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GUIDE

ON MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS AND EXTRADITION

(Various procedural pathways, legal bases, and practice between
Bosnia and Herzegovina and other countries with relevant
information for the Republic of Serbia, the Republic of Croatia,
the Federal Republic of Germany, the United States of America,
and the People's Republic of China)

NOTE: This guide was prepared as part of the EU4Justice Project by
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FOREWORD

Mutual legal assistance in criminal matters is a process, generally governed by treaty or authorized by domestic law, by which countries seek and provide information that may be used as evidence in criminal cases. In a world where everything is accelerating and where criminals are building increasingly trans and international networks, legal international cooperation has become more and more key to addressing these challenges.

The EU4Justice Project has developed the “Guide on mutual legal assistance in criminal matters and extradition” to share the working methodology, practice, and advice with prosecutors and judges to enable them to deal more efficiently with their cases of an international character.

The Guide aims at improving the cooperation between the judicial authorities without which the fight against organized crime and corruption is nothing but wishful thinking. It is part of the tools prepared by our Project to strengthen the investigative phase on complex cases and ensure the accused’s appearance before the court.

The Guide displays general information and practical factsheets regarding regional and international judicial cooperation. We chose to address the cooperation between BiH and a large variety of countries: the Republic of Serbia, the Republic of Croatia, the Federal Republic of Germany, the United States of America, and the People’s Republic of China based on the practice observed in Bosnia-Herzegovina.

International cooperation in criminal matters involves complex issues and decision-making that encompass many measures including extradition, mutual legal assistance (MLA), transfer of sentenced prisoners, transfer of proceedings, etc. This Guide focuses on the basic information and tools for various forms of legal cooperation that are provided under different treaty bases.

Its methodology is threefold: reiterating some basic and key principles underpinning the concept of international legal assistance and extradition; presenting the main lines of the bilateral day-to-day cooperation with its ups and downs; and proposing the use of selected model forms of requests and replies thereto for operational efficiency purposes.

Also, I would like to take this opportunity to draw your attention to the well-established police and justice communication channels through which much essential information can be shared. I am referring to the channels that range from direct relationships between police forces to the posting of police liaison officers and liaison magistrates in foreign states (for example, the network of French liaison magistrates abroad that is under the authority of the French Ministry of Justice). Resorting to human resources can benefit the formal process of mutual legal assistance. I personally take the view that there is no real substitute for direct informal contact between practitioners to adequately prepare the formal requests.

Finally, the EU4Justice team is proud to emphasize that this Guide is the result of extensive cooperation between experts with a breadth of knowledge in this field: the national expert Dr. Nikola Sladoje and the EU expert Mr. Bernard Rabatel.

Sarajevo, 15 April 2021

Sincerely,

Dr. Damien ROMESTANT

EU4Justice – Team leader

INTRODUCTORY NOTES – PREFACE

Based on the research into mutual legal assistance in criminal matters in Bosnia and Herzegovina (conducted through analysis of cases and regulations), it has been established that its functioning is rather satisfactory, however, there are certain problems in implementing legal regulations in practice.

The foregoing conclusion has served as the main impetus for drafting the Guide on Mutual Legal Assistance in Criminal Matters and Extradition, which will encompass basic information and rules holding importance for successful legal assistance, and provide relevant information on commonly used procedural tools which are effective but not exploited to the sufficient extent.

Looking at its entirety, in addition to the Introductory Notes/Preface, Abbreviations used for certain recurring terms, the Content, and at the end, the Final Comment and Annex (list of multilateral agreements binding BiH in this area), the Guide consists of six parts:

PART I – MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS AND EXTRADITION (General information on legal bases and modes of providing legal assistance in criminal matters).

PART II – MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS AND EXTRADITION BETWEEN BOSNIA AND HERZEGOVINA AND THE REPUBLIC OF SERBIA (The Republic of Serbia was selected as it is the country with the highest frequency of exchange of this type of legal assistance with Bosnia and Herzegovina and a country with which this legal assistance is sufficiently regulated by international treaties).

INFORMATION WITH PART II – PROPOSED LETTER ROGATORY FORMS/EXAMPLES FOR ACTION (Possible templates requesting action are provided on the basis of research into acceptable practices in relations between Bosnia and Herzegovina and the Republic of Serbia and are acceptable for other countries that have regulated this type of legal assistance with BiH in a similar way.)

PART III – MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS AND EXTRADITION BETWEEN BOSNIA AND HERZEGOVINA AND THE REPUBLIC OF CROATIA (The Republic of Croatia has been selected as an EU Member State with which Bosnia and Herzegovina has the highest volume of MLA exchanges compared to the other EU countries, and with which these issues are regulated by both by bilateral treaties and CoE conventions).

PART IV - MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS AND EXTRADITION BETWEEN BOSNIA AND HERZEGOVINA AND FR GERMANY (FR Germany was selected as the EU member state with which BiH has the largest volume of MLAs based on multilateral agreements - Council of Europe conventions).

PART V - MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS AND EXTRADITION BETWEEN BOSNIA AND HERZEGOVINA AND THE UNITED STATES OF AMERICA (USA) - (The USA was selected as a non-European country with which BiH has the largest volume of realized legal assistance, and which has certain specifics relative to the above-mentioned countries).

PART VI - MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS AND EXTRADITION BETWEEN BOSNIA AND HERZEGOVINA AND THE PEOPLE'S REPUBLIC OF CHINA (PRC) - The PRC has been selected as a populous nation on the Asian continent with which this legal assistance is regulated by new bilateral agreements.

ANNEX: - LIST OF INTERNATIONAL MULTILATERAL AGREEMENTS BINDING ON BiH (The list includes multilateral agreements that are binding upon BiH in this area and applicable to certain procedures with the member states of these agreements).

To make it easier to navigate through the Guide, we emphasized information and tools of the countries with which BiH has the largest volume of mutual legal assistance (Serbia, Croatia, FR Germany), as well as countries with certain specificities in these procedures.

The given information and tools can also be applied to other countries, but before that, the relevant agreements in this area that are binding on BiH and that country should always be consulted. In the absence of an agreement, the mutual legal assistance is provided based on reciprocity (example: general forms of mutual legal assistance between BiH and the USA).

Recognizing that the successful fight against organized and cross-border crime is the ultimate goal of this legal assistance and cooperation between Bosnia and Herzegovina and other countries, the Guide should represent a contribution to that end.

For the project

Sarajevo, 2020

LIST OF ABBREVIATIONS

- BiH – Bosnia and Herzegovina
- EU – European Union
- Eurojust – European Union (EU) Agency for Criminal Justice Cooperation
- Interpol – International Criminal Police Organization
- CC – Criminal Code
- Court of BiH – Court of Bosnia and Herzegovina
- Prosecutor’s Office of BiH – Prosecutor’s Office of Bosnia and Herzegovina
- CoE – Council of Europe
- CPC – Criminal Procedure Code
- MLA – Mutual Legal Assistance in Criminal Matters
- Law on MLA – Law on Mutual Legal Assistance in Criminal Matters
- Treaty/Agreement – bilateral and multilateral treaties

NOTE: Other abbreviations are either well known or not used in this guide because the Guide is hoped to contribute to the practical application of the institute of MLA in criminal matters in the proceedings, in which communication with other countries does not allow the use of abbreviations.



**PART I – MUTUAL LEGAL ASSISTANCE
IN CRIMINAL MATTERS
AND EXTRADITION
(GENERAL INFORMATION)**

PART I – MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS AND EXTRADITION (GENERAL INFORMATION)

1. Introduction (general remarks)

This guide is intended for prosecutors, judges, civil servants and law enforcement officers in Bosnia and Herzegovina (hereinafter BiH) to facilitate access to information and regulations applicable to mutual legal assistance in criminal matters (hereinafter: MLA) and extradition procedures.

This section provides information regarding legal solutions existing in laws in BiH and those prescribed by international treaties in this area¹, and outlines the basic and mandatory procedural rules to be followed in MLA.

MLA, in a nutshell, can simply be defined as the cooperation or action of an authority of one country (requested country) upon the letter rogatory of an authority of another country (requesting country) in the manner prescribed by a treaty. This legal assistance can also be achieved without a treaty, based on the rule of reciprocity between the countries, which is established through the exchange of diplomatic notes. If this happens, the content of the notes exchanged sets the conditions for legal assistance. The procedure is often similar to those in treaty-based arrangements, though some additional conditions may apply.

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Cooperation in these procedures can be bilateral and multilateral (between authorities of two countries or among the authorities of several countries). The ultimate goal of legal assistance and cooperation between countries is to successfully combat organized and cross-border crime, i.e., to exercise the right to prosecute the perpetrators of such criminal offenses or enforce a sentence previously imposed. Ultimately, this legal assistance most often includes taking certain procedural actions aimed at obtaining evidence, which is why this type of legal assistance and cooperation have been considered to be of a “probative” nature.

In BiH, this legal assistance is provided based on the Law on Mutual Legal Assistance in Criminal Matters² (hereinafter: the Law on MLA) and international treaties binding on BiH, as well as based on reciprocity with the countries with which Bosnia and Herzegovina have signed a treaty/agreement governing this matter.

Article 1 of the Law on MLA indicates that legal assistance shall be exercised in accordance with this Law, unless otherwise provided by an international treaty. Therefore, the international treaties that bind BiH have precedence over the mentioned law. In practice, this means these procedures are subject to the provisions of international treaties binding on BiH and another country participating in the exchange of the assistance.

¹ The list of international treaties binding for Bosnia and Herzegovina in this area along with the information on publication in the Official Gazette of BiH is given in a separate appendix (Appendix I) to this Guide.

² Law on Mutual Legal Assistance in Criminal Matters (Official Gazette of BiH nos. 53/09 and 58/13).

If the legal assistance is provided under international treaties, the question is: what is the purpose of the Law on MLA? The answer to this question is incorporated in every international treaty in this area through a standard provision defining that this legal assistance is provided under the laws of the requested country. Therefore, upon the letters rogatory of other countries, the BiH authorities also act in accordance with the provisions of the Law on MLA and provisions of other domestic laws that must be applied to the appropriate action taken to serve the request, while the conditions for action are determined by an international treaty.

As for the current situation in this area in BiH, the research has shown that, e.g., summons, as the simplest action by courts and prosecutor's offices in MLA procedures, are often sent by post or are served under coercion or threat in the case of no show, which is unacceptable and contrary to basic rules applicable to MLA.

If the Law on MLA and all international treaties regulate the issue of summoning the suspect, accused person, witness, expert witness or other parties to the criminal proceedings in almost identical manner, it would be sufficient to use at least one of these documents to properly serve the summons overseas, or to avoid the threat of coercion or pressing in case of a no show.

The given example of summoning parties from abroad, as well as other observations resulting from the analysis of the workings of MLA in BiH, shaped the concept of this Guide to include basic information and rules that are relevant to a successful MLA, and then point to the most commonly used institutes, as well as those that are effective but not exploited to a sufficient extent.

1.1. How to communicate with foreign countries?

The manner of communication between the authorities of two countries (courts and prosecutor's offices) in these procedures is prescribed by a relevant intergovernmental treaty, and as a rule it is implemented through the Central Authority³ or in emergency cases, through INTERPOL. All treaties also allow for diplomatic channels of communication. BiH is in the process of concluding a treaty/agreement with EUROJUST; upon its conclusion, there will be an opportunity for communication between the authorities of BiH and the authorities of other countries (EUROJUST member states) through this organization, and the procedure will be governed by that treaty/agreement.

In relation to the countries with which BiH does not have a signed treaty governing the MLA, communication is carried out through diplomatic channels only (Article 4, Paragraph 5 of the Law on MLA).

There are also certain obligations of bodies involved in the provision of international legal assistance, which are not defined by the Law or the international treaties that regulate this area but have been established between the countries through another treaty–convention, which regulates all forms of communication between the two countries. Treaties–conventions regulating diplomatic relations stipulate the use of formal language in communication between the authorities of two countries; hence, this method of communication is obligatory for mutual legal assistance procedures. Therefore, the requested country cannot accept orders, threats, and the like, but agrees to receive a formal request to provide the requested assistance.

³ The Ministry of Justice of Bosnia and Herzegovina is the Central Authority for Bosnia and Herzegovina.

1.2. Letter rogatory (Request) for Mutual Legal Assistance

As a general rule, mutual legal assistance is sought by a letter rogatory (request). Each international treaty stipulates the contents of the letter rogatory and that content and form should be complied.

A letter rogatory for MLA sent abroad is not an ordinary letter and should be a well-presented document containing relevant elements (content) prescribed by the treaty/agreement. While each international treaty prescribes the content of the letter rogatory, its form is not prescribed by any treaty, meaning that it generally corresponds to the usual form of written legal correspondence in a country, except in cases when requested country requires a special form. Taking into account the uneven and completely differing forms of writing letters rogatory by the authorities in BiH, this guide provides examples of acceptable and standardized forms of letters rogatory sent abroad.

1.3. Rationality and economy in selecting the forms of MLA

The analysis of the situation in BiH showed that the BiH judicial bodies often serve summons to witnesses abroad, even in overseas countries, without considering whether these witnesses can be interviewed in other ways without appearing before the court. Concurrently, insufficient attention is paid to the costs arising out of appearance of such witnesses before the court, while the summoned witnesses suffer no legal consequences if they fail to appear before the court.

The costs of airfare, lodging and stay in Bosnia and Herzegovina for witnesses summoned as previously described until the return to a country from which they were summoned is arranged, as well as compensation for lost income during their stay in BiH due to their testimony.

When summoning such a witness, prosecutor's office or court has an obligation to instruct the witness by means of summons of their rights, and not to summon them under the threat of forced bringing or penalization – like some prosecutor's offices and courts do when summoning witnesses from abroad.

Should such a summoned witness not respond to the summons, he/she will not be sanctioned, so in situations where direct hearing is not strictly necessary there is a much more economical option – to send a request for a witness interview in the country of witness residence, with a list of questions requiring an answer, or in more complex cases – to arrange the witness hearing through video conferencing. It also may be requested that the requesting party or the person/persons authorized by the requesting party be present during the witness interview abroad. The competent authority of the requested country needs to approve such presence in the legal assistance activities.

Therefore, when choosing the mode of mutual legal assistance, attention should be paid to the economy and rationality of the proceedings, provided that these principles will not affect the the establishment of the true state of facts.

In any case, if the summoned witness residing abroad does not respond to the summons from BiH, the only way to get his/her testimony will be by requesting the competent authority in the foreign country

to take the testimony from the witness or, based on the letter rogatory, provide this testimony through video conferencing.

1.4. Recommendations for selecting the mode of communication with foreign countries

Certain courts and prosecutor's offices often request that the letters rogatory for mutual legal assistance addressed to another country be forwarded through diplomatic channels, although the international treaty specifies that communication is to be carried out through Central Authorities, i.e., ministries of justice or judicial authorities. The requirement of adhering to diplomatic channels, which is also not excluded by the treaty, would imply a much longer path; the Ministry of Justice of Bosnia and Herzegovina would therefore forward such a letter rogatory to the Ministry of Foreign Affairs of Bosnia and Herzegovina, which would then, through its Embassy or in some other way deliver the letter rogatory to the Ministry of Foreign Affairs of the requested country. The latter would then forward the letter rogatory to the Ministry of Justice of its country, which would proceed in the same manner as if the letter rogatory had been directly transmitted to it by the Ministry of Justice of Bosnia and Herzegovina.

As the diplomatic channels extend the deadline by an average of one month, it is necessary, if a treaty allowing a shorter route of communication with a country exists, to use that route. **The recommendation is to use the shortest route of communication prescribed by an international treaty, which is generally a communication through the Central Authorities.** Central Authorities are usually the ministries of justice or judicial authorities of the signatory states.⁴

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There are other shorter routes of communication between the authorities of the two countries, such as direct communication, when an international treaty provides for such a mode of communication; however, it should be considered if the requested country has made a reservation to the provisions specifying such mode of communication in case of a multilateral agreement. For example, some countries placed reservation on the provision of the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters⁵, thus excluding the possibility of direct communication between judicial authorities of such countries based on this Protocol, whose general provisions allow such a possibility.

In addition to knowing the provisions of the Convention, it is necessary to have the information on the mentioned issues, i.e., issues of reservations to provisions of certain international multilateral treaties binding on BiH for this method of communication. These reservations are not visible in the treaty (convention), but are visible with the depositary of the treaty, which keeps all accession decisions of the states and the reservations of the states to individual articles of the treaty. Reservations on certain provisions of a multilateral treaty (convention) may, as a rule, also be placed with regard to the mode of communication and the language of communication.

⁴ For BiH, the BiH Ministry of Justice is the Central Authority in all mutual legal assistance procedures.

⁵ Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters, Strasbourg, 8/11/2001, entry into force 1/2/2004; entry into force with respect to BiH 1/3/2008 (Official Gazette of BiH – "International Treaties" No. 10/07). Even though the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters entered into force in 2008 in BiH, its application in practice and use of some institutes, especially cross-border observations, formation of joint investigation teams, and others, has still not reached the stage of full implementation with BiH authorities. Therefore, in more complex cases, the use of this legal basis for mutual assistance among the member States signatories to the Protocol is proposed.

Recognizing that it is not realistic to expect that all involved bodies (especially those who are encountering this type of procedure more rarely or for the first time) will be able to follow all international treaties and reservations to certain articles from those treaties (which member States individually placed in relation to different articles), it is recommended that in the case of inability to hold a proper information on the above, communication through the Central Authority – i.e. BiH Ministry of Justice – be used as a general mode of communication.

This recommendation aims to reduce the number of erroneous procedural actions that would become known to foreign authorities, since this Ministry, which also has a Sector for International and Inter-entity Legal Assistance and Cooperation, is specialized in this field. Therefore, if this Authority receives the letter rogatory, it will remedy any shortcomings or provide instructions as to how to remedy them.

It is recommended that the BiH authority seeking mutual legal assistance from another country through the BiH Ministry of Justice does not state in its document the channel through which it will send the letter rogatory, but rather simply state that the request will be forwarded to the requested country **“through mutual legal assistance.”** The Central Authority (Ministry of Justice of BiH) will then forward such letter rogatory to the requested country in a manner which is customary and acceptable to that country.

The forgoing is underlined because, for example, the Republic of France accepts communication through Central Authorities based on international multilateral treaties (Council of Europe conventions), while the Federal Republic of Germany requires the exclusive use of diplomatic channels of communication based on the same treaties. Both methods of communication are permitted by the mentioned conventions.

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2. Types (forms) of mutual legal assistance

It is common in mutual legal assistance to make a distinction between the mutual legal assistance itself and other forms of legal assistance, such as extradition, transfer of proceedings, transfer of convicted persons, recognition and enforcement of foreign court decisions.

2.1. General forms

Types or forms (term from the Law on MLA) of international legal assistance are, as a rule, divided into general and special forms both in theory and practice. Therefore, general forms include the following: summoning, interviewing witnesses and expert witnesses, questioning of suspects, crime scene investigation, search of premises, seizure, and all other actions not falling within the realm of special forms of this legal assistance.

Thus, the general forms of this legal assistance include all actions for which no special procedures have been prescribed, namely: extradition procedures, procedures of transfer of criminal prosecution and procedures for the recognition and enforcement of foreign judgements (transfer of convicted persons).

For general forms of mutual legal assistance, it is very important to choose a legal basis in relation to the requested country because, in addition to a bilateral agreement with Bosnia and Herzegovina, a lot of countries have a number of multilateral treaties in place, which bind that country and Bosnia and Herzegovina to combat various forms of crime. Therefore, for example, despite the bilateral agreement on

legal assistance between BiH and the Republic of Serbia, a relevant convention governing the relations between the two countries is to be applied in respect to criminal offences of money laundering, search, seizure and confiscation of proceeds of crime and financing of terrorism.⁶

The importance of a bilateral treaty/agreement cannot be neglected in this case either, since the convention itself governs relations related to the bilateral treaty, especially regarding the mode of communication between the countries and the language of communication. For legal basis to be applied in relation to the countries with which Bosnia and Herzegovina has several binding treaties (usually multilateral treaties – conventions) it is important to check the chapter or provisions in the multilateral treaty, which are mainly indicated by a special title and generally read: “Relationship with other treaties” or similar. That section determines what treaty has primacy in application in a particular area.

2.2. Special forms of mutual legal assistance

2.2.1. Extradition procedure from Bosnia and Herzegovina to another country

Extradition procedures are defined as the most complex forms of mutual legal assistance in criminal matters, and they include the transfer of the wanted person to another country for the purpose of conducting criminal proceedings or enforcement of a criminal sanction. These procedures should be distinguished from the currently popular deportation procedures (administrative expulsion).

In its Chapter III (Articles 32 through 56), the Law on MLA regulates the extradition procedure of suspected, accused and sentenced persons from Bosnia and Herzegovina to another country in detail. Contrary to the countries in the region and many European countries where the terms of extradition are decided by the courts holding exclusive and regional competence of the matter, Bosnia and Herzegovina adopted the decision that only one court – the Court of Bosnia and Herzegovina – has competence to decide if the requirements (preconditions) for extradition have been fulfilled.

Preconditions for extradition are presented in the form of a list and essentially reflect the standards established through most international treaties governing this area. It is always the Court of Bosnia and Herzegovina that decides if the preconditions for extradition from Bosnia and Herzegovina have been met, following a strictly formal procedure prescribed by the Law on MLA.

In these proceedings, the role of a prosecutor is very important in each stage of the proceedings. Upon receipt of the extradition request of the foreign country by the Ministry of Justice of BiH, the request is first forwarded to the Prosecutor’s Office of Bosnia and Herzegovina, which, after examining the request in accordance with Article 34 of the Law on MLA, forwards the request to the Court of Bosnia and Herzegovina (Article 36 of the Law on MLA). The role of the prosecutor is particularly important when the Court of Bosnia and Herzegovina renders a decision declaring that the preconditions (requirements) for extradition of the wanted person to another country have not been fulfilled. In such situations, cases of passive behaviour among the case prosecutors were recorded, even though a prosecutor, under Article 45 of the Law on MLA, has an obligation to bring a decision on pursuing or not pursuing criminal prosecution in the relevant case.

⁶ Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism, Warsaw, 16/5/2005, entry into force 1/5/2008, entry into force with respect to BiH 1/5/2008, publication: Official Gazette of BiH – “International Treaties” No. 14/2007;

In the context of preconditions for extradition or non-extradition, it is about the requirements based on which extradition is granted or rejected. These requirements must be identical for both the requesting and the requested country; they are always governed by an international treaty, if such a treaty exists between the two countries. For this reason, with regard to conditions under which the extradition is granted, reference is regularly made to Article 1 of the Law on Mutual Legal Assistance, and the international treaty is applied if it sets out these conditions differently than the Law. Within its jurisdiction, the Court is always obliged to act in the manner and according to procedure prescribed by the Law.

In case when more than one extradition request is filed against one person by more than one country, the Court of Bosnia and Herzegovina shall decide on each request individually; in certain situations, the Court may issue the decision establishing that conditions are fulfilled for a person to be extradited to the first, second, and possibly a third country. Therefore, the Court of Bosnia and Herzegovina may find that the conditions for extradition to more than one country are fulfilled with respect to the same person. The Minister of Justice of Bosnia and Herzegovina brings the final decision as to the country of extradition.

It is the international treaties that generally regulate the conduct in this situation; therefore, the European Convention on Extradition⁷ (Article 17) prescribes that “the requested Party shall make its decision having regard to all the circumstances and especially the relative seriousness and place of commission of the offences, the respective dates of the requests, the nationality of the person claimed and the possibility of subsequent extradition to another State”. Therefore, when deciding on multiple requests, the Minister of Justice is bound by the criteria set out in international treaties, in this particular case by the European Convention on Extradition.

In extradition procedures, one of the most important principles is the “rule of speciality” or “principle of speciality”, which is defined in all international treaties governing this area.

Speciality is the rule according to which a person extradited cannot be proceeded against or sentenced for any offence committed prior to his surrender other than that for which he was extradited (unless the person is given the opportunity to return to the state from which he or she has been extradited).

Since the extradition procedure from Bosnia and Herzegovina is prescribed by the domestic law, the adoption of the Law on Mutual Legal Assistance introduced the institute of simplified extradition for the first time. Namely, Article 52, paragraph 1 of the Law on MLA states: “The person whose extradition is requested may give consent to be transferred to the requesting State in a simplified manner without extradition procedure, as well as waive his/her right to the rule of speciality.” This legal solution helped solve a large number of extradition cases in a simplified manner, thus shortening the time from the moment of arrest of the requested person to the moment of his/her extradition.

The concept of double criminality is also fundamental in extradition procedure. For extradition to be possible, the offence in question must be considered a criminal offence in both the requesting and requested states. While seemingly simple, establishing double criminality in practice can prove to be one of the most challenging issues in an extradition case. The problems stem from technical differences in how states define, name and prove criminal offences.

The practice between BiH and other countries regarding double criminality is such that it is not the identity of the title of criminal offence that is observed, but rather the incriminated act that represents the criminal offence under the laws of both countries.

⁷ About 90% of the total extraditions between BiH and other countries are realized on the basis of the European Convention on Extradition, since all EU and Council of Europe member states are signatories to this Convention and most of legal assistance is done with these countries.

2.2.2. Extradition procedure from another country to Bosnia and Herzegovina

Unlike extradition procedure from Bosnia and Herzegovina to another country, where only one court in Bosnia and Herzegovina (the Court of Bosnia and Herzegovina) decides on fulfilment of preconditions for extradition, and where the procedure is at a remarkable level, the extradition procedure from other countries to Bosnia and Herzegovina encounters significant difficulties. The procedure itself is regulated only by Article 57 of the Law, which states that the extradition procedure will be initiated for a person against whom criminal proceedings is conducted in Bosnia and Herzegovina or if a national court has imposed a sentence of imprisonment upon such a person who is staying in a foreign country, in the manner that the Minister of Justice of Bosnia and Herzegovina will submit a request to the foreign country for the extradition of such person, upon a reasoned motion of the authority conducting the proceedings.

The procedure for sending the request to another country is the following: the authority (a prosecutor's office or a court) requesting the extradition of a person should prepare a reasoned motion for extradition of such person, followed by documents prescribed by an international treaty, translated into the language of the requested country if prescribed so by the international treaty; motion prepared in such a way shall, along with enclosures, be urgently delivered to the Ministry of Justice of BiH. Upon receipt of such a motion and documents, the BiH Minister of Justice shall immediately deliver the extradition request to another country, provided that such request is submitted within the time limit laid down in the treaty/agreement if the requested person is in custody.

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According to the provisions of the European Convention on Extradition, the time limit for the submission of an extradition request is 18 days, which can be extended up to 40 days and is counted from the date of apprehension of the wanted person to the date of receipt of the request in the country from which the extradition is requested. The mention of the European Convention is not accidental, since over ninety percent of extradition procedures, conducted at the request of Bosnia and Herzegovina, have a legal basis in the European Convention, while the deadlines in other international treaties are generally the same. These deadlines are preclusive and if the requested country does not receive the request within the deadline that the country set and the wanted person is in custody, such person will be released immediately after the expiry of the time limit for the delivery of the request. Hence the priority is given to pointing to deadlines as regards the extradition procedure from another country to Bosnia and Herzegovina, which implies the urgency of action of the authority moving for the submission of the extradition request and the urgency in the actual submission, and often an urgent delivery (by express mail) as well. All bilateral extradition treaties that BiH concluded with other countries reflect the principles of the mentioned Convention and transpose the Convention deadlines.

It is particularly important to point out for prosecutors in BiH that a person extradited to BiH cannot be prosecuted for a criminal offence committed prior to his/her extradition, where the person has not expressly renounced his/her entitlement to the rule of speciality with regard to specific offences preceding his/her extradition.

The Law on MLA did not anticipate or resolve such legal situations. How to overcome this issue? If the submitted request has not been decided on and the wanted person has not been extradited to BiH, then it is not logical to submit a new request, but rather update the submitted request and enclose the Annexes

determined by Article 35, paragraph 5, subparagraphs b), c) and d) of the Law on MLA, in relation to a new criminal offence. In these cases, it would not be necessary to resubmit the means of identification or the certificate of citizenship, as this would already be submitted with the extradition request.

In situations when the person whose extradition is requested was extradited to BiH, it is an established practice that the prosecutor will seek a subsequent consent of the requested state (country from which the person was extradited) to conduct criminal proceedings in BiH for an offence not included in the extradition decision. The initiative for subsequent consent is submitted to the Ministry of Justice of BiH in the same manner and with Annexes like in the process of supplementation of the extradition request.

RECOMMENDATION: When information is provided as part of this procedure, it is especially recommended that the status of the criminal proceedings be taken into account before submitting the extradition initiative. Persons inaccessible to the law enforcement authorities in BiH have often been on the run abroad for many years. Therefore, circumstances may change in some proceedings in the period between issuing an international arrest warrant and the actual arrest of such persons, or a completely different state of facts or statute of limitations can come to being, which all leads to discontinuation of criminal proceedings.

For the above reasons, it is necessary to study the criminal case and determine the status of the criminal proceedings before submitting the extradition initiative. This recommendation is based on poor examples from practice, because there were cases in which the requested states expressed dissatisfaction through notes of protest since BiH requested extradition of some persons for criminal prosecution, while the proceedings against those persons were discontinued immediately after extradition.

In certain cases, prosecutors dropped criminal prosecution during the extradition procedure, while the person whose extradition was requested was in the extradition custody in the requested State, which also resulted in a note of protest from that State.

2.3. Recognition and enforcement of foreign judgments in criminal matters

The enforcement of foreign judgments in criminal matters is an indication of a high degree of trust between states that have concluded treaties/agreements governing this issue, because the state of facts, established by a final judgment of the competent authority of a State Party that rendered the judgement (state delivering the judgement), are accepted in the State Party which is enforcing such judgment (state enforcing the judgement)

Before providing other general information about this procedural pathway, it is very important to emphasize the fact that research regarding its implementation in BiH has shown that a number of prosecutors are very often passive in the process of recognition of foreign judgments, which are recognized by the courts in BiH. Article 68, paragraph 2 (attendance at the session where the panel of judges will render a decision) and Article 69, paragraph 1 (the right to file an appeal) of the Law on MLA establish the right of the prosecutor.

Research also shows that prosecutors are not using either of the rights established by the Law on MLA in the same capacity as in the original domestic proceedings, even though recognized foreign judgments are subject to the same enforcement rules as judgments rendered by domestic

courts. There are examples in which the countries delivering a sentence (conviction), which want to transfer the enforcement of the sentence to BiH, do not accept the judgments of the BiH courts, because some BiH courts tend to impose a disproportionately lower prison sentence than the sentence imposed in the sentencing country. Such prison sentences are often within the limits of legal minimum, and are sometimes reduced even by a third of the pronounced sentence; even in case of such court decisions, prosecutors sometimes don't appeal the decisions, nor do they attend a session of the court panel that decides on recognition.

In some such cases, sentencing states do not accept the judgment (sentence) rendered by the court in BiH, with the explanation that it is a disproportionate reduction of the sentence and that such reduction of the sentence is contrary to the purpose of this procedure (contrary to the real reasons for transferring the convicted person). Such decisions may cause loss of trust with the requested state, and at the same time, such decision prevents a convicted BiH citizen from serving a prison sentence in the country of his or her citizenship.

If prosecutors would regularly appeal the judgments imposing disproportionately lower prison sentences, a control function would be achieved in these proceedings. Then the process of deciding on appeal would remove the incorrect application of regulations in this area, and the risks of the sentencing state not accepting the sentence imposed by the BiH court in the procedure of recognition of a foreign verdict would be mitigated.

A foreign judgment may be enforced in Bosnia and Herzegovina only on condition that there is an international treaty between Bosnia and Herzegovina and the sentencing state which regulates this matter. This restriction is set out in Article 62, paragraph 1 of the Law on MLA, which specifies that the court will enforce a final judgement in respect of a sanction imposed by a foreign court, in the manner that it will impose a sanction in accordance with the criminal legislation of Bosnia and Herzegovina. It follows from the foregoing that a foreign court decision will first be recognized by the competent court of Bosnia and Herzegovina and then enforced, as if it had been rendered by the BiH court.

The procedure on the request for recognition and enforcement of the foreign judgment in criminal matters in Bosnia and Herzegovina is conducted by a court which would hold substantive and territorial jurisdiction to adjudicate on a specific legal matter in the same case (Article 64 of the Law).

The issue of enforcement of a foreign judgment is very important in terms of whether the request is made by a convicted person or by the country. If the request is made by a convicted person, then it is usually a procedure for transfer of the convicted persons from one country to another. Conversely, if the request is made by the country, then it is obvious that the convicted person is avoiding punishment in the sentencing country and is in the country of his/her citizenship. In both cases, the procedure of recognition of the foreign court judgment will take place, although it is logical that no consent of the convicted person will be sought for this procedure and transfer of serving the sentence in the second case.

Unlike the European Convention on Extradition, which nullifies the provisions of bilateral treaties that are contrary to the Convention's provisions other than that which supplement and facilitate its application, the European Convention on the Transfer of Sentenced Persons enables the member states to also regulate this issue through a bilateral treaty in the way they agree. Thus, bilateral treaties on the enforcement of foreign judgments take precedence over the European Convention on the Transfer of Sentenced

Persons. In this situation, bilateral treaties differentiate between the transfer of sentenced persons from the sentencing country and the enforcement of the sentence in the enforcing country, since in the first case the procedure is conducted upon the request of the sentenced person and in the second case upon the request of the sentencing country.

The European Convention on the Transfer of Sentenced Persons represents the most common legal basis for the recognition and enforcement of foreign judgments in criminal matters conducted at the request (with the consent) of convicted persons. Many non-European countries are parties to this convention⁸. BiH is not a party to the Protocol to this Convention, provisions of which allow the transfer of a convicted person to the country of his/her citizenship without his/her consent.

At the request of the country imposing the sentence (without the consent of the convicted person), the procedure of recognition and enforcement of foreign judgements in criminal matters in BiH can be conducted only on the basis of bilateral treaties/agreements which allow for this possibility⁹. These are situations in which a convicted person flees from the sentencing country (country of adjudication) to the country of his or her citizenship, which then cannot extradite the person as its citizen, because of his/her citizenship.

2.4. Transfer of criminal proceedings (prosecution) to another country

In many countries, particularly those with civil law tradition, the extradition of its own nationals is prohibited. In most instances, countries which do not extradite their nationals, will hold domestic competence over criminal prosecution of their nationals for the offences committed in the territory of a foreign country. Therefore, many extradition treaties reflect the principle that, where extradition is refused on the basis of nationality, the case should be referred to competent authorities of the requested country for processing. These provisions reflect the “aut dedere aut judicare” principle and are intended to ensure that a criminal will not escape, and to ensure that a criminal will not escape justice and find safe haven on the basis of his/her citizenship. It must be noted that the EU member states, based on the European Arrest Warrant procedure, eliminated this ground for refusing the transfer of nationals.

The transfer of criminal prosecution to a foreign state (which can be linked to the “aut dedere aut judicare principle”) represents, among other things, a renunciation of the country to apply domestic law in the relevant criminal proceedings and a request/consent for such proceedings to be brought before a foreign court. The Law on MLA regulates this procedural tool through a separate chapter (Chapter 9) in a way that defines each stage of the procedure and the method of operation.

Thus, the Law on MLA regulates the procedure for submitting the letter rogatory to a foreign country, which has certain specificities when compared to similar laws of the countries in the region. Article 84, paragraph 2 of the mentioned Law specifies that the letter rogatory shall be submitted through the Min-

⁸ The Convention is published in the Official Gazette of BiH – Annex, international treaties/agreements, number 3/2005.

The members of this Convention are: Albania, Andorra, Austria, Azerbaijan, Belgium, Bosnia and Herzegovina, Bulgaria, Czech Republic, Denmark, Estonia, Finland, France, Greece, Georgia, the Netherlands, Croatia, Iceland, Italy, Ireland, Armenia, Cyprus, Latvia, Lithuania, Liechtenstein, Luxembourg, Hungary, Macedonia, Malta, Moldova, Germany, Norway, Poland, Portugal, Romania, Russia, Slovakia, Slovenia, Serbia, Montenegro, Spain, Switzerland, Sweden, Turkey, Ukraine and the United Kingdom. Of the non-member States of the Council of Europe, the following have ratified the Convention: Israel, Australia, Bahamas, Bolivia, Chile, Ecuador, Israel, Japan, Canada, Korea, Costa Rica, Mauritius, Panama, United States, Trinidad and Tobago, Tonga, and Venezuela.

⁹ BiH has signed such bilateral treaties/agreements with the Republic of Serbia, the Republic of Croatia, Montenegro and the Republic of Macedonia (now Northern Macedonia).

istry of Justice of BiH, and that the entity authorities shall submit such a letter rogatory to the Ministry of Justice of BiH through the entity ministries of justice, while the authorities of the Brčko District of BiH shall submit it through the Brčko District Judicial Commission.

It stems from the foregoing that only the Prosecutor's Office of BiH and the Court of BiH can communicate directly with the Ministry of Justice of BiH in this procedure, while other courts and prosecutor's offices in BiH establish this communication with the Ministry of Justice of BiH indirectly, through the entity ministries of justice and the Brčko District Judicial Commission.

The Law on MLA sets out the obligations of the Ministry of Justice of BiH with regard to forwarding the letter rogatory to the competent authority of the requested country, as well as the powers vested to exercise the proper control of the letter rogatory. This control is related to the content of the letter rogatory and the annexes thereto; therefore, this Ministry is authorized to return the letter rogatory to the requestor to amend or supplement it in case when it is evident that such a letter rogatory would also be returned by the competent authority of the requested country.

The content of the letter rogatory is determined by an international treaty if such treaty exists in relation to the requested country. An analysis of the norms of treaties and procedures relating to those treaties has shown that certain international treaties have special provisions regarding the letter rogatory, while certain countries require a special form of the letter rogatory even when this is not required by an international treaty. Such a treaty gives the requested country the opportunity to seek additional information or data. Certain countries require that, in addition to all the elements provided for in the treaty, the letter rogatory should contain a summary of the file based on which the authority of the requested country that is taking the action would have a clear idea as to how to render a decision on takeover of the criminal prosecution. The additional request of the requested country must be fulfilled if the letter rogatory is to be granted.

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2.4.1 Recommendations regarding the transfer of criminal prosecution

By analysing the cases and legal bases related to the transfer of criminal prosecution to a foreign country, it can be concluded that letters rogatory from BiH are rarely rejected by a foreign authority due to lacking legal basis. The most common reasons for the rejection of such letters rogatory lie in the insufficient effort to draft and reason the requests in the manner prescribed by the treaty or in the manner required by the requested country. Consequently, the most common reasons for rejection of letters rogatory are the formal ones.

This procedural tool is of a particular importance for BiH when it is conceding the prosecution, because the transfer of criminal prosecution also addresses the issue of serving a possibly imposed sentence – especially in the case when the procedure is against a person whose prosecution is handed over to the country of his/her citizenship. Namely, nationals of most countries, against whom a court in BiH has rendered a final sentence of imprisonment, have the right – under the provisions of certain treaties regulating the issue of recognition and enforcement of foreign judgments – to serve their prison sentence in the country of their citizenship. The European Convention on the Transfer of Sentenced Persons provides the broadest convenience for sentenced persons in this respect, since majority of the countries with which BiH exercises this type of legal assistance are signatories to this Convention.

The use of this procedural tool, to the extent and in the manner envisaged by the Law on MLA, the European Convention and bilateral treaties governing this matter, would certainly result in fewer cases before the courts in BiH, and consequently in the opportunity for more efficient management of other court proceedings. Furthermore, significant financial savings would be achieved in management of such proceedings, as well as savings related to serving of imposed prison sentences resulting from those proceedings. So, the primary objective of this information is to encourage prosecutor's offices to use this tool more generously to the extent regulated by the regulations governing this area in BiH.



**PART II – MUTUAL LEGAL ASSISTANCE
IN CRIMINAL MATTERS BETWEEN
BOSNIA AND HERZEGOVINA
AND THE REPUBLIC OF SERBIA**

PART II – MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS BETWEEN BOSNIA AND HERZEGOVINA AND THE REPUBLIC OF SERBIA

1. Introductory notes

In selecting the sample country for the explanation of full mutual legal assistance in criminal matters (hereinafter: MLA), the view was that it was to be the country with which Bosnia and Herzegovina (hereinafter: BiH) has the highest volume of exchange of this type of legal assistance.

Based on statistical data for 2013–2018, it was established that, in this period, BiH had the highest volume of exchange of this legal assistance with the Republic of Serbia. This Guide provides information covering modalities and possible forms of provision of MLA with this country.

The area of MLA is fully regulated in the relations between BiH and the Republic of Serbia; nevertheless, there is a clear issue pertaining to what extent and how are the available legal instruments in the MLA between the two countries used through the respective holders of judicial office (primarily prosecutors).

It is also evident that, in BiH, the trainings and professional literature from the field of MLA, have in the recent years been predominantly focused on more modern forms, and forms of this legal assistance related to the EU member States (e.g., European Arrest Warrant and the like, which is not applicable to relations between BiH and other countries); therefore, the basic forms and basic rules of the MLA have been neglected.

Similarly like the power of speech should not be underestimated when using and upgrading all modern means of communication, the basic rules for providing and seeking assistance must not be neglected in MLA. Hence this Guide puts a special emphasis on the basic rules, and then the further expansion on the matter for more complex forms stems from those rules.

It is not realistic to expect that every prosecutor in BiH, especially after coming in contact with the MLA for the first time, will have knowledge of all the legal bases regarding this legal assistance. Therefore, this Guide specifically highlights the general rules and legal bases in the MLA between BiH and the Republic of Serbia, which are most represented in bilateral treaties governing these relations. They are as follows:

- Agreement between BiH and the Republic of Serbia on Legal Assistance in Civil and Criminal Matters;
- Agreement between BiH and the Republic of Serbia on Mutual Enforcement of Court Decisions in Criminal Matters;
- Extradition Agreement between BiH and the Republic of Serbia.

The first two agreements have been amended and supplemented; instead of the present words – Republic of Serbia – they contained the words “Serbia and Montenegro” in the title, which still remains in the basic text of those agreements. Therefore, for the explanatory purposes, the text henceforward lists these legal bases with the recommendation to use the proper title and legal basis for a particular form of MLA.

2. Information on the legal basis for MLA between BiH and the Republic of Serbia

2.1. Law on Mutual Legal Assistance in Criminal Matters

The Law on Mutual Legal Assistance in Criminal Matters¹⁰ (hereinafter: The Law on MLA) regulates the procedure for providing this type of legal assistance in BiH and, at the same time, prescribes the manner of seeking this assistance abroad. In its Article 1, the Law on MLA indicates that “this Law shall govern the manner and procedure of mutual legal assistance in criminal matters, unless otherwise provided by an international treaty”.

Therefore, despite all theoretical knowledge about the relation between domestic laws and international treaties, when it comes to this matter, in BiH, the above-mentioned Law gives precedence to international treaties in this area.

The Law on MLA provides solutions in regards to issues of designation of authorities competent for MLA and their obligations in BiH, while the agreements stipulate the conditions and manner of providing MLA between BiH and the Republic of Serbia.

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2.2. Bilateral treaties

Legal assistance between BiH and the Republic of Serbia is based on the following bilateral treaties:

1) Agreement between BiH and Serbia and Montenegro on Legal Assistance in Civil and Criminal Matters of 24 February 2005; (Official Gazette of BiH – International Treaties, no. 11/2005; entry into force: 9 February 2006);

1/2) Agreement between BiH and the Republic of Serbia on the Amendments to the Agreement between BiH and Serbia and Montenegro on Legal Assistance in Civil and Criminal matters of 26 February 2010 (Official Gazette of BiH – International Treaties, no. 8/10, entry into force: 10 February 2011);

NOTE: Through the amendments of 26 February 2010, the words “and Montenegro” are deleted from the title of the agreement; therefore, the title “Agreement between BiH and the Republic of Serbia on Legal Assistance in Civil and Criminal Matters” is used in reference to these agreements. (Article 1)

The aforementioned Agreement (including through its amendments) allows for the exchange of general forms of MLA. This Agreement also regulates the issue of transfer of criminal prosecution between the two countries (Chapter III).

¹⁰ Law on Mutual Legal Assistance in Criminal Matters (Official Gazette of BiH nos. 53/03 and 58/13).

2) Agreement between BiH and Serbia and Montenegro on Mutual Enforcement of Court Decisions in Criminal Matters of 14 February 2005 (Official Gazette of BiH – International Treaties, no. 11/05; entry into force: 13 February 2006);

2/2) Agreement between BiH and the Republic of Serbia on the Amendments to the Agreement between BiH and Serbia and Montenegro on Mutual Enforcement of Court Decisions in Criminal Matters of 26 February 2010 (Official Gazette of BiH – International Treaties, no. 12/10; entry into force: 16 February 2011);

NOTE: Through the amendments of 26 February 2010, the words “and Montenegro” are deleted from the title of the agreement; therefore, the use of the title “Agreement between BiH and the Republic of Serbia on Mutual Enforcement of Court Decisions in Criminal Matters” is recommended in relation to this Agreement.

3) Extradition Agreement between BiH and the Republic of Serbia dated 5 September 2013 (Official Gazette of BiH – International Treaties, no. 19/14, entry into force: 2 December 2014);

2.3. Multilateral treaties

The issues (MLA procedures) that are governed by these bilateral treaties are also governed by the conventions of the Council of Europe to which both Bosnia and Herzegovina and the Republic of Serbia are members. Those conventions are the following:

1. **European Convention on Mutual Assistance in Criminal Matters**, Strasbourg, 20 April 1959; entry into force: 12 June 1962; entry into force with respect to BiH 24 July 2005; publication: Official Gazette of BiH – International Treaties, no. 04/2005.

- **Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters**, Strasbourg, 8 November 2001; entry into force: 1 February 2004, entry into force with respect to BiH: 1 March 2008; publication: Official Gazette of BiH – International Treaties, no. 10/07.

2. **European Convention on Extradition**, Strasbourg, 13 December 1957; entry into force: 18 April 1960; entry into force with respect to BiH: 24 July 2005; publication: Official Gazette of BiH – International Treaties, no. 04/2005.

- **Additional Protocol to the European Convention on Extradition**, Strasbourg, 15 October 1975; entry into force: 20 August 1979; entry into force with respect to BiH: 24 July 2005; publication: Official Gazette of BiH – International Treaties, no. 04/2005.

- **Second Additional Protocol to the European Convention on Extradition**, Strasbourg, 17 March 1978; entry into force: 5 June 1983; entry into force with respect to BiH: 24 July 2005; publication: Official Gazette of BiH – International Treaties, no. 04/2005.

3. **European Convention on the Transfer of Proceedings in Criminal Matters**, Strasbourg, 15 May 1972; entry into force: 30 March 1978; entry into force with respect to BiH: 26 July 2005; publication: Official Gazette of BiH – International Treaties, no. 04/2005.

4. **Convention on the Transfer of Sentenced Persons**, Strasbourg, 21 March 1983; entry into force: 1 July 1985; entry into force with respect to BiH: 26 July 2005, publication: Official Gazette of BiH – International Treaties, no. 04/2005.

NOTE: Bosnia and Herzegovina and the Republic of Serbia are also parties to a number of multilateral treaties – MLA conventions covering organized crime, corruption, terrorism and other serious criminal offences – but the general rules for the conduct of the competent authorities in BiH in MLA procedures remain essentially the same as in conduct based on bilateral treaties in this area between the two countries.

3. Information on procedures to obtain MLA between BiH and the Republic of Serbia

3.1. General types (forms) of MLA

The biggest and most versatile exchange of MLA forms between the two countries happens on the basis of the Agreement between BiH and the Republic of Serbia on Legal Assistance in Civil and Criminal Matters. Therefore, this guide will primarily focus on the MLA through the application of the mentioned Agreement between the two countries.

This Agreement covers all general forms of MLA, as well as transfer of criminal proceedings (criminal prosecution).

Article 32 has been amended through the Amendments to the mentioned Agreement, and it now contains all general forms of MLA between the two countries, which include:

- 1) execution of procedural actions, such as summoning and delivering of letters and documents, hearing of the accused, witness and expert examination, crime scene investigation, search of premises and persons, seizure of assets;
- 2) implementation of measures, such as surveillance and recording of telephone and other conversations or communications and optical recording of faces, controlled delivery, provision of simulated business services, concluding simulated legal affairs, hiring an undercover investigator, computer search and data processing;
- 3) exchange of notifications and delivery of letters and documents and items relating to criminal proceedings in the requesting country, delivery of information without letter rogatory, use of audio and video conferencing, formation of joint investigation teams;

NOTE: The reference to the above-mentioned Article was necessary since majority of participants in MLA procedures refer to professional publications that contain the basic text of an agreement (without amendments), and often do not have knowledge of the current (amended) solutions from this document.

Certain actions presented in the mentioned Agreement are terminologically different from the names of those actions in the domestic legislation – the Agreement refers to the “hearing of the accused”, while the domestic legislation refers to “questioning of the suspect”. These terms from the agreements are standard in conventions and are considered as generally accepted in MLA. The term “accused” in the agreements includes both suspects and defendant, which was known in BiH legislation prior to the 2003 reform. The reason for mentioning this is to avoid the situation where the terms in the Guide would be considered incompatible with the laws of BiH because they reflect the terms from the agreements, but regardless of this terminological difference, both terms are acceptable in drafting letters rogatory.

3.1.1. Letter rogatory (request)

All actions to be taken as part of MLA, including the simplest ones (the delivery of summons or documents and the like) are requested from the Republic of Serbia through the letter rogatory; hence, the letter rogatory is a mandatory document which is forwarded to the competent authority of the Republic of Serbia through the Ministry of Justice of BiH, as the Central Authority for these procedures. The letter rogatory should contain the name of the authority seeking legal assistance, code of the criminal case, a brief description of the incriminated act, place and time of perpetration, legal assessment of the crime, as much personal information about the accused as possible, as well as the precise request regarding the requested action.

Possible examples of the actions requested are given in PART III of the Guide, with particular focus on the form and some basic elements of the letter rogatory. However, each letter rogatory should, next to a legal assessment of the criminal offence, also state the place and time of the perpetration of the criminal offence and offer a brief description of the incriminated act.

The letter rogatory shall also indicate the name of the authority in the Republic of Serbia that will act on the request.

It is recommended that the correct name of the authority be indicated in the letter rogatory only in case of certainty as to which authority is competent to act on the request, while in all other cases it is recommended that the request be addressed in the following way: “Republic of Serbia – Competent authority”. The foregoing recommendation is given for practical reasons – when a non-competent authority receives the letter rogatory, a lot of time can pass before that authority delivers the letter rogatory to the competent one.

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Each letter rogatory (except for those seeking an extract from criminal records) shall be submitted to the Ministry of Justice of BiH with a special document (letter) in which (next to the other elements making a part of the official document) it is sufficient to state:

“herewith please find attached the letter rogatory we are requesting you to forward it to the competent authority of the Republic of Serbia through mutual legal assistance, and request such authority to act upon the letter rogatory in question”.

This means that two documents are always composed (letter rogatory and accompanying letter).

The foregoing recommendation is of practical importance for the BiH authorities requesting assistance, as it has been noted that a large number of letters rogatory come addressed to the Ministry of Justice of BiH, while the MLA is sought from the Republic of Serbia through the same document.

URGENCY: If urgent action is required, this shall be stated both in the letter rogatory and in the accompanying document, while both documents shall bear a mark “URGENT” in the upper right-hand corner, and there should be an explanation of the need for urgent action. The urgency mark should not become a rule, but an exception in justified cases, as it is necessary to recognize letters rogatory dictating such priority among many letters rogatory between the two countries. In urgent cases, central authorities have established the practice that they may also send each other copies of documents (letters rogatory) obtained through e-mail or fax, with the obligation to promptly supply the original documents.

REQUEST FOR PRESENCE DURING THE EXECUTION OF MLA ACTIONS: Certain letters rogatory may also contain additional special requests such as: **“Request for presence during the execution of MLA actions”**. In a case like this, a prosecutor (or a court) requests and states in the letter rogatory the desire to be present at the hearing, examination or presentation of other evidence. It is recommended in such case to state and deliver the contact information in the letter rogatory, to which the requested authority will deliver the response, with the goal of arranging the details on technical issues related to presence during the execution of legal assistance between the competent authorities of the two countries. Therefore, after the competent authority of the Republic of Serbia approves the presence during the execution of activities of legal assistance which were requested by the letter rogatory, then the competent authorities (prosecutors) can agree between themselves on the timeline for the execution of the letter rogatory and the acceptance of the authorized persons of the requesting country to attend those activities. In both countries, it is the ministries of justice that give the consent for presence during the execution of MLA actions.

In situations where the Republic of Serbia seeks such consent from BiH, the Ministry of Justice of BiH shall first obtain the opinion of the BiH authority competent to act on the letter rogatory in question (Article 21 of the Law on MLA). It is a common practice between the two countries that (except for a justifiable reason) this consent is always given; therefore, for the mentioned situation, we propose the following:

RECOMMENDATION: that the authority acting upon the request in BiH from which the opinion is sought (a prosecutor), submits as soon as possible, along with the schedule of the hearing for the execution of the requested action, an opinion on the presence during such action, with the contact information (name, telephone, email, etc.) included.

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This recommendation is also relevant in situations where the competent authorities in BiH seek the same type of legal assistance from the Republic of Serbia, since these types of actions create reciprocity between the two countries as regards the duration of delivery of feedback. There are noted examples where the Republic of Serbia (Ministry of Justice), upon the urgent reminder of the competent authority from BiH for the delivery of the requested opinion, responds that such opinion will be delivered, but reminds BiH that Serbia had been waiting for opinions on its letters rogatory for months. These positions indicate that the Republic of Serbia will apply the same deadlines like BiH authorities when acting upon the request of that country. The period of acquisition of opinion in these cases depends on the urgency of action of the competent authority, but also on the urgency of the action of the Central Authority; therefore, the Ministry of Justice of BiH is also recommended to act without delay in these procedures.

Once the requested authority submits a positive opinion to the BiH Ministry of Justice, the communication between the authorities acting upon the request can be made directly in order to execute the letter rogatory. In these cases, the ministries of justice of both countries always follow the opinion of the authority acting upon the letter rogatory, and the practice shows that the ministries do not oppose direct communication between the authorities taking action, after a proper communication and the positive opinion obtained through those ministries.

RECOMMENDATION: In assessing the requests for presence during the execution of legal assistance actions, the importance of evidence and the ability to ascertain new facts in case of presence during the requested action in the requested country is crucial (which has to be explained in the letter rogatory). The Republic of Serbia is a border state with BiH and these two countries understand the languages of communication, so it is justified to attend the requested actions whenever the circumstances of the case require so, since no such request has been rejected in practice so far.

3.1.2. The method of communication between the authorities of the two countries

3.1.2.1. CENTRAL LIAISON BODY (CENTRAL AUTHORITY)

Basic MLA communication between the authorities of the two countries is achieved through the liaison body (**Central Authority**). According to all agreements binding on the two countries in mutual legal assistance, the BiH Ministry of Justice is the Central Authority for all BiH authorities, and the Ministry of Justice of the Republic of Serbia is the Central Authority for all authorities of that country. This practically means that the pathway of letters rogatory prepared by prosecutors in BiH is the following: The prosecutor's office – Ministry of Justice of BiH – Ministry of Justice of the Republic of Serbia – authority in the Republic of Serbia taking the action; while the pathway of the feedback is reversed.

The exception to this rule is in the case when a criminal record extract (CR extract) is sought for the purpose of criminal proceedings; such extract may be requested directly from the competent authority of the Republic of Serbia.

RECOMMENDATION: The most rational option is to seek the CR extract directly from the Ministry of Internal Affairs of the Republic of Serbia for the purpose of criminal proceedings in BiH, as this Ministry holds the centralized data for all citizens whose records are kept in different police departments in Serbia.

Even though the possibility to undertake the mentioned action (direct communication) was introduced through Article 37, paragraph 2 of the 2010 Agreement on the Amendments to the Agreement between Bosnia and Herzegovina and the Republic of Serbia on Legal Assistance in Civil and Criminal matters, it is still not applied in practice (some authorities in both countries have not been informed about this possibility); hence, it is recommended that the delivered letter rogatory always indicate the correct legal basis for the submission of the CR extract through direct communication.

3.1.2.2. DIPLOMATIC PATHWAY

Each agreement between the two countries provides the possibility of communication through diplomatic channels as well, but this mode of communication is not sought or recommended between the two countries, since it would also include, next to the authorities mentioned in communication conducted through the central authorities, the ministries of foreign affairs of both countries, which would delay the execution of the letter rogatory. An exception to this rule exists in certain cases of transfer of criminal prosecution (when it comes to extensive number of documents), when the Ministry of Justice of BiH delivers such request through diplomatic channels to the Republic of Serbia.

3.1.2.3. INTERPOL

Communication between the authorities of the two countries may in urgent cases be conducted through **INTERPOL**, with the provision that in such cases a copy of the letter rogatory is submitted to the Ministry of Justice (Article 4, items 4 and 5 of the Agreement). This form of communication is very effective, albeit rarely used in practice between BiH and the Republic of Serbia for the cases it is intended for, except in extradition proceedings. When and in what cases is this communication recommended?

EXAMPLE: A competent prosecutor from BiH was informed that high-value technical goods were stolen in BiH and that the perpetrator fled to the Republic of Serbia and transported the goods there. In a case like this, the prosecutor urgently drafts the letter rogatory and submits it directly to INTERPOL bureau in Sarajevo, and delivers a copy of the letter rogatory to the Ministry of Justice of BiH. In the same case, INTERPOL bureau in Sarajevo forwards the letter rogatory directly to the INTERPOL bureau in Belgrade without delay. Such letter rogatory sent by the prosecutor can reach the competent authority in the Republic of Serbia in a matter of hours.

In these circumstances, the letter rogatory would also contain a request to e.g., search premises, vehicles, identify items, seize the items, and similar, as well as to perform other actions that would lead to the perpetrator and objects of the criminal offence.

Urgency in such circumstances is crucial; consequently, such letter rogatory (its copy) can also be forwarded through the Ministry of Justice of BiH, with an explanation of the reasons for the urgency of procedure and the obligation to send the original documents as soon as possible.

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Through INTERPOL, operational data the urgency of which requires this way of communication (notification of deprivation of liberty, custody, intention to submit an extradition request, etc.) may be sought and submitted.

RECOMMENDATION: In all urgent cases where the information on address, custody, serving the prison sentence and the like are required for the purpose of criminal proceedings, such information may be requested through INTERPOL bureau in Belgrade, in the manner that the requesting authority in BiH submits the letter rogatory to the INTERPOL bureau in Sarajevo (address: Ministry of Security of BiH – INTERPOL Sarajevo).

Communication through INTERPOL should not be used except for its intended purposes, and it is therefore unacceptable to deliver indictments and similar documents through INTERPOL, which was recorded by some courts, and opposed by INTERPOL representatives.

3.1.2.4. OTHER PERMITTED FORMS OF COMMUNICATION

Practice indicates that the two countries do not oppose informal communication (agreement) between prosecutors for the purpose of preparation of letters rogatory and acting upon them. In some cases, communication may be necessary to initiate the requested action (e.g., forming a joint investigation team and the like).

Special treaties between the two countries may provide for other forms of communication, in which case the norms of those treaties apply.

3.1.3. Joint Investigation Teams

Amendments to the Agreement between BiH and the Republic of Serbia on Legal Assistance in Civil and Criminal Matters of 26 February 2010 regulate through Article 36a (Article 8 of the Amendments) the way of forming joint investigation teams between the two countries in order to undertake coordinated and synchronized investigative actions in fight against serious forms of crime (terminology used in the Agreement), should the case circumstances warrant so.

“CASE CIRCUMSTANCES”: may include any type of aggravated criminal offences of organized crime involving persons from both countries or the evidence may be located in both countries; hence, the creation of a joint investigation team in such cases is the most rational solution for coordinating and harmonizing investigative actions. In such cases, the competent prosecutor’s office in BiH or the Republic of Serbia can move for the establishment of the joint investigation team.

A joint investigation team is formed on a case-by-case basis, in the manner that a competent prosecutor proposing to set up a joint investigation team submits his/her request to the competent authority of the other country (the competent prosecutor’s office in the Republic of Serbia) through the Central Authority (ministry of justice).

The competent authority of the requested country (prosecutor’s office) brings the decision whether to accept the request. Following this decision, an agreement is concluded and signed between the two authorities – managers of those authorities (in BiH, the chief prosecutor of the prosecutor’s office moving for the formation of a joint investigation team).

The joint investigation team acts and conducts activities in accordance with the criminal legislation of the State Party to the agreement in whose territory the investigative action is being undertaken.

This procedural tool represents a rational and broad form of involvement of the requested country and it differs from the previous mechanism of “presence during the execution of legal assistance actions” insofar as that a single decision to form a team provides for all MLA actions that need to be conducted in the requested country in a particular criminal proceeding.

Proposing the establishment of a joint investigation team depends on the assessment of the relevant prosecutor if the case circumstances justify the formation of such a team, and the method of formation and team tasks, when observing all bilateral treaties binding on BiH, are most appropriately regulated in the Agreement with the Republic of Serbia.

If BiH has a fully established procedure for the formation of joint investigation teams with the Republic of Serbia, the highest volume of exchange of MLA with that country, and if criminal groups operate jointly most often from these two countries, it is not acceptable that there is almost an equal number of joint investigation teams formed between these two countries like between BiH and the Republic of France. The emphasizes in the formation of the joint investigation team should not be placed on the location (destination) of the formation of team, but on the justification of the case for forming the joint investigation team.

RECOMMENDATION: Given that the procedure for the establishment of joint investigation teams has been thoroughly regulated between BiH and the Republic of Serbia, and considering that no interpreter is required for the functioning of these teams, as well as that these are bordering countries to which the team members arrive quite quickly by passenger vehicles (no unnecessary waste of time waiting at airports, or high costs), when the situation dictates that more evidence is required between the two countries to resolve a serious criminal offence, the formation of a joint investigation team is justified and desirable.

Proposal to establish a joint investigation team, next to the elements prescribed by Article 36a of the Agreement between BiH and the Republic of Serbia on the Amendments to the Agreement on Legal Assistance in Civil and Criminal Matters of 26 February 2010, should also contain all other elements present in every letter rogatory.

RECOMMENDATION: The proposal for the formation of a Joint Investigation Team should include as much information as possible about the suspects, name of the criminal offence or criminal offences that persons are charged with along with a reference to legal provisions and a detailed description of the facts available to the prosecutor, and the reasons serving in favour of formation of a joint investigation team.

EXAMPLE OF REASONS FOR THE FORMATION OF THE TEAM:

During the investigation, it was established that the following persons have also been involved in the commission of the aforementioned criminal offences:, son/daughter of ,, born on, in, residing in, the Republic of Serbia and, as well as that the evidence in relation to may be located in, at the territory of the Republic of Serbia.

Our assessment is that the circumstances of this case justify harmonized and jointly coordinated actions of the Prosecutor's Office of BiH and the Prosecutor's Office..... of the Republic of Serbia.

The proposal for the establishment of a joint investigation team should also include specific suggestions regarding the location of operation, time of operation, management, costs and any other details that may be relevant for the joint investigation.

EXAMPLE OF SPECIFIC PROPOSALS:

- That a joint investigation team be formed between the Prosecutor's Office of BiH and the Prosecutor's Office of the Republic of Serbia, which will work on solving this case in the territory of both countries;
- The team of the Prosecutor's Office of BiH would consist of: (team leader for BiH and the leader of the joint investigation team for conducting actions in the territory of BiH and, as team members (specify individual functions);
- That your esteemed prosecutor's office proposes the composition of the team and the team leader, as well as the leader of the joint investigation team for actions carried out on the territory of the Republic of Serbia, as well as other team members;
- That you send us a feedback on our proposal, and if you accept it, we are ready to immediately sign an agreement on the formation of the joint investigation team, which will determine the tasks, management, costs, timeframe, location of operation and other details in the manner stipulated by the mentioned agreement.
- Our contact information is as follows:, Telephone: ,,,,, E-mail:

NOTE: after receiving a positive response to such a proposal, the managers of prosecutor's offices of the two countries forming a joint investigation team conclude and sign the Agreement on Establishing the Joint Investigation Team setting out the tasks, management, costs, timeframe, location of operation and other details relevant to the efficient operation of the team.

Team management and costs are stipulated by the said Agreement, while the location of operation and the timeframe are determined according to the case circumstances. This Agreement does not have a specific prescribed form and is drafted under the terms of the Agreement between BiH and the Republic of Serbia on Legal Assistance in Civil and Criminal Matters, and in accordance with the circumstances of the case that dictates the creation of the joint investigation team.

3.1.4. MLA costs between BiH and the Republic of Serbia

According to the agreements concluded between the two countries, the costs of providing the MLA are borne by the requested country. There are exceptions that most often relate to the cost of expert witness opinions, in situations where such expertise entails enormously high costs. The practice between the two countries is such that the mentioned costs were not subject to estimation and none of the countries has so far requested from the other reimbursement of such costs in relation to the provision of MLA and the usual expertise carried out in the territory of the requested country.

Members of the joint investigation team in the territory of the receiving country shall bear the costs of staying in the receiving country, while the costs of execution of the requested action shall be borne by the receiving country (requested country).

4. Transfer of Criminal Prosecution

Research shows that, even today, certain BiH authorities ask for written information from the Ministry of Justice of BiH on whether there is an agreement with the Republic of Serbia on the transfer of criminal prosecution, because no such agreement has been mentioned in the list of agreements concluded between the two countries.

For this reason, it is important to point out again in this section that this issue between the two countries is governed by the Agreement between BiH and the Republic of Serbia on Legal Assistance in Civil and Criminal Matters (Article 39–42). The name of the agreement is what may be causing the confusion, because the basic text, much like its amendments, contain the words “and Montenegro” next to the words “the Republic of Serbia” in the title of the Agreement, while only the text from 2010 contains a visible change in the name of the Agreement. The remainder of the title of the Agreement also creates confusion: ... “in Civil and Criminal Matters,” where the title does not refer to the transfer of criminal prosecution, and other special forms of MLA are regulated by special agreements (extraditions – separate agreement; recognition and enforcement of foreign court decisions in criminal matters – separate agreement).

As this matter is regulated in detail by the Law on MLA and the bilateral agreement with the Republic of Serbia, the question is why not transfer the criminal prosecution to that country, if the relevant case cannot be solved in another way.

Actually, it is not uncommon that certain individuals avoid criminal prosecution by fleeing to another country.

EXAMPLE: In situations where the suspect is located in the Republic of Serbia, and Serbia is not permitting extradition of such suspect, the only way to complete such procedure is through the transfer of criminal prosecution.

Other procedures in which the interest of the Republic of Serbia in criminal prosecution prevails may be resolved in the same manner – through the transfer of criminal prosecution.

EXAMPLE: The expediency of criminal proceedings in BiH is questionable in relation to a citizen of the Republic of Serbia who inflicted grievous bodily harm on his fellow citizen during the summer holiday in Neum (BiH), when both persons are located in the Republic of Serbia as a country of their nationality. In this case, the interest of the Republic of Serbia certainly outweighs the interest of BiH, both in terms of criminal prosecution of the suspect and in terms of the exercise of the injured party’s rights.

The aforementioned bilateral Agreement, as well as the European Convention on the Transfer of Proceedings in Criminal Matters, provide the States Parties with a possibility to request takeover of the criminal proceedings in any case, provided that the person concerned is domiciled in, or is a national of, the requested country, or should serve the sentence for another criminal offence in that country as well, etc.

The main reason for the transfer of criminal prosecution lies in the permanent residence of the suspect in another country, or as specified in the Agreement “in the possibility of securing the presence of the accused”.

Given the fact that international treaties take precedence over domestic legislation, these procedures raise the question whether a bilateral agreement or the European Convention on the Transfer of Proceedings in Criminal Matters should be applied as a multilateral agreement in situations when BiH and the Republic of Serbia are bound by both bilateral and multilateral agreements.

The provisions of this Convention governing the relationship between the Convention and other treaties clearly eliminate this dilemma; hence, Article 43 (2) of the Convention provides that “The Contracting States may not conclude bilateral or multilateral agreements with one another on the matters dealt with in this Convention, except **in order to supplement its provisions or facilitate application of the principles embodied in it**”.

The bilateral agreement governing this issue between BiH and the Republic of Serbia follows the principles of the Convention, and the mentioned procedures have been additionally facilitated through the 2010 Amendments to the Agreement, when the provisions related to the consent of the injured party as a condition for the transfer of criminal prosecution between the two countries have been erased from the Agreement (Article 40, paragraph 2, item 4).

NOTE: There is a lack of knowledge of this Amendment, as the basic (first text of the Agreement) is often applied and its Amendments are neglected. Therefore, the transfer of criminal prosecution to the Republic of Serbia does not require the consent of the injured party.

RECOMMENDATION: Considering that the transfer of criminal prosecution by the authorities of one state is also an act of trust of that state towards the judicial authorities of another state, the use of this procedural pathway is proposed in all cases where criminal proceedings cannot be completed otherwise, as well as in other cases where it is assessed that this is in line with the purpose of the concluded agreements governing this area of MLA between BiH and the Republic of Serbia.

The request for the transfer of criminal prosecution shall be submitted to the competent judicial authority of the requested country, while the reasons for the transfer of criminal prosecution shall be stated (and explained) therein. Also, the requested authority is provided with all the files from the criminal case along with the necessary information, so that such authority can bring a decision to take over the criminal prosecution. This request shall be submitted to the requested authority through the Central Authority.

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RECOMMENDATION: It is desirable, in addition to the reasoning supporting the transfer of criminal prosecution, that the aforementioned submitted request contain a summary of the state of facts and an account of the actions carried out.

To encourage the transfer of criminal prosecution in so-called “sensitive cases” for crimes against humanity and crimes against international humanitarian law, the Agreement specifies “the nationality and residence of the suspect, accused or defendant” (Article 39, paragraph 2 – see the Amendments to the Agreement). These conditions are especially emphasized for the above-mentioned criminal offences since the Agreement on Extradition between the two countries explicitly sets out that they will not extradite their own nationals for crimes against humanity and crimes against international humanitarian law.

RECOMMENDATION: In addition to other factors, to take into consideration the citizenship and residence of the suspect, accused or defendant in deciding on the transfer of criminal prosecution for crimes against humanity and international humanitarian law (Article 39 (2) of the Agreement between BiH and the Republic of Serbia on Legal Assistance in Civil and Criminal Matters). This recommendation reflects the above-cited norm from the said Agreement (the 2010 Amendments) and aims to encourage the transfer of criminal prosecution for crimes against humanity and international humanitarian law, in situations where the country conducting the criminal proceedings cannot secure the presence of the suspect, accused or defendant.

5. Extradition procedure

5.1. Extradition procedure from BiH to the Republic of Serbia

5.1.1. Submitting the extradition request

The Republic of Serbia always delivers the request for extradition from BiH together with the necessary documents to the Ministry of Justice of BiH. In accordance with the provisions of the Law on MLA, this Ministry is obliged to immediately forward the mentioned request with supporting documents to the Prosecutor's Office of BiH¹¹, which shall determine whether the documentation is complete and whether it needs supplementing. The role of the Prosecutor's Office of BiH in this case is to make a preliminary assessment of the validity of the documents and submit it to the Court of BiH along with the request, and that Court is obliged to factually ascertain if the preconditions for extradition have been met – the action the Court is obliged to under the Law on MLA.

RECOMMENDATION: The Ministry of Justice of BiH and the Prosecutor's Office of Bosnia and Herzegovina should always act upon the extradition request with urgency and forward the request to the competent authority via courier service. This recommendation aims to eliminate results of some negative experiences when the wanted person was released due to the slow reaction of the mentioned authorities, even though the requesting country sent its request on time.

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Despite the fact that the Law on MLA stipulates the delivery of the foreign country's request to the Prosecutor's Office of BiH, the practice of this institution was such that it had most often only forwarded the request to the Court of BiH, which then determined the completeness and validity of the documents submitted with the request, and rendered decisions on the fulfilment of preconditions for extradition upon such requests. The Prosecutor's Office of BiH rarely requests supplementation of the request even if there were cases where it had to be done since incomplete requests were submitted. In most cases, the Court of BiH removed these deficiencies by requesting supplementation of documents through the Ministry of Justice of BiH.

RECOMMENDATION: That the Prosecutor's Office of BiH, upon receipt of the extradition request from the Republic of Serbia, in shortest possible time, determine the validity of the enclosed documents and forward the request immediately to the Court of BiH for further action, regardless of whether all enclosures have been submitted with the request. The request is forwarded to the Court of BiH even in case of receipt of incomplete documents; in that case, it is necessary, through the Ministry of Justice of BiH, to request from the Republic of Serbia to urgently supplement the documents. There is an established practice between BiH and the Republic of Serbia to accept the request which does not contain all prescribed documents, with the obligation to provide the missing documents as soon as possible. The reason for such relations lies in the fact that in some cases the authorities of both countries did not submit a complete request within 40 days from the day the wanted person was placed in custody, resulting in release of such person from custody, and consequent unavailability of the wanted person or his/her fleeing to a third country.

¹¹ Article 36 of the Law on MLA.

According to Article 2, Paragraph 1 of the Agreement between BiH and the Republic of Serbia, letters rogatory and notifications related to extradition procedure may in urgent cases be delivered through INTERPOL of the two countries. It is also acceptable between the two countries that, in an emergency, the extradition request with its enclosures be delivered between the central authorities (Ministries of Justice) through e-mail or fax to reach the court before the expiry of 40 days of custody, which must be terminated if the request of the requesting country is not received within that period. In both cases, the request with supporting documents is also urgently submitted through the central authorities.

5.1.2. Procedure upon the extradition request

Upon receipt of the extradition request, the Court of BiH ascertains if the preconditions (requirements) for extradition have been fulfilled and establishes such fact by a decision. **The Prosecutor's Office of BiH has a role prescribed by the Law on MLA in all stages of this procedure.** The procedure is precisely regulated by the Law on MLA (Chapter III), so no comments are needed in this part, and the role of the Prosecutor's Office is indicated through Part I of this Guide as well.

The Minister of Justice of BiH makes the final decision on the extradition or non-extradition of the requested person. The Court of BiH shall decide on the matter of custody in the period from the deprivation of liberty to the final extradition decision.

After the Minister of Justice of BiH receives the decision of the Court of BiH on the fulfilment of the preconditions for extradition along with the entire case file, the Minister shall decide whether or not to extradite the foreigner. The Minister of Justice of BiH shall issue a decision on the matter in the form of a decree, in accordance with Article 46 paragraph 1 of the Law on MLA. No appeal can be lodged against this decree, nor can an administrative proceeding be initiated, which is logical since the wanted person already received the judicial protection before the Court of BiH in determination of the preconditions for his/her extradition.

The legal situation is completely different in cases where the Court of BiH finds that the conditions for extradition to the Republic of Serbia have not been met. In these situations, the BiH Minister of Justice has no further authority to make a different decision, but will issue a decree refusing extradition.

5.1.3. Handover of the person whose extradition is requested

The person to be extradited, more precisely handed over to another country, is usually in the custody of the Court of BiH before the delivery. After the Minister of Justice of BiH issues a decree authorizing extradition, such decree shall be delivered to the Ministry of Justice of the Republic of Serbia for information and for further action aimed at implementation of such decree. The decree is submitted simultaneously to the Court of BiH, the Office for Cooperation with Interpol (Interpol Sarajevo) and the Border Police of BiH. Immediately upon receiving the decree, Interpol Sarajevo arranges with Interpol Belgrade the details related to location, time and manner of handing over of person whose extradition is requested.

Therefore, the Interpol bureaus of the two countries arrange for the location and time of the hand over and the method of transfer of persons for whom extradition has been granted to the Republic of Serbia.

The Border Police of BiH implements the hand over in the manner that the wanted person is handed over to the competent authorities of the Republic of Serbia at the border crossing. The Law on MLA does not regulate who exactly takes the person from the detention unit and transports him/her to the Border Police of BiH; however, the rules of the Court Police of the Court of BiH regulate the issue – the Court Police of the Court of BiH hands the person over to the Border Police of BiH.

5.1.4. Extradition of nationals

The extradition of country's nationals certainly represents the broadest form of cooperation and trust between the countries within the area of MLA. The Agreement between BiH and the Republic of Serbia on Extradition¹² was concluded solely to regulate issues and conditions regarding the extradition of the nationals of both countries, since all other issues related to extradition are governed by the European Convention on Extradition, to which both countries are parties. This Agreement was only concluded in 2013 even though all other issues related to MLA between the two countries have already been regulated through bilateral agreements many years earlier.

This Agreement introduces a restriction in regards to extradition of country's own nationals vis-à-vis crimes against humanity and international humanitarian law.

This reservation introduced through the aforementioned Agreement is the result of different views of the two countries on the character of the wars in the region; therefore, the conclusion of this type of agreement would still be pending without the mentioned reservation.

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The Agreement explicitly stipulates that the extradition of country's own nationals shall be applicable only in situations where the criminal offence was committed after the entry into force (i.e., after 2 December 2014).

The extradition of country's own nationals may also be allowed in all other cases under the conditions laid down in the mentioned Agreement, with the proviso that the conditions for the extradition of country's own nationals are different from those for the extradition of an alien.

For example, Article 7, Paragraph 1 of the Agreement on Extradition stipulates that “the extradition of country's own nationals for the purpose of criminal prosecution will be allowed if the conditions laid down in this Agreement for the criminal offences of organized crime, corruption and money laundering are fulfilled – offences for which a sentence of imprisonment or a measure involving deprivation of liberty for the period of four years or a more severe punishment are prescribed”; conversely, extradition of an alien will be allowed in case of criminal offences for which a much more lenient sentence is prescribed.

RECOMMENDATION: When extraditing one's own nationals, in addition to other provisions, special attention shall be paid to the provisions of Articles 7 and 8 of the extradition agreements governing the conditions for extradition for the purpose of criminal prosecution. When it comes to the extradition of one's own citizens who are already convicted, in addition to Articles 7 and 8, special attention shall be paid to the provisions of Article 9 of the said agreement. Namely, these provisions should be considered in conjunction with the provisions of the Treaty on the Recognition and Enforcement of Foreign Judgments in Criminal Matters between two States and the European Convention on the Transfer of

¹² BiH and Republic of Serbia signed extradition treaty on 05.09.2013. (Official Gazette of BiH - International Treaties, No. 19/14, entry into force 02.12.2014).

Sentenced Persons, which sets the rights of convicted persons. There is no case-law in BiH regarding the application of Article 9 of the Extradition Treaty because so far there has not been a single case of BiH extraditing its citizen to serve a prison sentence in another state, hence this issue should be approached with caution to harmonize future case-law.

REASONS: Paragraph 2 of Article 7 of the Agreement on Extradition reads as follows: “The extradition of country’s own nationals for the purpose of serving a sentence of imprisonment or a measure involving deprivation of liberty imposed by a final judgement, shall be allowed if the conditions laid down in this Agreement in regards to criminal offences of organized crime, corruption and money laundering – punishable under the law of both Contracting States – are fulfilled, if the duration of imprisonment or the measure involving deprivation of liberty, i.e. their remaining period to be carried out, amounts to at least two years.” Upon possible extradition of a convicted person on this legal basis, such person could immediately file a request to serve a sentence of imprisonment in the country of his/her nationality, which is his/her right stipulated by the Agreement on the Recognition and Enforcement of Foreign Judgments between the two countries, as well as the provisions of the European Convention on the Transfer of Sentenced Persons.

The question here is whether the convicted person extradited on these grounds could immediately file a motion to serve the sentence in the country of his/her citizenship or domicile¹³, which is the right provided by the Treaty on the Recognition and Enforcement of Foreign Judgments between the two states, as well as by the provisions of the European Convention on the Transfer of Sentenced Persons.

This Guide is meant to inform rather than to presume certain solutions, hence the foregoing explanation only indicates the complexity of the norms related to the extradition of one’s own nationals. At the same time, it also points to possible dilemmas regarding such requests, which are decided based on several agreements that regulate the same issue in different ways.

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5.2. Extradition from the Republic of Serbia to BiH

Extradition from another country to BiH is always related to persons who are a subject of criminal proceedings in BiH or have been convicted in BiH, and have fled to another country to avoid criminal proceedings or enforcement of a criminal sanction. The procedure and manner of submitting the request for extradition from abroad is always governed by the domestic law of the requesting country – hence, this issue is regulated by the Law on MLA in Bosnia and Herzegovina.

The Law on MLA has essentially regulated the course of the procedure for submitting the extradition request only through a single article.¹⁴ It would not be possible to draw a conclusion on the actual course of extradition procedure from another country to BiH by analysing the norms of the Law on MLA.¹⁵ When associating the norms of this Law with other regulations, one could only assume, but not decipher, the overall procedure spanning from the submission of the extradition request to the execution of the extradition decision.

¹³ “Domicile” is a term from the Treaty on the Recognition and Enforcement of Foreign Judgments in Criminal Matters between two States (Article 2).

¹⁴ Article 57 of the Law on MLA defined this course in a slightly unusual way by prescribing that the Minister of Justice of BiH may submit the request for the extradition of the wanted person from another country if a criminal proceeding is conducted in BiH or if the person is convicted in BiH and if that is proposed by the authority conducting the proceedings or the authority responsible for enforcement.

¹⁵ Article 57 of the Law on MLA.

If we lack clear solutions pertaining to this procedure in the Law on MLA, it is very important to know if we have any examples of **good practice in this procedure**. Criminal procedure codes or any other codes applicable in BiH don't contain definitions as regards these solutions either. Criminal procedure codes define under which conditions and upon whose motion the court issues an order for an international arrest warrant for a fugitive. If the court issued an order at the request of a prosecutor (in the investigation stage), then the prosecutor's office on whose motion the order was issued shall submit the motion for the extradition of the wanted person, after such person is arrested abroad. In all other cases, the ordering court moves for the extradition of the wanted person; such obligation leads to conclusion on the obligation of the mentioned authorities to take appropriate actions in the extradition procedure of the wanted person.

How is this procedure implemented in practice?

- First, an international warrant is issued against the fugitive, and at this stage the legal basis is not disputable and is defined by appropriate laws.¹⁶
- When a wanted person is deprived of liberty based on an international arrest warrant, such information is sent immediately through Interpol to the Ministry of Justice of BiH, which then forwards the information to the authority issuing the order for an international arrest warrant, i.e., authority conducting criminal proceedings (prosecutor's office) against the wanted person or the authority responsible for the execution of the sentence of imprisonment.
- The Ministry of Justice of BiH shall invite the authority conducting the criminal proceedings (a prosecutor's office or a court) to declare the current relevance of the international arrest warrant, and if the wanted person is sought from abroad, that authority is obliged to submit the initiative (motion) for extradition with complete extradition documentation, which, together with the request of the Minister of Justice of BiH, will be delivered to the country where the wanted person is deprived of liberty.

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The initiative (written motion for extradition) shall be accompanied by the documentation prescribed by the Agreement on Extradition between the two countries as follows:

- 1) means of establishing the identity of the person whose extradition is requested (exact description, photographs, fingerprints, etc.);
- 2) confirmation or other information on the citizenship of the person whose extradition is requested;
- 3) original or certified copy of the indictment or judgment or decision ordering custody, or any other document equivalent to this decision, which must indicate the name and surname of the person whose extradition is requested and other information necessary to establish his/her identity, description of the offence, the legal name of the criminal offence and the evidence giving rise to grounded suspicion;
- 4) an excerpt from the text of legal provisions that will be applied or have been applied to the person whose extradition is requested, because of the offence prompting the extradition request;
- 5) information on the length of the criminal sanction when it comes to extradition of a person for the purpose of serving the remainder of the criminal sanction.

¹⁶ The order for the arrest warrant is issued by a competent court while Interpol issues the actual warrant following the prescribed procedure.

The listed documents must be originals or certified copies. This initiative with documentation shall be submitted to the Minister of Justice of BiH, who submits the requests to the Republic of Serbia for the extradition of the wanted person.

RECOMMENDATION: All authorities in BiH engaged in the extradition procedure are obliged to take urgent actions within the scope of their competence, as the Agreement stipulates that the custody can last for a maximum of 40 days before the delivery of the extradition request, and this period is counted from the day of deprivation of liberty in the Republic of Serbia. Therefore, the authority in the Republic of Serbia that ordered the custody of the wanted person for the purpose of extradition must receive the extradition request before the expiry of the mentioned deadline. Upon receipt of the extradition request, custody may be extended until the final decision on extradition (using this as a basis, the custody in the Republic of Serbia may last up to one year, counting from the date of deprivation of liberty).

NOTE: In the Republic of Serbia, every district court, depending on its competence, may decide on the fulfilment of the preconditions (requirements for extradition); hence, there is no established practice and the level of tolerance regarding the deadlines for submission of documentation is not always the same. This is why it is RECOMMENDED to always pay attention to deadlines and the documentation prescribed by the Agreement.

All other rules shall be applied by analogy like in the case of extradition from Bosnia and Herzegovina to the Republic of Serbia (item 5.1.).

INFORMATION WITH PART II – PROPOSED LETTER ROGATORY FORMS/EXAMPLES FOR ACTION

This section provides examples of possible letter rogatory (request) forms and other documents significant for MLA, and is especially intended for holders of judicial functions, who are less likely to encounter mutual legal assistance procedures when performing their duties. The forms reflect a generally applied form of an official document used in Bosnia and Herzegovina, supplemented by elements of the letter rogatory (request) for the use abroad.

The forms are of an informative nature and should be viewed only as a guide for easier drafting of letters rogatory acceptable abroad.

The outlook of the letter rogatory may be different from the one offered in the forms; however, each request must contain at least the elements from the forms, as well as other elements prescribed by an international treaty, if they are not included in the form.

In addition to the information provided in the form, each letter rogatory, in addition to the legal assessment of the criminal offence, should also contain the location and time of commission of the criminal offence and a brief description of the incriminated act.

EXAMPLE 1 (Request for delivery of criminal records extract – DIRECT DELIVERY)

BOSNIA AND HERZEGOVINA

(full title of the authority)

Case number :...../....

.....

(place and date)

REPUBLIC OF SERBIA
MINISTRY OF INTERNAL AFFAIRS
B E L G R A D E

SUBJECT: Mutual legal assistance, the suspect _____
delivery of criminal records extract, hereby requested

This authority is conducting criminal proceedings against the suspect/defendant _____ son/daughter of _____, born on _____ in _____, the Republic of Serbia, because of the criminal offence of _____ referred to in Article _____ paragraph _____ of the Criminal Code of _____.

Given that Article 37 (2) of the Agreement on the Amendments to the Agreement on Legal Assistance in Civil and Criminal Matters between Bosnia and Herzegovina and the Republic of Serbia provides that a judicial authority of one Contracting State which is conducting the criminal proceedings may request a criminal records extract from a national authority of another Contracting Party responsible for maintaining the criminal records, we kindly request that the respected authority provide us with an extract from criminal records for the above-mentioned person.

Presenting our compliments, we kindly ask you to deliver the requested criminal records extract for the person named _____ directly to this authority, with reference to our document number.

Sincerely,

PROSECUTOR

Note: Obtaining a CR extract is the only MLA action that can be requested directly from the Republic of Serbia under applicable agreements (Article 37, Paragraph 2 of the Agreement on the Amendments to the Agreement on Legal Assistance in Civil and Criminal Matters between Bosnia and Herzegovina and the Republic of Serbia dated 26 February 2010.)

EXAMPLE 2 (Example of a document accompanied by a letter rogatory to a foreign authority)

BOSNIA AND HERZEGOVINA

(full title of the authority)

Case number: /

.....

(place and date)

TO THE ATTENTION OF THE MINISTRY OF JUSTICE
OF BOSNIA AND HERZEGOVINA

SUBJECT: Mutual legal assistance, the suspect,
delivery of summons abroad

This authority is conducting criminal proceedings against _____, son/
daughter of, born on in because of the criminal offence of
„..... referred to in Article paragraph of the
Criminal Code of

As the mentioned person is domiciled in the territory of the Republic of Serbia, we kindly request that
the summons for _____ before this authority for the following
date, (dd/mm/yyyy) along with the letter rogatory for the delivery of the summons,
which is attached herewith, be forwarded to the competent authority of the Republic of Serbia with the
request to deliver the summons to the suspect.

We kindly ask you to return the delivery note (summons delivery record), as a confirmation that the letter
rogatory has been granted, to this authority, with reference to our document number.

Sincerely,

Enclosure: as stated in the text

Note: This is an example of a document submitted to the Central Authority to mediate in the delivery of
the letter rogatory and the summons to the requested authority in the Republic of Serbia. This document
should contain only the basic elements from the letter rogatory. In MLA, agreements place all stages of
proceedings (as well as the investigation) under “criminal proceedings”, with the proviso that the use of
terminology from domestic laws is permitted.

EXAMPLE 2/1 (Sample letter rogatory – TO BE DELIVERED WITH THE DOCUMENT FROM THE EXAMPLE 2)

(full title of the authority)

Case number: _____

.....

(place and date)

REPUBLIC OF SERBIA

- TO THE ATTENTION OF THE COMPETENT AUTHORITY -

SUBJECT: Mutual legal assistance, the suspect _____
delivery of summons for _____

This authority is conducting criminal proceedings against the suspect _____, son/daughter of _____, born on _____, in _____, because of the criminal offence of _____ referred to in Article _____ paragraph _____ of the Criminal Code _____

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As the named person is domiciled in the territory of the Republic of Serbia, we have the honour to, in accordance with the provisions of the Agreement between Bosnia and Herzegovina and the Republic of Serbia on Legal Assistance in Civil and Criminal Matters, ask the competent authority of the Republic of Serbia to deliver the summons for hearing/questioning before this authority for the following date _____ to the suspect who has a registered habitual residence in the Republic of Serbia at the following address _____ street, _____ and to return the signed delivery note and the summons delivery record to this authority as a confirmation that the letter rogatory was granted, with reference to our document number.

At the same time, we hereby declare that the summoned person’s rights set out in Articles 33 and 35 of the Agreement between Bosnia and Herzegovina and the Republic of Serbia on Legal Assistance in Civil and Criminal Matters, will be respected.

I present my personal compliments and gratitude for the collaboration.

EXAMPLE 3 (Sample letter rogatory for witness examination)

BOSNIA AND HERZEGOVINA

_____ **(full title of the authority)**

Number:.....

.....

(place and date)

TO THE ATTENTION OF THE COMPETENT AUTHORITY
OF THE REPUBLIC OF SERBIA

SUBJECT: Mutual legal assistance, the suspect _____, letter rogatory
for witness examination

The above authority is conducting investigation against the suspect, son/
daughter of, born on in because of the criminal offence of
..... referred to in Articleparagraph 2 of the Crim-
inal Code The suspect is charged with committing

.....
.....

Evidence presented thus far point that the person named, who is
domiciled in the Republic of Serbia at the following address,
has knowledge of the facts related to the commission of the criminal offence with which the suspect is
charged.

In connection with the above, we have the honour to ask the competent authority of the Republic of Ser-
bia to examine in the capacity of a witness the person named, son/daughter of,
born on..... (dd/mm/yyyy), residing at the following address,
the Republic of Serbia, in relation to circumstances from the enclosed order to conduct investigation,
while focusing particularly on the following questions:
..... **(specify in
the form of an exhaustive list or descriptively the circumstances that the witness should be exam-
ined about)**, as well as in relation to other circumstances that the authority deems relevant for the further
course of this proceeding – all with the purpose of solving the mentioned crime.

Please provide the witness examination record to this authority, with reference to our document number. We take the opportunity to present our compliments and gratitude for the cooperation with the authority of the Republic of Serbia handling this case.

NOTE: It is a rule that instead of the term “this authority” and similar (as presented in the example), the correct name of the authority seeking legal assistance be stated (e.g., the Prosecutor’s Office of Bosnia and Herzegovina). Similarly, the capacity of the judicial office holder, as well as his/her name and surname shall be listed at the end of the letter rogatory (in signature line).

It is recommended to present in the letter rogatory a summary of the proceedings along with all circumstances that the witness is to be examined about, and enclose the necessary documents from the proceedings therewith.

Although in practice it often appears that “legal associates” sign the letter rogatory, this is neither recommended nor acceptable, since it is the judicial office holders that communicate in proceedings of this kind, and most often with central authorities of the two countries acting as intermediary.

EXAMPLE 4 (Requesting consent for presence during the execution of the requested mutual legal assistance activities)

BOSNIA AND HERZEGOVINA

(full title of the authority)

Number:.....

.....

(place and date)

TO THE ATTENTION OF THE COMPETENT AUTHORITY
OF THE REPUBLIC OF SERBIA

**SUBJECT: Mutual legal assistance, the suspect _____, letter rogatory
for witness examination**

The above authority is conducting investigation against the suspect, son/daughter of, born on (dd/mm/yyyy) in because of the criminal offence of referred to in Articleparagraph 2 of the Criminal Code The suspect is charged with committing

.....
.....

Evidence presented thus far point that the person named, born on, son/daughter of who is domiciled in the Republic of Serbia at the following address, has knowledge of the facts related to the commission of the criminal offence with which the suspect is charged.

In connection with the above, we have the honour to ask that you examine in the capacity of a witness the person named, in relation to circumstances from the enclosed order to conduct investigation.

As the testimony of the mentioned witness is important for the further course of this criminal proceedings, we kindly ask you to inform us, in accordance with Article 36 of the Agreement between Bosnia and Herzegovina and the Republic of Serbia on Legal Assistance in Civil and Criminal Matters, about the time and place of the hearing as well as to allow the presence of the following individuals during the hearing:

1 (state the function, name and surname)

2

Please note that the following contact details are at your disposal for further communication regarding our presence during the requested legal assistance actions, if such presence is approved by the competent authority of the Republic of Serbia:, e-mail:, telephone:

We take the opportunity to present our compliments and gratitude for the cooperation with the authority of the Republic of Serbia handling this case.

IMPORTANT REMARKS: The Ministry of Justice of the Republic of Serbia gives approval (consent) for presence during the execution of the legal assistance actions in that country, while the requesting authority delivers the contact details by way of letter rogatory so that it can communicate with the executing authority upon a given consent.

These letters rogatory always follow the communication through central liaison bodies (central authorities). Direct communication between the authorities of the two countries upon the given consent for the presence during the execution of legal assistance actions is allowed, since it concerns the technicalities of the implementation of the approved action in the manner prescribed by the Agreement; however, this consent is also delivered through the central liaison bodies.

In this case as well, the requested country delivers the witness examination record through the central liaison bodies, regardless of the fact that the party submitting the letter rogatory was present during the requested actions. The party submitting the letter rogatory or a person whose presence during the requested actions has been authorised, shall be issued with a copy of the records at his/her request.

The costs of execution of the letter rogatory shall be borne by the requested authority. However, the costs pertaining to presence during the requested legal assistance (transportation, accommodation, etc.) shall be borne by the authority requesting the presence during such actions.

ACTIONS OF THE BiH AUTHORITY UPON THE LETTERS ROGATORY FROM THE REPUBLIC OF SERBIA:

The Ministry of Justice of BiH gives the consent for the presence during the MLA actions requested by the competent authorities of the Republic of Serbia from the authorities in BiH, upon the previously obtained opinion of the authority competent to execute the letter rogatory (Article 21 of the Law on MLA).

The BiH authority (a prosecutor's office or a court) that receives such letter rogatory through the Ministry of Justice of BiH is obliged to immediately schedule a hearing for the purpose of examination (or presentation of other evidence requested through the letter rogatory), give its opinion on the presence during the requested actions, and immediately notify the Ministry of Justice of BiH thereof in writing, which shall then without a delay inform the requesting country (in this case: the Ministry of Justice of the Republic of Serbia).

In case of such requests, the authority taking action (a prosecutor's office or a court) generally provides a written positive opinion, which clearly shows the responses to the request and leaves a reasonable time for scheduling the hearing and organizing presence during the requested actions. It is also advisable to leave contact details (e-mail, telephone and the name of contact person).

Therefore, the opinion on the presence during the legal assistance actions which is provided by the BiH authority acting upon the request is not bound by any specific form, while the notification to the requesting country is delivered as provided below (EXAMPLE 5).

EXAMPLE 5 (Notification on the consent for presence during the legal assistance actions)

BOSNIA AND HERZEGOVINA

MINISTRY OF JUSTICE

Number:/.....

Sarajevo,..... (date)

URGENT!

REPUBLIC OF SERBIA

MINISTRY OF JUSTICE

BELGRADE

SUBJECT: Mutual legal assistance, MM and others

Reference: Your document number: dated:

The Ministry of Justice of Bosnia and Herzegovina presents its compliments to the Ministry of Justice of the Republic of Serbia.

In reference to the letter rogatorydated, for the provision of mutual legal assistance in criminal matters all in relation to the criminal proceedings against and others, we have the honour to inform you that the Ministry of Justice of Bosnia and Herzegovina, in accordance with the provisions of Article 21 of the Law on Mutual Legal Assistance in Criminal Matters, and upon the previously obtained opinion, agrees that authorized representatives of the judicial authorities of the Republic of Serbia can be present during the requested action of examination of the following person in the function of a witness

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The examination of the mentioned witness is scheduled for (date), starting at hours in the premises of located on the street no. in

For any additional information you can contact this authority on the following fax no. or telephone no.(contact person

The Ministry of Justice of Bosnia and Herzegovina also uses this opportunity to once more present its compliments and gratitude to the Ministry of Justice of the Republic of Serbia.

NOTE: The approval of the Ministry of Justice of BiH has been taken as an example to draw attention to the importance and urgency that the BiH authority acting upon similar letter rogatory from the Republic of Serbia needs to observe when providing an opinion. The consent of the Ministry of Justice of the Republic of Serbia is delivered in the same manner upon the submission of such letters rogatory from BiH.

EXAMPLE 6 (Delivery of the letter rogatory for hearing by video conference)

BOSNIA AND HERZEGOVINA

(full title of the authority)

Number:.....

.....

(place and date)

VERY URGENT

MINISTRY OF JUSTICE
OF BOSNIA AND HERZEGOVINA

SUBJECT: Mutual legal assistance, _____ , hearing by video conference

Dear Sir/Madam,

This authority is currently conducting the criminal proceedings against the suspect/defendant and others, because of the criminal offence of referred to in Article... of the Criminal Code

This criminal proceeding requires the hearing of the following witness: from the Republic of Serbia, through video conferencing (explanation provided in the letter rogatory).

Given the previous successful communication between the judicial authorities of the two countries as regards this type of hearing, we kindly request you to deliver the attached request in question through the mechanism of mutual legal assistance to the competent authority of the Republic of Serbia and request it to act in the manner stated therein.

Sincerely,

NOTE: The document with which the requested is submitted to the Ministry of Justice of BiH contains only basic information, while the request must contain the reasons for hearing by video conference. It is recommended that the authority requesting the legal assistance provides all necessary contact information within the letter rogatory, so that the direct communication between the two authorities can be established upon the approval of this type of legal assistance, with the purpose of carrying out the hearing requested by the letter rogatory.

EXAMPLE 6/1 (Example of the letter rogatory prepared by a BiH authority for hearing by video conference)

BOSNIA AND HERZEGOVINA

(full title of the authority)

Number:.....

.....

REPUBLIC OF SERBIA

– COMPETENT AUTHORITY –

SUBJECT: Letter rogatory for mutual legal assistance – hearing of the witnessthrough video conferencing

This authority is conducting the criminal proceedings against the suspect/defendant (***state the personal details***), because of the criminal offence of

(state the criminal offence and provide the summary of the state of facts and the proceedings)

This criminal proceeding requires the examination of the following witness: from the Republic of Serbia; therefore, for the sake of the economy of the proceedings and due to the importance of this witness testimony, we kindly ask you to conduct the examination through video conferencing. The examination of the mentioned witness is necessary to determine the full state of the facts in the case, as well as to achieve comprehensive clarification of the state of affairs in this criminal proceeding, all of which would be carried out through video conferencing since it was impossible to secure the personal presence of the above-mentioned person, whose examination in the function of a witness is requested.

(It is recommended to state in this section all the relevant facts speaking in favour of the hearing in the proposed manner).

The provisions of the European Convention on Mutual Assistance in Criminal Matters, the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters, and the Agreement on Legal Assistance in Civil and Criminal Matters between Bosnia and Herzegovina and Serbia make the legal basis for this legal assistance.

Regarding the technical support, you can contact the head of the Technical Support Department of this Court, Mr. _____ (on the following telephone number: _____), where you will be able to obtain the technical information necessary to establish a video link.

Please note that this authority uses the following device for establishing the video link _____; the device has two ISDN lines (_____ Kbps) and the call-in numbers are: + 387_____.

For any additional information regarding the provision of mutual legal assistance by the Court of BiH in this matter, please contact _____, (contact telephone number: _____, e-mail address_____).

With our highest compliments,

NOTE: This form of legal assistance is very effective, but used scarcely and generally in situations where it is not possible to introduce the required evidence in another way. The Republic of Serbia is a country bordering with BiH, so it is much easier to secure the examination of a witness from that country than from a country overseas. In the cooperation between the two countries so far, this assistance (video conferencing) was provided predominantly in proceedings related to crimes against humanity and crimes against international humanitarian law.

It is necessary to state the reasons for this form of legal assistance as the technical equipment and the time of use of such equipment is limited in both countries and not always possible between all authorities of the two countries due to the lack of equipment or the capacity of the equipment.

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In relation to the legal basis, it is sufficient to refer to a bilateral agreement, since the appropriate solutions from the Convention have been transposed and incorporated into the agreement, but the example offers a more complete form of reference.

EXAMPLE 6/2 (Example of the document of the Ministry of Justice serving to forward the letter rogatory for video conferencing)

**MINISTRY OF JUSTICE
OF BOSNIA AND HERZEGOVINA**

Number: _____

Date:

**REPUBLIC OF SERBIA
MINISTRY OF JUSTICE**

BELGRADE

SUBJECT: Mutual legal assistance, _____, request for hearing by video conference

The Ministry of Justice of Bosnia and Herzegovina presents its compliments to the Ministry of Justice of the Republic of Serbia.

Pursuant to the Agreement on Legal Assistance in Civil and Criminal Matters between Bosnia and Herzegovina and the Republic of Serbia, the Ministry of Justice of Bosnia and Herzegovina has the honour to deliver you the enclosed letter rogatory of the Prosecutor’s Office, number: _____ dated _____, requesting the provision of mutual legal assistance by way of facilitation of the hearing of the witness named _____, through video conferencing.

We kindly request you to forward the letter rogatory in question to the competent authority for further action and ask the authority to provide the legal assistance in the requested manner; please deliver the response to the letter rogatory to this ministry, with reference to the number and date of our document. **At the same time, we consent to the direct communication between the competent authorities for the purpose of technical implementation of the letter rogatory upon the approval of the requested legal assistance.**

The Ministry of Justice of Bosnia and Herzegovina uses this opportunity to once more present its compliments and gratitude to the Ministry of Justice of the Republic of Serbia for the cooperation.

Enclosure: – Letter Rogatory, number: _____

Note: Examples 6/1 and 6/2 show the pathway of the letter rogatory: prosecutor’s office/court – Ministry of Justice of BiH – Ministry of Justice of the Republic of Serbia; followed by the Ministry forwarding the letter rogatory to the authority responsible for its execution. The role of the central authorities in this form of MLA can be very important as this form of legal assistance establishes the reciprocity in terms of the extent of the provision of the assistance, since not all authorities in both countries have the technical ability or capacity to provide all the assistance requested in this way.

EXAMPLE 7 (Example of the document accompanied by the letter rogatory for imposing an interim measure)

BOSNA I HERCEGOVINA

VERY URGENT

(full title of the authority)

Number:.....

.....

(place and date)

MINISTRY OF JUSTICE
OF BOSNIA AND HERZEGOVINA

SUBJECT: ----- Letter rogatory for the provision of legal assistance in criminal matters – **imposing of interim measures**

We kindly request you to, pursuant to Article 4 of the Law on Mutual Legal Assistance in Criminal Matters, forward the letter rogatory for the provision of legal assistance along with supporting documentation to the competent prosecutor’s office for organized crime in the Republic of Serbia, for the purpose of imposing an interim measure concerning the financial investigation conducted by this prosecutor’s office under the following number; ----- against and other connected persons.

Sincerely,

PROSECUTOR

ENCLOSURE: as stated in the text

NOTE: It is recommended to maintain a simple form of this document, by stating the basic information from the letter rogatory and indicating the urgency of the action.

EXAMPLE 7/1 (Sample letter rogatory seeking imposing of the interim measure)

BOSNIA AND HERZEGOVINA

(full title of the authority)

Number:.....

.....

(place and date)

TO THE ATTENTION OF THE COMPETENT AUTHORITY
OF THE REPUBLIC OF SERBIA

SUBJECT: Mutual legal assistance, request to impose the interim measure of prohibition of sale or disposal of property

This prosecutor’s office has the honour to inform you that we issued an order to initiate a financial investigation number: dated (dd/mm/yyyy) against and other connected persons due to the grounds of suspicion that the owners of the property acquired through the commission of the criminal offence of organized crime from Article paragraph of the Criminal Code of in relation to the criminal offence of from Article.....paragraph of the Criminal Code of

In the course of the financial investigation, the data and information collected have shown that the named person, at the time of the incriminated act, organized (and for example) and managed a criminal enterprise, which, through joint activities and over a long period of time in the wider area of Bosnia and Herzegovina, committed criminal offences of illicit production and traffic in narcotic drugs, whereby the accused obtained a large sum of cash, for which there are grounds of suspicion that it has originated from the commission of the criminal offence, and where the obtained money in question was used to buy immovable property in Bosnia and Herzegovina and the Republic of Serbia.

Evidence that, upon completion of the financial investigation, was delivered by to this prosecutor’s office, indisputably indicates that the accused..... owns, in addition to the property in Bosnia and Herzegovina, property in the Republic of Serbia – namely – an apartment in a residential and commercial building at the number on the following Street: in, and a residential property–suite number ..., with surface area of m2 in, the Republic of Serbia, on the following Street:, at the number; hence, it is necessary to take appropriate measures and actions to check the property and prevent the disposal of the mentioned property until the completion of financial investigation. Namely, according to data collected during the financial

investigation, there is a clear discrepancy between the legally generated revenues and the expenditures of the accused

As there is a danger that the accused could sell, conceal, encumber or otherwise dispose of the mentioned property, we kindly request that the competent authorities of the Republic of Serbia acting upon mutual legal assistance requests freeze the mentioned property, prevent an alien to conceal, encumber or otherwise dispose of it before the competent Court makes a decision on confiscation of the property. It is necessary to send a motion to the competent Court in the Republic of Serbia to render a decision by which:

1., son/daughter of born on in with permanent residence on the street number, and reported habitual residence in, (nationality) citizen of, personal identification number (JMBG) SHALL BE IMPOSED THE MEASURE OF PROHIBITION OF DISPOSAL AND SALE of the following immovable property:

- One apartment located in the Republic of Serbia, (*city*), on the street, number, in a residential and commercial building at the number ..., having a surface area of
- One residential property located in the Republic of in (*city*), on the street number ... having a surface area of

We also move that an entry be recorded on the prohibition of sale, disposal and encumbrance of the mentioned property in the appropriate public registers.

Attached is the Financial Investigation Report number....., dated (*dd/mm/yyyy*),

Considering the complexity of this criminal case, the fact that the property is located on the territory of another state, and the fact that the criminal case against is at the stage of appeal before the competent court of second instance, in the interest of the efficiency in processing of this criminal case and the prevention of sale of the illegally obtained property, we kindly ask the requested authority to act upon this letter rogatory, in accordance with the provisions of Articles 3, 4, 5, and 32 of the Agreement between Bosnia and Herzegovina and the Republic of Serbia on Legal Assistance in Civil and Criminal Matters.

PROSECUTOR
.....

Enclosures:

- Financial Investigation Report number....., with attachments
-

NOTE: To give a broader picture as to the outlook of a letter rogatory, the example includes some data related to the criminal offence and the subject of seizure, with reservation that each procedure has its own specificities that the requesting party will certainly take into consideration.

EXAMPLE 7/2 (Sample decision of a court in the Republic of Serbia imposing an interim measure upon the letter rogatory from BiH)

REPUBLIC OF SERBIA

.....,

(EXCERPT FROM THE DECISION)

D E C I S I O N

The request for mutual legal assistance submitted by Bosnia and Herzegovina, Prosecutor’s Office ..
....., number....., dated..., IS HEREBY APPROVED;
therefore

The person named:, JMBG....., father’s name:, mother’s name:,
born on.... (dd/mm/yyyy) in, with permanent residence in, on the following street:, and
reported habitual residence in.....

SHALL BE IMPOSED AN INTERIM MEASURE of prohibition of sale and encumbrance of the fol-
lowing immovable property:

- residential property number..., structurally a one-room accommodation, having a surface area of
..., in (place) .., on the following street:, number ..., constructed on the cadastral parcel number
..., in unregistered ownership of, and
- three-room apartment–duplex number, located in the attic of a residential and commercial
building in (place), on the following street:, number ..., having a surface area of, on the
parcel number, (place) .., in unregistered ownership of

Republic Institute for Geodesy, Department for Cadastre of Immovable Proper-
ty....., IS HEREBY ORDERED to enter the mentioned interim measures
into records.

The above-mentioned measures shall last until the completion of the criminal proceedings in the
requesting country conducted against the accused....., because of the criminal offence
of organized crime referred to in Article, paragraph, in connection with the
criminal offence of illicit production and traffic of narcotic drugs referred to in Article,
paragraph, as read with paragraph 1 of the CC of, upon the indictment submitted
by....., number, dated... (dd/mm/yyyy).

R e a s o n i n g

.....

NOTE: The example contains only an excerpt from the decision of a court of the requested country, which is delivered to the requester through the central authorities. The excerpt provides information of interest to the requester, as this pertains to the decision of the requested country.

EXAMPLE 8 (Notice on immunity from criminal prosecution)

BOSNIA AND HERZEGOVINA

MINISTRY OF JUSTICE

Number:/12

Date:

MINISTRY OF FOREIGN AFFAIRS

SARAJEVO

SUBJECT: - notice, hereby delivered,

Reference: Your document number: dated (dd/mm/yyyy)

In reference to your document with the above-mentioned number and date, by which you delivered the Note-Letter Rogatory of the Ministry of Foreign Affairs number: dated (dd/mm/yyyy), we wish to inform you of the following:

In accordance with the Convention on the Privileges and Immunities of the United Nations of 13 February 1946 and the Convention on Special Missions of 8 December 1969, to which Bosnia and Herzegovina is a State Party, as well as in accordance with agreements on the status of missions of international organizations in Bosnia and Herzegovina signed by Bosnia and Herzegovina, members of the United Nations Mission to Bosnia and Herzegovina, enjoy immunity from prosecution in Bosnia and Herzegovina.

According to the foregoing, in this specific case, the person named from the Republic of Serbia, as a member of the United Nations Mission to Bosnia and Herzegovina, was exempt from prosecution and trial by domestic judicial authorities; therefore, the authorities in Bosnia and Herzegovina are not competent to issue the certificate on no criminal record requested through the letter rogatory in question.

Sincerely,

NOTE: This example is given to illustrate that in addition to diplomats who have been appointed to BiH and who have immunity from criminal prosecution under Vienna Convention on Diplomatic Relations, such immunity is also given to persons who are members of missions implemented under the conventions listed in the example. The competent prosecutor is obliged to cease the investigation against the persons enjoying immunity from prosecution in BiH immediately upon learning of such a fact and to urgently inform the Ministry of Justice of BiH thereof.

EXAMPLE 9 (Example of proposal to establish a joint investigation team)

BOSNIA AND HERZEGOVINA

PROSECUTOR’S OFFICE OF BOSNIA AND HERZEGOVINA

SARAJEVO

Number:

Sarajevo,

REPUBLIC OF SERBIA

(state the full name of the prosecutor’s office; or, if we do not have such information, address it to the “Competent authority”)

SUBJECT: Proposal to establish a joint investigation team in the case

.....

Highly respected Sir/Madam,

We wish to inform you that the Prosecutor’s Office of BiH is conducting an investigation against the suspect and others, because of the criminal offence of referred to in Article

(list the offences with reference to legal norms).

The mentioned persons are charged with (describe the incriminated acts in detail). During the investigation, it was established that the following persons also participated in the commission of criminal offences:, (state personal details for each person such as: name of a parent, date and place of birth, and other), domiciled in, the Republic of Serbia, and..... . It was also established that the evidence pertaining to may be located in, on the territory of the Republic of Serbia.

Our assessment is that the circumstances of this case justify synchronised and jointly coordinated actions of the Prosecutor’s Office of BiH and the Prosecutor’s Office of of the Republic of Serbia.

Given that the Amendments to the Agreement between BiH and the Republic of Serbia on Legal Assistance in Civil and Criminal Matters of 26 February 20102010 regulate through Article 36a (Article 8 of the Amendments) the way of forming joint investigation teams between the two countries in order to undertake coordinated and synchronized investigative actions in fight against this kind of serious forms of crime, we consider that this case justifies the joint action and we therefore propose the following:

- That a joint investigation team be formed between the Prosecutor’s Office of BiH and the Prosecutor’s Office of the Republic of Serbia, which will work on solving this case in the territory of both countries;
 - The team of the Prosecutor’s Office of BiH would consist of: (team leader for BiH and the leader of the joint investigation team for conducting actions in the territory of BiH and, as team members (specify individual functions);
 - That your esteemed prosecutor’s office proposes the composition of the team and the team leader, as well as the leader of the joint investigation team for actions carried out on the territory of the Republic of Serbia, as well as other team members;
 - That you send us a feedback on our proposal, and if you accept it, we are ready to immediately sign an agreement on the formation of the joint investigation team, which will determine the tasks, management, costs, timeframe, location of operation and other details in the manner stipulated by the mentioned agreement.
- With our particular compliments, we place at your disposal for any clarification and further questions regarding our proposal the following persons:, telephone:, e-mail:
-

NOTE: after receiving a positive response to such a proposal, the managers of prosecutor’s offices of the two countries forming a joint investigation team conclude and sign the Agreement on Establishing the Joint Investigation Team setting out the tasks, management, costs, timeframe, location of operation and other details relevant to the efficient operation of the team.

Team management and costs are stipulated by the said Agreement, while the location of operation and the timeframe are determined according to the case circumstances. This Agreement does not have a specific prescribed form and is drafted under the terms of the Agreement between BiH and the Republic of Serbia on Legal Assistance in Civil and Criminal Matters, and in accordance with the circumstances of the case that dictates the creation of the joint investigation team.

EXAMPLE 10 (Example of the request for taking over the criminal prosecution)

BOSNIA AND HERZEGOVINA
DISTRICT OF BRCKO DISTRICT
BOSNIA AND HERZEGOVINA

Number:
Brčko,

**REPUBLIC OF SERBIA
TO THE ATTENTION OF THE COMPETENT AUTHORITY**

SUBJECT:, Mutual legal assistance in criminal matters

– Request for taking over the criminal prosecution –

Pursuant to Article 84 of the Law on Mutual Legal Assistance in Criminal Matters..... and in accordance with the provisions of the Agreement between Bosnia and Herzegovina and the Republic of Serbia on Legal Assistance in Civil and Criminal Matters, we have the honour to request that you take over the prosecution of the suspect

....., son/daughter of....., born on (dd/mm/yyyy) in
....., residing in, at the Street, number...., citizen of the Republic of Serbia, because of grounds of suspicion that he/she committed a criminal offence of
..... referred to in Article paragraph of the Criminal Code of
.....

The suspect is charged with

..... **(describe the acts that constitute a criminal offence)**

After reviewing all the documents contained in the case file and the results of the investigative measures taken, it was determined that there were grounds of suspicion that the suspect
., committed the criminal offence referred to in Article paragraph of the Criminal Code of
.....

Considering that the suspect is a citizen of the Republic of Serbia, where he/she is domiciled, it has been assessed that, in order to successfully pursue further criminal proceedings, it is justified to transfer the case to the judicial authorities of the Republic of Serbia; therefore, enclosed with this request we are delivering you the complete case file for this case. **(Recommendation: state all the reasons for transferring the criminal prosecution, and especially highlight the weak possibility of securing the suspect’s presence before the BiH authorities).**

Please inform us of the follow-up actions taken as a result of this request, with reference to our document number. We use this opportunity to express our gratitude for successful cooperation.

Sincerely,
PROSECUTOR

NOTE: The request in question (with a complete case file), in a given example, is submitted to the Ministry of Justice of BiH through the Judicial Commission of the Brčko District of BiH. The submission of the request is regulated by Article 85, paragraph 2 of the Law on MLA.

EXAMPLE 11 (Motion to submit the extradition request)

BOSNIA AND HERZEGOVINA

.....

(state the name of the authority – the prosecutor’s office or the court)

.....

Number:

VERY URGENT

MINISTRY OF JUSTICE OF BOSNIA AND HERZEGOVINA

SARAJEVO

SUBJECT: Motion to submit the request for extradition of from the Republic of Serbia to Bosnia and Herzegovina

Reference: Your document number dated

As regards your document with the number and date as stated in the reference above, by which you inform us that the suspect son/daughter of, born on (dd/mm/yyyy) in, citizen of Bosnia and Herzegovina was arrested in the Republic of Serbia, we hereby wish to inform you that the criminal proceedings against the mentioned person is still ongoing.

To continue the criminal proceedings conducted against the named person before, because of the criminal offence of referred to in Article paragraph of the Criminal Code of, we are putting forward to the Minister of Justice of Bosnia and Herzegovina this motion to submit the request for extradition of the suspect from the Republic of Serbia to Bosnia and Herzegovina.

Explanation:

.....

..... (explain the motion – Article 57 of the Law on MLA).

For the purpose of the aforementioned, please find enclosed the following documents:

- Document of the Ministry of Internal Affairs number dated(dd/mm/yyyy), containing a fingerprint and a photo of the wanted person
- Certificate of Citizenship of Bosnia and Herzegovina for the wanted person dated (dd/mm/yyyy);
- Order on..... from the Court in number: dated (dd/mm/yyyy) to issue an international arrest warrant for the wanted person
- Decision on of the Court in number:dated (dd/mm/yyyy) on ordering the custody for the wanted person
- Motion of the Prosecutor’s Office number: dated (dd/mm/yyyy) for ordering the custody for the wanted person

- Order on..... of the Prosecutor's Office number: dated (dd/mm/yyyy) on conducting investigation against the wanted person
- Copied text of Article of the Criminal Code ofpertaining to the offence for which the extradition is requested, as well as copied text of legal provisions pertaining to the statute of limitations for criminal prosecution.

If necessary, we will deliver other documents that the requested country may possibly require, with the overall aim of extraditing the suspect as soon as possible.

Sincerely,
PROSECUTOR

NOTE: When a person against whom criminal proceedings is conducted in BiH is deprived of liberty (arrested) on an international arrest warrant abroad, the country of arrest shall immediately inform the Ministry of Justice of BiH through INTERPOL thereof, and within the same document, ask if the extradition request for that person will be submitted. The Ministry of Justice of BiH shall immediately deliver this information and inquiry to the authority on whose motion an international arrest warrant was issued (in the given example: The Prosecutor's Office of ...). The case prosecutor urgently submits the answer and the requested documentation to the Ministry of Justice of BiH, so that the Minister of Justice of BiH can submit the extradition request (example given below).

EXAMPLE 11/1 (EXTRADITION REQUEST)

.....
.....

Number:

VERY URGENT!
By express mail!

Sarajevo, (dd/mm/yyyy)

**THE MINISTRY OF JUSTICE
OF THE REPUBLIC OF SERBIA**

BELGRADE

SUBJECT:, extradition request

Reference: Your document number: (dd/mm/yyyy)

The Ministry of Justice of Bosnia and Herzegovina presents its compliments to the Ministry of Justice of the Republic of Serbia.

Pursuant to the provisions of the European Convention on Extradition and the Agreement between Bosnia and Herzegovina and the Republic of Serbia on Extradition, and according to Article 57 of the Law on Mutual Legal Assistance in Criminal Matters, the Minister of Justice of Bosnia and Herzegovina has the honour to submit to the Ministry of Justice of the Republic of Serbia the following

REQUEST FOR THE EXTRADITION OF

..... son/daughter of, born on (dd/mm/yyyy) in, citizen of Bosnia and Herzegovina, for the purpose of continuation the criminal proceedings that is conducted against the named person before, because of the criminal offence of referred to in Article paragraph of the Criminal Code of is currently unavailable to judicial authorities in Bosnia and Herzegovina, and according to available information from Interpol Belgrade, the named person is in custody in the Republic of Serbia.

Considering that the wanted person..... committed a criminal offence on the territory of Bosnia and Herzegovina, that he/she is a citizen of Bosnia and Herzegovina who is currently available to the state authorities of the Republic of Serbia, we kindly request you to, after taking action upon this request, allow the extradition of the wanted person to Bosnia and Herzegovina.

For the purpose of the aforementioned, please find enclosed the following documents:

- Document of the Ministry of Internal Affairs number dated(dd/mm/yyyy), containing a fingerprint and a photo of the wanted person
- Certificate of Citizenship of Bosnia and Herzegovina for the wanted person dated (dd/mm/yyyy);

- Order on from the Court in number: dated (dd/mm/yyyy) to issue an international arrest warrant for the wanted person
- Decision on of the Court in number:dated (dd/mm/yyyy) on ordering the custody for the wanted person
- Motion of the Prosecutor's Office number: dated (dd/mm/yyyy) for ordering the custody for the wanted person
- Order on..... of the Prosecutor's Office number: dated (dd/mm/yyyy) on conducting investigation against the wanted person
- Copied text of Article of the Criminal Code ofpertaining to the offence for which the extradition is requested, as well as copied text of legal provisions pertaining to the statute of limitations for criminal prosecution.

The Ministry of Justice of Bosnia and Herzegovina also uses this opportunity to once again express its respect and gratitude to the Ministry of Justice of the Republic of Serbia for its cooperation.

.....

NOTE: The authority moving for the extradition request is especially obliged to pay attention to the statute of limitations, because there are recorded cases in which it was established after the submission of the request that the statute of limitations occurred before the deprivation of liberty abroad.

EXAMPLE 11/2 (DECISION ON EXTRADITION OF OWN CITIZEN)

MINISTRY OF JUSTICE

OF BOSNIA AND HERZEGOVINA

Number:

Sarajevo, (dd/mm/yyyy)

Pursuant to Article 46 of the Law on Mutual Legal Assistance in Criminal Matters (“Official Gazette of BiH” nos. 53/09 and 58/13) and the provisions of Article 8 of the Agreement between Bosnia and Herzegovina and the Republic of Serbia on Extradition, deciding on the request of the Ministry of Justice of the Republic of Serbia in the matter of extradition of from Bosnia and Herzegovina to the Republic of Serbia, the Minister of Justice of Bosnia and Herzegovina issues the following

DECREE

on extradition

I

The extradition of, son/daughter of, born on..... in, citizen of Bosnia and Herzegovina and the Republic of Serbia, is hereby granted from Bosnia and Herzegovina to the Republic of Serbia for the purpose of continuing the criminal proceedings against the named person conducted before the Higher Court in, because of the criminal offence of referred to in Article, paragraph, as read with Article..... and Article of the Criminal Code of the Republic of Serbia.

II

The extradition of is granted under condition that no criminal prosecution may be instituted against the named person for another criminal offence committed before extradition, nor may a sentence imposed on him/her because of another criminal offence prior to the granted extradition be carried out against him/her.

The named person may not be extradited to a third country without the consent of Bosnia and Herzegovina because of a criminal offence committed before the granted extradition.

III

This Decree will be executed by the members of the Border Police of Bosnia and Herzegovina, in accordance with prior agreement between the Directorate for Coordination of Police Bodies of Bosnia and Herzegovina and Interpol Belgrade.

E x p l a n a t i o n

The Ministry of Justice of the Republic of Serbia submitted to the Ministry of Justice of Bosnia and Herzegovina the request number dated(dd/mm/yyyy), for the extradition of, son/daughter of,, born on in, citizen of Bosnia and Herzegovina and the Republic of Serbia, for the purpose of continuing the criminal proceedings against the named person conducted before, because of the criminal offence of referred to in Article item as read with Article and Article..... of the Criminal Code of the Republic of Serbia.

The Ministry of Justice of Bosnia and Herzegovina forwarded the request in question with the accompanying documents to the Prosecutor's Office of Bosnia and Herzegovina, which, after determining that the request meets the legal requirements, submitted the request to the Court of Bosnia and Herzegovina for decision.

The Court of Bosnia and Herzegovina, in its decision number, dated (dd/mm/yyyy), which was confirmed by the decision of the Appellate Division of the same Court number S1..... Kž, dated (dd/mm/yyyy), determined that the legal preconditions for the extradition of to the judicial authorities of the Republic of Serbia have been met.

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When deciding if the legal preconditions for the extradition of the wanted person to the Republic of Serbia have been met, the Court of Bosnia and Herzegovina found that Article 8 (1) of the Agreement between Bosnia and Herzegovina and the Republic of Serbia on Extradition, provides that the extradition of its own nationals for the purpose of criminal prosecution will be allowed if the conditions prescribed by this Agreement are met, as well as for other aggravated criminal offences punishable by imprisonment or by a measure including deprivation of liberty for a period of at least 5 (five) years or a heavier sentence, and established that the wanted person, suspected of committing an act for which, according to the entity laws of Bosnia and Herzegovina, a prison sentence of at least 10 (ten) years may be imposed and therefore the wanted person may be extradited to the Republic of Serbia regardless of having the citizenship of Bosnia and Herzegovina.

After reviewing the entire extradition documentation and the aforementioned Decisions of the Court of Bosnia and Herzegovina, the Minister of Justice of Bosnia and Herzegovina issued the Decree as stated in the operative part.

.....

EXAMPLE 11/3 (SIMPLIFIED EXTRADITION)

.....

.....

Number:

Sarajevo, (dd/mm/yyyy)

Pursuant to Article 46 of the Law on Mutual Legal Assistance in Criminal Matters (“Official Gazette of BiH” nos. 53/09 and 58/13) and the provisions of the Agreement between Bosnia and Herzegovina and the Republic of Serbia on Extradition, deciding on the request of the Ministry of Justice of the Republic of Serbia in the matter of extradition of from Bosnia and Herzegovina to the Republic of Serbia, the Minister of Justice of Bosnia and Herzegovina issues the following

DECREE

on the extradition of an alien

I

The extradition of the alien, son/daughter of, citizen of the Republic of Serbia, born on (dd/mm/yyyy) in, is hereby granted from Bosnia and Herzegovina to the Republic of Serbia under the simplified procedure, for the purpose of conducting the criminal proceedings against the named person before the Higher Court in, because of the criminal offence of referred to in Article item as read with Article 30 and Article 33 of the Criminal Code of the Republic of Serbia.

II

The extradition of is granted under condition that no criminal prosecution may be instituted against the named person for another criminal offence committed before extradition, nor may a sentence imposed on him/her because of another criminal offence prior to the granted extradition be carried out against him/her.

No heavier punishment can be imposed on the named person than the one to which he/she was sentenced.

The named person may not be extradited to a third country without the consent of Bosnia and Herzegovina because of a criminal offence committed before the granted extradition.

III

This Decree will be executed by the members of the Border Police of Bosnia and Herzegovina, in accordance with prior agreement between the Directorate for Coordination of Police Bodies of BiH – Department for cooperation with INTERPOL in Sarajevo, and INTERPOL Belgrade.

E x p l a n a t i o n

Pursuant to the international arrest warrant issued by Interpol Belgrade, the person named
....., citizen of the Republic of Serbia, was deprived of liberty on(dd/mm/
yyyy) in Bosnia and Herzegovina, and the mentioned person was placed in temporary extradition cus-
tody by the Decision of the Court of Bosnia and Herzegovina number Eks-..... of
(dd/mm/yyyy).

..... is wanted by the judicial authorities of the Republic of Serbia for the purpose of
criminal proceedings which is conducted against him/her before the Higher Court in
....., because of the criminal offence of, referred to in Article item,
as read with Article 30 and Article 33 of the Criminal Code of the Republic of Serbia.

The Court of Bosnia and Herzegovina delivered to this Ministry the Minutes with the following num-
ber: Eks-..... dated (dd/mm/yyyy), and the document with number: Eks
..... (dd/mm/yyyy), in which the Court had established that the wanted person named
....., pursuant to the provisions of Article 52 of the Law on Mutual Legal Assistance in
Criminal Matters, gave consent for extradition to the Republic of Serbia in a simplified manner.

After reviewing the entire case file, and considering that the Court of Bosnia and Herzegovina estab-
lished that the person whose extradition is requested is not a citizen of Bosnia and Herzegovina, the
Minister of Justice of Bosnia and Herzegovina issued the Decree as stated in the operative part.

.....

NOTE: Simplified extradition implies that the person whose extradition is requested consents to extra-
dition to the requesting State without a procedure (Article 52 of the Law on MLA).



**PART III – MUTUAL LEGAL ASSISTANCE
IN CRIMINAL MATTERS BETWEEN
BOSNIA AND HERZEGOVINA
AND THE REPUBLIC OF CROATIA**

PART III – MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS BETWEEN BOSNIA AND HERZEGOVINA AND THE REPUBLIC OF CROATIA

1. Introductory remarks

There is a high volume of exchange of all forms of mutual legal assistance in criminal matters (hereinafter: MLA) between Bosnia and Herzegovina (hereinafter: BiH) and the Republic of Croatia.

Despite the fact that the Republic of Croatia is a member of the European Union (hereinafter: the EU), MLA between BiH and the Republic of Croatia is largely the same as between BiH and the Republic of Serbia, as explained in Chapters I and II of this Guide.

For these reasons, this Part of the document will provide information and point out the tools that are specific to MLA between BiH and the Republic of Croatia, while the other tools are covered through Part I and II of MLA and applied correspondingly along with a reference to the relevant norms (articles) of the regulations which have to be applied.

Mutual legal assistance between the two countries mostly occurs through application of three bilateral agreements, as follows:

- The Agreement between BiH and the Republic of Croatia on Legal Assistance in Civil and Criminal Matters;
- The Agreement between BiH and the Republic of Croatia on Mutual Enforcement of Court Decisions in Criminal Matters;
- The Agreement between BiH and the Republic of Croatia on Extradition.

Confusion in the application of the first two agreements is caused by the titles of the first (basic) texts of the agreements between the two countries – the basic texts which are still in force – because BiH is marked in those agreements as the “Government of Bosnia and Herzegovina, Government of the Federation of Bosnia and Herzegovina”, while the application of these agreements is limited to the territory of the Federation of BiH. These agreements, in addition to amendments within the text, have also been amended in the part relating to the names of contracting parties; however, in practice, even in the year 2020, the original names and only the original texts of the agreements are used.

Since the biggest problems in MLA between the two countries lie in the recognition of the legal basis – which is crucial for the proper application of MLA tools in the relations between BiH and the Republic of Croatia – the information related to the legal basis and their application will be given below. This Part of the text will again point out the importance of the Law on Mutual Legal Assistance in Criminal Matters¹⁷ (hereinafter: the Law on MLA), because research has shown that even now (ten years after the entry into force), this Law is often not consulted in the execution of MLA between BiH and the Republic of Croatia.

¹⁷ The Law on Mutual Legal Assistance in Criminal Matters (Official Gazette of BiH No. 53/09 and 58/13).

2. Legal bases for MLA between BiH and the Republic of Croatia and their application

To use the MLA tools between the two countries properly, it is necessary to first consult the relevant provisions of the Law on MLA, and then the provisions of the agreements (bilateral and multilateral) governing this type (form) of legal assistance.

2.1. The Law on Mutual Legal Assistance in Criminal Matters (The Law on MLA)

Until the enactment of the Law on MLA, the only domestic legal bases for this legal assistance were contained in the criminal procedure codes (hereinafter: CPCs), so it is unacceptable that even now a number of prosecutors and judges when writing letters rogatory for MLA to the Republic of Croatia exclusively invoke the CPC, as the only legal basis.

The Law on MLA is the only domestic regulation that regulates the overall MLA on the territory of BiH. The Law on MLA determines when international agreements in this area are to be applied, as well as when domestic laws are to be applied. Therefore, this Law points to the application of other laws as well.

The Law on MLA offers solution for issues regarding the determination of authorities responsible for acting upon MLA requests in BiH and regarding the obligations of such authorities in BiH, while the agreements stipulate the conditions and manner of providing MLA between BiH and the Republic of Croatia. Each agreement between the two countries stipulates that MLA is provided according to the laws of the requested country, and the conditions for MLA are regulated by the agreements.

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Article 1 of the Law on MLA states that “this Law shall govern the manner and procedure of mutual legal assistance in criminal matters, unless otherwise provided by an international treaty.”

Article 8 of the Law on MLA lists the types (forms) of MLA, and in the later text of the Law, these forms of MLA are systematically regulated by law.

In addition to bilateral agreements, multilateral agreements govern legal assistance between BiH and the Republic of Croatia, so it is important to know when to apply individual agreements.

It is also important to know which form of MLA is regulated by individual agreements, noting again that MLA exchanges between the two countries are mostly governed by bilateral agreements, because most of the solutions from multilateral agreements to which both BiH and the Republic of Croatia are parties are implemented in bilateral agreements.

NOTE: The requesting country is the country (or authority in the country) requesting the MLA, and the requested country is the country or authority in the country executing the letter rogatory/request.

2.2. Bilateral agreements/treaties between BiH and the Republic of Croatia

After gaining its independence, BiH concluded the first bilateral agreements/treaties¹⁸ in this area with the Republic of Croatia, which are still in force with certain amendments. These agreements have been amended and supplemented effectuating changes in the names of the contracting parties and the application of agreements.

As no consolidated texts of these agreements have been made, and in order to clarify which norms from the valid agreements should be applied and what are the exact names of the agreements and the contracting parties, we provide the following overview of the mentioned agreements:

- 1) The Agreement between the Government of Bosnia and Herzegovina, the Government of the Federation of Bosnia and Herzegovina and the Government of the Republic of Croatia on Legal Assistance in Civil and Criminal Matters of 26 February 1996. (“Official Gazette of the Republic of BiH” – International Agreements, no. 1/96);
- 2) The Agreement between the Government of Bosnia and Herzegovina, the Government of the Federation of Bosnia and Herzegovina and the Government of the Republic of Croatia on Mutual Enforcement of Court Decisions in Criminal Matters of 26 February 1996. (“Official Gazette of the Republic of BiH” – International Agreements, no. 01/96).

These agreements are still in force in the part in which they have not been amended, and they regulated only the relations between the Federation of BiH and the Republic of Croatia, which was explicitly stated in the special annex to the agreements, noting that special agreements will govern the application of these agreements in Republika Srpska. These agreements were amended after several (nine) years, when the name of the contracting party was changed; hence, the words “Government of Bosnia and Herzegovina, Government of the Federation of Bosnia and Herzegovina,” were replaced by the words “Bosnia and Herzegovina”, and the Agreement applies to the entire territory of BiH.

The Agreement number 1) was amended by the Agreement between Bosnia and Herzegovina and the Republic of Croatia on the Amendments to the Agreement between the Government of Bosnia and Herzegovina, the Government of the Federation of Bosnia and Herzegovina and the Government of the Republic of Croatia **on Legal Assistance in Civil and Criminal Matters** of 17 June 2002. (“Official Gazette of BiH” – International Agreements, no. 11/05);

The Agreement number 2) was amended by the Agreement between Bosnia and Herzegovina and the Republic of Croatia on the Amendments to the Agreement between the Government of Bosnia and Herzegovina, the Government of the Federation of Bosnia and Herzegovina and the Government of the Republic of Croatia **on Mutual Enforcement of Court Decisions in Criminal Matters** of 7 June 2004. (“Official Gazette of BiH” – International Agreements, no. 08/07), entered into force on 8 July 2010); and The Agreement between Bosnia and Herzegovina and the Republic of Croatia on the Amendments to the **Agreement on Mutual Enforcement of Court Decisions in Criminal Matters** of 10 February 2010. (“Official Gazette of BiH” – International Agreements, no. 08/10, with application from the date of signing and entry into force on 18 September 2010.);

¹⁸ This type of agreement was concluded by BiH only after nine years (2005) with Serbia and Montenegro (then the community), Macedonia (now Northern Macedonia), when the agreements between BiH and the Republic of Slovenia entered into force.

The above-mentioned agreements and their amendments still appear to have complicated linguistic construction in their titles, but the titles of the agreements have been amended through Article 1 of both agreements, **so the following titles are in use:**

1) **The Agreement between BiH and the Republic of Croatia on Legal Assistance in Civil and Criminal Matters**

NOTE: General forms of MLA that are not covered by this Agreement are realized through the application of the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters (clarification below in the section “multilateral agreements”).

(In addition to the general forms of MLA, this Agreement also regulates the issue of transfer of criminal prosecution between BiH and the Republic of Croatia. The Republic of Croatia, despite being an EU member, has not ratified the European Convention on the Transfer of Proceedings in Criminal Matters. Therefore, this Agreement is the only legal basis for the transfer of criminal prosecution between the two countries).

2) **The Agreement between BiH and the Republic of Croatia on Mutual Enforcement of Court Decisions in Criminal Matters.**

NOTE: The very title of the Agreement indicates that this agreement governs the issue of mutual recognition and enforcement of court decisions in criminal matters.

RECOMMENDATION: When writing a letter rogatory and when referring to the mentioned agreements, it is not necessary to state, for example (agreement number 2): the Agreement between the Government of Bosnia and Herzegovina, the Government of the Federation of Bosnia and Herzegovina and the Government of the Republic of Croatia on Mutual Enforcement of Court Decisions in Criminal Matters of 26 February 1996. (“Official Gazette of the Republic of BiH” – International Agreements, no. 01/96), amended by the Agreement between Bosnia and Herzegovina and the Republic of Croatia on Amendments to the Agreement between the Government of Bosnia and Herzegovina, the Government of the Federation of Bosnia and Herzegovina and the Government of the Republic of Croatia on Mutual Enforcement of Court Decisions in Criminal Matters of 7 June 2004 (“Official Gazette of BiH” – International Agreements, no. 08/07), entered into force on 8 July 2010, and amended by the Agreement between Bosnia and Herzegovina and the Republic of Croatia on the Amendments to the Agreement on Mutual Enforcement of Court Decision in Criminal Matters of 10 February 2010 (“Official Gazette of BiH” – International Agreements, no. 08/10, with application from the date of signing and entry into force on 18 September 2010); **It is sufficient to refer to the “Agreement between Bosnia and Herzegovina and the Republic of Croatia on Mutual Enforcement of Court Decisions in Criminal Matters”.**

This name includes all applicable norms (basic text and all the amendments), which regulate the matter treated by the agreement.

In addition to these two bilateral agreements, BiH and the Republic of Croatia are also bound by:

3) **The Agreement between Bosnia and Herzegovina and the Republic of Croatia on Extradition of 28 November 2012. (“Official Gazette of BiH” – International Agreements, no. 22/12, with provisional application from the date of signing and entry into force on 6 March 2014);**

NOTE: This Agreement also regulates the issue of extradition of country's own citizens and the conditions for extradition.

2.3. Multilateral agreements

For mutual legal assistance between the two countries, in addition to the above-mentioned bilateral agreements, there are Council of Europe conventions which govern the entire issue of MLA. Bilateral agreements mainly transpose the solutions from the conventions of the Council of Europe to which both Bosnia and Herzegovina and the Republic of Croatia are State parties, and those conventions are the following:

(1) The European Convention on Mutual Assistance in Criminal Matters.

NOTE: this Convention has been fully implemented through **the Agreement between BiH and the Republic of Croatia on Legal Assistance in Civil and Criminal Matters;**

Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters.

NOTE: the provisions of this Protocol have never been implemented through the Agreement between BiH and the Republic of Croatia on Legal Assistance in Civil and Criminal Matters, so the provisions of the Protocol shall apply to all actions not covered by the said Agreement.

These actions are:

- hearing by video conference (Article 9);
- observation outside the borders of a contracting Party (Article 17);
- controlled delivery (Article 18);
- covert investigations (Article 19);
- formation of a joint investigation team (Article 20).
- and other actions that are not regulated by a bilateral agreement.

(2) The European Convention on Extradition (with protocols);

NOTE: All issues related to extradition which have not been solved by the Agreement on Extradition between Bosnia and Herzegovina and the Republic of Croatia are solved by the application of the provisions of the European Convention on Extradition and its protocols (for the publication in the Official Gazette and date of entry into force please see Part II).

(3) The European Convention on the Transfer of Sentenced Persons;

NOTE: The Convention on the Transfer of Sentenced Persons applies to situations in the field of en-

forcement of foreign court decisions, which are not regulated by the Agreement between BiH and the Republic of Croatia on Mutual Enforcement of Court Decisions in Criminal Matters (for the publication in the Official Gazette and date of entry into force please see Part II).

(4) Additional information pertaining to the transfer of criminal proceedings:

in addition to the above-mentioned Council of Europe conventions, the issue of MLA is additionally covered by the European Convention on the Transfer of Proceedings in Criminal Matters; Strasbourg, 15 May 1972; entry into force: 30 March 1978; entry into force with respect to BiH: 26 July 2005; publication: Official Gazette of BiH – International Agreements, no. 04/2005. Although prosecutors often invoke this Convention when transferring the criminal prosecution, the Republic of Croatia is not a Party to this convention. (It has already been stated that this issue between the two countries is regulated by the Agreement between BiH and the Republic of Croatia on Legal Assistance in Civil and Criminal Matters).

NOTE: BiH and the Republic of Croatia are at the same time parties to a large number of multilateral agreements – conventions in the area of MLA, which relate to organized crime, corruption, terrorism and other aggravated criminal offences, but the general rules stipulating actions of the competent authorities in BiH in MLA procedures are basically the same as in the procedures governed by bilateral agreements in this area between the two countries, with the proviso that in some procedures it is necessary to consult the appropriate (specific) norms of these agreements.

3. Manner of communication between the authorities of the two states

3.1. CENTRAL LIAISON AUTHORITY (CENTRAL AUTHORITY)

The basic communication between the authorities of the two countries in the MLA procedures takes place through the liaison authorities (**central authorities**). According to all agreements binding on the two countries in the area of MLA, the Ministry of Justice of BiH is the Central authority for all authorities in BiH, and the Ministry of Justice of the Republic of Croatia is the Central authority for all respective authorities of that country.

3.2. DIPLOMATIC PATHWAY

Every agreement between the two countries gives the possibility of communication **through diplomatic channels, but this pathway of communication is not strictly required or recommended between the two countries**, because in addition to the authorities included in the communication taking place through central authorities, this communication pathway would also include Ministries of Foreign Affairs of both countries, which would slow down the execution of the letter rogatory.

3.3. INTERPOL

Communication between the authorities of the two countries may in urgent cases be carried out through **INTERPOL**, provided that in such cases a copy of the letter rogatory is submitted to the Ministry of Justice (Article 4, items 4 and 5 of the Agreement). This form of communication is very efficient but used very rarely in practice between BiH and the Republic of Croatia in cases for which it is intended, except in extradition procedures. Urgent data and information and all operational data whose urgency requires this route of communication can be requested and submitted through INTERPOL.

RECOMMENDATION: Communication through INTERPOL should not be used for purposes for which it is not intended, so it is unacceptable to submit decisions, indictments, requests for transfer of criminal proceedings, etc. through INTERPOL, the cases of which were recorded in practice. This organization is against such practice.

3.4. Other permitted forms of communication

Special agreements between the two countries may provide for other forms of communication, in which case norms of those agreements apply.

4. Information on procedures for mutual legal assistance between BiH and the Republic of Croatia

4.1. General types (forms) of MLA

General forms of MLA between the two countries take place on the basis of the Agreement between BiH and the Republic of Croatia on Legal Assistance in Civil and Criminal Matters (Article 3 and Articles 24 to 37).¹⁹

Article 6 of the mentioned Agreement prescribes the content of the request/letter rogatory for MLA, but no agreement governing this area has prescribed the template of the letter rogatory.

Template of the request/letter rogatory should reflect the layout of the official document of the authority submitting it and should contain elements from the agreement.

¹⁹ See PART I (point 2.2 - general forms).

EXAMPLE: (summons to suspect/accused)

BOSNA I HERCEGOVINA

(full title of the authority)

Case number: _____

..... (dd/mm/yyyy)

(place and date)

REPUBLIC OF CROATIA

– TO THE ATTENTION OF THE COMPETENT AUTHORITY –

SUBJECT. Mutual legal assistance, suspect _____

delivery of summons _____

This authority is conducting the criminal proceedings against the suspect _____ son/daughter of _____, born on _____ in _____, because of the criminal offence of _____, referred to in Article _____, paragraph _____ of the Criminal Code _____

The suspect is charged with _____
_____ (give a brief description of the act for which the suspect is charged)

As the named person is domiciled in the territory of the Republic of Croatia, we have the honour to, in accordance with the provisions of the Agreement between Bosnia and Herzegovina and the Republic of Croatia on Legal Assistance in Civil and Criminal Matters, ask the competent authority of the Republic of Croatia to deliver the summons for hearing/questioning before this authority for the following date _____ to the suspect who has a registered habitual residence in the Republic of Croatia at the following address _____ street, _____ and to return the signed delivery note and the summons delivery record to this authority as a confirmation that the letter rogatory was granted, with reference to our document number.

At the same time, we hereby declare that the summoned person's rights set out in Article 31 of the Agreement between Bosnia and Herzegovina and the Republic of Croatia on Legal Assistance in Civil and Criminal Matters, will be respected.

I present my personal compliments and gratitude for the collaboration.

PROSECUTOR

NOTE: All letters rogatory requesting general types of MLA may be prepared in accordance with the given template, with reference to the relevant article of the Agreement and the elements required for that type of MLA.

URGENCY: If urgent action is necessary, this needs to be stated in both the letter rogatory and the accompanying document, both documents must be marked with the mark “URGENT” in the upper right corner, and the urgency of the action needs to be explained. The urgency mark should not be used as a rule, but an exception in justified cases, since it is necessary to easily recognize the letters rogatory with such a priority among the many other ones between the two countries. In urgent cases, the central authorities have established the practice that they can also submit to each other copies of documents (letters rogatory) obtained by e-mail or fax, with the obligation to urgently submit the original documents as well.

Presence during the MLA actions is precisely regulated by Article 32 of the Agreement, and those are the situations when a prosecutor (or a court) requests an action to be conducted in the requested country and asks and states in the same letter rogatory that the representatives of such authority wish to be present during the requested actions (hearing, questioning or presentation of other evidence). In that case, it is recommended to include in the letter rogatory the contact information to which the requested authority will deliver a response so that the technical issues pertaining to presence during the actions of legal assistance can be arranged between the competent authorities of the two countries. Therefore, after the competent authority of the Republic of Croatia approves the presence during the actions of legal assistance requested through the letter rogatory, the mentioned authorities (prosecutors) can mutually agree on the time of execution of the letter rogatory and accepting the presence of authorized persons of the requesting country during such actions. The Ministry of Justice of the Republic Croatia is giving the consent for presence during the activities of the MLA in that country, while the Ministry of Justice of BiH is giving the same consent in Bosnia and Herzegovina.

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Issues related to general types/forms of MLA, which have not been covered by the Agreement between Bosnia and Herzegovina and the Republic of Croatia on Legal Assistance in Civil and Criminal Matters, are regulated by the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters (hearing by video conference (Article 9), observation outside the borders of one Contracting Party (Article 17), controlled delivery (Article 18), covert investigations (Article 19), formation of a joint investigation team (Article 20) and others).

For these forms of MLA, the layout of the request may be the same as in the previous example, but the legal basis is different, so in addition to the reference to the Agreement between Bosnia and Herzegovina and the Republic of Croatia on Legal Assistance in Civil and Criminal matters²⁰, reference should be made to the relevant provisions of the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters.

Below is a possible template of a proposal to establish a Joint Investigation Team, as this procedural tool represents a rational and broad form of involvement of the requested country and differs from the institute of “presence during the actions of legal assistance” in as far as one decision to form a team enables presence during all MLA actions to be carried out in the requested country as part of a particular criminal proceeding.

²⁰ The agreement regulates the issue of language and manner of communication between the two countries, so that is the reason why the application of the mentioned convention also refers to the agreement.

(Example of a proposal to form a Joint Investigation Team)

BOSNIA AND HERZEGOVINA
PROSECUTOR’S OFFICE OF BOSNIA AND HERZEGOVINA
SARAJEVO

Number:
Sarajevo,

REPUBLIC OF CROATIA

(state the full name of the prosecutor’s office; or, if we do not have such information, address it to the “Competent authority”)

SUBJECT: Proposal for the Establishment of a Joint Investigation Team in Case
.....

Highly respected Sir/Madam,
We wish to inform you that the Prosecutor’s Office of BiH is conducting an investigation against the suspect and others, because of the criminal offence of
.....referred to in Article
(list the offences with reference to legal norms).

The mentioned persons are charged with (describe the incriminated acts in detail). During the investigation, it was established that the following persons also participated in the commission of criminal offences:, **(state personal details for each person such as: name of a parent, date and place of birth, and other)**, domiciled in, the Republic of Croatia, and..... . It was also established that the evidence pertaining to may be located in, on the territory of the Republic of Croatia.

Our assessment is that the circumstances of this case justify synchronised and jointly coordinated actions of the Prosecutor’s Office of BiH and the Prosecutor’s Office of of the Republic of Croatia.

Our assessment is that the circumstances of this case justify synchronised and jointly coordinated actions of the Prosecutor’s Office of BiH and the Prosecutor’s Office of of the Republic of Croatia, and with that in view, based on the Agreement between Bosnia and Herzegovina and the Republic of Croatia on Legal Assistance in Civil and Criminal Matters and Article 20 of the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters, we propose the following:

- That a joint investigation team be formed between the Prosecutor’s Office of BiH and the Prosecutor’s Office of the Republic of Croatia, which will work on solving this case in the territory of both countries;
- The team of the Prosecutor’s Office of BiH would consist of:

(team leader for BiH and the leader of the joint investigation team for conducting actions in the territory of BiH and, as team members (specify individual functions);

- That your esteemed prosecutor's office proposes the composition of the team and the team leader, as well as the leader of the joint investigation team for actions carried out on the territory of the Republic of Croatia, as well as other team members;
- That you send us a feedback on our proposal, and if you accept it, we are ready to immediately sign an agreement on the formation of the joint investigation team, which will determine the tasks, management, costs, timeframe, location of operation and other details in the manner stipulated by the mentioned agreement.

With our particular compliments, we place at your disposal for any clarification and further questions regarding our proposal the following persons:, telephone:, e-mail:

NOTE: The Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters allows the direct communication between prosecutors in such cases as well, but the Republic of Croatia has made a reservation to this provision, so this communication is taking place through central authorities.

The proposal to establish a joint investigation team depends on the relevant prosecutor's assessment if the circumstances of the case justify the formation of such a team.

RECOMMENDATION: Considering that no interpreter is required for functioning of these teams, as well as that this is a bordering country to which the team members arrive quite quickly by passenger vehicles (no unnecessary waste of time waiting at airports, or high costs), and when the situation dictates that more evidence is required between the two countries to resolve a serious criminal offence, the formation of a joint investigation team is justified and desirable.

4.2. Extradition procedure

(Specifics of the Extradition Agreement between BiH and the Republic of Croatia)

The Agreement between BiH and the Republic of Croatia on Extradition was concluded solely to regulate issues and conditions related to the mutual extradition of citizens of both countries, because all other issues related to extradition are regulated by the European Convention on Extradition to which both countries are Parties. This agreement was concluded on 28 November 2012, when it also came into a temporary effect. It entered into force on 6 March 2014.

This Agreement introduces a restriction regarding the extradition of countries' own nationals for crimes against humanity and international humanitarian law.

This Agreement explicitly stipulates that it can apply to the extradition of countries' own nationals only in situations when the criminal offence was committed after its signing, i.e., after 28 November 2012.

Extradition of own nationals may be allowed in all other cases under the conditions prescribed by the mentioned Agreement, with the proviso that the conditions for the extradition of countries' own nationals are prescribed differently than in the case of the extradition of aliens, as follows:

Article 7

(1) Extradition of country's own nationals for the purpose of criminal prosecution shall be permitted if the conditions prescribed by this Agreement for criminal offences of organized crime, corruption and money laundering, which, according to the law of both Contracting Parties are punishable by imprisonment or a measure that includes **deprivation of liberty for a term of four years or a more severe punishment**, are fulfilled.

NOTE: Problems regarding the application and interpretation of this provision are evident in practice, yet unreasonable, because the purpose of the Agreement was to enable mutual extradition of national of both countries in case of criminal offences punishable by a minimum "sentence of four-year imprisonment or a more severe punishment". This interpretation is not disputed by the Republic of Croatia either.

(2) The extradition of nationals for the purpose of enforcing a final sentence of imprisonment or a measure involving deprivation of liberty shall be permitted if the conditions laid down in this Agreement for the offences of organized crime, corruption and money laundering punishable under the law of both Contracting Parties are met, if the imprisonment or a measure involving deprivation of liberty, i.e., their remainder amounts to at least two years.

NOTE: This provision (Article 7, paragraph 2) appears to conflict with the provisions of the European Convention on the Transfer of Sentenced Persons and the provisions of the Agreement between BiH and the Republic of Croatia on Mutual Enforcement of Judgments in Criminal Matters, which allow a convicted person to serve his/her sentence in the country of which he/she is a national.²¹ However, this legal situation is addressed in Article 9 of the Extradition Treaty

²¹ Article 2 of the Law on MLA in Criminal Matters defines the "meaning of terms and concepts", and in point h) the term alien is defined as follows: "An alien is a person who is not a national of Bosnia and Herzegovina." Hence, any person who holds citizenship of Bosnia and Herzegovina (regardless of other citizenships) is considered to be a national of Bosnia and Herzegovina in mutual legal assistance proceedings.

under which a convicted person is allowed to serve a prison sentence in the country of which he/she is a national²², if he/she so agrees, in which case the convicted person will be exercising the right laid down in the Agreement on Mutual Enforcement of Judgments in Criminal Matters. The agreement between BiH and the Republic of Serbia contains similar legal solutions concerning the extradition of its own nationals who have been convicted, which is elaborated in the chapter on MLA between BiH and Serbia, hence, for the sake of rationality, please see these solutions on page 45 herein.

(3) The criminal offences of organized crime referred to in paragraphs (1) and (2) of this Article are the following:

- criminal offences punishable by a prison term of four years or a more severe punishment which were committed by an organized criminal group, as stipulated by the domestic law;
- organizing and participating in an organized criminal group, as stipulated by the domestic law.

(4) The criminal offences of corruption referred to in paragraphs (1) and (2) of this Article are the following:

- abuse of office by an official or responsible person,
- active and passive illegal mediation using influence,
- active and passive bribery of an official,
- active and passive bribery in the private sector,
- embezzlement.

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(Article 8) Extradition of nationals because of other serious criminal offences

(1) Extradition of nationals for the purpose of criminal prosecution shall be permitted if the conditions prescribed by this Agreement are met, except for the criminal offences referred to in Article 7 of this Agreement, and for aggravated criminal offences punishable by imprisonment or a measure involving deprivation of liberty for a term of ten years or a more severe punishment.

NOTE: This provision is defined in the same way as the provision in Article 7, paragraph 1.

(2) Extradition of nationals for the purpose of enforcement of a final sentence of imprisonment or a measure involving deprivation of liberty shall be allowed if the conditions prescribed by this Agreement for criminal offences referred to in paragraph (1) of this Article are met, if the duration of imprisonment or the measure involving deprivation of liberty, i.e., their remainder amount to at least five years.

NOTE: Same as in Article 7, paragraph 2.

(3) The provisions of paragraphs (1) and (2) of this Article shall not apply to the criminal offences of genocide, crimes against humanity and war crimes.

²² In the context of mutual legal assistance, any person holding citizenship of Bosnia and Herzegovina (regardless of other citizenships) shall be considered the citizen of Bosnia and Herzegovina.

NOTE: The reservation in paragraph (3) arises from the different views of the two countries on the character of the wars in the region; therefore, the Agreement enabling the extradition of the respective nationals of both countries would not have been concluded without this reservation in place.

4.3. Transfer of criminal prosecution

The Republic of Croatia has not ratified the European Convention on the Transfer of Proceedings in Criminal Matters to which BiH is a Party, but this matter is regulated in detail by the Law on MLA and the Agreement between BiH and the Republic of Croatia on Legal Assistance in Civil and Criminal Matters (Articles 34 to 37), so the question arises why not transfer the criminal prosecution to that country, if the case cannot be resolved in another way.

EXAMPLE: The expediency of criminal proceedings in BiH is questionable in relation to a citizen of the Republic of Croatia who caused severe bodily injuries to his fellow citizen during the winter holidays spent on Jahorina (BiH), while both of them are now in the Republic of Croatia as the country of their citizenship. In this case, the interest of the Republic of Croatia certainly prevails as compared to the interest of BiH, both in terms of criminal prosecution of the suspect and in terms of exercising the rights of the injured party.

The mentioned bilateral agreement gives the possibility to the Contracting Parties to request to take over the criminal proceedings in any case under the conditions that the person in question has a permanent residence in the requested country or is a national of that country, or is to serve in that country for another criminal offence, etc.

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RECOMMENDATION: Transfer of criminal prosecution by the authorities of one country to another is also an act of trust of that country towards the judicial authorities of the other; therefore, the use of this institute is proposed in all cases where criminal proceedings cannot be completed in another way, as well as in other cases when it is assessed that it corresponds to the purpose of the concluded agreements that regulate this area of MLA between BiH and the Republic of Croatia.

The request for transfer of criminal prosecution shall be addressed to the competent judicial authority of the requested country, stating (and explaining) the reasons for the transfer of criminal prosecution, and the requested authority shall be provided with the full case file of the criminal case as well as the information necessary for the authority to reach a decision on taking over the criminal prosecution. This request shall be submitted to the requested authority through the central liaison authorities.

(Example of a request for taking over the criminal prosecution)

BOSNIA AND HERZEGOVINA
PROSECUTOR’S OFFICE OF BOSNIA AND HERZEGOVINA
BOSNIA AND HERZEGOVINA

Number:
Brčko,

REPUBLIC OF CROATIA
– TO THE ATTENTION OF THE COMPETENT AUTHORITY –

SUBJECT:
– Request for taking over the criminal prosecution –

Pursuant to Article 84 of the Law on International Legal Assistance in Criminal Matters
....., and in accordance with Article 34 of the Agreement between Bosnia and Herzegovina
and the Republic of Croatia on Legal Assistance in Civil and Criminal Matters, we have the honour to
request that you take over the further criminal prosecution of the suspect

....., son/daughter of, born on (dd/mm/yyyy) in
....., residing in, on the following Street:, number, a citizen of
the Republic of Croatia, because of grounds of suspicion that he/she committed a criminal offence of ...
..... referred to in Article, paragraph of the Criminal Code
of.....

The suspect is charged with
.....

**(describe the actions that constitute a criminal offence and state all the reasons for transferring
the criminal prosecution, and especially highlight the weak possibility of securing the suspect’s
presence before the BiH authorities)**

After reviewing all the documents contained in the case file and the results of the investigative measures
taken, it was determined that there were grounds of suspicion that the suspect
., committed the criminal offence referred to in Article paragraph of the Criminal Code of ..
.....

Considering that the suspect is a citizen of the Republic of Croatia, where he/she is domiciled, it has
been assessed that, in order to successfully pursue further criminal proceedings, it is justified to transfer
the case to the judicial authorities of the Republic of Serbia; therefore, enclosed with this request we are
delivering you the complete case file for this case.

Please inform us of the follow-up actions taken as a result of this request, with reference to our document
number. We use this opportunity to express our gratitude for successful cooperation.

Sincerely,

PROSECUTOR

4.4. Recognition and enforcement of foreign court decisions (Procedure and problems in practice)

The Law on MLA, regulates in a separate chapter the details pertaining to the procedure of recognition and enforcement of foreign court decisions (Chapter VII, Articles 62–78), and prescribes conditions that imply that a foreign court decision can be enforced in BiH only if the issue is regulated by an international treaty and if a competent court in BiH – through the appropriate court proceedings – recognizes the foreign decision in question, and, by its decision on the acceptance of the foreign court decision, imposes a sanction in accordance with the laws of BiH.

The Agreement between BiH and the Republic of Croatia on Mutual Enforcement of Court Decisions in Criminal Matters, in addition to the conditions for mutual recognition and enforcement of court decisions, stipulates that a final decision recognizing a foreign court decision shall be delivered to the country where the sentence is imposed, so that such country can give its consent to the sentence pronounced.

The country where the sentence is pronounced may not accept a decision of a foreign court that recognizes its decision, especially when the court that recognized the foreign decision enormously reduced the prison sentence or replaced the prison sentence with a fine.

Even if the Agreement between BiH and the Republic of Croatia on Mutual Enforcement of Court Decisions in Criminal Matters does not provide for such a possibility, it has been noticed in practice that courts in BiH often replace a prison sentence of up to one year with a fine. This manner of enforcement of foreign court decisions in BiH is disputed by the Republic of Croatia and along with every case in which the enforcement of the sentence is transferred, the Republic of Croatia states that it is against this, with a remark that it will not accept such a decision (which replaces imprisonment with a fine) and will retain the right to enforce its decisions.

Nevertheless, some courts that issue such decisions invoke their independence in decision-making, so in this way several court judgments have been recognized and enforced, which have so far had no effect on the Republic of Croatia.

EXAMPLE: In one such case, a person convicted in the Republic of Croatia, after the recognition of the decision in BiH, was sentenced to one year in prison, and by the same decision, the mentioned sentence was replaced with a fine of 36,000 BAM (about 18,000 EUR).

The Republic of Croatia did not give its consent to this decision, and the convicted person is in Bosnia and Herzegovina. The lack of consent of the sentencing country resulted in the convicted person being deprived of his liberty after crossing the BiH border, and handed over to a court in the Republic of Croatia to serve his sentence, regardless of the fact that his prison sentence in BiH was replaced by a fine – the punishment that the convicted person had served in BiH.

Several cases like the above example were recorded, with the proviso that in most such cases convicted persons do not cross the BiH border, so they are not deprived of liberty, and the Republic of Croatia never gave its consent in those cases for the sanction to be changed in BiH, and still claims the right to enforce the punishment imposed in the Republic of Croatia.

Although in these proceedings **the right of the prosecutor** is established through Article 68, paragraph 2 of the Law on MLA (presence at the session of the panel held for the purpose of rendering the decision) and Article 69, paragraph 1 of the Law on MLA (right to appeal), research shows that in some of these cases, when the Republic of Croatia explicitly opposes the replacement of a prison sentence with a fine, prosecutors do not file an appeal and do not attend the session of the panel that decides on recognition, nor are they present when the court does not accept the position of the country transferring the enforcement of the sentence.

RECOMMENDATION: In the procedure of recognition and enforcement of court verdicts in criminal matters from the Republic of Croatia (and other countries), courts in BiH should take into account whether the decision rendered by a court in BiH recognizing a foreign court judgement will be accepted by the country that rendered the original judgement, while prosecutors should play an active role as envisaged by Articles 68 and 69 of the Law on MLA, in order to avoid situations where the sentencing country does not accept the decision of the court in BiH recognizing a foreign judgment.

FINAL COMMENT: The aim of this chapter (PART III) of the Guide was to provide references to the regulations and tools used in MLA between BiH and the Republic of Croatia. As the Guide represents a whole, certain information and examples given in Chapters I and II have not been repeated, so they can be accepted by analogy. The Guide specifically treated the MLA through BiH's relations with the Republic of Serbia and the Republic of Croatia, as the countries with which BiH has the highest volume of exchange of this legal assistance, that is, to the extent almost equal to the exchange with all other countries. Some examples have treated MLA between the Republic of Serbia and BiH, but these examples can be applied analogously to the relations between BiH and the Republic of Croatia, as well as to the relations between BiH and the Republic of Slovenia, Montenegro, Northern Macedonia and many other European countries, with the proviso that in relation to those countries it is necessary to provide a translation of the documents into the language of the requested country.

Certain specificities (in relation to countries with which there is a significant exchange of MLA) exist in the relations of BiH with Germany, USA and China, so these specificities will be addressed in the continuation of the Guide. (PART II).



**PART IV - MUTUAL LEGAL ASSISTANCE
IN CRIMINAL MATTERS AND
EXTRADITION BETWEEN BOSNIA AND
HERZEGOVINA AND THE FEDERAL
REPUBLIC OF GERMANY**

PART IV - MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS AND EXTRADITION BETWEEN BOSNIA AND HERZEGOVINA AND THE FEDERAL REPUBLIC OF GERMANY

1. Introductory remarks

Parts II, III, and VI of this Guide concern the mutual legal assistance with countries with which Bosnia and Herzegovina (hereinafter: BiH) exchanges legal assistance mainly based on bilateral agreements governing this subject in criminal matters.

Although mutual legal assistance between two countries was most commonly arranged based on bilateral agreements, now the legal assistance undeniably can be comprehensively regulated by multilateral agreements binding on several states. The best example of regulating comprehensive legal assistance and cooperation among several countries are the Council of Europe conventions governing the overall international legal assistance among the Member States. BiH is a member to all these conventions, hence it exercises mutual legal assistance on this legal ground with all EU and Council of Europe Member States with which no bilateral agreement has been concluded.

For BiH, the Council of Europe conventions are the most common legal basis for overall international legal assistance, and the bilateral agreements between BiH and the individual EU Member States serve only to facilitate the implementation of conventions.

Through the application of the Council of Europe conventions, this part of the document deals specifically with the relationship between BiH and the Federal Republic of Germany (hereinafter: FR Germany), because the legal assistance on these legal grounds is most commonly used with FR Germany. When it comes to the mutual legal assistance in criminal matters between BiH and other countries, the scope of cooperation, not only on these but also on any other grounds, is greatest with the Federal Republic of Germany, the Republic of Serbia, and the Republic of Croatia.

To illustrate **the significance and the scope** of this legal assistance between BiH and FR Germany, it is enough to say that, in 2018, the two countries have implemented 32 extraditions, which is - observed on an individual level - more than with the Republic of Serbia or Croatia, which are bordering countries. There is also a high number of convicted BiH nationals in FR Germany, so for the period from October 1, 2019 - October 1, 2020, BiH received over 7,000 (seven thousand) forms with data on BiH nationals convicted in FR Germany. This data also includes misdemeanour proceedings, but legal assistance is provided in these proceedings too.

For these reasons, this section will deal with legal assistance between BiH and the Federal Republic of Germany, and by the analogy, the same legal assistance may be sought or received from all other Council of Europe Member States with which BiH has not concluded a special bilateral agreement to facilitate the implementation of the conventions.

2. Information on the legal grounds for MLA between BiH and FR Germany

2.1. Law on Mutual Legal Assistance in Criminal Matters

Law on Mutual Legal Assistance in Criminal Matters²³ (hereinafter: the MLA Law) is touched upon in the introductory part, but this part also points to its importance and highlights the fact that this law is the starting point for the authorities in BiH in the process of seeking and receiving legal assistance. Article 1 of the MLA Law states that “the law governs the manner and procedure of mutual legal assistance in criminal matters unless otherwise provided by an international treaty”. **The Law gives precedence to the international treaties in this area, so the corresponding multilateral agreements - conventions, which bind BiH and FR Germany in this area, should be treated in the same way.**

The MLA Law defines the issues regarding the designation of the authorities responsible for acting upon an MLA request and their obligations in BiH, while treaties - i.e., conventions listed below - prescribe the conditions and manner of providing MLA between BiH and FR Germany.

2.2. Council of Europe Conventions to which BiH and FR Germany are members

106 BiH and FR Germany are both members to many Council of Europe conventions, but for mutual legal assistance in criminal matters between the two countries (including extradition proceedings, transfers of convicted persons, and transfers of prosecutions), the most important are the four conventions governing mutual legal assistance in this area.

These conventions regulate certain forms/types of legal assistance in a way that each type of legal assistance is regulated by a special convention. This way of regulating this area is an improvement compared to most bilateral agreements because bilateral agreements often cover legal assistance in criminal matters in general or they regulate general types of legal assistance and the procedure of transferring criminal proceedings through one bilateral agreement (one regulation). The subject-matter of most bilateral agreements is not visible from their titles, **while the conventions of the Council of Europe, of which BiH and FR Germany are members, refer by their name to the type of legal assistance, and provide a list of legal sources by type of legal assistance as follows:**

a) Mutual legal assistance (general aspects)

The most common legal basis for general types of mutual legal assistance in criminal matters between BiH and FR Germany is as follows:

- The European Convention on Mutual Assistance in Criminal Matters, Strasbourg, April 20, 1959, entered into force on June 12, 1962, effective to BiH as of July 24, 2005, published in the Official Gazette of BiH - International Treaties 04/2005;

²³ Law on Mutual Legal Assistance in Criminal Matters (Official Gazette of BiH No. 53/09 and 58/13).

- The Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters, November 08, 2001, entered into force on February 1, 2004, and effective to BiH as of March 1, 2008, published in the Official Gazette of BiH - International Treaties 10/07;

NOTE: Bosnia and Herzegovina have not yet ratified the (First) Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters.

BiH and FR Germany are also members of a large number of other multilateral treaties concerning the fight against organized crime, money laundering, corruption, etc., but the abovementioned legal basis is the most comprehensive and most commonly used in international legal assistance procedures between the two countries. The application of this legal basis is, by analogy, applied to other conventions that regulate this area.

b) Extradition procedure

The legal basis for the extradition procedure between BiH and FR Germany is as follows:

- The European Convention on Extradition; Strasbourg, December 13, 1957, entered into force on 18 April 1960, effective for BiH as of 24 June 2005, published in the Official Gazette of BiH - International Treaties 04/2005;

- Additional Protocol to the European Convention on Extradition; Strasbourg, 15 October 1975, entered into force on 20 August 1979, effective for BiH as of June 24, 2005, published in the Official Gazette of BiH - International Treaties 04/2005.

- Second Additional Protocol to the European Convention on Extradition, Strasbourg, March 17, 1978, entered into force on June 5, 1983, effective for BiH as of July 24, 2005, published in the Official Gazette of BiH - International Treaties 04/2005;

- Third Additional Protocol to the European Convention on Extradition, open for signing as of 10 November 2010, entered into force on May 1, 2012. BiH signed it on March 24, 2014, and ratified it on December 1, 2014, effective for BiH as of April 1, 2015, published in the Official Gazette of BiH - International Treaties 04/2014.

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c) Transfer of criminal proceedings

The legal basis for transferring criminal proceedings between BiH and FR Germany is as follows:

- The European Convention on transfer proceedings in criminal matters, Strasbourg, May 15, 1975, entered into force on March 30, 1978, effective for BiH as of July 16, 2005, published in the Official Gazette of BiH - International Treaties 04/2005.

d) Recognition and enforcement of foreign court judgments in criminal matters

In BiH legislation, this procedure is called "Recognition and enforcement of foreign court judgments in

criminal matters”, and this issue is regulated between BiH and FR Germany by the Convention on the transfer of sentenced persons; Strasbourg, March 21, 1983, entered into force on July 1, 1985, effective for BiH as of July 26, 2005, published in the Official Gazette of BiH - International Treaties 04/2005.

NOTE: BiH has not yet ratified the Additional Protocol to the Convention on the Transfer of Sentenced Persons, so the transfer of such persons between BiH and other member states of the Convention can be approved only upon a request and with the consent of the sentenced person.

3. Communication and language of the letter rogatory/MLA request between the authorities of BiH and FR Germany

a) Mode of communication: Without going into the reasons why this is so, FR Germany **in all the proceedings** resorts to an exception to the rules established by the conventions, and communicates with the authorities of BiH **using diplomatic channels of communication** (the regular communication channel is between the ministries of justice). For authorities in BiH (prosecutor’s offices and courts), this requirement is relevant only in terms of the speed of delivery of the request, because in these cases the request is addressed to “the Competent Authority of FR Germany” and together with a special letter forwarded to the Ministry of Justice of BiH, which then forwards the request to the BiH Ministry of Foreign Affairs, etc.

An exception to this mode of communication is submitting the request via INTERPOL, which is allowed in emergencies only.

URGENCY: In the current practice in these proceedings, urgency exists and is accepted in case of notification of deprivation of liberty abroad based on an international arrest warrant, notification of remanded custody, temporary custody and extradition custody, the possibility of extradition, and similar situations where the status of the proceedings depends on the speed of obtaining information (length of custody and the like). Urgency may also exist in other cases, such as fear of concealment or destruction of evidence, etc., but in such cases, the requesting authority must provide an explanation and reasons for urgency in the MLA request. A copy of such a request addressed to INTERPOL shall be submitted to the Ministry of Justice of Bosnia and Herzegovina (Article 4, paragraph 6 of the Mutual Legal Assistance Law).

Under Article 4, paragraph 6 of the MLA Law, in urgent cases, when communication is pursued through INTERPOL, a copy of that act (request) shall be submitted to the Ministry of Justice of Bosnia and Herzegovina. Hence, the Ministry of Justice of BiH must be informed of any communication in the mutual legal assistance process, as it is responsible for keeping a central record on mutual legal assistance proceedings and communication with foreign jurisdictions in these cases. This obligation is often neglected, which is why it is here particularly emphasized.

b) Language of communication: Letters rogatory/MLA requests for FR Germany are always written in the official language of the requesting authority and are accompanied by a German translation thereof.

RECOMMENDATION: Any MLA request addressed to FR Germany (or any other member state of the Convention) should be translated into the language of the requested country, even though the Convention says (in Article 15) that it may also be the language of the Council of Europe.

Member states may express reservations to this provision, as the Federal Republic of Germany has done. This country has the right to request letters rogatory with a translation in their language. It is not appropriate (and it often happens) that the requests submitted to FR Germany are accompanied by an English translation, because such requests (if accepted) must be again translated by the requested authority to be able to act upon them.

4. Information on MLA between BiH and FR Germany

4.1. General types (forms) of MLA

The Federal Republic of Germany is rightly a very demanding country when it comes to stating precisely the legal basis for a certain type of legal assistance sought and indicating the exact actions requested. This country also insists on the format of a request and the language prescribed by the Convention.

Studies show that whenever some judicial officeholders from BiH addressed this country with a letter rogatory using bossy verbs, the requests were returned with the explanation that they were “incomprehensible” even if the content of the letter of request was very clear. The point is that the wording of the letters rogatory was commanding (we urgently demand, we ask ... without delay, etc.), which is not acceptable, because the requested party might feel that by doing so the foreign authority is exercising judicial power on its territory. Therefore, the request referred to this jurisdiction (and any other jurisdiction) should be properly phrased, using courteous words or phrases such as “we kindly ask you”, “we ask, for reasons of urgency”, and the like.

The general forms of MLA that may be sought between two states are set out in the Convention, as well as in Article 13 of the MLA Law (which followed and almost verbatim copied the wording from the Convention). Indicating the forms of mutual legal assistance does not exhaust all possible legal assistance, hence the MLA Law says “...., as well as other actions which could emerge during the criminal proceedings requiring mutual legal assistance, providing that they are not in contravention of this Law. The Convention regulates this issue in Article 1 by saying that the Member States shall provide each other with “the widest possible legal assistance.”

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Letter rogatory/request

There is no standardized form and format of an MLA request between the authorities (prosecutors' offices and courts) of the two states, but in any case, this act must have all the elements prescribed by the Convention (listed under 2.2.a).

As a rule, the Federal Republic of Germany uses letters rogatory with a memorandum containing the data such as name of the authority, address, contact telephone number, e-mail, etc., **as well as a note that the response shall be returned under the same reference number under which the request was submitted.** This note has a great practical significance because in BiH the same case is often kept under different reference numbers, and the documents often get “diverged” between different authorities or even within the same authority but among different persons. The following is an example of the form and content of the request from the Federal Republic of Germany, which is most often used in communication with the BiH authorities:

4.1.1. Example of a letter rogatory from the Federal Republic of Germany

THE FEDERAL REPUBLIC OF GERMANY

Chief State Prosecutor in ...

Counter Computer Crime Centre in ...

Mailing address

BOSNIA AND HERZEGOVINA

-To the competent criminal prosecution authority -

Please always indicate our reference number when responding

Your reference number, your notice

Date:

Providing legal assistance in a criminal case

An investigation against the defendant: (Specify all the details)

Fraud for professional purpose as a criminal enterprise

Subject: Determining the owner of the connection of an IP address

Ladies and gentlemen,

The Chief Public Prosecutor’s Office in ...- Counter Computer Crime Centre in ...- is conducting an investigation against the defendant and other unknown accomplices due to fraud committed for professional purposes acting as a criminal enterprise. The case is based on the following facts:

(factual description provided).

In view of the present proceedings, we kindly ask the competent prosecution authority to take the following actions:

(describe actions)

We submit our request based on the European Convention on Mutual Assistance in Criminal Matters, Strasbourg, April 20, 1959, and the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters Strasbourg, November 8, 2001.

Along with the request, we submit an Excerpt from the Criminal Code of the Federal Republic of Germany: (a transcript of the relevant sections of the Law related to the proceedings provided).

NOTE: We stand ready to provide any other information needed to satisfy the request.

Please accept the assurance of our deepest consideration, and we kindly thank you for your cooperation.

(Name, surname, function)

4.1.2. Possible form of a letter rogatory for FR Germany

BOSNIA AND HERZEGOVINA

(full name of the authority)

Number:.....

.....

THE FEDERAL REPUBLIC OF GERMANY

- TO THE COMPETENT JUDICIAL AUTHORITY -

SUBJECT: International legal assistance - examination of witnesses

REFERENCE NUMBER: or / Please indicate our reference number when responding

Referring to the provisions of the European Convention on Mutual Assistance in Criminal Matters, Strasbourg, April 20, 1959, and the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters, Strasbourg, November 8, 2001,the Prosecutor’s Office/Court has the honour of addressing the competent authorities of the Federal Republic of Germany with a request for legal assistance in examining a witness:

....., of, born in, a national of.....residing at no., in, Federal Republic of Germany.

This Prosecutor’s Office is conducting an investigation against an unidentified perpetrator or several of them due to the suspicion that he (they) committed the criminal offense of murder under Article of the Criminal Code by planting a hand grenade on (date), in or around hours in the street number in (place), in the apartment owned by targeting to kill the owner of the apartment. As a result of activating the explosive device, from, who worked on the renovation of the apartment was killed, while his co-worker..... fromsuffered serious bodily injuries. (Provide precise factual description).

As there are indications that witness was at the scene at the time of the incident and that he/she knew some of the persons from the present case, and that he/she might have some information about the incident, we would need him/her examined about the following circumstances:

- Whether was in BiH in the month of
- What he/she was doing at the time?
- Whether he/she is aware of the event that happened (date)?
- Does he/she know the person.....? How long has he/she known him? What is their relationship?

- Does he/she know the person ;
- Did he/she know the injured parties and
- Was he/she in the company of on a critical day?
- (Specify any other questions that could shed light on the incident).

Appreciating the importance of this statement, we kindly ask you to examine the witness about other circumstances that could affect the further course of the investigation and lead to information that could point to the perpetrator or perpetrators of the said criminal offense.

Please accept the assurance of our deepest consideration, and we kindly thank you for your cooperation.

(Name, surname, function)

RECOMMENDATION: To write clear letters rogatory to FR Germany for general types of assistance, it is very useful to follow the views of the **Council of Europe - Committee of Experts on the Operation of Conventions on Cooperation in Criminal Matters. In the opinion of this Committee the letters rogatory should contain:**

- Facts and legal information about the crime,
- A summary of relevant facts related to the time, place, and manner of commission of the offense,
- The legal qualification of the offense with relevant provisions including the range of penalties applicable,
- Clear description of the links between the offense and the person and between the offense and the evidence /measures/ criminal assets sought in the requested State

Where applicable, the letter rogatory should also include damage caused by the offense, information on the victim, where relevant, information on a lapse of time, and any other additional information which may assist the requested authority in carrying out the request.

Other information regarding the general forms of this legal assistance is contained in the previous part of the Guide.

4.2. Extradition procedure

4.2.1. Introductory information

Legal grounds for extradition procedure between BiH and FR Germany are provided under points 2.1. and 2.2. b), but it is very important to point out the problems that arise in these procedures. Extradition from BiH to FR Germany (and other countries) is regulated in detail by the MLA Law. It is covered in PART I of the Guide, and it is fair to say that there are no special problems regarding extradition from BiH to FR Germany.

The number of extraditions from BiH to FR Germany is well below the number of extraditions from FR Germany to BiH.²⁴The judicial bodies on the BiH side involved in the extradition procedure are only the Prosecutor's Office of Bosnia and Herzegovina and the Court of Bosnia and Herzegovina, which are already specialized in these proceedings. In case of extradition from FR Germany (and other jurisdictions) to BiH, the process is open for all prosecutors' offices and courts from BiH, which is why, due to lack of information on the manner of initiating this procedure, especially with the judicial officeholders who encounter these proceedings for the first time, this process is often handled in an untimely and uneven manner.

For these reasons, in this part, special attention will be paid to the obligations and steps of the BiH authorities regarding the handling of an extradition request from the Federal Republic of Germany.

4.2.2. Information related to an extradition request

What are the obligations of the authority (prosecutor's office or court) from BiH if proposed that a suspect, accused or convicted person from the Federal Republic of Germany be extradited to BiH?

The practical steps in these procedures are as follows:

- A notice of provisional arrest of the wanted person in FR Germany (the same is true for other countries) is submitted to the Ministry of Justice of BiH via INTERPOL. In the notice, BiH is asked to confirm if it will file a motion for extradition and if so, it will be given a deadline of 18 or 40 days to submit the request.
- Upon receipt of the notice, the Ministry of Justice of BiH shall immediately forward this notice to the authority (prosecutor's office or court) conducting the proceedings or the court responsible for enforcement of a sanction, with a request on their intention to request extradition, with an act that should contain the following:

²⁴ In 2017, FR Germany enforced 29 extraditions to BiH, while BiH in that year enforced only 3 extraditions to the Federal Republic of Germany. Year later, this ratio was 30: 4, and approximately the same trend was maintained until the end of 2020.

4.2.2. a) Example of a notice of deprivation of liberty of a wanted person in FR Germany

MINISTRY OF JUSTICE BOSNIA AND HERZEGOVINA

Number:

Date:

URGENT

.....

(name of the authority making the initiative - prosecutor’s office/court)

SUBJECT:, extradition

Reference: Your document number: of(date)

We received a document from INTERPOL Sarajevo containing a notice from Interpol Wiesbaden informing us that the wanted person has been located/**deprived of liberty** in the Federal Republic of Germany based on an international arrest warrant of the NCB Interpol Sarajevo Department, issued based on the order

If the extradition of the wanted person is to be requested, the Ministry of Justice of Bosnia and Herzegovina should urgently submit the following extradition documentation so that an extradition motion can be prepared:

a) In the case of criminal proceedings

means for establishing the identity of the person concerned (a copy of ID card with photo and fingerprint, etc.), an excerpt of Criminal Code Articles relevant to the offense(s) prompting the extradition request, order for issuing an international arrest warrant, custody order, an indictment, an investigation order or another document that contains all the facts related to the committed criminal offense and the perpetrator, and the legal provisions relating to the statute of limitations for criminal prosecution.

b) In case of execution of a sentence

means for establishing the identity of the person concerned (copy of ID card with photo and fingerprint, etc.), an excerpt of Criminal Code Articles relevant to the offense(s) prompting the extradition request, order for issuing an international arrest warrant, a final judgment, time spent in custody, legal provisions relating to the statute of limitations for criminal prosecution and other information provided for in the Convention.

All original documents or certified copies thereof must be submitted by (date) and accompanied by a German translation.

c) In case of provisional arrest and ordering temporary custody for 18 days for submitting a request

If the deadline (of 18 days) for completing and translating the documentation, and submitting an extradition request is too short, an extension of the deadline to 40 days should be immediately requested through the Ministry.

Sincerely,

NOTE: Specify the requested information indicated in item a), b) or c), depending on the notice received from FR Germany. If the authority receiving the notice does not have the competence to act upon the request, it shall immediately forward it to the competent body, and shall submit a copy of that act to the Ministry of Justice of BiH for information.

4.2.2.b) Initiative (motion) for submitting an extradition request (possible form)

Immediately upon receipt of the prior notification, the authority (prosecutor’s office or court) that received it should react, and may do so as follows:

BOSNIA AND HERZEGOVINA

Number...../.....

Banja Luka,..... (date) **VERY URGENT**

MINISTRY OF JUSTICE BOSNIA AND HERZEGOVINA

SARAJEVO

SUBJECT:, delivery of extradition documentation

Reference: Your number o.....of(date)

Regarding your letter (the number and date of the reference) informing our Court that, a national of born son of (father’s name) and (mother’s name)was deprived of liberty in FR Germany based on Interpol’s red notice, who is wanted for (state the purpose),

WE HEREBY CONFIRM our intention to file an extradition request, and with this letter we kindly ask for the extension of the deadline up to 40 days to complete the documentation, ensure translation, and submit the extradition request.

Once completed, the documentation will be delivered to you without delay.

Sincerely,

(Name, surname, function)

NOTE: The practice shows that, in the extradition proceedings with the Federal Republic of Germany (and other jurisdictions where a translation into the language of the requested jurisdiction is requested), it is always necessary to urgently confirm the intention to submit the motion and seek an extension of the deadline for submitting the request. The reason is clear - when issuing a warrant, it is not possible to know in which country the wanted person will be arrested and deprived of liberty, hence the translation (of often extensive documentation) into the language of the requested state cannot be prepared in advance.

4.2.3. Preliminary assessment and completion of documentation

RECOMMENDATION: before filing a motion to submit an extradition request, it is necessary to assess whether the statute of limitations for criminal prosecution or the execution of a criminal sanction has occurred. This recommendation is not declarative in nature and has practical significance, because it happened and still happens in practice that the wanted person hides on the run for several years, and following his/her deprivation of liberty, the requesting authority files an initiative to the BiH Ministry of Justice for his/her extradition without checking the statute of limitations. The BiH Ministry of Justice, based on such initiative, submits a request for extradition to the Federal Republic of Germany, and subsequently, the authorities of the Federal Republic of Germany found that the statute of limitations had expired and that the person (in some cases) had been unlawfully detained in the Federal Republic of Germany, in which case they serve BIH authorities with a note of protest.

After completing the documentation and translating it into German, it should be submitted to the Ministry of Justice of BiH with a proposal to submit a request for the extradition of the wanted person from the Federal Republic of Germany to BiH.

The proposal for submitting a request for extradition does not have a special form, but it must, *inter alia*, contain an inventory of all documents submitted:

- Judgment of the court in, number of(date);
- Data from the form LK-0I-5 for the person concerned/
- Order for issuing an international arrest warrant for, number K of (date);
- An act of reference issued by the court no. of.....(date) ;
- A copy of the Criminal Code sections for the offense prompting the extradition order, Articles governing the statute of limitation, and any other information, data, and documents provided by the Convention.

4.2.4. Requests for additional information and guarantees

4.2.4.a) Additional information:

Once a wanted person is located or provisionally arrested in FR Germany, the authorities of this country may request additional information regarding the statute of limitations if they suspect that the statute of limitations may have occurred. In one case they requested the following:

“In connection with the present case, we would like to inform you that the General Prosecutor’s Office in Frankfurt has submitted the following notice and request:

The subject lives in Germany.

Under Article 10 of the EuAlUbek, the extradition of the person concerned could be inadmissible, as, under German law, the statute of limitations could occur.

According to our law, the statute of limitations is 5 years after the commission of this criminal offense. The criminal offense was committed on July 19, 2012, which means that the statute of limitations occurred on July 19, 2017.

The extradition could be approved if actions interrupting the statute of limitations took place in the period between June 2015 and July 18, 2017.

The statute of limitation will be considered interrupted if some of the following actions have taken place:

1. the first interview with the accused; serving a notice of an investigation or an order to conduct an interview or issue a notice;
2. hearing of the accused person by a judge or issuing an order for such a hearing;
3. a judge or public prosecutor engaging a court expert after the person has already been heard or a notice of the investigation being initiated has been issued;
4. any court order for search and seizure or any court decision to update their validity;
5. issuing an arrest warrant, a referral act, a court summons, or a court decision to update them;
6. issuing a criminal warrant or other court decision equivalent to a verdict;
7. temporary suspension of the proceedings by court order due to the absence of the accused person, as well as any order of the court or public prosecutor requesting, after such a suspension of the proceedings or the proceedings against the person in absentia, the establishing of residence of the accused person or evidence-collecting;
8. temporary suspension of the court proceedings due to the mental inability of the accused to appear at trial, as well as any other decision of the court or prosecutor issued after this suspension to determine the mental capacity of the accused to stand trial or
9. any court request for conducting investigative activities abroad.

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The arrest warrant stated in the warrant of November 18, 2018, as well as Interpol's red warrant of April 8, 2020, have been issued too late, as the statute of limitations for criminal prosecution has already occurred.

Please let us know if you had taken any actions that interrupt the statute of limitations under the above provisions of German law, and if so, when.

Only in the present case, we kindly ask you to submit an extradition request translated into German, as soon as possible, using diplomatic channels."

NOTE: The cited act illustrates how rightly the judiciary of the Federal Republic of Germany raises serious concern regarding all the necessary conditions before granting extradition. In the case presented in the example, the competent prosecutor's office responsible for the investigation in BiH is required to submit all information and evidence for the competent authorities in FR Germany to conclude that the statute of limitations was interrupted and not yet occurred. This information is submitted to the Ministry of Justice of BiH, which then submits a request for extradition, accompanied by relevant documentation and information regarding the statute of limitations.

Failure to comply with this or similar additional requirements results in the extradition request not being submitted or motion denied, if filed.

4.2.4.b) Additional guarantees:

In addition to the additional information requested with the extradition request, the requested state (FR Germany) often requests additional guarantees regarding the security of the wanted person and conditions in custody/prison, the application of a more lenient law, consular visits, and the like. These guarantees are in some cases sought along with the motion for extradition, while in some cases they are required after the motion is filed but before extradition is granted.

a) Possible example of a guarantee (based on a previous guarantee of a penitentiary institution)

About the request for guarantees concerning the security of the person concerned, we would like to inform you that Article 52 of the BiH Law on Execution of Criminal Sanctions, Detention, and Other Measures stipulates that the treatment of detainees and prisoners must be humane and with respect for their human dignity, preserving their physical and mental health. In this regard, the Ministry of Justice of Bosnia and Herzegovina provides guarantees that the custody institution to which he/she will be referred i.e., penitentiary institution in which he/she will serve time, if convicted, shall comply with all statutory provisions guaranteeing respect for the human rights of the person concerned, as well as his/her safety.

b) Possible example of a guarantee (based on a previous Court guarantee)

About the request for the application of a more lenient law, the Ministry of Justice of Bosnia and Herzegovina provides a guarantee based on the guarantee previously given by the Court, which has jurisdiction in this criminal case, that, if found guilty, the Courtwill, in terms of sentencing, be bound by the decision of the European Court of Human Rights regarding the application of a more lenient law for war crimes. Also, please note that the European Convention on Human Rights and Fundamental Freedoms is an integral part of the Constitution of Bosnia and Herzegovina, and the rights and freedoms provided by this Convention and its protocols are directly applicable in Bosnia and Herzegovina and take precedence over all laws.

d) Other possible guarantees

Other guarantees may relate to ensuring that a detained or convicted person has contact with a country's diplomatic or consular representative or a national or international body whose duty is to act in the interest of such persons, or that a foreign prisoner has the right to be visited by his or her diplomatic or consular representative.

Failure to accommodate the requested guarantees results in the extradition request not being submitted or motion denied, if filed.

CONCLUSION: In the process of extradition of suspects, accused and convicts from the Federal Republic of Germany wanted by the authorities of BiH, it is necessary to consult the regulations from item 2.1. and 2.2.b) and act promptly on any request, and in case of any additional request by the requested State, to always provide the additional information or guarantees requested by that State.

Acting in the manner described above will improve mutual trust and hence, cooperation between the BiH and the FR Germany justice systems in particular regarding custody/prison conditions, consular visits, etc. It is essential to confirm unequivocally compliance with all requirements prescribed by the conventions of which BiH is a member.

The reasons for requesting additional guarantees stem from the fact that certain bodies in BiH do not always act in accordance with the treaty - convention prescribing the extradition procedure, which is why even those authorities, that act responsibly and diligently, have to invest additional efforts. The foregoing stems from the fact that in international law reciprocity is applied between states and not between certain authorities in those states.

4.2.5. Transfer through the territory of FR Germany

FR Germany also appears as a frequent transit country during the approved extradition from other European and non-European countries (most often the USA, Australia, Canada, and other countries) to BiH with which BiH does not have a direct flight. For a transfer through the territory of another state, it is very important to determine that the extradited person does not have the citizenship of that state, i.e., that he/she is not wanted by that state for pending criminal proceedings against him/her or executing a criminal sanction. **This form of legal assistance also requires that all authorities in BiH provide the Ministry of Justice of BiH whatever information or evidence requested of them without delay to carry out the approved extradition.**

4.2.5.a) Example of a request for transfer through the territory of FR Germany

BOSNIA AND HERZEGOVINA

MINISTRY OF JUSTICE

Number:

Sarajevo,/.....

THE FEDERAL REPUBLIC OF GERMANY

FEDERAL MINISTRY OF JUSTICE

SUBJECT: a request for transfer through the territory of the Federal Republic of Germany

The Ministry of Justice of Bosnia and Herzegovina expresses its respect to the Federal Ministry of Justice of the Federal Republic of Germany, and pursuant to provisions of Article 21 of the European Convention on Extradition, and the current cooperation between Bosnia and Herzegovina and the Federal Republic of Germany in providing mutual legal assistance, the Minister of Justice of Bosnia and Herzegovina has the honour to submit to the Federal Ministry of Justice of the Federal Republic of Germany

A REQUEST

for transfer through the territory of the Federal Republic of Germany of, son of (father) and(mother), born on in, a national of whose extradition to the judicial authorities in BiH has been approved by the judicial authorities of the United States of America, to serve a prison sentence of 9 (nine) years, imposed by the verdict of the court in number, for the criminal offense under Article of the Criminal Code

The transfer of would be made via Munich Airport, on (date) The time, flight number, and other details are contained in the enclosed act of the NCB INTERPOL Sarajevo. To help you consider and accommodate our request, please find enclosed a copy of the extradition request and accompanying documentation, with a translation into German.

Information about the names of officials who will carry out the transfer in question will be submitted later, through the NCB INTERPOL Sarajevo. Should you need any additional data, they will be submitted to you through NCB INTERPOL Sarajevo. Bearing in mind the urgency of the matter, we take the liberty of asking for your prompt response.

The Ministry of Justice of Bosnia and Herzegovina takes the opportunity to once again express its deepest respect and gratitude to the Federal Ministry of Justice of the Federal Republic of Germany for its cooperation.

NOTE: According to the statistics, the Federal Republic of Germany is the country with the largest number of requested extraditions to BiH, which is why in this section we discussed the extradition process from that country to BiH. Here we covered the stages of the procedure and the segments that were not covered in PART I of the Guide, but are important for the approval of extradition, and which are often not given enough attention. The presented information and views clearly show that not all signatories of the same convention (the European Convention on Extradition with protocols) have the same attitude towards BiH, which is also a member of the said convention. Most members to the Convention allow communication through the Ministries of Justice and do not seek additional guarantees when extradition is requested, while some states insist on the use of diplomatic channels of communication and seek certain guarantees to the person whose extradition is requested.

CONCLUSION: All requests made by the requested country in the extradition procedure are the sovereign right of that country and must be accommodated by the authorities in BiH, if they want to obtain the requested international assistance, provided that these requests are not contrary to the basic principles of legal order in BiH.

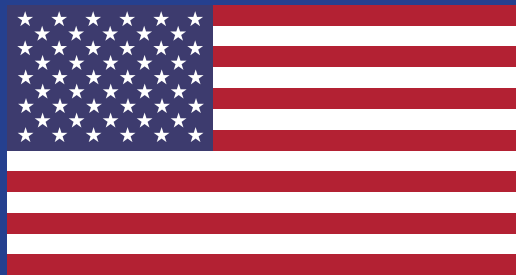
5. Other forms/types of legal assistance between BiH and FR Germany

The legal basis for the transfer of criminal proceedings between BiH and the Federal Republic of Germany is contained and listed in point 2.1. and 2.2.c), while the legal grounds for the recognition and enforcement of foreign court judgments between BiH and the Federal Republic of Germany are contained and listed in point 2.1. and 2.2.d). The information provided in PART I regarding these proceedings is also relevant for the relations between BiH and the Federal Republic of Germany, hence will not be repeated in this part.

Specifics of these procedures between BiH and FR Germany are most often reflected in the requirements of FR Germany in terms of additional information, guarantees, or clarifications (as in extradition procedures explained in point 4). If the requested legal assistance is to be provided, it is recommended that these requirements be accommodated. So far no request made by the said country was contrary to the basic principles of the legal order in BiH. Hence, accommodating such requests will get BiH authorities the requested legal assistance and improve relations between the two states in this field, through concrete actions that will prove the soundness of the BiH legal system.

6. CONCLUDING OPINION:

For successful functioning of mutual legal assistance in criminal matters between BiH and FR Germany the legal grounds and recommendations given in this Guide should be consulted. Adopting the given recommendations will create conditions, based on the basis of mutual respect, transparency and partnership, that foster greater involvement of BiH in these proceedings with the Federal Republic of Germany, and at the same time with the authorities of all EU member states (France, Austria, the Netherlands, Belgium) and Council of Europe member states. All these countries are generally bound to BiH by the same multilateral agreements - conventions underpinning the relations between BiH and FR Germany, and as a rule, the only specifics that can occur are that of a different language and channel of communication used by a particular country.



**PART V - MUTUAL LEGAL ASSISTANCE
IN CRIMINAL MATTERS AND
EXTRADITION BETWEEN BOSNIA AND
HERZEGOVINA AND
THE UNITED STATES**

PART V - MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS AND EXTRADITION BETWEEN BOSNIA AND HERZEGOVINA AND THE UNITED STATES

1. Introduction

Mutual legal assistance (especially general forms) covered in Chapters II, III, IV, and VI of this Guide is realized based on international agreements between BiH and the countries covered in the Guide.

In the relations between BiH and the USA, there is no bilateral or multilateral agreement to comprehensively govern the general types of legal assistance in criminal matters, hence, the legal assistance between the two states is to the most part realized based on the established reciprocity.

Unlike the general forms of this legal assistance, which are not regulated by the agreement, extradition and transfer procedures between BiH and the USA are mutually regulated by the respective agreements.

2. Information on the legal grounds for MLA and extradition between BiH and the USA

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2.1. General types

As mentioned above, there is no international agreement between BiH and the United States to govern the general types of international legal assistance, but it does not mean that mutual legal assistance between the two countries is not being successfully implemented.

Hence, mutual legal assistance takes place based on reciprocity, in which case the Law on Mutual Legal Assistance in Criminal Matters applies (hereinafter: MLA Law), taking into account the views and requests of the other party under its legal order (USA), which are not in conflict with the provisions of this law.

There are multilateral agreements – conventions governing the legal assistance in the fight against certain forms of crime, of which both BiH and the USA are members, so the legal assistance for this type of crime is provided in the manner prescribed by these agreements; following the same principle like with any other country–signatory to the mentioned agreements.²⁵

The general forms of this legal assistance between BiH and the USA are taking place intensively and

²⁵ - Convention on Cybercrime, entered into force on 1 September 2006, published in the Official Gazette of BiH – International Treaties no. 06/2006;
- Criminal Law Convention on Corruption, entered into force on 1 July 2002, “Official Gazette of BiH” no. 36/2001;
- United Nations Convention against Corruption, New York, 31 October 2003; entered into force on 26 October 2006, “Official Gazette of BiH” no. 05/2006;
- Rome Statute of the International Criminal Court, Rome, 17 July 1998; entered into force on 11 April 2002, “Official Gazette of BiH” no. 2/02
- United Nations Convention against Transnational Organized Crime, New York, 15 November 2000, entered into force on 29 September 2003, “Official Gazette of BiH” no. 03/2002;
- Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, New York, 15 November 2000, entered into force on 28 January 2004, “Official Gazette of BiH” no. 03/2002;

continuously – in the period from 2016 to 2020, mutual legal assistance between the authorities of the two countries was provided in 201 cases.²⁶ There are no statistics as to how many letters rogatory were sent from BiH or received by BiH in the mentioned period, but according to the estimates of staff of the BiH Ministry of Justice processing these cases, over 90% of the mentioned letters rogatory were sent from BiH to the USA.

2.2. Extradition procedure

Unlike BiH, where regulations have changed significantly, the USA is a country with a federal legal system responsible for international judicial cooperation (which is separate from the state system) in which domestic regulations or agreements governing relations with other countries in certain areas are relatively stable, hence, the extradition procedure between BiH and the USA is being pursued based on the Convention on Surrendering of Offenders closed between the Kingdom of Serbia and the United States of America from 12/25 October 1901, which Bosnia and Herzegovina assumed by succession agreement from the former SFR Yugoslavia.²⁷ The treaty under this name was also applied between the former SFR Yugoslavia and the USA, **and since this treaty from the period of early extradition treaties is much the same, Article 2²⁸ of the Treaty contains a list of criminal offences (crimes and offenses)²⁹ for which extradition will be allowed.**

The mentioned Treaty represents a legal basis in extradition procedures between the two countries, so during its application, regardless of the list of criminal acts for which extradition may be granted, reciprocity of extradition has also been established for other criminal acts not covered by Article 2 of the mentioned Treaty.

Due to the manner of defining (the list) of criminal offences for which extradition may be granted (Article 2), this Treaty does not contain limitations regarding the minimum sentence of imprisonment which allows the extradition of a suspect or accused, nor the limitations on the admissibility

²⁶ Data taken over from the DMS system

²⁷ The list of assumed treaties is provided in the Decree on the assumption and application of the federal laws. They apply in BiH as Republic laws (Official Gazette of the Republic of BiH No. 2 of 11 April 1992).

²⁸ Extradition shall be granted for the following crimes and offenses :

1. Murder, comprehending assassination, parricide, infanticide, and poisoning; attempt to commit murder; manslaughter, when voluntary.
2. Arson.
3. Robbery, defined to be the act of feloniously and forcibly taking from person of another money or goods, by violence or putting him in fear; burglary, defined to be the act of breaking, and entering by night, into the dwelling house of another, with intent to commit felony; housebreaking or shopbreaking. .
4. Forgery, or the utterance of forged papers; the forgery or falsification of official acts of government, of public authorities, or of courts of justice, or the utterance of the thing forged or falsified.
5. The counterfeiting, falsifying or altering of money, whether coin or paper, or of instruments of debt created by national, state, provincial, or municipal governments, or of coupons thereof, or of banknotes, or the utterance or circulation of the same; or the counterfeiting, falsifying or altering of seals, dies or stamps of state; of postage and revenue stamps.
6. Embezzlement by public officers; embezzlement by persons hired or salaried, to the detriment of their employers ; larceny; obtaining money, valuable securities or other property by false pretenses, or receiving money, valuable securities or other property, knowing the same to have been embezzled, stolen or fraudulently obtained, when such act is made criminal by the laws of both countries and the amount of money or the value of the property fraudulently obtained or received, is not less than two hundred dollars or one thousand francs in gold.
7. Fraud or breach of trust by a bailee, banker, agent, factor, trustee, or other person acting in a fiduciary capacity, or director or member or officer of any company, when such act is made criminal by the laws of both countries and the amount of money or the value of the property misappropriated is not less than two hundred dollars or one thousand francs in gold. .
8. Perjury; subornation of perjury.
9. Rape; abduction; kidnapping.
10. Wilful and unlawful destruction or obstruction of railroads which endangers human life.
11. Crimes committed at sea:
 - a. Piracy, by statute or by the law of nations.
 - b. Revolt, or conspiracy to revolt, by two or more persons on board a ship on the high seas against the authority of the master.
 - c. Wrongfully sinking or destroying a vessel at sea, or attempting to do so.
 - d. Assaults on board a ship on the high seas with intent to do grievous bodily harm..
12. Crimes and offenses against the laws of the United States of America for the suppression of slavery and slave trading.

Extradition is also to take place for participation in any of the crimes and offenses mentioned in this Treaty, provided such participation may be punished in the United States as felony and in Serbia as crime or offense as before specified.

²⁹ Original title for criminal offences in the Treaty

of extradition of a convicted person. In this case, the BiH authorities should apply the provisions of Article 33 of the Law on MLA.

2.3. Transfer of sentenced persons

Convention on the transfer of sentenced persons; Strasbourg, 21 March 1983, entered into force on 01 July 1985, effective in BiH as of 26 July 2005, published in the Official Gazette of BiH - International Treaties 04/2005. In the MLA Law, this procedure is regulated in the chapter “Recognition and enforcement of foreign court decisions in criminal matters” (see PART I of the Guide).

2.4. Transferring criminal proceedings

This issue is not regulated by international agreement between BiH and the USA, but these procedures are being conducted based on the established reciprocity (as under point 2.1). For further information see PART I of the Guide.

3. General types

PART I of the Guide provides information on general types of MLA and explains the way of writing a letter rogatory. Examples of these letters rogatory are given in the previous text, especially in PART II of the Guide. The USA does not require a special form of these letters, but it does require that any action requested in them must be reasoned. Thus, to write a letter rogatory for the USA any of the forms provided in the document can be used, specifying the facts of the case, the current course of the procedure, and the explanation of the reasons for the requested action.

Also, usual BiH letters rogatory containing the copy of the operative part of the order/indictment/verdict is less acceptable to the USA, as the US authorities often subsequently ask for a brief description of facts (summary).

E.g., it is less acceptable to have letters rogatory written in the following way (which is common in BiH): „Because on the day, with the intention, by prior arrangement, having done, intending to and so on“

The acceptable way is: „Because on the day.....he/she killed He/she did it in a way (describe understandably) He/she is charged with the criminal offense This offense is punishable by etc.

The general aspects of this legal assistance are not all that different relative to the other countries covered in the previous part of the Guide, except that the USA requires that a letter rogatory contain a clear summary of the facts, and clearly defined actions sought (e.g., if a witness interview is requested, the US authorities request a list of questions that should be asked of the witness), and communication via diplomatic channels.

NOTE: The request/letter rogatory and all attachments must be submitted in their original form and accompanied by an English translation. The letter rogatory must be signed by a prosecutor or a judge (not an expert associate, which happened in the past).

The letter is submitted to the Ministry of Justice of BiH, which forwards it to the USA through diplomatic channels (through the Ministry of Foreign Affairs of BiH).

Other ways of communication between the authorities of the two countries can be regulated by special international agreements provided in the list of agreements (APPENDIX I at the end of the Guide or other agreements binding to BiH and USA in this area), to which BiH and the USA are members. However, in the research made in preparation of this guide, we observed no such agreements enabling direct cooperation between the authorities of the two countries.

In any case, the admissibility of evidence collected abroad is assessed by the court through the evidence admissibility process, and the above-presented information represents the general rules of conduct in the relations between BiH and the USA in mutual legal assistance in criminal matters.

4. Extradition procedure

The procedure for submitting a request to the United States implies that the requesting authority (prosecutor or court), following the notification by the BiH Ministry of Justice about the wanted person being provisionally arrested in the US, shall make a reasoned request for extradition of the person concerned, and submit documentation prescribed by the extradition rules of the requested state. The original request and attachments shall be accompanied by a certified English translation thereof.

The proposal with attachments prepared in this way is urgently submitted to the Ministry of Justice of BiH. Upon receipt of such a proposal and documentation, the BiH Minister of Justice shall submit an extradition request. Such a request is always submitted to the United States through diplomatic channels.

Any sovereign state is entitled to seek information or guarantees regarding the person whose extradition is requested from its territory; hence, the United States requires a certain formality that should accompany an extradition request.

Although an extradition request is submitted by the Minister of Justice of BiH, the USA insists that the requests be accompanied by a motion with the statement of the judicial officeholder (prosecutor or judge) responsible for the criminal proceeding or enforcement of verdict in question. This statement should be provided in the requested format (hereinafter referred to as: "REQUEST FOR EXTRADITION OF A SUSPECT/ACCUSED/ CONVICTED PERSON.")

These requests (forms) may somewhat vary depending on the crimes for which extradition is requested, but in principle, it boils down to the fact that the BiH authority (prosecutors' office/court) requesting the extradition of a person from the USA is obliged to submit a request to the USA, through the Ministry of Justice of BiH, in the manner described in the example below (EXAMPLE 1).

This request is submitted to the Ministry of Justice of BiH and is an integral part (attachment) of the extradition request.

EXAMPLE 1 (Prosecution/extradition request)

FOR: COMPETENT AUTHORITY OF THE UNITED STATES OF AMERICA

FROM: PROSECUTOR'S OFFICES / COURT

(full name of the body - prosecutor's office/court)

Reference number, and date:

VIA MINISTRY OF JUSTICE BOSNIA AND HERZEGOVINA

REQUEST FOR EXTRADITION OF A SUSPECT/ACCUSED/CONVICTED PERSON:

..... (Full name and surname)

I INTRODUCTION

My name is (name and surname), and I am a national of Bosnia and Herzegovina, serving as a prosecutor/judge in Bosnia and Herzegovina since My current duties include prosecuting persons suspected/accused/convicted of violating the criminal law of Bosnia and Herzegovina.

In course of my duties as a prosecutor/judge, I became aware of the allegations and evidence against ...
..... in a criminal case of (specify the criminal offense, e.g., aggravated theft), number, established based on the results of the investigation.

Brief description of the investigation: (describe simply and concisely)

.....
.....

(For example, the suspect committed aggravated theft on The act was committed in the following manner: (describe).

..... the suspect admitted committing the acts charged against him. From the investigation report and photo-documentation collected at the crime scene, and from the testimony of the witness
..... and the acts of the injured party arises that the injured party has suffered material damage in the amounts stated in the statement, i.e., the acts of the injured party.

Based on the report of the Police Directorate - Forensic Support Centre..... it is established that and have communicated with each other via cell phone immediately before and during the commission of criminal offenses, and that the suspect/accused sent the following text message: „ (specify the content of the message).

Other proposed evidence of subjective and material nature collected during the investigation point to the existence of a reasonable suspicion that the person concerned committed the criminal offense in question and confirm the allegations specified in the investigation order/indictment, which the accused

admitted during the investigation.

We hereby request thatbe extradited from the United States, so that he/she can stand trial before (Specify the name of the court).

II. DESCRIPTION OF FACTS

Describe facts
.....
.....

III. INDICTMENT/JUDGMENT AND ARREST WARRANT

Along with the Extradition Request, we submit (Specify the documents corresponding to the specific request).

IV. RELEVANT PENAL PROVISIONS

Specify relevant provisions regarding the offense, sanctions, and statute of limitations and attach a transcript of those provisions.

V. DESCRIPTION OF THE FUGITIVE

The identification information is as follows:

- Name and surname:
- Nickname:
- Birthdate:
- Birthplace:
- Passport number:
- Location:
- Citizenship.
- Sex:
- Ethnic origin

VI. CONCLUSION

Briefly state the reasons justifying extradition
.....
.....

APPENDICES

The following attachments are enclosed to this request: (List all attachments with number and date)

1.
2.
3. etc.

NOTE: The previous example clearly shows that an extradition request is to be made by the prosecution/court requesting the wanted person, which is also responsible for making an appropriate statement, while the Ministry of Justice is responsible for preparing a motion, binding but less formal act demonstrating the consent of BiH for submitting the request (EXAMPLE 2).

There are situations where the wanted person is simply located in the USA (but not deprived of liberty), and where the requested country asks BiH authorities for certain information or facts regarding the criminal offense of the wanted person before the BiH authorities send their request. Such requests should be accommodated.

There are also situations where, after submitting a request for extradition, the requested jurisdiction asks for certain information or guarantees. Failure to provide the requested information and a guarantee is a ground for denying an extradition request.

EXAMPLE 2 (Request for extradition)

FOR: DEPARTMENT OF JUSTICE OF THE UNITED STATES OF AMERICA

FROM: MINISTRY OF JUSTICE BOSNIA AND HERZEGOVINA

SUBJECT: Request for extradition from the United States to Bosnia and Herzegovina

Reference number of the Ministry of Justice of Bosnia and Herzegovina:
.....

The Ministry of Justice of Bosnia and Herzegovina expressing esteem to the US Department of Justice.

Following the provisions of the Convention on Surrendering of Offenders closed between the Kingdom of Serbia and the United States of America from 12/25 October 1901, which BiH assumed by succession agreement from the former SFR Yugoslavia, and based on previous cooperation between Bosnia and Herzegovina and the United States in mutual legal assistance, and Article 57 of the Law on Mutual Legal Assistance in Criminal Matters, the Minister of Justice of Bosnia and Herzegovina has the honour to submit to the United States Department of Justice the following

REQUEST FOR EXTRADITION

....., son of (father/mother) , a national of Bosnia and Herzegovina, born in at the request of the Municipal Court in , ordering the issuance of an international arrest warrant, is subject of the search for the purpose of serving a prison sentence of 5 (five) years, imposed by the verdict court in number: , which was upheld by the judgment of the Supreme Court of the Federation of Bosnia and Herzegovina number: of (date) due to the criminal offense (specify the criminal offense, e.g., “War crime against civilians” under Article 142, paragraph 1 of the assumed Criminal Code of the former Socialist Federal Republic of Yugoslavia).

ATTACHMENTS:

1. The request of the Municipal Court in number: of (date) for extradition
2. Minutes from the hearing of the court in Tuzla number: of (date), in which the identity of the wanted person was established
3. The judgment of court in Tuzla number: of (date);
4. The judgment of the Supreme Court of the Federation of Bosnia and Herzegovina number: of (date);
5. Order of the Municipal Court of number: Iks of ... (date) on issuing an international arrest warrant against (wanted) with a completed international search form;

6. Excerpt from an article of the Criminal Code relevant for the offense for which extradition is requested, and legal provisions relating to the statute of limitations for criminal prosecution and execution of a prison sentence;
7. Birth certificate for the wanted of (date);
8. Certificate of citizenship of Bosnia and Herzegovina for the wanted of (date);
9. Identity card with a photograph of the wanted
10. Copy of ID card with fingerprint and photo of the wanted

The Ministry of Justice of Bosnia and Herzegovina takes the opportunity to once again express its deepest respect and gratitude to the Department of Justice of the United States of America for its cooperation.

MINISTER

ATTACHMENT: as in the text of the request (10 documents and 10 translations into English).

NOTE: Some data have been knowingly entered into this request (Municipal or Supreme Court and the like) to make it easier to navigate through the form).

The provided examples of the extradition procedure between BiH and the USA should provide sufficient guidance to the authorities (prosecutors and courts). In case of any other (additional) requests, as a rule, the BiH Ministry of Justice shall provide instruction upon forwarding such requests to the responsible authority for action.

The extradition procedure from BiH to another country (including the USA) is regulated in detail by the Law on MLA (CHAPTER III – Articles 32-56). This procedure is addressed through PART I of the Guide, while Article 34 (i) of the Law on MLA is particularly referred to in relation to countries that have the death penalty (including the United States). **The mentioned norm (item (i)) stipulates that extradition from BiH may be granted to countries that have the death penalty only on condition that the requesting country guarantees that the death penalty will not be imposed or executed.**

The previous practice has shown that the BiH authorities have requested guarantees from many countries that the death penalty will not be imposed or executed, but in some cases of extradition to the USA such guarantees have not been requested. Therefore, it is recommended for all cases where this issue has not been resolved by a treaty binding for BiH and the requesting country to act in accordance with Article 34 (i).

As there is no treaty between BiH and the USA according to which BiH could extradite its citizen, **the principle aut dedere aut iudicare (detailed explanation provided in PART VI, item 3.3.1) should be**

applied in case of refusal of extradition of the requested person only on the basis of his/her citizenship of BiH.

Given the importance of the issue of extradition with this vast country, this part related to active extradition (requested to the USA by BiH) should be completed with a brief relevant information about:

- Passive extradition requested by the USA to BiH.
- Extradition of nationals between BiH and the USA.
- Offences which are extraditable ones for prosecution or enforcement of punishment;
- The level of assurances given to BiH authorities in case the requested person would be at risks of the death penalty if extradited to the USA (for PR China, this sensitive question is addressed on pages 171-175).
- Implementation of the Aut Dedere Aut Judicare principle.

5. Transfer of sentenced persons

When it comes to the procedure of transfer of convicts between BiH and the USA, the authorities in BiH do not seem to be sufficiently informed about the legal basis for this procedure. The courts and lawyers frequently make inquiries about whether there is a bilateral agreement between the two countries regulating the issue, not knowing that this issue has been regulated between the two countries by a multilateral agreement - Convention on the Transfer of Sentenced Persons, Strasbourg 21 March 1983.

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In the legal system of BiH, this issue is covered by the MLA Law, chapter “Recognition and enforcement of foreign court decisions in criminal matters” (see PART I of the Guide). The Convention on the Transfer of Sentenced Persons is, as a rule, related to the EU and CoE member states, but the United States as well as many non-European countries are also members to this convention.³⁰

Since the USA is a member to the Convention on the Transfer of Sentenced Persons and it does not require any special conditions for the application of the said convention with BiH, the convention is applied to this country in the same way as to other member states (see PART I item 2.3).

³⁰ The members of this Convention are: Albania, Andorra, Austria, Azerbaijan, Belgium, Bosnia and Herzegovina, Bulgaria, Czech Republic, Denmark, Estonia, Finland, France, Greece, Georgia, the Netherlands, Croatia, Iceland, Italy, Ireland, Armenia, Cyprus, Latvia, Lithuania, Liechtenstein, Luxembourg, Hungary, Macedonia, Malta, Moldova, Germany, Norway, Poland, Portugal, Romania, Russia, Slovakia, Slovenia, Serbia and Montenegro, Spain, Switzerland, Sweden, Turkey, Ukraine and the United Kingdom. Of the non-member States of the Council of Europe, this Convention has been ratified by Israel, Australia, the Bahamas, Bolivia, Chile, Ecuador, Israel, Japan, Canada, Korea, Costa Rica, Mauritius, Panama, the United States of America, Trinidad and Tobago, Tonga and Venezuela.



**PART VI - MUTUAL LEGAL ASSISTANCE
IN CRIMINAL MATTERS BETWEEN
BOSNIA AND HERZEGOVINA AND
THE PEOPLE'S REPUBLIC OF CHINA**

PART VI - MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS BETWEEN BOSNIA AND HERZEGOVINA AND THE PEOPLE'S REPUBLIC OF CHINA

1. Introductory remarks (legal basis)

Bosnia and Herzegovina (hereinafter: BiH) and the People's Republic of China (hereinafter: PR China) have, regardless of the distance and differences in legal systems, regulated mutual legal assistance in criminal matters in an advanced way (hereinafter: MLA).³¹ In addition to certain multilateral agreements in this area, to which both countries are parties, this type of legal assistance and cooperation between the two countries is regulated through two bilateral agreements, as follows:

- 1) Agreement between BiH and the People's Republic of China on Legal Assistance in Criminal Matters of 18 December 2012.³² (this Agreement regulates general types/forms of legal assistance between the two countries).
- 2) Agreement between BiH and the People's Republic of China on Extradition of 18 December 2012.³³

PROBLEMS OBSERVED The mentioned agreements entered into force in 2014, but a number of BiH judicial office holders are still unaware of the existence of these agreements; consequently, in some cases, legal assistance is requested from this country on the basis of reciprocity, without invoking or consulting the provisions of the appropriate agreement.

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2. General types of MLA

Agreement between BiH and the People's Republic of China on Legal Assistance in Criminal Matters (hereinafter: the Agreement), regulates general forms of MLA between the two countries, which include the following:

- (a) delivery of documents on criminal proceedings;
- (b) taking testimony or statements from persons;
- (c) submission of documents, minutes and exhibits;
- (d) obtaining and submitting expert witness reports;
- (e) locating and identifying persons;
- (f) conducting judicial crime scene investigations or inspecting locations or items;
- (g) ensuring that persons are available to testify or providing assistance in investigations
- (h) handover of persons deprived of their liberty for the purpose of testimony or providing assistance in investigations;
- (i) conducting investigations, searches, freezing and seizure;

³¹ BiH is the first country in the region to conclude agreements in the area of MLA with the People's Republic of China on a bilateral basis.

³² Agreement between BiH and the People's Republic of China on Legal Assistance in Criminal Matters of 18 December 2012. (Official Gazette of BiH – International Treaties, no. 18/13; entered into force on 12 October 2014);

³³ Agreement between BiH and the People's Republic of China on Extradition of 18 December 2012. (Official Gazette of BiH – International Treaties, no. 18/13; entered into force on 12 October 2014);

- (j) confiscation of proceeds of crime and objects used to commit a criminal offence;
- (k) informing about the results of criminal proceedings and delivering extracts from criminal records;
- (l) exchange of information on the law; and
- (m) all other forms of assistance which are not contrary to the legal provisions of the requested Contracting Party.

NOTE: The mentioned forms of MLA have been listed in the Agreement (Article 1, paragraph 1), while the item (m) provides for possibility to request all other actions not specifically included in the list which are not contrary to laws of the requested party, for the purpose of criminal proceedings.

Even though the People’s Republic of China has a different legal system and state structure, research shows that so far no letter rogatory from BiH has been rejected because the requested action was contrary to the laws of that country, which means that the Agreement provides for all general forms of MLA between the two countries.

OBSERVATIONS: The Agreement on Legal Assistance in Criminal Matters between BiH and the People’s Republic of China has very clearly determined the manner of communication, the content of the letter rogatory, the language of communication, and other elements; however, research has shown that the norms of the Agreement are often not consulted in requesting the MLA from this country. Namely, it often happens that the BiH authorities request that the letter rogatory be submitted through diplomatic channels, that the request not be in accordance with the Agreement, that it be accompanied by an English translation, etc., which is contrary to the Agreement and provokes disagreement on the side of China.

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The reasons for refusing to provide MLA are listed in Article 3 of the Agreement, and generally follow the standards of the European Convention on Mutual Legal Assistance in Criminal Matters, and are related to political offences and alike.

2.1. The method of communication

The method of communication between the authorities of the two countries (prosecutor’s office and courts) has been prescribed by the Agreement and is carried out through central authorities, i.e., through the Ministry of Justice of BiH and the Ministry of Justice of the People’s Republic of China (Article 2, paragraph 2). The diplomatic path of communication is not excluded either, but it is unnecessary since it is longer and delays the execution of the letter rogatory.

It is recommended to avoid stating in the document addressed to the BiH Ministry of Justice and accompanied by the letter rogatory, that the request be forwarded “through diplomatic channels or through diplomatic path”, as is often stated, but simply state that the letter rogatory be forwarded through the channels of “mutual legal assistance” to the competent authority of the People’s Republic of China. Based on the letter rogatory submitted in this way, the Ministry of Justice will forward it by the shortest route allowed by the Agreement.

It is also unacceptable to write the abbreviated name of the requested country in the letter rogatory (e.g., PR China); hence, the letters rogatory from BiH must always be addressed to: “the People’s Republic of China”, while it is also recommended to add an indication “to the competent authority” below the name of the country, because it is difficult to know precisely which authority in that country will act upon the concrete letter rogatory submitted by BiH (as in the example under 2.2.1).

The request made by the competent authority in BiH and its enclosures must be accompanied by a translation into Chinese language (Article 4, paragraph 5 of the Agreement).

Due to frequent mistakes of authorities in BiH, where the same document that is submitted to the Ministry of Justice of BiH contains a letter rogatory to be sent abroad, example of the method of communication is provided below (letter to the Ministry of Justice of BiH and the letter rogatory). Accordingly, there are always two documents that are drafted – a general document/letter to the Ministry of Justice of BiH, and an accompanying letter rogatory.

2.1.1. Example of a document accompanied by a letter rogatory

BOSNIA AND HERZEGOVINA

(full title of the authority)

Case number:...../....

.....

(place and date)

TO THE ATTENTION OF THE MINISTRY OF JUSTICE

OF PEOPLE’S REPUBLIC OF CHINA HERE

SUBJECT: Mutual legal assistance, the suspect,

hearing of the witness, PR China

This authority is conducting the criminal proceedings against _____, son/ daughter of, born on (dd/mm/yyyy) in, because of the criminal offence of, referred to in Article.....paragraph.....of the Criminal Code of

As part of this proceedings, it is necessary to examine the witness _____, who is domiciled on the territory of the People’s Republic of China, and whose personal appearance before this authority would be difficult; therefore, we hereby deliver you the letter rogatory addressed to the competent authority of the mentioned country, with a request to forward it through mutual legal assistance to the same country and request its action.

The legal basis for action upon this letter rogatory is contained in Article 1 of the Agreement between Bosnia and Herzegovina and the People’s Republic of China on Mutual Legal Assistance in Criminal Matters; therefore, in accordance with Article 4 of the same Agreement, a translation into Chinese language shall accompany the letter rogatory.

Please deliver the documents containing feedback to this authority, with reference to our document number.

Sincerely,

NOTE: The document given in the example should contain only the basic elements from the letter rogatory. If **urgency of action or secrecy** of certain data or information is requested, that must be indicated and explained in both the document and the letter rogatory.

2.2. Letter rogatory

The requested action is sought by way of a written letter rogatory which, in addition to data related to the authority requesting the legal assistance, also contains the following:

- a description of the relevant case, a brief overview of the relevant facts and legal provisions applicable to the case that the letter rogatory pertains to;
- a description of the assistance requested, as well as the purpose and relevance of the request for such assistance;
- all other known data that would contribute to the successful execution of the letter rogatory (e.g. data on the identity and the address of the person expected to testify; data on the identity and the address of the person that needs to be served the summons, along with the explanation of the relationship of such person with the proceedings; data on the identity and movement of a person to be located or identified; a description of the place or objects to be inspected or examined, a description of the place to be searched and the property to be investigated, frozen or seized, etc.).
- should there be a need for secrecy, the letter rogatory shall describe such a need and the reasons for it. It is not enough to simply write “confidential” in the upper right corner of the letter rogatory – as it is often done – but the text should contain the reasons prompting confidentiality.

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The letter rogatory is submitted in writing and must contain a signature and a stamp; also, the letter rogatory and all enclosures should be accompanied by a translation into Chinese. To that end, letter rogatory and enclosures are always delivered in our local language with attached translation into Chinese language (it often happens that only a translation is submitted which is not proper). Letters rogatory cannot be signed by legal associates (which is a common practice), but only prosecutors and judges. The completed letter rogatory, with the necessary enclosures, accompanied by a translation into Chinese, is submitted to the Ministry of Justice of BiH together with a special document.

The most common example of a letter rogatory send to the People’s Republic of China is related to the hearing of witnesses (witness examination); hence the following example treats that kind of letter rogatory, while all other general forms of MPP are requested in an analogous way.

NOTE: The given example of a letter rogatory is only a possible template (form), which should serve as a guide for drafting of letters rogatory and should not be adapted to all forms of legal assistance without consulting the text of the relevant agreement, which often happens in practice.

2.2.1. Example of letter rogatory requesting the hearing of a witness in the PR China

BOSNIA AND HERZEGOVINA

(full title of the authority)

Number:.....

.....

(place and date)

THE PEOPLE’S REPUBLIC OF CHINA

– TO THE ATTENTION OF THE COMPETENT AUTHORITY –

**SUBJECT: Mutual legal assistance, the suspect _____, letter rogatory
for hearing of the witness _____**

- In accordance with the Agreement on the Legal Assistance in Criminal Matters between Bosnia and Herzegovina and the People’s Republic of China, the authority as listed in the title has the honour to inform you that it is conducting the investigation against the suspect, son/daughter of, born on (dd/mm/yyyy) in, because of the criminal offence of, referred to in Article, paragraph of the Criminal Code of

The suspect is charged with

.....
.....

(state precise description of the facts)

The evidence presented so far indicates that, who is domiciled in the People’s Republic of China at the following address:....., has knowledge of the facts related to perpetration of the criminal offence that the suspect is charged with.

In connection with the above, we have the honour, in accordance with Article 1 of the mentioned Agreement, to ask the competent authority of the People’s Republic of China to examine in the capacity of a witness the person named, son/daughter of, born on.....(dd/mm/yyyy), residing at the address....., People’s Republic of China, all in relation to the following circumstances:

.....
.....**(specify in the form of an exhaustive list or descriptively the circumstances that the witness should be examined about),**

as well as in relation to other circumstances that the authority deems relevant for the further course of this proceeding – all with the purpose of solving the mentioned crime. It is necessary to ask the witness the following questions:

- Did witness
- When and at what time etc.

(ask all the questions important for clarification of the state of facts in a precise manner).

If during the hearing the witness points to other evidence or the authority acting upon this letter rogatory finds such evidence in the requested state, this letter rogatory shall also be considered a request to obtain such evidence, so we kindly ask for legal assistance in such possible circumstances as well.

Please submit the hearing record and any other evidence related to this letter rogatory to this authority, with a reference to the number and date of the letter rogatory. We take the opportunity to present our compliments and express gratitude for cooperation to the authority of the People’s Republic of China handling this case.

(function, name and surname)

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The previous example provides the layout and content of the letter rogatory acceptable by the competent authorities of the PR China; consequently, other letters rogatory may follow the same form with adjustments in regards to legal action requested and delivery of the necessary, connected enclosures.

NOTE: Instead of using the wording “this authority” and alike (as stated in the example), it is necessary to state the exact title of the authority (e.g., The Prosecutor’s Office of Bosnia and Herzegovina) requesting the legal assistance. Similarly, the capacity of the judicial office holder, as well as his/her name and surname shall be listed at the end of the letter rogatory (in signature line).

If **urgency of action or secrecy** of certain data or information is requested, that must be indicated and explained in the letter rogatory.

It is recommended to present in the letter rogatory a summary of the proceedings along with all circumstances that the witness is to be examined about, and enclose the necessary documents from the proceedings therewith. **Other general forms of this legal assistance are treated in the same way.**

RECOMMENDATION: Although Article 10 of the Agreement provides for the possibility for a witness to be called to testify during the proceedings, this possibility should be avoided in relation to distant countries, primarily because the summoned witness is not obliged to respond to the summons of BiH authorities, and a possible coming of the witness would cause significant expenses for the authority that summoned the witness (a prosecutor’s office or a court).

3. Extradition procedure

3.1. Legal basis

The extradition procedure between the two countries is regulated by the Agreement on Extradition between BiH and the People's Republic of China of 18 December 2012. This agreement reflects the standards of the European Convention on Extradition, as well as the standards of the Law on MLA **with certain differences and specifics**, which must be respected.

When applying the Law on MLA to this procedure, it is important to pay attention to Article 32 of the Law which specifies that the extradition procedure will be carried out according to the provisions of this law, "unless otherwise stipulated by an international agreement". Therefore, the conditions and deadlines prescribed by the Agreement must be applied in the manner stipulated by the Agreement.

3.2. Conditions for extradition

According to Article 2 of the Extradition Agreement between the BiH and the People's Republic of China, extradition may be allowed for the purpose of conducting criminal proceedings or for the purpose of enforcement of a criminal sanction, as follows:

Extradition for the purpose of conducting the criminal proceedings shall be permitted if, under the law of both Contracting Parties, imprisonment or a security measure or an educational measure implying deprivation of freedom for at least one year is prescribed for the criminal offence.

NOTE: Therefore, the condition for the extradition of a person against whom the criminal proceedings are conducted (suspect, accused or defendant) exists, next to other conditions specified in the Agreement, when the act of that person constitutes a criminal offence in both countries and when the sentence of imprisonment of at least one year is to be imposed for the offence in both countries. The identity of the norm or the title of the criminal offense is not required.

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Extradition for the purpose of enforcement of a final sentence of imprisonment or a security measure or educational measure involving deprivation of liberty shall be permitted if the offence for which the criminal sanction was imposed is prescribed as a criminal offence under the law of both Contracting Parties, before the offence is committed and if the sentence of imprisonment or a security measure or an educational measure involving deprivation of liberty for at least six months is imposed.

NOTE: In the event that a final court decision on the basis of which extradition is requested is rendered in absentia, the requesting country is obliged to provide guarantees that the person whose extradition is requested will have the opportunity to be tried again in his/her presence if extradited (Article 3, item g. of the Agreement).

3.3. Reasons for refusing extradition

Reasons for refusing extradition are listed in Article 3 of the Agreement, but in addition to the generally accepted reasons for refusal, it is important to pay attention to item h) of this Article, which specifies that the request will be rejected "if the enforcement of the request is contrary to the basic legal principles in the requested country." This is the only (hidden) provision of the Agreement under which the refusal of extradition due to threatened or imposed death penalty can and must be included.

How to resolve such possible situation?

In addition to the BiH Constitution, which prohibits the death penalty as a criminal sanction, Article 34 (i) of the Law on MLA specifies “that the extradition shall not be granted for a criminal offence which carries the death penalty pursuant to the law of the requesting State, unless the requesting State provides guarantees that the death penalty would not be imposed or carried out”. In such situations, the Court of BiH, when deciding if the preconditions for extradition have been fulfilled, is obliged to request through the Ministry of Justice of BiH a guarantee from the People’s Republic of China that no death penalty will be imposed or executed in relation to the requested person. The Minister of Justice of BiH shall also pay attention to this obligation when making the final decision on the extradition, if the Court has missed to do so.

3.3.1. The *aut dedere aut judicare* rule

The Agreement does not prescribe this rule, even for nationals in case the extradition request by the People’s Republic of China is not approved. Article 5 of the Agreement stipulates that “each Contracting Party has the discretion to refuse the extradition of its nationals in accordance with its legislation.” The Law on MLA prohibits the extradition of nationals unless that issue is regulated by a separate agreement which sets out special conditions for the extradition of nationals (Article 34, item a) in conjunction with Article 1, item 1) of the Law on MLA. Therefore, according to the Agreement with the People’s Republic of China, BiH cannot extradite its nationals to that country.

Article 5, paragraph 2 of the Agreement stipulates that the requested party (BiH is in the focus of observation), in case the extradition is not approved and if so requested by the requesting country (in this case the People’s Republic of China), shall forward the case to the competent authority for the purpose of initiation of the proceedings against that person in accordance with the domestic law of the country. Therefore, the Agreement provides for the transfer of prosecution by the requesting country, so that the requested country may take over the criminal prosecution in the event that it has not approved the extradition.

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The analysis of previous practice in extradition proceedings with the People’s Republic of China as well as other countries in situations of non-extradition of nationals has shown that the Court of BiH (which decides on the fulfilment of preconditions/requirements for the extradition) and the Prosecutor’s Office of BiH that participates in the mentioned proceedings often neglect the *aut dedere aut judicare* rule.

It is unacceptable to reject a request of a foreign country for the extradition of the wanted person for a sole reason of such person having the BiH citizenship, without informing the competent prosecutor’s office in BiH thereof to assess the existence of a criminal offence punishable under the BiH legislation, even if the requesting country ceded the prosecution.

According to Article 35 of the Criminal Procedure Code, the basic right and obligation of the Prosecutor is to detect and prosecute perpetrators of criminal offences for which the courts in BiH are competent.

In cases of refusal of extradition, only for the reasons of citizenship, the legislation of BiH provides for the possibility of conducting a criminal proceeding against such a person, regardless of whether the requesting country has ceded the criminal prosecution or not.

EXAMPLE: In a case where the People’s Republic of China requested the extradition of its national for the criminal offence of homicide, the extradition was not granted because the wanted person had in the meantime acquired BiH citizenship. Therefore, the extradition was not granted due to the impossibility of extradition of nationals, while the People’s Republic of China also disputed the legality of acquisition of the citizenship due to a matter of “false identity”.

The prosecutor did not take any actions in this case either in connection with the criminal offence of homicide, or in connection with a possible illegal manner of acquisition of the BiH citizenship.

In this case, the People's Republic of China could not transfer the criminal prosecution because the person in question is also its citizen (a large number of countries have a provision in their laws not to transfer criminal prosecution in case of their nationals), but in case of non-extradition for the mentioned reason (dual citizenship), many countries, even without formal transfer of criminal prosecution, are ready to provide all evidence by way of mutual legal assistance in order to bring the wanted person to justice at least in the country of his/her second citizenship.

There is an issue if it is realistic and justified not to conduct the criminal proceedings (e.g., for the criminal offence of "homicide") against a national for whom the requesting country provided evidence of the commission of that offence, and that person was not extradited to the requesting country only because he/she has the BiH citizenship.

CONCLUSION: Even if the Law on MLA does not contain an explicit provision on the obligation of the Court to report the criminal offence to the prosecutor's office on the basis of information obtained through the extradition procedure, this obligation of the Court stems from Article 97 of the Law on MLA (title: Adequate application of other regulations) which prescribes that the provisions of the Criminal Procedure Code and criminal codes in BiH shall apply to issues that are not specifically regulated by this Law.

The above provision of the Law on MLA also provides for a mandatory application of the principle *aut dedere aut judicare* for BiH authorities, in cases of non-extradition of nationals only due to the issue of BiH citizenship, because all criminal laws in BiH prescribe the competence of BiH courts in matters when the nationals commit a criminal offence abroad, but are located on the territory of BiH, and the criminal offence is punishable under the laws of BiH.

The competence of the courts (and prosecutor's offices in BiH) is not the subject of this Guide; hence, this information does not list or explain the articles of the mentioned laws, but this Conclusion only provides a reference to the application thereof.

What are other specificities of the Extradition Agreement between BiH and the People's Republic of China?

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3.4. Temporary custody

Under this Agreement, the temporary custody or temporary deprivation of liberty can last 30 days from the day of deprivation of liberty, with the proviso that such a deadline may be extended for another 15 days, within which the requesting country has an obligation to deliver the extradition request (Article 9, paragraph 4).

NOTE: There was no previous knowledge about these deadlines based on earlier agreements binding on BiH, and the Law on MLA stipulated through Article 41, paragraph 5 that the temporary custody may last for a maximum of 18 days, while paragraph 6 of the same Article of the Law leaves the possibility that this custody may be extended to up to 40 days, which was transposed from the European Convention on Extradition).

- Temporary custody may be terminated if the extradition request along with its enclosures (Article 5 of the Agreement) is not delivered to the requested country within 30 days of the date of deprivation of liberty or within 45 days if the requesting country has sought an extension of such custody.
- Temporary custody may be terminated if the requested country has taken all measures it deems necessary to prevent an escape of the person whose extradition is requested.
- **The deadlines for temporary custody are exclusively related to the period spanning from the deprivation of liberty to the receipt of the extradition request and are laid down by the Agreement; upon the receipt of the extradition request, extradition custody, prescribed by the domestic legislation of each country, may be imposed.**

3.5. Motion for temporary custody

If the person whose extradition is requested is only located on the territory of the PR China without the temporary custody being imposed, then the authority requesting the extradition of such person may move for temporary custody to be imposed.

Request for temporary custody is submitted through the Ministry of Justice of BiH, but in urgent cases, the request for temporary custody may also be delivered through Interpol, while the copy of such request is delivered to the Ministry of Justice of BiH.

Subject to the conditions laid down in Article 6 of the Agreement, the request for temporary custody must also include a statement of intent to send the extradition request.

The extension of the temporary custody is also requested in the described manner. Therefore, if the temporary detention is ordered for a period of 30 days, then the authority requesting an extradition of a person from the People's Republic of China submits a request for the extension of temporary custody for another 15 days with an explanation of the reasons for extension (the most common reason is translation of the extensive documentation into Chinese).

Negative practice

It happens in certain cases in BiH that the decisions for temporary custody upon the request of the People's Republic of China are issued on the basis of the Law on MLA and not on the basis of the Agreement, so we wish to especially emphasize that the conditions and deadlines for temporary custody are laid down by the Agreement.

3.6. Extradition custody

The length of extradition custody in BiH is determined by the Law on MLA and may last for a maximum of six months from the day of deprivation of liberty (Article 39, paragraph 3 of the Law on MLA).

- Release after the expiration of temporary custody will not prevent imposing of new custody (extradition custody) and the extradition if the extradition request arrives after 30, i.e., 45 days from the day of deprivation of liberty.

Extradition custody lasting for a maximum of six months is not a time period in which the extradition request must be decided on, but rather represents the maximum period that the detained person whose extradition is requested can spend in custody; therefore, the extradition request may be decided on even after the expiry of that deadline.

EXAMPLE

PR China is requesting the extradition of a person because of the criminal offence committed in that country. In the meantime, the mentioned person was granted BiH citizenship. PR China offers evidence that this person acquired the BiH citizenship on the basis of a changed (false) identity.

What to do in this situation?

In a similar case, the court did not examine all the allegations of the People's Republic of China, and found that based on the BiH citizenship, the person whose extradition is requested could not be extradited to the PR China, to which that country expressed dissatisfaction, claiming that the BiH failed to take all actions necessary to ascertain the legality of acquiring the BiH citizenship in the concrete case.

RECOMMENDATION:

Deadlines related to temporary and extradition custody do not represent deadlines related to establishing the existence of the preconditions for extradition, or deadlines for extradition (which is often equated in practice). After the expiration of these deadlines, other security measures may be imposed on the person whose extradition is requested, and the decision on the fulfilment of the requirements for extradition as well as the extradition decision shall be made after all disputed facts related to the specific case have been given consideration.

3.7. Proposal – initiative to submit the extradition request

Pursuant to Article 57 of the Law on MLA, the Minister of Justice of BiH shall submit the extradition request, always on the initiative – a reasoned proposal of the authority seeking the extradition of a person for the purpose of conducting criminal proceedings or enforcing a prison sentence. The Agreement prescribes the conditions for extradition and the documents that must be enclosed with the extradition request. Therefore, the authority submitting the initiative – proposal for extradition shall deliver all the necessary documents that the Minister of Justice of BiH will use as a basis to submit the extradition request.

Since the biggest problem in practice so far has been to complete the documentation required to submit a request, the text below provides an example of an initiative – proposal that contains all the necessary elements for submitting the extradition request. The Agreement between the two countries defines that the requested country may seek additional documentation, so such a request should be met for the wanted person to be extradited.

3.7.1. Example of proposal – initiative to submit the extradition request

BOSNIA AND HERZEGOVINA

(full title of the authority)

Number:

.....

(place and date)

VERY URGENT

MINISTRY OF JUSTICE
OF BOSNIA AND HERZEGOVINA

SUBJECT: Motion to submit the request for extradition of from the People’s Republic of China to Bosnia and Herzegovina

With the aim of submitting the request for extradition from the People’s Republic of China to Bosnia and Herzegovina of the suspect (wanted person), son/daughter of, born on(dd/mm/yyyy) in, citizen of, for the purpose of conducting/continuing the criminal proceedings being conducted against the named person before, because of the criminal offence of, referred to in Article paragraph of the Criminal Code of, we hereby deliver you **in the form of the original document and the translation into Chinese language:**

1. Indictment/Order of the Prosecutor’s Office number: dated (dd/mm/yyyy),, on conducting the investigation against the wanted person ;
(Note: In accordance with the Agreement, the following needs to be delivered: Indictment, order, or another document of the same legal force with a description of the facts concerning the criminal offence and the perpetrator: location and time of perpetration and legal classification of the criminal offence)
2. Order on of the Court in number: dated to issue an international arrest warrant for the wanted person
3. Decision on of the Court in number: dated (dd/mm/yyyy) imposing the custody on the wanted person
4. Motion of the Prosecutor’s Office number: dated (dd/mm/yyyy) for imposing the custody on the wanted person
5. Copied text of Article of the Criminal Code of pertaining to

the offence for which the extradition is requested,

6. as well as copied text of legal provisions pertaining to the statute of limitations for criminal prosecution;

7. Document of the Ministry of Internal Affairs of number: dated(dd/mm/yyyy) with a fingerprint and photo of the wanted person

8. Certificate of Citizenship of Bosnia and Herzegovina for the wanted person dated(dd/mm/yyyy), if the matter concerns a BiH citizen;

We propose that the Minister of Justice of Bosnia and Herzegovina, based on Article 57 of the Law on Mutual Legal Assistance in Criminal Matters, submit the request to the People's Republic of China for the extradition of to Bosnia and Herzegovina.

If the requested party deems that the submitted information is insufficient to make a decision on extradition, we are ready to provide additional information to assist the extradition of the wanted person whose presence is necessary to complete the criminal proceedings.

Sincerely,

PROSECUTOR

NOTE: The minister of Justice of BiH submits the extradition request on the basis of the proposal from the given example. The request shall be accompanied by all documents enclosed with the extradition proposal.

In a similar manner, the court submits the initiative for extradition for the purpose of serving the prison sentence, with the proviso that such initiative should be accompanied by documents prescribed for this purpose (final judgement and other) in the manner stipulated by the Agreement. Attention needs to be paid to the fact that the duration of the prison sentence or the remaining part of the unserved prison sentence cannot be less than 6 (six) months.

FINAL COMMENT

This guide is the result of research on the functioning of International Judicial Assistance through the actions of competent authorities, primarily prosecutor's offices and courts in BiH in MLA and extradition proceedings. The research demonstrates that, in the same legal situations and on the same legal grounds, authorities in BiH (prosecutor's offices and courts) tend to act differently. The research also shows that, in BiH, there is no recognized authority responsible for making a legally binding opinion and position regarding the interpretation of a certain norm of an international agreement with other jurisdictions.

The role of the Guide is to point out the basic rules in the field of international legal assistance in criminal matters, legal bases, and procedures.

Knowing that a large number of judicial office holders (prosecutors and judges), and other participants in these proceedings, may encounter this topic or some forms of legal assistance for the first time, this Guide aims to serve as a source of information about these procedures.

The Guide is essentially informative and the views expressed in it do not imply that the authorities in BiH are in any way obliged to comply with the recommendations provided herein. It, however, indicates the need for all authorities to act per the obligations arising from the international agreements binding upon BiH in this area.



ANNEX - LIST OF INTERNATIONAL
MULTILATERAL AGREEMENTS
BINDING ON BIH

ANNEX - LIST OF INTERNATIONAL MULTILATERAL AGREEMENTS BINDING ON BIH

NOTE: Users of this Guide should not be confused by a large number of multilateral agreements binding on Bosnia and Herzegovina and the Republic of Serbia, because the highest exchange of MLA between the two countries takes place through bilateral agreements, which essentially adopt solutions from multilateral agreements.

Multilateral agreements, to which two countries are State Parties, may represent a legal basis for certain actions related to special forms of organized crime, corruption, money laundering, terrorism, etc.; hence, it is necessary, in addition to consulting a bilateral agreement, to consult the relevant norms of multilateral agreements whose title refers to certain forms of criminal offences for which MLA is sought.

In all other cases, the norms of bilateral agreements concluded by the two countries have to be applied, so that most of the MLA between Bosnia and Herzegovina and the countries with which there are concluded bilateral agreements (general forms) are regulated by these bilateral agreements.

The relationship between bilateral and multilateral agreements is regulated by each multilateral agreement – generally at the end of such agreement in a separate chapter carrying a title: “Relationship with other agreements” or similar – hence, a conclusion can be made based on such a chapter as to what norms should be applied in a particular situation.

Some of the agreements have been listed previously but have also been included in this list for practical reasons.

LIST OF INTERNATIONAL MULTILATERAL AGREEMENTS BINDING ON BIH IN THE AREA OF CRIMINAL LAW

1. COUNCIL OF EUROPE CONVENTIONS

- **European Convention on Mutual Assistance in Criminal Matters,**

Strasbourg, 20 April 1959, entered into force on 12 June 1962; entered into force with respect to BiH on 24 July 2005; publication: Official Gazette of BiH – International Agreements, no. 04/2005.

- **Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters,**

Strasbourg, 8 November 2001; entered into force on 1 February 2004; entered into force with respect to BiH on 1 March 2008; publication: Official Gazette of BiH – International Treaties, no. 10/07.

- **European Convention on Extradition;**

Strasbourg, 13 December 1957; entered into force on 18 April 1960; entered into force with respect to BiH on 24 July 2005; publication: Official Gazette of BiH – International Treaties, no. 04/2005.

- **Additional Protocol to the European Convention on Extradition;**

Strasbourg, 15 October 1975; entered into force on 20 August 1979; entered into force with respect to BiH on 24 July 2005; publication: Official Gazette of BiH – International Treaties, no. 04/2005.

- **Second Additional Protocol to the European Convention on Extradition;**

Strasbourg, 17 March 1978; entered into force on 5 June 1983; entered into force with respect to BiH on 24 July 2005; Publication: Official Gazette of BiH – International Treaties, no. 04/2005.

- **European Convention on the Transfer of Proceedings in Criminal Matters;**

Strasbourg, 15 May 1972; entered into force on 30 March 1978; entered into force with respect to BiH on 26 July 2005; Publication: Official Gazette of BiH – International Treaties, no. 04/2005.

- **Convention on the Transfer of Sentenced Persons;**

Strasbourg, 21 March 1983; entered into force on 1 July 1985; entered into force with respect to BiH on 1 August 2005; Publication: Official Gazette of BiH – International Treaties, no. 03/2005.

- **European Convention on the Supervision of Conditionally Sentenced or Conditionally Released Offenders;**

Strasbourg, 30 November 1964; entered into force on 22 August 1975; ratified on 29 December 1994; entered into force with respect to BiH on 30 March 1995.

- **Criminal Law Convention against Corruption;**

Strasbourg, 27 January 1999; entered into force on 1 July 2002; entered into force with respect to BiH on 1 July 2002; Publication: Official Gazette of BiH no. 36/2001.

- **European Convention on the Suppression of Terrorism;**

Strasbourg, 27 January 1977; entered into force on 4 August 1978; entered into force with respect to BiH on 4 January 2004; Publication: Official Gazette of BiH – International Treaties, no. 12/2003.

- **European Convention on the Suppression of Terrorism;**

Warsaw, 16 May 2005; entered into force on 1 June 2007; entered into force with respect to BiH on 1 May 2008; Publication: Official Gazette of BiH – International Treaties, no. 14/2007.

- **Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism;**

Warsaw, 16 May 2005; entered into force on 1 May 2008; entered into force with respect to BiH on 1 May 2008; Publication: Official Gazette of BiH – International Treaties, no. 14/2007.

- **European Convention on the Compensation of Victims of Violent Crimes;**

Strasbourg, 24 November 1983; entered into force on 1 February 1988; entered into force with respect to BiH on 1 August 2005; Publication: Official Gazette of BiH – International Treaties, no. 04/2005.

- **Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime;**

Strasbourg, 8 November 1990; entered into force on 1 September 1993; entered into force with respect to BiH on 1 July 2004; Publication: Official Gazette of BiH – International Treaties, no. 04/2006.

- **Convention on Cybercrime;**

Budapest, 23 November 2001; entered into force on 1 July 2004, entered into force with respect to BiH on 1 September 2006; Publication: Official Gazette of BiH – International Treaties, no. 06/2006.

- **Additional Protocol to the Convention on Cybercrime, Concerning the Criminalization of Acts a Racist and Xenophobic Nature Committed through Computers Systems;**

Strasbourg, 28 January 2003; entered into force on 1 March 2006; entered into force with respect to BiH on 1 September 2006; Publication: Official Gazette of BiH – International Treaties, no. 06/2006.

- **European Convention on the Non-Applicability of Statutory Limitation to Crimes against Humanity and War Crimes;**

Strasbourg, 25 January 1974; entered into force on 27 June 2003; Publication: Official Gazette of BiH – International Treaties, no. 08/08.

- **Council of Europe Convention on Action against Trafficking in Human Beings;**

Warsaw, 16 May 2005; entered into force on 1 February 2008; entered into force with respect to BiH on 1 May 2008; Publication: Official Gazette of BiH – International Treaties, no. 14/2007.

2. UNITED NATIONS CONVENTIONS

- **Convention on Offenses and Certain Other Acts Committed on Board Aircraft;**

Tokyo, 14 September 1963; entered into force on 4 December 1969; BiH member on the basis of succession; Publication: Official Gazette of SFRY, no. 47/1970.

- **Convention for the Suppression of Unlawful Seizure of Aircraft;**

The Hague, 16 December 1970; BiH member on the basis of succession; Publication: Official Gazette of SFRY, no. 33/1972.

- **Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents;**

New York, 14 December 1973; entered into force on 20 February 1977; BiH member on the basis of succession; Publication: Official Gazette of SFRY – International Agreements, no. 54/1976.

- **United Nation Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances;**

Vienna, 20 December 1988; entered into force on 11 November 1990; BiH member on the basis of succession; Publication: Official Gazette of SFRY – International Agreements, no. 14/1990.

- **United Nations Convention against Transnational Organized Crime;**

Palermo, 15 November 2000; entered into force internationally and domestically on 29 September 2003; Publication: Official Gazette of BiH, no. 03/2002.

- **Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the UN Convention against Transnational Organized Crime;**

entered into force internationally and domestically on 28 January 2004; Publication: Official Gazette of BiH, no. 03/2002.

- **Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the UN Convention against Transnational Organized Crime;**

entered into force internationally and domestically on 25 December 2003; Publication: Official Gazette of BiH, no. 03/2002.

- **International Convention for the Suppression of Terrorist bombings;**

New York, 15 December 1997; entered into force, ratified by BiH on 30 April 2003; Publication: Official Gazette of BiH – International Agreements, no. 07/2003.

- **United Nations Convention against Corruption;**

entered into force on 14 December 2005; entered into force with respect to BiH on 26 October 2006; Publication: Official Gazette of BiH – International Agreements, no. 05/2006.

