments which are not only valid in both states, but envisage the possibility of providing all the necessary assistance in accordance with the procedures meeting the evidential requirements of a requesting Party.

PART III. CONCLUSIONS AND RECOMMENDATIONS

This part of the Overview presents summarised conclusions and recommendations for developing new and effective use of the existing cooperation instruments for pooling joint efforts of law enforcement agencies of GUAM member countries in countering transnational corruption, with account taken of the above. The recommendations are classified into two categories: (a) the ones referring to the expediency of legislative regulation of some institution at the national level, working out methodological recommendations for their employment, conducting practical trainings, etc., and are aimed at persons taking political decisions in these matters; (b) the ones developed exclusively for practitioners for use in their daily activities.

3.1. General Conclusions and Recommendations

The international treaty framework of cooperation between the Overview countries is rather well developed and envisages both operational interaction in criminal investigations and provision of all forms of legal assistance. At the same time, the fight against transnational corruption and laundering proceeds of crime requires a much greater level of consistency between the states.

Considering the need for further development of the currently available mechanisms of cooperation of the Overview countries in the sphere under review, the following is recommended:

1. To take measures for the earliest signing, ratification and entry into force of the Second Additional Protocol 2001 to the European Convention on Mutual Assistance in Criminal Cases of 1959 envisaging the possibility of improvement of direct communication procedures and other important legal innovations (questioning with the use of video and telephone conferencing, creation and operation of joint investigative teams, submitting information without prior request, new forms of operational cooperation, etc.).
2. To take measures for the fullest implementation of progressive provisions of the Second Additional Protocol 2001 to the European Convention of 1959 in the national legislation of the GUAM countries regulating the terms and procedures of using the opportunities offered by the Protocol.
3. To consider the expediency of concluding bilateral and multilateral inter-state and inter-departmental agreements building upon provisions of the European Convention on Mutual Assistance in Criminal Cases of 1959 in edition of its Second Additional Protocol 2001.
4. To harmonise the practice of preparation and implementation of requests for legal assistance in the form of proceedings requiring special permits or sanctions with provisions of Art. 4 of the Convention on Laundering, Search, Seizure and Confiscation of Proceeds of Crime of 1990, Art. 12 of the United Nations Convention against Transnational Organised Crime of 2000, and Art. 23 of the Convention on Criminal Responsibility for Corruption of 1999.

5. To consider the expediency of signing and ratifying the Third Additional Protocol of 2010 to the European Convention on Extradition of 1957 envisaging the possibility of simplified (accelerated) extradition of a person on condition of his voluntary consent to extradition and abidance by a number of other conditions. This may also require the introduction of amendments to the legislation, unless it already envisages such an institution.
6. To consider the expediency of joining the European Convention on the Transfer of Proceedings in Criminal Matters of 1972 (valid only for Moldova and Ukraine of all the Overview countries) covering a wide spectrum of grounds for the transfer of criminal prosecutions. It is expedient to include relevant provisions in bilateral treaties on legal assistance between GUAM countries. If the legislation of the requested Party does not impose a direct ban on acceptance of criminal prosecution on the basis of goodwill – to build up national practice in this respect.
7. To conduct regular specialised trainings for investigators and prosecutors engaged in detection, investigation and criminal prosecution of offences involving transnational corruption and laundering proceeds of crime, progressive forms of international legal cooperation in the criminal law sphere (new instruments of legal assistance and practices of their effective application).
8. To harmonise the national legislation and enforcement practices with the new approaches to the evidential value of materials of international operational cooperation. To take measures for making the materials gathered in the course of operational cooperation of the competent authorities of different states (not in the course of legal assistance) applicable as evidence in a criminal case on condition of compliance with procedural guarantees prescribed at the national level. To build up national judicial practice in this respect.
9. To use trainings and other educational and awareness raising measures for bringing to notice of officials of the competent authorities of GUAM countries more detailed information on the Cooperation Agreement between governments of GUAM member countries in the fight against terrorism, organised crime, drugs trafficking, and other dangerous types of crime of 20 July 2002, its Protocol dd. 04.12.2008, and operational interaction opportunities offered by these agreements, and to build up the practice of using these instruments in corruption-related cases and cases of laundering crime proceeds.
10. To take measures for improving the provisions of the Agreement dd. 20.07.2002 (which do not ensure the promptness of fulfilling requests in cases of corruption and laundering of crime proceeds, do not contain a classification of requests according to categories of urgency, etc.) and/or to consider the expediency of elaborating a signing within the GUAM framework of a separate multilateral agreement on the fight against corruption and laundering of crime proceeds.
11. To conduct trainings and take other measures for informing the competent authorities of GUAM member states of the opportunities offered by the GUAM Virtual Centre and the GUAM Inter-State Information Management System within the context of operational cooperation in investigation of offences involving corruption and laundering of crime proceeds.

3.2. Practical Conclusions and Recommendations

1. If investigative/intelligence information is available on the possible whereabouts of the person being sought in another country requires verification, it is recommended, prior to or simultaneously with the submission of an extradition request, to use the available instruments of operational cooperation at the disposal of law enforcement authorities of that country (to file requests for assistance to border control, police, national security bodies, etc.) for confirmation or denial of such information and also to notify them that this person is on a wanted list. It is recommended to support operational cooperation requests with decisions of courts of the requesting Party on detention (arrest, custody) of the person being sought, so that in the event of establishment of his whereabouts the competent authorities of the requested Party could, if necessary, take measures for his temporary arrest before receiving an extradition request. The channels and possibilities offered by the GUAM Virtual Centre for the fight against terrorism, organised crime, drugs trafficking, and other dangerous types of crime, inter-departmental police and security bodies cooperation channels, and the Interpol may be efficient for ensuring the earliest receipt of such information.
2. In certain cases of drawing up requests for extradition it is expedient to make reference not only to the European Convention on Extradition of 1957 and its Protocols, but also to relevant provisions of other multilateral international instruments as the legal basis for extradition. E.g. reference to the Minsk Convention will enable, when necessary, to use the Russian language in extradition requests, to the United Nations Convention against Corruption of 2003 – to avoid possible qualification of a corruptive offence as a political offence and to achieve consultations regarding a concrete extradition request to ensure a more complete presentation of the positions and providing additional data, etc.
3. During the assessment of the possible barriers to extradition in the process of preparation and submission of a request to the competent authorities of a certain member country of GUAM, it is necessary to take into account the reservations and declarations made by it during the ratification of relevant treaties on extradition, specifically, the 1957 European Convention and its Protocols.
4. It is also recommended, in requests for extradition in cases of corruption and laundering of crime proceeds, based on Art. 20 of the European Convention on Extradition of 1957 and Art. 78 of the Minsk Convention, to raise the question of monitoring and handing over material evidence and property obtained by criminal methods, which may be an effective means of search and arrest of criminal assets in cases of this category.
5. It is recommended to accept criminal prosecution in cases covered by the Minsk Convention on the basis of goodwill and the principle of reciprocity, unless this is directly prohibited by the law of relevant GUAM countries.
6. To justify requests for the transfer of criminal prosecution in the categories of criminal cases involving corruption and laundering of crime proceeds, the provisions

of Art. 47 of the United Nations Convention against Corruption of 2003 and Art. 21 of the United Nations Convention against Transnational Organised Crime of 2000 should be applied more actively to ensure more effective use of the available international instruments of countering these offences.

7. It is recommended during the preparation of a petition for legal assistance in criminal matters involving corruption and crime proceeds laundering to refer in the request both to a general international instrument and to a specialised treaty in this sphere if it envisages a more effective interaction mechanism (e.g. more acceptable communication procedures, communication language, a more complete list of proceedings included in the scope of legal assistance, the duty of the competent authorities of the requested Party to receive the necessary court decisions independently, the possibility of applying additional special measures – blocking assets or property seizure, etc.).
8. It is expedient for the initiator of the request to preliminarily have the matter of language approved by competent authorities of the requested Party (in the absence of direct communications – through the central authorities) to ensure its earliest implementation with the highest quality.
9. International investigative requests should specify which legislation shall be applied to conduct the requested proceedings. If proceedings need to be exercised in compliance with the criminal procedure code of the requesting Party, the request shall be supported with abstracts from provisions of its legislation regulating their implementation procedures.
10. Considering the circumstances of a concrete criminal case, it is recommended where necessary to refer in the request to Art. 4 of the European Convention on Mutual Assistance in Criminal Matters of 1959, according to which officials and interested persons may be present if the requested Party consents.
11. It is recommended during the preparation of a relevant request to clearly and completely present the information on connection of investigation of the case with the need to exercise certain proceedings in the territory of another state.
12. Requests for legal assistance in cases of corruption and crime proceeds laundering are recommended to indicate maximally explicit details of individuals and legal entities sufficient for identification by competent authorities of the requested Party, complete details of bank accounts (name of the bank, number of the bank account, account holder's name), immovable property objects (city, address, owner), etc.
13. If a request for legal assistance seeks the exercising of proceedings requiring the disclosure of a banking secret, conducting search in a person's private estate or another serious interference with citizens' rights, it shall present all the facts and arguments at the disposal of the investigation authority or the court enabling a competent authority of the requested Party to consider the case on their basis and to pass its own procedural decision on the matter.
14. Filing requests for exercising proceedings in the territory of another state in such cases involving persons or with respect to objects about which only initial information is available (e.g. only the first and/or last name, the name of a company

or its location and sphere of activity, etc.) is quite inefficient in practice. In such cases, investigation authorities are recommended to gather all possible information on such persons and/or objects in the process of investigation inside the country and at the same time take measures to obtain such information on them using the mechanisms of international operational cooperation (bilateral, within the GUAM frameworks, as described above, or by Interpol channels). It is expedient to file legal assistance requests only after such detailed information has been obtained or simultaneously with launching operational cooperation mechanisms (with undelayed forwarding of additional information immediately after its receipt using operational channels). Presumably, the described approach will enable to prepare more adequate requests for legal assistance and result in their more efficient implementation by the requested Party. If the measures taken failed to produce additional information, it is recommended to draw up the request on the basis of Art. 8 (para 4) of the Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters of 1993 envisaging the obligation of a competent authority of the requested Party to take the necessary measures for establishing the location of the person specified in the request.

15. It is recommended to more actively use in investigations of offences involving transnational corruption and crime proceeds laundering joint investigative teams, questioning in the form of video or telephone conferencing, to refer the information obtained in the process of national investigation about possible offence of this category committed in another country to competent authorities of that country on their own initiative if the national legislation has legal grounds for applying these institutions.
16. The request for freezing, arrest, confiscation, and measures for direct return of assets shall make reference both to provisions of effective international treaties in the sphere of legal assistance and to provisions of specialised international instruments on search, arrest and confiscation of assets envisaging a wider spectrum of measures or less strict conditions for their application that will be especially efficient in conditions of a particular criminal investigation.
17. During the preparation of requests for freezing, arrest, confiscation or recovery of assets, provisions of Chapter V of the United Nations Convention against Corruption of 2003 shall be applied in practice if they envisage more effective mechanisms for cooperation between competent authorities of the countries as compared to traditional instruments.
18. During the preparation of requests for freezing or arrest of assets, the initiator shall justify in detail the need to apply such measures, inter alia, in connection with relevant assets of persons who may be involved in commission of corruptive acts or the laundering of crime proceeds.
19. Before filing a request for freezing or arrest of assets in such cases it is recommended to obtain in advance maximally complete information on all immovable property, financial and banking transactions, accounts, other assets of all persons involved using international operational cooperation measures, which will make it possible to prepare and execute the request for preliminary measures more efficiently.

20. The results of operational cooperation should be used more actively not only for proper investigation planning, formulating cases, high quality preparation of requests for legal assistance in criminal cases, but also as sources of evidence in a criminal case.

Practical recommendations with substantiated are presented in greater detail in the text of the Overview, marked in underlined italics.

ATTACHMENTS

List of International Instruments

Table of applicability to GUAM countries of agreements that may be used as the legal basis for requesting **legal assistance** in corruption-related cases as of 1 October 2012

Multilateral treaty	Azerbaijan	Georgia	Moldova	Ukraine
United Nations				
United Nations Convention against Corruption of 2003 (articles 43–59)	+	+	+	+
United Nations Convention against Transnational Organised Crime of 2000 (articles 12–28)	+	+	+	+
Council of Europe				
European Convention on Extradition of 1957 (<i>ETS 024</i>)	+ since 2002	+ since 2001	+ since 1997	+ since 1998
Additional Protocol to the European Convention on Extradition of 1975 (<i>ETS 086</i>)	+ since 2002	+ since 2001	+ since 2001	+ since 1998
Second Additional Protocol to the European Convention on Extradition of 1978 (<i>ETS 098</i>)	+ since 2002	+ since 2001	+ since 2001	+ since 1998
Third Additional Protocol to the European Convention on Extradition of 2010 (did not enter into force) (<i>ETS 209</i>)	-	-	-	-
European Convention on Mutual Assistance in Criminal Matters of 1959 (<i>ETS 030</i>)	+ since 2003	+ since 2000	+ since 1998	+ since 1998
Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters of 1978 (<i>ETS 099</i>)	+ since 2003	+ since 2003	+ since 2001	+ since 1998
Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters of 2001 (<i>ETS 182</i>)	-	-	-	+ since 01.01.2012
European Convention on the Transfer of Proceedings in Criminal Matters of 1972 (<i>ETS 073</i>)	-	-	+ since 2007	+ since 1995
Convention on Laundering, Search, Seizure and Confiscation of Proceeds of Crime of 1990 (<i>ETS 141</i>)	+ since 2003	+ since 2004	+ since 2002	+ since 1998
Council of Europe Convention on	-	-	+	+

Laundering, Search, Seizure and Confiscation of Proceeds of Crime and on the Financing of Terrorism of 2005 (<i>ETS 198</i>)			since 2008	since 2011
Criminal Law Convention on Corruption of 1999 (articles 25–31)(<i>ETS 173</i>)	+ since 2004	+ since 2008	+ since 2004	+ since 2010
Additional Protocol to the Criminal Law Convention on Corruption of 2003 (<i>ETS 191</i>)	-	-	+ since 2007	+ since 2010
CIS				
Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters of 1993 (the Minsk Convention)	+ since 1996	+ since 1996	+ since 1996	+ since 1995
Protocol to the Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters adopted in 1997	-	-	+ since 2003	+ since 1999
Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters of 2002 (the Chisinau Convention)	+ c 2004	-	-	-
GUAM				
Cooperation Agreement between governments of GUUAM member countries in the fight against terrorism, organised crime, drugs trafficking, and other dangerous types of crime of 2002*	+ c 2004	+ c 2004	+ c 2004	+ c 2004

* Envisages exchange of requests for “support,” which is not legal assistance in its traditional meaning.

Contact Information and Cooperation Focal Points

Central bodies

AZERBAIJAN



The Prosecutor General's Office and the Ministry of Justice of the Republic of Azerbaijan are identified by the national legislation as the central bodies for purposes of legal assistance, transfer of criminal prosecution, and extradition.¹³

Contact information:

Ministry of Justice of the Republic of Azerbaijan

Address

1, Insaarcipar Prospect,
370073 Baku,
Republic of Azerbaijan

*International
instruments:
ETS 112, ETS 141*

Contact information

tel. +(99) 412 4300 167
fax +(99) 412 4923 479
e-mail: minjus@azdata.net

Prosecutor General's Office of the Republic of Azerbaijan

Address

7, Nigar Rafibeyli St.,
370001 Baku,
Republic of Azerbaijan

*International
instruments:
ETS 024, ETS 030*

Chief of the
International Legal
Department

tel. +(99) 412 4926 198

Contact information

tel. +(99) 412 4921 770
tel. +(99) 412 4928 751
tel. +(99) 412 4921 158
fax +(99) 412 4930 020
e-mail: intlaw@azeri.com

GEORGIA



According to international treaties binding on Georgia, requests for conducting any proceedings in a criminal case shall be submitted with the help of central competent authorities. In case of Georgia the central competent authority is the Georgian Ministry of Justice. In addition, a Decree of the Georgian Minister of Justice assigned the jurisdictions on

¹³ The information was provided to the Network Secretariat by Azerbaijan within the framework of response to the questionnaire "Questions on the National Legislation and Practices of Georgia, Azerbaijan and Moldova" of 30.03.2012.

this issue to the International Relations Office of the Legal Support Department of the Chief Prosecution Office of Georgia.¹⁴

Contact information:

**Ministry of Justice of
Georgia
Chief Prosecution
Office of Georgia**

*International
instruments:
ETS 024, ETS 030,
ETS 112, ETS 141*

Address

24, Gorgasali St.,
380033 Tbilisi,
Georgia

Head of the
international legal
department

Irakli Chilingarashvili

Contact information

tel. +(99532) 240 51 43

fax +(99532) 240 51 42

e-mail: ichilingarashvili@justice.gov.ge

MOLDOVA



Requests for international legal assistance in criminal matters shall be submitted through the Ministry of Justice or the Prosecutor General's Office directly and/or through the Foreign Ministry of the Republic of Moldova, except cases when a different procedure of requests is envisaged on reciprocal basis.¹⁵

Contact information:

**Ministry of Justice of
the Republic of
Moldova**

*International
instruments:
ETS 024, ETS 030,
ETS 073*

Address

82, 31 August 1989 St., MD-2012,
Chisinau, the Republic of Moldova

Head of the
international legal
department

tel. + 373(22) 201 438

Contact information

tel. + 373(22) 201 455

tel. + 373(22) 201 457

fax + 373(22) 201 410

e-mail: sirku@justice.gov.md

**Prosecutor General's
Office of the Republic
of Moldova**

*International
instruments:
ETS 024, ETS 030,
ETS 073, ETS 141*

Address

26, Metropolit Banulescu-Bodoni St.,
2005 Chisinau, the Republic of Moldova

Head of the
international legal
department

tel. +373(22) 221 470

Contact information

tel. + 373(22) 225 589

tel. + 373(22) 221 335

fax + 373(22) 221 335

e-mail: proc-gen@gov.md

¹⁴ The information was provided to the Network Secretariat by Georgia within the framework of response to the questionnaire "Questions on the National Legislation and Practices of Georgia, Azerbaijan and Moldova" of 30.03.2012.

¹⁵ Article 532 of the Criminal Procedure Code of the Republic of Moldova.

UKRAINE

The Prosecutor General's Office and the Ministry of Justice of Ukraine are identified by the national legislation as the central authorities for purposes of legal assistance, transfer of criminal prosecution and extradition, unless stipulated otherwise by international treaties effective in Ukraine. The Prosecutor General's Office of Ukraine is authorised to submit requests (fulfil requests and assignments) for international legal assistance in criminal cases at the stage of pre-trial investigation, and the Ministry of Justice of Ukraine – in cases at the stage of judicial examination (review in court or enforcement of a court decision).¹⁶

Contact information:**Ministry of Justice of Ukraine**

*International instruments:
ETS 024, ETS 030
ETS 073, ETS 112,
ETS 141, ETS 185*

Address	13, Gorodetskogo St., 01001, Kiev
Head of the international legal department	tel. +38(044) 2796 977
Contact information	tel. +38(044) 2796 879 fax +38(044) 2705 453 e-mail: ilad@minjust.gov.ua itex@minjust.gov.ua

Prosecutor General's Office of Ukraine

*International instruments:
ETS 024, ETS 030
ETS 073, ETS 141,
ETS 185*

Address	13/15, Riznytska St., 01011, Kiev
Head of the international legal department	tel. +38(044) 2007 438
Contact information	tel. +38(044) 2007 439 tel. +38(044) 2007 444 tel. +38(044) 2007 881 tel. +38(044) 2007 437 fax +38(044) 2802 851 e-mail: indep@gp.gov.ua

National Segments of the GUAM Virtual Centre**GEORGIA**Contact information:**Interior Ministry of Georgia**

Address	10 G. Gulua Str., Tbilisi 0114
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¹⁶ Articles 452 and 471 of the Criminal Procedure Code of Ukraine.

Focal point	Sandro Skliarenko International Relations Department Head of Regional Cooperation Unit/GUAM Law Enforcement center tel. (995 32) 241 17 62
Contact information	e-mail: regional@mia.gov.ge e-mail: s.kliarenko@mia.gov.ge

UKRAINE



Contact information:

**Designated institution
in Ukraine**

Address	---
Focal point	---
	tel. ---
	tel. ---
Contact information	fax ---
	fax ---
	e-mail: ---

AZERBAIJAN



Contact information:

**Designated institution
in Azerbaijan**

Address	---
Focal point	---
	tel. ---
	tel. ---
Contact information	fax ---
	fax ---
	e-mail: ---

MOLDOVA



The SECI/GUAM National Virtual Centre for the fight against terrorism, organised crime, drugs trafficking, and other dangerous types of crime (a specialised interdepartmental agency at the Ministry of Internal Affairs of the Republic of Moldova) performs the functions of the national segment of the GUAM Virtual Centre.

Contact information:

**SECI/GUAM National
Virtual Centre**

Address	14, Bucuriej St., MD 2004, Chisinau mun., the Republic of Moldova
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Focal point	---
Contact information	tel. +373(22) 577 119 fax +373(22) 577 112 e-mail:

List of Useful Publications and other Information Sources

This section contains a list of publications for further reading on this subject and more detailed information regarding interpretation and practical application of individual instruments and other information resources and references to international instruments that could be useful in the context of cooperation with other countries. The list indicates, for purposes of convenience, the name of the publication, source and electronic reference to the publication or the name of the international treaty/Internet resource and reference to it.

International Instruments

- *United Nations Convention against Corruption of 2003* (articles 43–59)
http://treaties.un.org/doc/source/RecentTexts/Corruption_E.pdf
- *Technical Guide for Implementation of the United Nations Convention against Corruption* (Vienna, 2010)
http://www.unodc.org/documents/corruption/Technical_Guide_UNCAC.pdf
- *Legislative Guide for Implementation of the United Nations Convention against Corruption* (Vienna, 2007)
http://www.unodc.org/pdf/corruption/CoC_LegislativeGuide.pdf
- *United Nations Convention against Transnational Organised Crime of 2000* (articles 12–28)
<http://www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Convention/TOCebook-e.pdf>
- *Legislative Guide for Implementation of the United Nations Convention against Transnational Organised Crime* (Vienna, 2004)
http://www.unodc.org/pdf/crime/legislative_guides/Legislative%20guides_Full%20version.pdf
- *European Convention on Extradition of 1957*
<http://conventions.coe.int/Treaty/en/Treaties/Html/024.htm>
- *Explanatory Report to the European Convention on Extradition*
<http://conventions.coe.int/Treaty/EN/Reports/Html/024.htm>
- *Additional Protocol to the European Convention on Extradition of 1975*
<http://conventions.coe.int/Treaty/en/Treaties/Html/086.htm>
- *Explanatory Report to the Additional Protocol on Extradition of 1975*
<http://conventions.coe.int/Treaty/EN/Reports/Html/086.htm>
- *Second Additional Protocol to the European Convention on Extradition of 1978*
<http://conventions.coe.int/Treaty/en/Treaties/Html/098.htm>

- *Explanatory Report to the Second Additional Protocol*
<http://conventions.coe.int/Treaty/EN/Reports/Html/098.htm>
- *Third Additional Protocol to the European Convention on Extradition of 2010* (did not enter into force)
<http://conventions.coe.int/Treaty/EN/Treaties/Html/209.htm>
- *Explanatory Report to the Third Additional Protocol*
<http://conventions.coe.int/Treaty/EN/Reports/Html/209.htm>
- *European Convention on Mutual Assistance in Criminal Matters of 1959*
<http://conventions.coe.int/Treaty/en/Treaties/Html/030.htm>
- *Explanatory Report to the European Convention on Mutual Assistance in Criminal Matters*
<http://conventions.coe.int/Treaty/EN/Reports/Html/030.htm>
- *Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters of 1978*
<http://conventions.coe.int/Treaty/en/Treaties/Html/099.htm>
- *Explanatory Report to the Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters*
<http://conventions.coe.int/Treaty/EN/Reports/Html/099.htm>
- *Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters of 2001*
<http://conventions.coe.int/Treaty/en/Treaties/Html/182.htm>
- *Explanatory Report to the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters*
<http://conventions.coe.int/Treaty/EN/Reports/Html/182.htm>
- *European Convention on the Transfer of Proceedings in Criminal Matters of 1972*
<http://conventions.coe.int/Treaty/en/Treaties/Html/073.htm>
- *Explanatory Report to the European Convention on the Transfer of Proceedings in Criminal Matters*
<http://conventions.coe.int/Treaty/EN/Reports/HTML/073.htm>
- *Convention on Laundering, Search, Seizure and Confiscation of Proceeds of Crime of 1990*
<http://conventions.coe.int/Treaty/EN/Treaties/HTML/141.htm>
- *Explanatory Report to the Convention on Laundering, Search, Seizure and Confiscation of Proceeds of Crime*

<http://conventions.coe.int/Treaty/EN/Reports/Html/141.htm>

- *Council of Europe Convention on Laundering, Search, Seizure and Confiscation of Proceeds of Crime and on the Financing of Terrorism of 2005*
<http://conventions.coe.int/Treaty/EN/Treaties/Html/198.htm>
- *Criminal Law Convention on Corruption of 1999 (articles 25–31)*
<http://conventions.coe.int/Treaty/en/Treaties/Html/173.htm>
- *Explanatory Report to the Criminal Law Convention on Corruption*
<http://conventions.coe.int/Treaty/EN/Reports/Html/173.htm>
- *Additional Protocol to the Criminal Law Convention on Corruption of 2003*
<http://conventions.coe.int/Treaty/en/Treaties/Html/191.htm>
- *Explanatory Report to the Additional Protocol to the Convention of Criminal Responsibility for Corruption*
<http://conventions.coe.int/Treaty/EN/Reports/Html/191.htm>
- *Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters of 1993 (the Minsk Convention – available only in Russian)*
<http://cis.minsk.by/reestr/ru/index.html#reestr/view/text?doc=192>
- *Protocol to the Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters adopted in 1997 (available only in Russian)*
<http://cis.minsk.by/reestr/ru/index.html#reestr/view/text?doc=690>
- *Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters of 2002 (the Chisinau Convention – available only in Russian)*
<http://www.cis.minsk.by/page.php?id=614>
- *2002 Cooperation Agreement between governments of GUUAM member countries in the fight against terrorism, organised crime and other dangerous types of crime*
<http://guam-organization.org/node/808>
- *Recommendation (2001)11 Concerning Guiding Principles on the Fight against Organised Crime*
http://www.coe.int/t/dlapil/codexter/Source/CM_Recommendation_2001_11_EN.pdf

International organisations

- *Interpol*
<http://www.interpol.int/en>
- *Europol*

<https://www.europol.europa.eu/>

- *Eurojust*
<http://eurojust.europa.eu/Pages/home.aspx#>
- *European Judicial Network*
http://www.ejn-crimjust.europa.eu/ejn/ejn_home.aspx
- *Southeast European Law Enforcement Center (SELEC)*
<http://www.secicenter.org/>
- *Committee of Experts on the Operation of European Conventions on Co-Operation in Criminal Matters (PC-OC)*
http://www.coe.int/t/dghl/standardsetting/pc-oc/default_en.asp

Publications and practical guides

- *Manual on Mutual Legal Assistance and Extradition* (United Nations, 2012)
http://www.unodc.org/documents/organized-crime/Publications/Mutual_Legal_Assistance_Ebook_E.pdf
- *Manual on International Cooperation for the Purposes of Confiscation of Proceeds of Crime* (United Nations, 2012)
http://www.unodc.org/documents/organized-crime/Publications/Confiscation_Manual_Ebook_E.pdf
- *Mutual Legal Assistance Request Writer Tool of the uUnited Nation Office on Drugs and Crime*
<https://www.unodc.org/mla/index.html>
- *Asset Recover Handbook: A Guide for Practitioners* (International Bank for Reconstruction and Development/ World Bank, 2011)
http://www.unodc.org/documents/corruption/Publications/StAR/StAR_Publication_-_Asset_Recovery_Handbook.pdf
- *Stolen Asset Recovery: A Good Practices Guide for Non-Conviction Based Asset Forfeiture* (World Bank, 2010)
http://www1.worldbank.org/finance/star_site/documents/non-conviction/ncb_russian.pdf
- *Requesting Mutual Legal Assistance from G-20 Countries: A Step-by-Step Guide (G-20, 2012)*
<http://www.google.fr/url?sa=t&rct=j&q=&esrc=s&source=web&cd=2&ved=0CCIQFjAB&url=http%3A%2F%2Fwww.track.unodc.org%2FDocuments%2FG20%2520Guid%2520to%2520Mutual%2520Legal%2520Assistance%25202012.pdf&ei=I4SFUPD>

[mBle80QXyqIGwBQ&usg=AFQjCNEKuEoyfMCezmo-ejjHyAyl5OA3Cg&sig2=DCAzLC6EruQMIw-fgDScaQ](https://www.coe.int/t/dghl/standardsetting/pcoc/PCOC_documents/8_MLA%20step-by-step_CN152011_CRP.6_eV1182196.pdf)

- *Requesting Mutual Legal Assistance from G8 Countries: A Step-by-Step Guide*¹⁷
http://www.coe.int/t/dghl/standardsetting/pcoc/PCOC_documents/8_MLA%20step-by-step_CN152011_CRP.6_eV1182196.pdf
- *Mutual Legal Assistance, Extradition and Reconvert of Proceeds of Corruption in Asia and the Pacific*
<http://www.oecd.org/site/adboecdanti-corruptioninitiative/37900503.pdf>

¹⁷ Submitted by France in its capacity as Presidency of the G8 on behalf of the Member States of the United Nations that are members of the G8.

ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT

The OECD is a unique forum where governments work together to address the economic, social and environmental challenges of globalisation. The OECD is also at the forefront of efforts to understand and to help governments respond to new developments and concerns, such as corporate governance, the information economy and the challenges of an ageing population. The Organisation provides a setting where governments can compare policy experiences, seek answers to common problems, identify good practice and work to co-ordinate domestic and international policies.

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