

International Association of Prosecutors' conference 11-13 March 2009

Notes of Group 3's discussions on good practice

The group determined that there were three key aspects to good practice: excellent communication, effective use of existing procedures, and calling on other resources appropriately. The group also favoured the French criminal offence of failure to explain one's lifestyle, and the presumption of being 'related' to someone one had met more than once. Discussions that were at a tangent to the central question posed are included at the end, under 'Other issues'.

Communication

- Clarity in the request from another jurisdiction, concise request, and well-presented. It should include the legal basis for the request, a factual summary, what action is being sought, and, if known, what assets are involved.
- The language used should be simple, without unnecessary jargon or idiom. Any technical words used, such as restraint, forfeiture, or seizure, should have an explanation as to what that term means in the requesting state, so that the requested state can ensure that their understanding tallies, and/or they can provide exactly what is being sought.
- The offences alleged should be accompanied by a description of the acts or events constituting the offence. Dutch law, for example, does not recognise the offence of conspiracy, but an account of the alleged activities of the accused can be used to found the application on the equivalent substantive offence(s) in Dutch law.
- Nobody would decline a request in English, even if it were not the requested state's first language. (It was suggested that Switzerland may take a different view, but there was no Swiss delegate in the group to clarify this.) Some delegates would prefer to have the request in good English than a poor translation into their language.
- It would be preferable if the requested state could contact the requesting state informally, by phone or email, to ask questions or clarify the request, if need be, rather than having to rely on formal letters back and forth. If need be, a translator could be included in a conference call.
- It would be useful to have readily available information for the requested state – to whom does the requesting state need to speak, what language(s) do they speak, how do they wish to be contacted, etc.
- The process for Letters of Requests used to be very formal and very slow. In the modern world, and with modern criminality being very different, we should be less frightened of the diplomatic niceties.

- If the requesting state does not know what assets are available, it is sensible to talk to the requested state, and ask them what the best course of action is, and what information they will need to discover assets.

Effective use of existing procedures

- Principle of 'speciality' is required and useful. It sets out that information in the request can only be used for those purposes, and not to start new proceedings, although the requesting state can give permission to the requested state to use it for other purposes. In Finland, the police deal mainly with mutual legal assistance requests (MLAs) so they would consult the prosecutor first if they wished to start proceedings for other offences. In Norway, the requesting state can make a supplementary request, and dialogue will circumvent problems. A fairly broad MLA, and not specifying too much too early can assist with issues flowing from the principle of speciality.
- There are tools already available (such as the European arrest warrant and the European freezing order) and more to come (e.g. the European confiscation order) which are helpful, but which could be used more often. The European confiscation order is not without its problems because of differences in the national law of countries. The example given was Greece, where an asset sold to a third party in good faith cannot be confiscated from that person. There is legislation coming, which will require mutual recognition of national judicial decisions, to address that.

Other resources which could be used more effectively, and those being developed

- ICAR has a website under construction giving country profiles, including their law and procedure.
- The World Bank is a useful resource, and has good contacts in many jurisdictions. It can build links into developing countries, help with returning assets from them, and circumvent some of the political obstacles.
- StAR (World Bank) is compiling a legal library of international laws, and hopes to make available a publicly searchable database at little or no cost.
- Any such resource needs to be kept up to date to be effective.

Other issues

- The people who are at the conference are not the people with whom we really need to engage. There are countries where the blockages are much more difficult to overcome, such as Spain, where they have a different sense of urgency, or Russia, where they refuse to interrogate their own nationals at the request of a foreign jurisdiction. (This is not restricted to

countries viewed as uncooperative, for example, Finland also will not interview their own nationals.)

- UNCAC is meant to overcome blockages caused by having different systems of law, if it has been ratified. The group discussed whether it need to be incorporated by specific legislation in the different countries, or whether it was incorporated automatically by the process of ratification. In Hungary, it is automatically incorporated, but Greece, the Netherlands, and Norway, national legislation would be needed. The Finnish delegate was unsure.