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## **EUROMED JUSTICE III PROJECT**

### **Component III**

#### **Criminal and Penitentiary Law**

#### **WG 3**

**Working Group on Criminal Law in order to  
prepare a tool equivalent to the so-called  
“fiches belges”**

**ALGERIA, EGYPT, ISRAEL, JORDAN, LEBANON, MOROCCO, PALESTINE, TUNISIA**

Implemented by



Lead Firm

**Version updated in January 2014**

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Warning: The information you will find in the “Fiches” has indicative value only; it does not have binding judicial value in the context of a legal procedure.

The EuroMed Justice III Project Team wishes to express its gratitude to the European Judicial Network (EJN) for the support received during the elaboration of this tool equivalent to the so-called “fiches belges” and for the authorisation given to us to use the texts of the EJN fiches belges to draw up this equivalent document.

In particular, the PT is very grateful for the support and help received from the EJN Secretariat

The “fiches belges” related to the EU MS can be consulted on: [http://www.ejn-crimjust.europa.eu/ejn/EJN\\_FichesBelges.aspx](http://www.ejn-crimjust.europa.eu/ejn/EJN_FichesBelges.aspx) © (2012 EJN. All rights reserved)

# EUROMED JUSTICE III PROJECT

## Criminal and Penitentiary Law

### WG 3

Working Group on Criminal Law in order to prepare a tool equivalent to the so-called “fiches belges”

Tool equivalent to the so-called “fiches belges”

## **LIST OF MUTUAL ASSISTANCE POSSIBILITIES – 8 DIFFERENT INVESTIGATIVE MEASURES**

### **1. TRACING AND INTERCEPTION OF (TELE) COMMUNICATIONS**

#### **Interception, recording and transcription of telecommunications (101)**

- Definition and scope of the measures
- Failing that, an alternative measure with the same purpose
- Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?
- Body competent to authorize the measure
- Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)
- Assistance or participation of agents of the requesting State in the execution of the measure

#### **Tracing of telecommunications (102)**

- Definition and scope of the measures
- Failing that, an alternative measure with the same purpose
- Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?
- Body competent to authorize the measure
- Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)
- Assistance or participation of agents of the requesting State in the execution of the measures

#### **Interception and recording of other forms of communication (103)**

- Definition and scope of the measures
- Failing that, an alternative measure with the same purpose
- Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?
- Body competent to authorize the measure

- Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)
- Assistance or participation of agents of the requesting State in the execution of the measure

#### **Interception of mail (104)**

- Definition and scope of the measure
- Failing that, an alternative measure with the same purpose
- Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?
- Body competent to authorize the measure
- Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)
- Assistance or participation of agents of the requesting State in the execution of the measure

#### **Observation (105)**

- Definition and scope of the measure
- Failing that, an alternative measure with the same purpose
- Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?
- Body competent to authorize the measure
- Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)
- Assistance or participation of agents of the requesting State in the execution of the measure

#### **Interception of telecommunication (106)**

- Definition and scope of the measure.
- Failing that, an alternative measure with the same purpose
- Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?
- Body competent to authorize the measure
- Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)
- Assistance or participation of agents of the requesting State in the execution of the measure

#### **Interception of telecommunication without the technical assistance of another State (107)**

- Definition and scope of the measure
- Failing that, an alternative measure with the same purpose

- Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?
- Body competent to authorize the measure
- Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)
- Assistance or participation of agents of the requesting State in the execution of the measure

## **2. AGENTS AND INFORMERS – INFILTRATION**

### **Infiltration by undercover agents of the requested State (201)**

- Definition and scope of the measure.
- Failing that, an alternative measure with the same purpose
- Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?
- Body competent to authorize the measure
- Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)
- Assistance or participation of agents of the requesting State in the execution of the measure

### **Infiltration by agents of the requesting State in the territory of the requested State (202)**

- Definition and scope of the measure
- Failing that, an alternative measure with the same purpose
- Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?
- Body competent to authorize the measure
- Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)
- Assistance or participation of agents of the requesting State in the execution of the measure

### **Infiltration by an informer of the requested State (203)**

- Definition and scope of the measure
- Failing that, an alternative measure with the same purpose
- Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?
- Body competent to authorize the measure
- Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

- Assistance or participation of agents of the requesting State in the execution of the measure

#### **Handling of informers (204)**

- Definition and scope of the measure.
- Failing that, an alternative measure with the same purpose
- Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?
- Body competent to authorize the measure
- Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)
- Assistance or participation of agents of the requesting State in the execution of the measure

### **3. EXAMINATION, BODY SEARCH AND EXPERT EVALUATION**

#### **Superficial body search (301)**

- Definition and scope of the measure.
- Failing that, an alternative measure with the same purpose
- Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?
- Body competent to authorize the measure
- Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)
- Assistance or participation of agents of the requesting State in the execution of the measure

#### **Invasive body search (302)**

- Definition and scope of the measure.
- Failing that, an alternative measure with the same purpose
- Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?
- Body competent to authorize the measure
- Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)
- Assistance or participation of agents of the requesting State in the execution of the measure

#### **Psychiatric medical examination (303)**

- Definition and scope of the measure.

- Failing that, an alternative measure with the same purpose
- Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist
- Body competent to authorize the measure
- Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)
- Assistance or participation of agents of the requesting State in the execution of the measure

#### **Control of identity, measures for judicial identification (304)**

- Definition and scope of the measure
- Failing that, an alternative measure with the same purpose
- Body competent to authorize the measure
- Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist
- Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)
- Assistance or participation of agents of the requesting State in the execution of the measure

#### **Technical or scientific examinations or expert evaluations (305)**

- Definition and scope of the measure
- Failing that, an alternative measure with the same purpose
- Body competent to authorize the measure
- Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist
- Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)
- Assistance or participation of agents of the requesting State in the execution of the measure

### **4. DOCUMENTS - OBTAINING**

#### **Spontaneous exchange of information (401)**

- Definition and scope of the measure
- Failing that, an alternative measure with the same purpose
- Body competent to authorize the measure
- Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist



- Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)
- Assistance or participation of agents of the requesting State in the execution of the measure

#### **Order to produce documents (402)**

- Definition and scope of the measure
- Failing that, an alternative measure with the same purpose
- Body competent to authorize the measure
- Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist
- Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)
- Assistance or participation of agents of the requesting State in the execution of the measure

#### **Other possibilities of obtaining information concerning taxes or bank accounts (403)**

- Definition and scope of the measure
- Failing that, an alternative measure with the same purpose
- Body competent to authorize the measure
- Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist
- Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)
- Assistance or participation of agents of the requesting State in the execution of the measure

#### **Access to public documents in judicial files (404)**

- Definition and scope of the measure
- Failing that, an alternative measure with the same purpose
- Body competent to authorize the measure
- Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist
- Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)
- Assistance or participation of agents of the requesting State in the execution of the measure

#### **Communication of individual police records (405)**

- Definition and scope of the measure
- Failing that, an alternative measure with the same purpose

- Body competent to authorize the measure
- Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist
- Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)
- Assistance or participation of agents of the requesting State in the execution of the measure

#### **Sending and service of procedural documents (406)**

- Definition and scope of the measure
- Failing that, an alternative measure with the same purpose
- Body competent to authorize the measure
- Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist
- Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)
- Assistance or participation of agents of the requesting State in the execution of the measure

#### **Transfer of proceedings (407)**

- Definition and scope of the measure
- Failing that, an alternative measure with the same purpose
- Body competent to authorize the measure
- Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist
- Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)
- Assistance or participation of agents of the requesting State in the execution of the measure

### **5. ASSETS - SEQUESTRATION, CONFISCATION AND RESTITUTION**

#### **Sequestration of assets (501)**

- Definition and scope of the measure
- Failing that, an alternative measure with the same purpose
- Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?
- Body competent to authorize the measure
- Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)
- Assistance or participation of agents of the requesting State in the execution of the measure

### **Freezing of bank accounts (502)**

- Definition and scope of the measure
- Failing that, an alternative measure with the same purpose
- Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?
- Body competent to authorize the measure
- Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)
- Assistance or participation of agents of the requesting State in the execution of the measure

### **Restitution (503)**

- Definition and scope of the measure
- Failing that, an alternative measure with the same purpose
- Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?
- Body competent to authorize the measure
- Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)
- Assistance or participation of agents of the requesting State in the execution of the measure

### **Interim measures in view of confiscation (504)**

- Definition and scope of the measure
- Failing that, an alternative measure with the same purpose
- Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?
- Body competent to authorize the measure
- Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)
- Assistance or participation of agents of the requesting State in the execution of the measure

### **Confiscation (505)**

- Definition and scope of the measure
- Failing that, an alternative measure with the same purpose
- Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?
- Body competent to authorize the measure
- Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

- Assistance or participation of agents of the requesting State in the execution of the measure

## **6. PLACES - VISIT AND SEARCH**

### **Visit to and search of homes (601)**

- Definition and scope of the measure
- Failing that, an alternative measure with the same purpose
- Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?
- Body competent to authorize the measure
- Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)
- Assistance or participation of agents of the requesting State in the execution of the measure

### **Visit and search on the site of an offence (602)**

- Definition and scope of the measure
- Failing that, an alternative measure with the same purpose
- Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?
- Body competent to authorize the measure
- Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)
- Assistance or participation of agents of the requesting State in the execution of the measure

## **7. WITNESSES, VICTIMS, SUSPECTS - SUMMONING AND HEARING**

### **Summoning witnesses (701)**

- Definition and scope of the measure
- Failing that, an alternative measure with the same purpose
- Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?
- Body competent to authorize the measure
- Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)
- Assistance or participation of agents of the requesting State in the execution of the measure

### **Hearing witnesses: standard procedure (702)**

- Definition and scope of the measure
- Failing that, an alternative measure with the same purpose
- Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?
- Body competent to authorize the measure
- Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)
- Assistance or participation of agents of the requesting State in the execution of the measure

### **Hearing witnesses: by video conference (703)**

- Definition and scope of the measure
- Failing that, an alternative measure with the same purpose
- Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?
- Body competent to authorize the measure
- Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)
- Assistance or participation of agents of the requesting State in the execution of the measure

### **Hearing witnesses: by telephone (704)**

- Definition and scope of the measure
- Failing that, an alternative measure with the same purpose
- Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?
- Body competent to authorize the measure
- Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)
- Assistance or participation of agents of the requesting State in the execution of the measure

### **Hearing children (705)**

- Definition and scope of the measure
- Failing that, an alternative measure with the same purpose
- Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?
- Body competent to authorize the measure

- Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)
- Assistance or participation of agents of the requesting State in the execution of the measure

#### **Hearing persons collaborating with the inquiry (706)**

- Definition and scope of the measure
- Failing that, an alternative measure with the same purpose
- Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist? Failing that, an alternative measure with the same purpose
- Body competent to authorize the measure
- Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)
- Assistance or participation of agents of the requesting State in the execution of the measure

#### **Hearing victims/plaintiffs (707)**

- Definition and scope of the measure
- Failing that, an alternative measure with the same purpose
- Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?
- Body competent to authorize the measure
- Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)
- Assistance or participation of agents of the requesting State in the execution of the measure

#### **Hearing experts (708)**

- Definition and scope of the measure
- Failing that, an alternative measure with the same purpose
- Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?
- Body competent to authorize the measure
- Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)
- Assistance or participation of agents of the requesting State in the execution of the measure

### **Summoning suspects/persons accused (709)**

- Definition and scope of the measure
- Failing that, an alternative measure with the same purpose
- Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?
- Body competent to authorize the measure
  
- Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)
- Assistance or participation of agents of the requesting State in the execution of the measure

### **Hearing suspects/persons accused: standard procedure (710)**

- Definition and scope of the measure
- Failing that, an alternative measure with the same purpose
- Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?
- Body competent to authorize the measure
- Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)
- Assistance or participation of agents of the requesting State in the execution of the measure

### **Hearing suspects/persons accused: by video conference (711)**

- Definition and scope of the measure
- Failing that, an alternative measure with the same purpose
- Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?
- Body competent to authorize the measure
- Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)
- Assistance or participation of agents of the requesting State in the execution of the measure

### **Hearing suspects/persons accused: by telephone (712)**

- Definition and scope of the measure
- Failing that, an alternative measure with the same purpose
- Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

- Body competent to authorize the measure
- Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)
- Assistance or participation of agents of the requesting State in the execution of the measure

### **Confrontation (713)**

- Definition and scope of the measure
- Failing that, an alternative measure with the same purpose
- Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?
- Body competent to authorize the measure
- Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)
- Assistance or participation of agents of the requesting State in the execution of the measure

## **8. CROSS-BORDER OPERATIONS**

### **Cross-border observation (801)**

- Definition and scope of the measure
- Failing that, an alternative measure with the same purpose
- Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?
- Body competent to authorize the measure
- Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)
- Assistance or participation of agents of the requesting State in the execution of the measure

### **Cross-border hot pursuit (802)**

- Definition and scope of the measure
- Failing that, an alternative measure with the same purpose
- Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?
- Body competent to authorize the measure
- Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)
- Assistance or participation of agents of the requesting State in the execution of the measure



### **Cross-border tracking (by placing a beeper on a vehicle or a person (803)**

- Definition and scope of the measure
- Failing that, an alternative measure with the same purpose
- Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?
- Body competent to authorize the measure
- Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)
- Assistance or participation of agents of the requesting State in the execution of the measure

### **Controlled deliveries (804)**

- Definition and scope of the measure
- Failing that, an alternative measure with the same purpose
- Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?
- Body competent to authorize the measure
- Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)
- Assistance or participation of agents of the requesting State in the execution of the measure

### **Joint investigation teams (805)**

- Definition and scope of the measure
- Failing that, an alternative measure with the same purpose
- Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?
- Body competent to authorize the measure
- Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)
- Assistance or participation of agents of the requesting State in the execution of the measure

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## **EUROMED JUSTICE III PROJECT**

### **Criminal and Penitentiary Law**

#### **WG 3.1**

**Working Group on Criminal Law in order to prepare a tool equivalent to the  
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#### **ALGERIA**

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EUROMED JUSTICE III PROJECT

Criminal and Penitentiary Law

WG 3

Working Group on Criminal Law in order to prepare a tool equivalent to the so-called "fiches belges"

ALGERIA

**1. TRACING AND INTERCEPTION OF (TELE) COMMUNICATIONS**

**Interception, recording and transcription of telecommunications (101).**

**Definition and scope of the measures**

*Article 65 bis 05 of the Code of Criminal Procedure allows the interception, representation, transmission and recording of correspondence, private or confidential statements by one or several individuals in private or public places, and images of one or several individuals in a public space, in the course of a rapid-response investigation or preliminary investigation into the following offences:*

*- drug trafficking offences.- international organised crime.- subverting automated data processing systems. - money laundering.- terrorism.- infringements of the law on foreign exchange.- corruption, as well as smuggling by virtue of Art33 of Ordinance 05-06 of 23 August 2005 related to the fight against smuggling.*

*- This measure may be enforced upon authorisation by a public prosecutor or examining magistrate, as the case may be.*

*- Operations authorised in this manner are undertaken under the direct supervision of the competent public prosecutor.*

*For the implementation of the technical measure, the authorisation allows the introduction of goods into any place of residence or other, inter alia outside of the hours laid down in article 47 of the Code of Criminal Procedure or without the consent of persons who may have a right of ownership in respect of said goods.*

*Such authorisations are given in writing for a maximum duration of four (4) months, which may be renewed depending on the needs of the investigation or the requirements in terms of form and duration. Article (65 bis 07 Code of Criminal Procedure [hereinafter CCP]).*

**Failing that, an alternative measure with the same purpose**

*None*

**Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?**

*Yes (conventional framework-application of the principle of reciprocity).*

**Body competent to authorize the measure**

*The public prosecutor or competent examining magistrate, as the case may be.*

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*The authorisations laid down in article 65 bis 05 above must contain all the information allowing identification of the connections to be intercepted, the places of residence or other that are targeted and the offence justifying the application of these measures and the duration of same.*

*For the implementation of the technical measure, the authorisation allows the introduction of goods into any place of residence or other, inter alia outside of the hours laid down in article 47 of the Code of Criminal Procedure or without the consent of persons who may have a right of ownership in respect of said goods.*

*These operations are conducted without prejudice to professional secrecy in art 45 CCP.*

*As regards the possibility to execute the measure in conformity with the procedure applicable in the requesting State:*

*- If the bilateral or multilateral conventions ratified by Algeria provide for this possibility in their provisions, the execution will take place in accordance with these provisions.*

*- If there are no conventions, the measure may be implemented in compliance with the applicable procedure in the requesting State subject to the principle of reciprocity.*

Assistance or participation of agents of the requesting State in the execution of the measure

*Yes*

#### **Tracing of telecommunications (102)**

Definition and scope of the measures

*See answer to question 101.*

Failing that, an alternative measure with the same purpose

*None*

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*See answer to question 101.*

Body competent to authorize the measure

*See answer to question 101.*

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*See answer to question 101.*

Assistance or participation of agents of the requesting State in the execution of the measures

*Yes*

#### **Interception and recording of other forms of communication (103)**

Definition and scope of the measures

*See answer to question 101.*

Failing that, an alternative measure with the same purpose

*Searching information systems for preliminary and judicial investigations (Art 5 of Law 09-04 of 05 August 2009 containing specific rules on the prevention and the fight against offences linked to Information and Communication Technologies).*

*Electronic surveillance is also provided for in the law on prevention and fight against corruption, in order to facilitate the gathering of evidence in corruption cases. (Art 56 ACT 06-01 of 20/02/2006).*

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*Yes (conventional framework-application of the principle of reciprocity).*

Body competent to authorize the measure

*See answer to question 101.*

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*See answer to question 101.*

Assistance or participation of agents of the requesting State in the execution of the measure

*Yes*

#### **Interception of mail (104)**

##### **Definition and scope of the measure**

*See answer to question 101.*

Failing that, an alternative measure with the same purpose

*None*

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*Yes (conventional framework-application of the principle of reciprocity).*

Body competent to authorize the measure

*See answer to question 101.*

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*See answer to question 101.*

Assistance or participation of agents of the requesting State in the execution of the measure

*Yes*

### Observation (105)

Definition and scope of the measure

Failing that, an alternative measure with the same purpose

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

Body competent to authorize the measure

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

Assistance or participation of agents of the requesting State in the execution of the measure

### Interception of telecommunication (106)

Definition and scope of the measure.

*See answer to question 101.*

Failing that, an alternative measure with the same purpose

*None*

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*Yes (conventional framework-application of the principle of reciprocity).*

Body competent to authorize the measure

*See answer to question 101.*

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*See answer to question 101.*

Assistance or participation of agents of the requesting State in the execution of the measure

*Yes*

### Interception of telecommunication without the technical assistance of another State (107)

Definition and scope of the measure

Failing that, an alternative measure with the same purpose

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

Body competent to authorize the measure

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

Assistance or participation of agents of the requesting State in the execution of the measure



## **2. AGENTS AND INFORMERS – INFILTRATION**

### **Infiltration by undercover agents of the requested State (201)**

#### **Definition and scope of the measure**

*Article 65 bis 11 of the Code of Criminal Procedure authorises infiltration when needed in the course of the investigation or preliminary investigation into one of the offences listed in article 65 bis 05 of the Code of Criminal Procedure mentioned below. Offences are the following:*

- Drug-trafficking.*
- International organised crime.*
- Subverting automated data processing systems.*
- Money laundering.*
- Terrorism.*
- Offence against the foreign exchange legislation.*
- Corruption.*
- Smuggling (Art 33 of Ordinance 05-06 related to the fight against smuggling).*

*For a judicial police officer or a judicial police constable acting under the responsibility of an officer of the judicial police tasked with coordinating the operation, infiltration consists of the surveillance of persons suspected of committing a crime or misdemeanour by presenting themselves to such persons as their fellow perpetrators, accomplices or receivers of stolen goods (Art 65 bis 12).*

*On that basis, he or she is authorised to undertake the following operations:*

- Obtaining, keeping, transporting, delivering or releasing substances, goods, products, documents or information deriving from the commission of such offences.*
- Using or making available to persons who commit such offences resources of a legal or financial nature as well as means of transport, storage, accommodation, preservation and telecommunications (Art 65 bis 14).*
- This measure is also possible under Law 06-01 on the prevention and the fight against corruption.*

**Failing that, an alternative measure with the same purpose**

*None*

**Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?**

*Yes (conventional framework-application of the principle of reciprocity).*

**Body competent to authorize the measure**

*The public prosecutor or examining magistrate after consultation with the public prosecutor.*

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*An authorisation issued by application of article 65 bis 11 must be in writing and state reasons, on pain of invalidity. It will mention the offence that justifies the use of this procedure and the identity of the judicial police officer tasked with coordinating the operation. This authorisation states the duration of the operation that cannot exceed a period of four months, which may be renewed if necessary in accordance with article 65 bis 15.*

*Concerning the possibility to execute the measure in conformity with the procedure applicable in the requesting State:*

*-If the bilateral or multilateral conventions ratified by Algeria provide for this possibility in their provisions, the execution will take place in accordance with these provisions.*

*-If there are no conventions, the measure may be implemented in compliance with the applicable procedure in the requesting State subject to the principle of reciprocity.*

Assistance or participation of agents of the requesting State in the execution of the measure

#### **Infiltration by agents of the requesting State in the territory of the requested State (202)**

Definition and scope of the measure

*The infiltration operation shall be conducted by an Algerian State agent; the code of criminal procedure does not include the possibility for foreign State agents to conduct this operation.*

Failing that, an alternative measure with the same purpose

*None*

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

Body competent to authorize the measure

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

Assistance or participation of agents of the requesting State in the execution of the measure

#### **Infiltration by an informer of the requested State (203)**

Definition and scope of the measure

*In accordance with the Code of Criminal Procedure, infiltration operations can be undertaken only by a judicial police officer or a constable appointed by a judicial police officer tasked with coordinating the operation (article 65 bis 12).*

Failing that, an alternative measure with the same purpose

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

Body competent to authorize the measure

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

Assistance or participation of agents of the requesting State in the execution of the measure

### Handling of informers (204)

Definition and scope of the measure

Failing that, an alternative measure with the same purpose

*None*

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*No precedent.*

Body competent to authorize the measure

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

Assistance or participation of agents of the requesting State in the execution of the measure

### 3. EXAMINATION, BODY SEARCH AND EXPERT EVALUATION

#### Superficial body search (301)

Definition and scope of the measure

*Measure taken by: law enforcement agents, in the case of a presumption, judicial police officers or constables in particular concerning suspects caught in flagrante delicto or as a preventative measure for persons in police custody, and in the case of the fight against fraud and narcotics (Art 42 of Customs Code).*

Failing that, an alternative measure with the same purpose

*Other detection methods and equipment are more and more often used (metal detectors, etc.).*

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*Yes, conventional framework and principle of reciprocity.*

Body competent to authorize the measure

*Judicial Authority - Investigating constable or officer.*

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*Assessment on a case-by-case basis and in compliance with the public policy of the requested State.*

Assistance or participation of agents of the requesting State in the execution of the measure

*Possible, on a case-by-case basis.*

### Invasive body search (302)

Definition and scope of the measure

*Possible in case of medical examination or expertise, in the context of a judicial investigation.*

Failing that, an alternative measure with the same purpose

*None.*

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*Yes, conventional framework and principle of reciprocity*

Body competent to authorize the measure

*Order by the public prosecutor or examining magistrate, as the case may be, or the president of the court.*

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*Art 143 et seq. CCP.*

*The request must contain a description of the expertise sought and the deadlines for its establishment.*

*-If the bilateral or multilateral conventions ratified by Algeria provide for this possibility in their provisions, the execution will take place in accordance with these provisions.*

*-If there are no conventions, the measure may be implemented in compliance with the applicable procedure in the requesting State subject to the principle of reciprocity.*

Assistance or participation of agents of the requesting State in the execution of the measure

*Yes, conventional framework and principle of reciprocity.*

### Psychiatric medical examination (303)

Definition and scope of the measure

*The criminal code provides that: the individual who was suffering from insanity when the offence was committed is not punishable (Art 47-21 criminal code).*

*The aim of the measure is to ensure that the accused was in possession of his or her senses when he or she committed the offence.*

*A psychiatric medical examination is obligatory in criminal cases. (Art. 143 et seq. of the Code of Criminal Procedure)*

Failing that, an alternative measure with the same purpose

*None.*

Body competent to authorize the measure

*Any examining and adjudicating jurisdiction (Art 143 et seq. CCP).*

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*Yes, conventional framework and principle of reciprocity.*

Assistance or participation of agents of the requesting State in the execution of the measure

*See answer 302.*

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*See answer 302.*

#### Control of identity, measures for judicial identification (304)

Definition and scope of the measure

*Measure taken by the judicial police officer in the course of a judicial enquiry (Art 50 CCP).*

*By the public prosecutor or examining magistrate, as the case may be, or the president of the court (Art 59, 100 and 343 CCP).*

*Failing that, an alternative measure with the same purpose*

*None*

Body competent to authorize the measure

*See answer above (definition and scope of the measure).*

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*Possible*

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*Art 50, 59, 100 and 343 CCP.*

*-If the bilateral or multilateral conventions ratified by Algeria provide for this possibility in their provisions, execution will take place in accordance with these provisions.*

*-If there are no conventions, the measure may be implemented in compliance with the applicable procedure in the requesting State subject to the principle of reciprocity.*

Assistance or participation of agents of the requesting State in the execution of the measure

*Possible*

#### Technical or scientific examinations or expert evaluations (305)

Definition and scope of the measure

*Art 143 CCP.*

*Failing that, an alternative measure with the same purpose*

*None.*

Body competent to authorize the measure

*The measure may be authorized by the public prosecutor, the investigating or adjudicating jurisdiction, whereas the judicial police officer or the public prosecutor may appoint a person qualified to examine matters relating to an offence Art 49 CCP.*

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*Yes, conventional framework and principle of reciprocity.*

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*See answer 302.*

Assistance or participation of agents of the requesting State in the execution of the measure

*Possible.*

#### **4. DOCUMENTS - OBTAINING**

##### **Spontaneous exchange of information (401)**

Definition and scope of the measure

*The measure already exists through different channels: Interpol for the exchange of information (police cooperation), exchange of electronic mail between operational magistrates, exchange of information through the liaison magistrate (Algeria-France), Financial Intelligence Unit (art 25 of the law on the prevention of and fight against money-laundering and the financing of terrorism), and in the context of the fight against corruption (Art 60 and 69 of the law on the prevention of and fight against corruption) and in matters related to the criminal record (Art 643 CCP).*

Failing that, an alternative measure with the same purpose

Body competent to authorize the measure

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist

*Yes.*

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*According to the channel used.*

Assistance or participation of agents of the requesting State in the execution of the measure

##### **Order to produce documents (402)**

Definition and scope of the measure

*Yes, it is possible for any competent court to issue an order to require production of documents in some procedures in respect of search (Art 84 CCP) and in respect of forgery (Art 532, 533 and 534 et seq. CCP)*

Failing that, an alternative measure with the same purpose

*None*

Body competent to authorize the measure

*Any competent judicial authority*

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*Yes, conventional framework and principle of reciprocity.*

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*Art 84, 532, 533 and 534 et seq. CCP.*

*-If the bilateral or multilateral conventions ratified by Algeria provide for this possibility in their provisions, the execution will take place in accordance with these provisions.*

*-If there are no conventions, the measure may be implemented in compliance with the applicable procedure in the requesting State subject to the principle of reciprocity.*

Assistance or participation of agents of the requesting State in the execution of the measure

*Possible*

#### Other possibilities of obtaining information concerning taxes or bank accounts (403)

Definition and scope of the measure

*The possibility of obtaining fiscal information or information relating to bank accounts is provided for in articles 21, 25 et seq. of the law on the prevention of and fight against money-laundering and the financing of terrorism and also article 60 of the law on the prevention of corruption.*

*The measure is also possible within the framework of conventions or in application of the principle of reciprocity*

Failing that, an alternative measure with the same purpose

Body competent to authorize the measure

*Competent judicial authority and institutions (Art 25 et seq. of the law on prevention of and fight against money laundering and financing of terrorism and article 60 of the law on the prevention of corruption.*

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*Yes, conventional framework and principle of reciprocity*

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*Depending on the nature of the information requested and on the requested authority and subject to compliance with the conventional framework or in application of the principle of reciprocity, as the case may be.*

Assistance or participation of agents of the requesting State in the execution of the measure

*Possible*

#### Access to public documents in judicial files (404)

Definition and scope of the measure

Failing that, an alternative measure with the same purpose

Body competent to authorize the measure

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

Assistance or participation of agents of the requesting State in the execution of the measure

#### Communication of individual police records (405)

Definition and scope of the measure

*The Algerian CCP provides for the exchange of individual police records (Art 643, 644 and 645).*

Failing that, an alternative measure with the same purpose

*None.*

Body competent to authorize the measure

*The competent judicial authority.*

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*Yes*

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*See Art 643, 644 and 645 CCP subject to compliance with the conventional framework or in application of the principle of reciprocity as the case may be.*

Assistance or participation of agents of the requesting State in the execution of the measure

*No precedent.*

#### Sending and service of procedural documents (406)

Definition and scope of the measure

*Measure provided for in the Algerian CCP (Art 723) subject to compliance with the conventional framework or in application of the principle of reciprocity as the case may be.*

Failing that, an alternative measure with the same purpose

Body competent to authorize the measure

*The competent judicial authority*

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*Possible*



Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*See Articles 723 and 725 CCP subject to compliance with the conventional framework.*

Assistance or participation of agents of the requesting State in the execution of the measure

*Yes, in respect of the conventional framework and the principle of reciprocity.*

#### **Transfer of proceedings (407)**

Definition and scope of the measure

*If the question concerns the official denunciation, this mechanism is covered in article 583 CCP that provides: any act defined as an offence, by Algerian law or by the legislation of the country where it was committed, may be prosecuted and tried in Algeria, when the perpetrator is an Algerian citizen.*

*Proceedings or judgment can occur within the conditions provided for in article 582, paragraph 2.*

*Furthermore, when the offence is committed against a private individual, proceedings can take place only upon request by the public prosecutor based on the complaint filed by the injured party or on a denunciation by the authorities of the country where the offence was committed.*

Failing that, an alternative measure with the same purpose

Body competent to authorize the measure

*Competent judicial authority*

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist

*The conventional framework also provides for the non-extradition of nationals leaving it to the requested country to undertake to prosecute the individual or individuals who were the subject of the official denunciation.*

*Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)*

*See Articles 583-582 CCP, subject to the guarantees required by the requested State in compliance with the provisions of the conventions.*

Assistance or participation of agents of the requesting State in the execution of the measure

*Yes in accordance with the conventional framework and the principle of reciprocity.*

#### **5. ASSETS - SEQUESTRATION, CONFISCATION AND RESTITUTION**

##### **Sequestration of assets (501)**

Definition and scope of the measure

*Law 06-01 defines seizure as follows: temporarily prohibiting the transfer, conversion, disposition or movement of property or temporarily assuming custody or control of property on the basis of an order issued by a court or other competent authority (Art 02 paragraph H).*

*This is a precautionary measure taken by an officer of the judicial police or the examining magistrate, as the case may be, for the needs of an investigation or a judicial inquiry in order to ascertain the truth (assets, documents, etc.) (Art 44-45-84-40 bis 5 CCP).*

*Illicit proceeds and property (movable or immovable) deriving from one or more offences laid down by law 06-01, may be seized or frozen by a decision of the judge or by order of the competent body (Art 51).*

*This measure is also provided for in Law 05-01 (Art.30): judicial cooperation can concern investigation requests, international letters rogatory, extradition of individuals wanted under the law, as well as detection and seizure of proceeds of money laundering and those intended for the financing of terrorism for purposes of confiscation.*

**Failing that, an alternative measure with the same purpose**

*None*

**Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?**

*Yes (Compliance with the conventional framework or application of the principle of reciprocity).*

**Body competent to authorize the measure**

*Any competent judicial authority.*

**Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)**

*-If the bilateral or multilateral conventions ratified by Algeria provide for this possibility in their provisions, the execution will take place in accordance with these provisions.*

*-If there are no conventions, the measure may be implemented in compliance with the applicable procedure in the requesting State subject to the principle of reciprocity.*

**Assistance or participation of agents of the requesting State in the execution of the measure**

*Possible on a case-by-case basis*

### **Freezing of bank accounts (502)**

**Definition and scope of the measure**

*Law 06-01 defines freezing as follows: temporarily prohibiting the transfer, conversion, disposition or movement of property or temporarily assuming custody or control of property on the basis of an order issued by a court or other competent authority (Art 02 paragraph H).*

*- Illicit proceeds and property (movable or immovable) deriving from one or more offences may be seized or frozen by a decision of the judge or by order of the competent body (Art 51 of Law 06-01).*

*- In the context of the fight against money laundering, the specialised body (Financial Intelligence Unit) may, as a precautionary measure, oppose, for a maximum duration of 72 hours, the execution of all banking operations for a natural or legal person in respect of whom/which there are strong presumptions of money laundering or financing of terrorism. This measure may only be maintained beyond 72 hours by a judicial decision of the president of the tribunal of Algiers after consultation with the public prosecutor (Art 17,18 of Law 05/01 of 06/02/2005 on the prevention of and the fight against money laundering or financing of terrorism).*

*-The examining magistrate, as the case may be, may order this measure (Art 40 bis 5 CCP).*

Failing that, an alternative measure with the same purpose

*None.*

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*Yes.*

Body competent to authorize the measure

*Any competent judicial authority or other competent bodies (see Article 51 of Law 06/01, Art 17 and 18 of Law 05/01 and Art 40 bis 5 CCP).*

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*See Article 51 of Law 06/01, Art 17 and 18 of Law 05/01 and Art 40 bis 5 CCP.*

*-If the bilateral or multilateral conventions ratified by Algeria provide for this possibility in their provisions, the execution will take place in accordance with these provisions.*

*-If there are no conventions, the measure may be implemented in compliance with the applicable procedure in the requesting State subject to the principle of reciprocity*

Assistance or participation of agents of the requesting State in the execution of the measure

*Possible on a case-by-case basis.*

### **Restitution (503)**

Definition and scope of the measure

*Any person who claims entitlement to an object placed in the hands of the justice system may request restitution by an application to either the examining magistrate or the competent court (Art 86 – 163 paragraph 3 – 316 paragraphs 4, 5 and 6 - 372 et seq. CCP).*

*When no court has been seized or when, after a non-suit decision, the examining magistrate did not rule on the return of seized items, the public prosecutor may decide ex officio or upon request to return these items if their ownership is not seriously challenged (Art 36bis CCP).*

*In the context of the fight against corruption, law 06-01 includes measures for the direct recovery of assets; article 62 of that law stipulates that the Algerian courts are competent to rule in civil cases brought by States parties to the convention (UN Convention against Corruption) to establish right of ownership of property acquired through corruption.*

*This law also provides for this measure through international cooperation:*

*-Foreign decisions ordering the confiscation of property acquired through the commission of one of the offences established by law 06-01 or the means used for its commission shall be enforceable on the national territory in compliance with established rules and procedures.*

Failing that, an alternative measure with the same purpose

*None.*

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*Yes (compliance with the conventional framework or application of the principle of reciprocity).*

*See Art 720 CCP.*

Body competent to authorize the measure

*Any competent judicial authority. See Art 720, 86 and 36bis CCP*

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*See Art 86, 36bis and 720 CCP.*

*-If the bilateral or multilateral conventions ratified by Algeria provide for this possibility in their provisions, the execution will take place in accordance with these provisions*

*-If there are no conventions, the measure may be implemented in compliance with the applicable procedure in the requesting State subject to the principle of reciprocity.*

Assistance or participation of agents of the requesting State in the execution of the measure

*Conventional framework or principle of reciprocity.*

#### Interim measures in view of confiscation (504)

Definition and scope of the measure

*These measures are: seizure and freezing (see 501 and 502).*

*In the context of the fight against corruption, courts or competent and authorized authorities may order freezing or seizure of assets that are the proceeds of one of the offences listed in law 06-01 or material goods or other instruments used or intended for use in the commission of these offences, where there are sufficient grounds and evidence that subsequent confiscation will be ordered (Art 64).*

Failing that, an alternative measure with the same purpose

*None.*

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*Yes, conventional framework and principle of reciprocity.*

Body competent to authorize the measure

*Any competent judicial authority or other competent bodies (see definition above).*

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*See above-mentioned articles and art 721 CCP.*

Assistance or participation of agents of the requesting State in the execution of the measure

*On a case-by-case basis subject to conventional framework and principle of reciprocity.*

## Confiscation (505)

### Definition and scope of the measure

*The Algerian Criminal Code defines confiscation as the definitive transfer to the State of one or several specific assets, in the absence of an amount equivalent to their value - art 15.*

*Law 06-01 defines confiscation as a permanent deprivation of property by order of a judicial body – art 02 paragraph 1.*

*In the criminal code, confiscation is foreseen as an additional penalty: mandatory in case of conviction for crime and where the law expressly provides this in the case of misdemeanours or minor offences art 15 bis 1.*

*It is also provided as a security measure, regardless of the legal decision, for objects whose manufacturing, use, carrying, detention or sale constitutes an offence, as well as for objects qualified by the law or the regulation as dangerous or harmful (Art 16 CCP).*

*In the context of the fight against corruption, confiscation of illicit income and assets is mandatory in case of conviction for one of the offences covered in law 06-01.*

*Where a money laundering offence has been committed or any other offence within the jurisdiction of an Algerian court, confiscation of assets of foreign origin acquired by means of one of the offences covered in law 06-01 or used to commit these offences can be ordered and pronounced, even in the absence of a criminal conviction because of a termination of public prosecution or for any other cause (Art 63 paragraph 2 and 3).*

*In the context of the fight against narcotics, the competent court orders the confiscation of installations, equipment and other movable or immovable property used or intended to be used for the commission of the offence, regardless of who their owner is, unless the owner establishes their good faith (Art 33 of Law 04-18).*

*Art 32 and 34 of the same law also provide for the confiscation of plants and substances seized, and the money used in committing the offences covered in law 04-18.*

Failing that, an alternative measure with the same purpose

*None.*

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*Yes, conventional framework and principle of reciprocity.*

Body competent to authorize the measure

*Competent judicial authorities.*

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*See above-mentioned articles.*

*See also art 66 et seq. of Law 06-01.*

Assistance or participation of agents of the requesting State in the execution of the measure

## **6. PLACES – VISIT AND SEARCH**

### **Visit to and search of homes (601)**

#### **Definition and scope of the measure**

*The State guarantees the inviolability of the home. See article 40 of the Constitution.*

*Search is provided for in the Code of Criminal Procedure, articles 43, 44, 45, 47 and 64. The legislator requires a written authorisation from the competent judicial body.*

#### **Failing that, an alternative measure with the same purpose**

*None.*

#### **Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?**

*Most of the conventions ratified by Algeria include clear provisions concerning this measure and where there is no convention, requests for mutual judicial assistance are dealt with in compliance with Algerian law and the principle of reciprocity (Art 721 CCP).*

#### **Body competent to authorize the measure**

*The competent body for authorising this measure will depend on the procedural stage of the case:*

- The public prosecutor at the stage of the preliminary investigation. (Art 44, 64 and 79 CCP)*
- The examining magistrate at the stage of the judicial investigation. (Art 44, 64 and 79 CCP)*
- One of the members of the indictment chamber in the case of an additional enquiry. (Art 190 CCP)*
- The judge ordering an additional inquiry. (Art 356 CCP)*
- The competent judicial body in the context of a request for mutual judicial assistance.*

#### **Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)**

*Judicial police officers (in the case of a rapid-response investigation or one of the offences referred to in articles 37 and 40 CCP) may only enter the homes of persons who appear to have participated in a crime, retain documents or objects relating to the actions with which such persons are charged and search the premises subject to an authorisation in writing from the public prosecutor or examining magistrate with an obligation to produce this document before entering the home and proceeding to search it (Art 44 CCP).*

*Searches, home visits and seizures cannot be commenced before 5 a.m. and after 8 p.m., unless they are requested by the owner of the house, calls from inside the house or subject to the exceptions laid down by the law (Art 47 CCP).*

*During the preliminary investigation, searches, home visits and the seizure of documents as evidence may not be undertaken without the express consent of the person in whose home the operation takes place. This consent must take the form of a declaration in the hand-writing of the interested party or, if that person cannot write, he or she may be assisted by a third party of their choice; this will be mentioned in the report, and so will the fact of his or her consent (Articles 44 to 47 CCP and art 64 CCP also apply).*

#### **Concerning the possibility of implementing the applicable procedure in the requesting State:**

*If the bilateral or multilateral conventions ratified by Algeria provide for this possibility in their provisions, execution will take place in compliance with these provisions.*

*If there are no conventions, the measure may be implemented in compliance with the applicable procedure in the requesting State subject to the principle of reciprocity.*

Assistance or participation of agents of the requesting State in the execution of the measure

*Possible, if the convention provides for it in the framework of letters rogatory and the principle of reciprocity.*

### **Visit and search on the site of an offence (602)**

Definition and scope of the measure

*The visit and search on the site of an offence allows to directly observe the different circumstances likely to provide information on the commission of the offence or the identity of the perpetrator, especially in flagrant cases of offence (Art 79 to 86 CCP).*

*The examining magistrate and public prosecutor may go to the premises to make any useful observations there (articles 56, 60 and 79 CCP).*

Failing that, an alternative measure with the same purpose

*None.*

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*Yes, if foreseen in bilateral and multilateral conventions or by virtue of the principle of reciprocity (Art 720).*

Body competent to authorise the measure

*The judicial police is tasked with confirming offences, assembling evidence and looking for the perpetrators (by all methods, including visits), either ex officio or upon instruction from the public prosecutor, until a judicial investigation is opened. (Art 12, 36, 42, 56 and 63 CCP)*

*Once a judicial investigation has been opened, the judicial police will follow instructions from the investigating courts. (Art 13 CCP)*

*The public prosecutor and examining magistrate may decide to attend the visit and search (at their discretion). (Articles 79, 80, 57 and 60 CCP)*

*The court, either ex officio or at the request of the prosecution, a plaintiff or the accused, may order any useful visits with a view to ascertaining the truth. (Art. 235 CCP)*

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*Article 79 CCP provides that the examining magistrate may attend the visit and search, subject to the following conditions;*

*He or she must advise the public prosecutor.*

- *Always be assisted by a court clerk.*
- *Draw up a report on his or her operations.*

- *Give advance notice to the public prosecutor for the court into whose jurisdiction the examining magistrate is travelling and mention the reasons for his or her visit in the report. (if he or she travels to places that come under the jurisdiction of adjacent courts) (art 80 CCP)*

*The last condition also applies where a public prosecutor travels into the jurisdiction of adjacent courts. (Art 57)*

*Concerning the possibility of implementing the measure in compliance with the applicable procedure in the requesting State:*

*Yes, if the bilateral or multilateral conventions ratified by Algeria provide for this possibility in their provisions.*

*If there are no conventions, the measure may be implemented in compliance with the applicable procedure in the requesting State subject to the principle of reciprocity and respect for law enforcement in the requested State.*

**Assistance or participation of agents of the requesting State in the execution of the measure**

*Possible, if the convention provides for it in the framework of letters rogatory and the principle of reciprocity.*

## **7. WITNESSES, VICTIMS, SUSPECTS - SUMMONING AND HEARING**

### **Summoning witnesses (701)**

**Definition and scope of the measure**

*The summons served on a witness obliges him or her to appear and give evidence before the investigating court or the adjudicating court or before the judicial police in the context of a preliminary investigation. (Art 65-1, 88 and 220 CCP)*

**Failing that, an alternative measure with the same purpose**

*None*

**Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?**

*Most of the conventions ratified by Algeria include clear provisions concerning this measure and where there is no convention, requests for mutual judicial assistance are dealt with in compliance with Algerian law, subject to the principle of reciprocity. (Art 721 CCP)*

**Body competent to authorize the measure**

*The judicial police officer or law enforcement agent. (Art 65-1 and 338 CCP)*

*The prosecution. (Art 440 CCP)*

*The examining magistrate. (Art 88 CCP)*

*The judge. (Art 223)*

**Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)**

*Subject to provisions to the contrary in the laws and regulations, the provisions in the Code of Civil Procedure regarding summonses and notification will apply (Art 439 CCP).*



*A summons will be issued at the request of the prosecution and any administration qualified to make such a request. The agent serving the summons must carry out the visit without delay. The summons states the charge and refers to the text of the law that sanctions it.*

*It indicates the court at which the proceedings will be held, the place, time and date of the hearing and whether the addressee has been summonsed as a defendant, party incurring civil liability or a witness.*

*The summons served on a witness must also mention that, a failure to appear, refusal to testify, or giving false evidence, will be sanctioned by the law (Art 440 CCP).*

*The summons served on a witness must also mention that, a failure to appear, refusal to testify, or giving false evidence, will be sanctioned by the law (Art 440 CCP).*

*The judicial police officer may, with the public prosecutor's prior consent, use force to oblige persons who have failed to respond to two summonses to appear in court (Art 65-1 CCP).*

*An examining magistrate may, through a law enforcement agent, summons to appear before him or her any person whose testimony he or she deems useful. A copy of the summons is delivered to the person summonsed by an ordinary letter by the administrative channel or, alternatively, they may appear voluntarily (art 88 CCP).*

*Witnesses in a case of flagrante delicto may be called before the court verbally by any judicial police officer or law enforcement agent. They are bound to appear on pain of sanctions, as laid down in the law (art 338 2 CPP).*

*Concerning the possibility of implementing the measure in compliance with the applicable procedure in the requesting State:*

*If the (bilateral or multilateral) conventions ratified by Algeria provide for this possibility in their provisions, the request for mutual judicial assistance will be implemented in accordance with those provisions*

*If there are no conventions, the measure may be implemented in compliance with the applicable procedure in the requesting State subject to the principle of reciprocity and respect for law enforcement in the requested State.*

**Assistance or participation of agents of the requesting State in the execution of the measure**

*This is possible if foreseen for by the convention or in application of the principle of reciprocity.*

### **Hearing witnesses: standard procedure (702)**

**Definition and scope of the measure**

*Witnesses are heard by officers of the judicial police in the course of a preliminary investigation and by the examining magistrate, public prosecutor and adjudicating court.*

**Failing that, an alternative measure with the same purpose**

*None.*

**Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?**

*Most of the conventions ratified by Algeria include clear provisions concerning this measure and where there is no convention, requests for mutual judicial assistance are dealt with in compliance with Algerian law and subject to the principle of reciprocity (Art 721 CCP).*

Body competent to authorize the measure

*The prosecution (article 440 CCP), examining magistrate (article 88 CCP), adjudicating court (article 223 CCP), judicial police officer (articles 90, 224 et 225 and 301 CCP).*

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*Witnesses are heard separately and without the presence of the accused, by the examining magistrate, assisted by his or her court clerk. Their statement is minuted (Art 90 CCP). Witnesses who have been heard regarding the facts are invited to state their family name, first name, age, profession, residence, to say whether they are related to or allied with the parties and whether they lack legal capacity. Each witness will take an oath (Art 93 CCP).*

*The provisions in articles 220 and 94 to 97 CCP.*

*Concerning the possibility of implementing the applicable procedure in the requesting State:*

*If the bilateral or multilateral conventions ratified by Algeria provide for this possibility in their provisions, the request for mutual assistance will be implemented in accordance with these provisions.*

*If there are no conventions, the measure may be implemented in compliance with the applicable procedure in the requesting State subject to the principle of reciprocity and respect for law enforcement in the requested State*

Assistance or participation of agents of the requesting State in the execution of the measure

*Possible, if the convention provides for it in the framework of letters rogatory and the principle of reciprocity.*

**Hearing witnesses: by video conference (703)**

Definition and scope of the measure

*Algerian law does not make provision for this type of hearing but, depending on the (bilateral or multilateral) conventions, the said method may be used in the context of mutual judicial assistance*

Failing that, an alternative measure with the same purpose

*Yes. If a witness is unable to appear, the examining magistrate will travel to hear him or her, or issue letters rogatory for this purpose (art 99 CPP). Certain conventions provide for the possibility of transferring persons to the territory of the requesting State for them to be heard.*

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*Yes (please refer to the previous reply).*

Body competent to authorize the measure

*The competent judicial authority for implementing a request for mutual judicial assistance.*

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*No precedent in this context.*

Assistance or participation of agents of the requesting State in the execution of the measure

*Yes.*

**Hearing witnesses: by telephone (704)**

Definition and scope of the measure

*This procedure is not provided for by the Algerian legislation.*

Failing that, an alternative measure with the same purpose

*Yes.*

*If a witness is unable to appear, the examining magistrate will travel to hear him or her or issue letters rogatory for this purpose (art 99 CPP).*

*Certain conventions provide for the possibility of transferring persons to the territory of the requesting State for them to be heard.*

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*Yes (please refer to the previous reply) but there is no precedent in this context.*

Body competent to authorize *the* measure

*The competent judicial authority for implementing a request for mutual judicial assistance/ there is no precedent in this context.*

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*N/A*

Assistance or participation of agents of the requesting State in the execution of the measure

*No precedent in this context.*

**Hearing children (705)**

Definition and scope of the measure

*Is possible at the stages of preliminary investigation, judicial investigation and judgement, provided that they are in the presence of their parents, custodian or known guardian.*

*It should be pointed out that Algerian law deems a person a child if they were under 18 years of age at the time at which the acts in question occurred.*

*The law protects children who are victims of crimes and misdemeanours in articles 493 and 494 CCP.*

Failing that, an alternative measure with the same purpose

*None*

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*Yes, if it is provided for in bilateral conventions and the principle of reciprocity.*

Body competent to authorize the measure

*The public prosecutor, examining magistrate, adjudicating court, judicial police officer and juvenile court judge. (Art 454 CCP)*

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*This issue is governed by the Code of Criminal Procedure, Art. 444 and seq.*

Assistance or participation of agents of the requesting State in the execution of the measure

*Possible if the convention provides for it or in application of the principle of reciprocity.*

#### Hearing persons collaborating with the inquiry (706)

Definition and scope of the measure

*No special treatment; see the hearing of witnesses (702).*

Failing that, an alternative measure with the same purpose

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*Yes.*

Body competent to authorize the measure

*The competent Algerian requested authority: the public prosecutor, the examining magistrate, the adjudicating court and the judicial police officer.*

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*If the bilateral or multilateral conventions ratified by Algeria provide for this possibility in their provisions, the request for mutual assistance will be implemented in accordance with these provisions.*

*If there are no conventions, the measure may be implemented in compliance with the applicable procedure in the requesting State subject to the principle of reciprocity and respect for law enforcement in the requested State.*

Assistance or participation of agents of the requesting State in the execution of the measure

*Possible*

#### Hearing victims/plaintiffs (707)

Definition and scope of the measure

*Any person who considers himself/herself victim of a crime, an offence or a contravention can file civil proceedings before the examining magistrate – art 72 cpp, prior to the hearing by a written declaration/statement to the Registrar – art 240 ccp, or during the hearing art 239 ccp.*

Failing that, an alternative measure with the same purpose

*None.*

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*Yes, if it is provided for in bilateral conventions and the principle of reciprocity*

**Body competent to authorize the measure**

*The competent Algerian requested authority: the public prosecutor, the examining magistrate, the adjudicating court and the judicial police officer.*

**Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)**

*The practical hearing modalities of the complainants before the examining magistrate are provided for by articles 103, at art. 108 of the Code of Criminal Procedure. The hearing modalities during the hearing are provided for by art. 355 CCP.*

*If the bilateral or multilateral conventions ratified by Algeria provide for this possibility in their provisions, the request for mutual assistance will be implemented in accordance with these provisions*

*If there are no conventions, the measure may be implemented in compliance with the applicable procedure in the requesting State subject to the principle of reciprocity and respect for law enforcement in the requested State.*

**Assistance or participation of agents of the requesting State in the execution of the measure**

*Possible*

**Hearing experts (708)**

**Definition and scope of the measure**

*No special treatment, see the hearing of witnesses (702); except in the case of experts who have not been approved and who have to take an oath before the examining magistrate or competent court.*

*Experts may be heard during the preliminary investigation, before the examining magistrate or the adjudicating court in order to explain their conclusions (Art 49, 143 et seq. CCP).*

**Failing that, an alternative measure with the same purpose**

*None.*

**Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?**

*Yes.*

**Body competent to authorize the measure**

*The competent Algerian requested authority: the public prosecutor, the examining magistrate, the adjudicating court and the judicial police officer.*

**Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)**

*If the bilateral or multilateral conventions ratified by Algeria provide for this possibility in their provisions, the request for mutual assistance will be implemented in accordance with these provisions.*

*If there are no conventions, the measure may be implemented in compliance with the applicable procedure in the requesting State subject to the principle of reciprocity and respect for law enforcement in the requested State.*

**Assistance or participation of agents of the requesting State in the execution of the measure**

*Possible*

### Summoning suspects/persons accused (709)

Definition and scope of the measure

*See the summoning of witnesses (701).*

Failing that, an alternative measure with the same purpose

*The use of public force, bench warrant (mandat d'amener) and arrest warrant;*

- *An officer of the judicial police may, with the prior consent of the public prosecutor, use public force to oblige persons to appear in court when they have failed to reply to two summonses to appear. (Art 65-1 CCP)*

- *In the case of a rapid-response investigation and if the examining magistrate has not yet been referred to, the public prosecutor may issue a bench warrant against any person suspected of having taken part in the offence. (Art 58 CPP)*

*The examining magistrate may issue a bench warrant or an arrest warrant. (Art 109 CPP)*

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*Most of the conventions ratified by Algeria include clear provisions concerning this measure and where there is no convention, requests for mutual judicial assistance are dealt with in compliance with Algerian law, subject to the principle of reciprocity. (Art 721 CCP)*

Body competent to authorize the measure

*The competent Algerian requested authority: the public prosecutor, the examining magistrate, the adjudicating court and the judicial police officer.*

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*No specific measure, see Summoning of witnesses (701).*

Assistance or participation of agents of the requesting State in the execution of the measure

*Possible, if the convention provides for it in the context of letters rogatory and the principle of reciprocity.*

### Hearing suspects/persons accused: standard procedure (710)

Definition and scope of the measure

*The criminal process allows both sides to be heard; the accused person chooses his or her own means of defence.*

*The judicial police interrogate suspects in the course of the preliminary investigation. The public prosecutor interrogates the suspect who has been brought before him or her. The suspect has the right to assistance from counsel in a case of flagrante delicto.*

*The examining magistrate and adjudicating court will interrogate the accused in criminal cases (minor offences, offences and misdemeanours) (Articles 59 and 100, 302 CPP).*

Failing that, an alternative measure with the same purpose

*None*

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*Most of the conventions ratified by Algeria include clear provisions concerning this measure and where there is no convention, requests for mutual judicial assistance are dealt with in compliance with Algerian law, subject to the principle of reciprocity (Art 721 CCP).*

Body competent to authorize the measure

*The competent Algerian requested authority: the public prosecutor, the examining magistrate, the adjudicating court and the judicial police officer.*

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*Where the perpetrator has been caught in flagrante delicto, the public prosecutor interrogates the person brought before him or her in the presence of the accused's lawyer if the latter is on the premises. If a person presents him or herself spontaneously, accompanied by his or her lawyer, he or she will be interrogated in the presence of the latter (Articles 58 and 59 CCP).*

*At the person's first appearance, before the hearing, the examining magistrate will confirm the identity of the accused, expressly inform him or her of each of the charges against him/ her and advise him/her that he/she is not obliged to make a statement. This warning is noted in the transcript. If the accused wishes to make any statements, these will be immediately admitted by the examining magistrate. The latter will inform the accused of his or her right to choose a lawyer and, if he or she does not do so, the magistrate will appoint one, if the accused requests this. This will be noted in the transcript. The magistrate will also advise the accused that he or she must inform the court of any change of address. The accused may elect domicile within the court's jurisdiction (Art 100 CCP).*

*The adjudicating court interrogates the accused directly or, at his or her lawyer's request, through the magistrate (Art 302 CPP).*

*Reference should be made to articles 350 and 353 CPP.*

Concerning the possibility of implementing the applicable procedure in the requesting State:

*If the bilateral or multilateral conventions ratified by Algeria provide for this possibility in their provisions, the request for mutual assistance will be implemented in accordance with these provisions.*

*If there are no conventions, the measure may be implemented in compliance with the applicable procedure in the requesting State subject to the principle of reciprocity.*

Assistance or participation of agents of the requesting State in the execution of the measure

*Possible*

**Hearing suspects/persons accused: by video conference (711)**

Definition and scope of the measure

*See the reply concerning the hearing of witnesses by video mentioned above.*

Failing that, an alternative measure with the same purpose

*Interrogation at home or at a penitentiary (Art 350 CCP).*

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*See the reply concerning the hearing of witnesses by video (in the context of mutual judicial assistance) mentioned above.*

Body competent to authorize the measure

*The same reply as that concerning the hearing of witnesses by video.*

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*The same reply as that concerning the hearing of witnesses by video.*

Assistance or participation of agents of the requesting State in the execution of the measure

*The same reply as that concerning the hearing of witnesses by video.*

#### Hearing suspects/persons accused: by telephone (712)

Definition and scope of the measure

*See the reply concerning the hearing of witnesses by telephone mentioned above.*

Failing that, an alternative measure with the same purpose

*None*

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*Yes, No precedent in this context.*

Body competent to authorize the measure

*See the reply concerning the hearing of witnesses by telephone mentioned above.*

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*See the reply concerning the hearing of witnesses by telephone mentioned above.*

Assistance or participation of agents of the requesting State in the execution of the measure

*See the reply concerning the hearing of witnesses by telephone mentioned above.*

#### Confrontation (713)

Definition and scope of the measure

*See Art 96 and 101 CCP.*

Failing that, an alternative measure with the same purpose

*None*

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*Yes.*



Body competent to authorize the measure

*Examining magistrate, adjudicating court. (Articles 96 and 101 CPP)*

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*The examining magistrate may immediately proceed to an interrogation and to confrontations between the accused, witness and plaintiff (Art 102 CCP). The adjudicating court may arrange confrontations (between the accused, witness and plaintiff) directly or at the request of the lawyers, through the magistrate.*

*Concerning the possibility of implementing the applicable procedure in the requesting State:*

*If the bilateral or multilateral conventions ratified by Algeria provide for this possibility in their provisions, the request for mutual assistance will be implemented in accordance with these provisions.*

*If there are no conventions, the measure may be implemented in compliance with the applicable procedure in the requesting State subject to the principle of reciprocity.*

Assistance or participation of agents of the requesting State in the execution of the measure

*Possible*

## **8. CROSS-BORDER OPERATIONS**

### **Cross-border observation (801)**

Definition and scope of the measure

*There is no such measure in the Algerian legislation.*

Failing that, an alternative measure with the same purpose

*No precedent*

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*No precedent.*

Body competent to authorize the measure

*No precedent.*

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*No precedent.*

Assistance or participation of agents of the requesting State in the execution of the measure

*No precedent.*

### Cross-border hot pursuit (802)

Definition and scope of the measure

Failing that, an alternative measure with the same purpose

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

Body competent to authorize the measure

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

Assistance or participation of agents of the requesting State in the execution of the measure

### Cross-border tracking (by placing a beeper on a vehicle or a person) (803)

Definition and scope of the measure

*This issue is governed by the Code of Criminal Procedure in the chapter titled "interception of correspondences of sounds and image freezing"*

Failing that, an alternative measure with the same purpose

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

Body competent to authorize the measure

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

Assistance or participation of agents of the requesting State in the execution of the measure

### Controlled deliveries (804)

Definition and scope of the measure

*Controlled delivery pursuant to Law 05/06 concerning the fight against smuggling (Art 40), following authorisation by the public prosecutor. This measure is also provided for in the law 06-01 on prevention and fight against corruption (Art 56).*

Failing that, an alternative measure with the same purpose

*None*

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*Assistance is not granted when this undermines national sovereignty, laws and obligations entered into by an agreement, security, law and order, or when it would harm commercial and professional interests.*

Body competent to authorize the measure

*Public prosecutor, Art 40 of the law on the fight against smuggling.*

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*After authorisation by the competent public prosecutor, the qualified bodies in the area of the fight against smuggling, may, with knowledge of the case and subject to their surveillance, authorise the movement of illicit or suspect goods into, out of or in transit through Algerian territory with a view to discovering and combating smuggling (Art 40 and 41 of the law on the fight against smuggling).*

Assistance or participation of agents of the requesting State in the execution of the measure

*No precedent in this context.*

#### Joint investigation teams (805)

Definition and scope of the measure

*Is not provided for by the Algerian legislation.*

Failing that, an alternative measure with the same purpose

*None*

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*Yes.*

Body competent to authorize the measure

*The requested authority for enforcing the request for mutual judicial assistance.*

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*Not provided for by the law.*

Assistance or participation of agents of the requesting State in the execution of the measure

*Yes.*

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# EUROMED JUSTICE III PROJECT

## Criminal and Penitentiary Law

### WG 3.1

Working Group on Criminal Law in order to prepare a tool equivalent to the so-called “fiches belges”

## EGYPT

### 3. EXAMINATION, BODY SEARCH AND EXPERT EVALUATION.

#### Superficial body search (301)

##### Definition and scope of the measure

*Administrative inspection is an inspection carried out for purely administrative purpose and has no relation with any crime investigation or searching for relevant evidences. Its soundness is conditional on the existence of a regulation by the competent authority to authorize such inspection and this regulation could be a legislation, regulations or administrative regulation , such as :*

- 1- *Inspection of prisoners;*
- 2- *Inspection carried out by custom's officers;*
- 3- *Inspection carried out by security personnel at airports;*
- 4- *Inspection carried out by ambulance's staff.*

Failing that, an alternative measure with the same purpose.

*N/A*

Is the measure possible under mutual judicial assistance? IF not, does an alternative measure exist?

*Evidences resulted from the administrative inspection may be relied thereon in mutual judicial assistance, provided that there is an equivalent regulation in the requested state as the matter is related to a procedural rule in criminal matter.*

##### Body competent to authorize the measure

*Authority authorized to conduct administrative inspections is any authority that has the right to conduct inspections under legal regulation, whether it is legislative or administrative regulation or regulations.*

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting state)

*By organizing mutual agreements that authorize the legality of evidence derived from the administrative inspection.*

Assistance or participation of agents of the requesting State in the execution of the measure

*Please refer to the answer given to the previous item.*

## Invasive body search (302)

### Definition and scope of the measure

*Invasive inspection is a precautionary measure that justifies to any member of the judicial police or the authority implementing of arrest warrant to do so to avoid any acts that could potentially be made by the perpetrator. Its soundness is conditional on the existence of a justification by the law to do so. (Challenge 21492 for the judicial year 69 session 17/1/2002).*

Failing that, an alternative measure with the same purpose.

N/A

Is the measure possible under mutual judicial assistance? IF not, does an alternative measure exist?

*Yes, under mutual judicial assistance agreements.*

### Body competent to authorize the measure

*Public Prosecution and the judicial officer or any authority concerned with the implementation of a judicial order that requires the above-mentioned inspections, and all who has the right to judicial officers including:*

- 1. Staff of the Department of Consumer Protection*
- 2. Supply department inspectors*
- 3. Staff Central Accounting Authority*

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting state)

*Through international agreements the legality of the evidence derived from the preventive inspection can be stipulated in accordance with the provisions of the existing legislation in both requesting and the requested countries.*

Assistance or participation of agents of the requesting State in the execution of the measure

*See answer given in the previous paragraph.*

## Psychiatric medical examination (303)

### Definition and scope of the measure

*This measure is conducted by the primary investigating authority represented in the public prosecution or the final investigating authority represented in the court that examines the criminal case then it can second a doctor or a committee of medical specialists to examine mental and psychological status of the accused to stand on the availability of his full consciousness during the commission of the crime.*

Failing that, an alternative measure with the same purpose

N/A

Is the measure possible under mutual judicial assistance? IF not, does an alternative measure exist?

*Yes, under mutual judicial assistance agreements.*



Body competent to authorize the measure

*Department of forensic medicine at the Ministry of Justice, upon a request from the Public Prosecution or competent court.*

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting state)

*Issuing a decision from the Public prosecution or the court to authorise specialist doctors committee to examine a patient and prepare a report on his mental and psychological condition.*

Assistance or participation of agents of the requesting State in the execution of the measure

*Yes, under mutual judicial assistance agreements.*

#### Control of identity, measures for judicial identification (304)

Definition and scope of the measure

*These measures shall be taken by the competent authority in the country to check the sound official identification of suspects and accused and their conformity to their proven correct official data whether this identity is a passport or travel document or any other official true document which prove their identity.*

*Judicial proceedings mean measures that carried out by competent authorities to assure that the concerned person which a particular legal measure was taken against him is the same person who committed a particular crime or suspected of doing it.*

Failing that, an alternative measure with the same purpose.

*N/A*

Is the measure possible under mutual judicial assistance? IF not, does an alternative measure exist?

*Yes, under mutual judicial assistance agreements.*

Body competent to authorize the measure

*The Interior Ministry in coordination with the Public Prosecution.*

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting state)

*If this person is in the territory of the state which he holds its nationality, there is no problem, if he is in the territory of another state, the full file that includes the name of the accused or the suspected person, his crime and all the measures that have been taken about him either at investigation or trial stage shall be sent .*

Assistance or participation of agents of the requesting State in the execution of the measure

*Yes, under mutual judicial assistance agreements.*

## Technical or scientific examination or expert evaluations (305)

### Definition and scope of the measure

*Expertise means technical advice sought by the judges or the court to assessing the technical issues that require technical knowledge or know-how that are not available in those in charge of the investigation due to their work nature and culture, whether those technical issues are related to the accused himself or the crime tool or materials used in the perpetration of the crime or its effects. Examples include autopsy to determine the cause of death and simulation to know the writing and to whom it returns back.*

*If the purpose of the expertise is assistance of those undertaking the investigation to reach the truth, this requires that who has such expertise meaning the expert should have in addition to accuracy of work, the impartiality and integrity when conducting that work. And if there is a reason that would affect the impartiality and integrity of the expert, he should ask the competent investigation authority to disqualify the expert. This is stipulated for by Egyptian legislator in the in the Criminal Procedure Code in Article (89) which stipulates that (litigants have the right to disqualify an expert if they find strong reasons to do so).*

Failing that, an alternative measure with the same purpose.

N/A

Is the measure possible under mutual judicial assistance? IF not, does an alternative measure exist?

*Yes, under mutual judicial assistance agreements or under international conventions to which Egypt adhered.*

### Body competent to authorize the measure

*This measure may be taken at the request of the Public prosecution or the competent court through the department of experts at the Ministry of Justice or through any governmental authority having experts that may be sought such as Central Accounting Authority and department of control over the banks at the Central Bank if the case is related to accounts in banks or Building Research Centre at the Ministry of Housing if the technical matter is related to engineering matters.*

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting state)

*This measure is executed by technical committees authorized for this purpose by Expert's department at the Ministry of Justice under bilateral agreements and international conventions.*

Assistance or participation of agents of the requesting State in the execution of the measure

*Yes, under bilateral and multilateral judicial cooperation agreements.*

## 4. DOCUMENTS-OBTAINING.

### Spontaneous exchange of information (401)

#### Definition and scope of the measure

*Freedom of exchange of information is a new and non-traditional idea and it lacks the practical practice in Egypt, unless this information is related to investigations or prosecutions and criminal proceedings of the incident; they can be obtained according to a permission from the Public Prosecution or from the competent court and it is worth mentioning that the Ministry of Justice is about to complete the preparation of the draft law on the free flow of information in preparation to take constitutional measures concerning it during the current legislative term.*

Failing that, an alternative measure with the same purpose.

*As previously stated, if this information was related to the crime that was committed, it can be obtained upon permission from the Public prosecution or permit from the competent court.*

Is the measure possible under mutual judicial assistance? IF not, does an alternative measure exist?

*This measure may be executed under judicial cooperation for mutual judicial assistance or under international conventions to which Egypt acceded.*

Body competent to authorize the measure

*The competent court or Public prosecution.*

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*This measure is implemented through central authorities in both states the requesting and the requested through a request submitted by the requesting state to the requested state specifying the measure nature and responsible authority and this within mutual judicial assistance or within the framework of reciprocity principle or international courtesy. The international cooperation sector at the ministry of justice is the central authority responsible for receiving such requests.*

Assistance or participation of agents of the requesting State in the execution of the measure.

*It is possible within the framework of mutual judicial assistance referred to in the previous item*

#### Order to produce documents (402)

Definition and scope of measure

*Upon a request by the concerned person, an order to obtain documents related to preliminary investigation or trial may be submitted. In this case the Public Prosecution or the competent court, within its jurisdiction, shall issue a permission to obtain such documents or any other documents to rely upon during case proceedings.*

Failing that, an alternative measure with the same purpose.

*N/A*

Is the measure possible under mutual judicial assistance? IF not, does an alternative measure exist?

*Yes, the measure is possible under mutual judicial assistance agreements.*

Body competent to authorize the measure

*Public Prosecution in case of criminal investigation and civil court if the dispute is related to civil action.*

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*Judicial assistance is executed according to the law of the requested State and the measure will be executed in conformity with the procedure applicable in the requesting State to the extent acceptable by the domestic laws. The requested State shall notify the requesting State upon its request of the date and place of executing the request through the central authority that will send requests to the concerned authorities.*

Assistance or participation of agents of the requesting State in the execution of the measure.

*The participation is admissible with the consent of the competent authority executing the production.*

#### Other possibilities of obtaining information concerning taxes or bank accounts (403)

##### Definition and scope of measure

*The provision of article 98 of the Law no.88 of the year 2003 promulgating the law on central bank, the banking machinery and exchange " the Attorney General or the one he delegates from at least the first advocates general may, of his own accord, or upon the request of an official entities or interested party, request Cairo court of appeal to pass an order for reviewing or obtaining any data or information connected with the accounts, deposits, trusts, or safes prescribed in the previous article, or their related dealings, if this necessitates uncovering the fact in a crime or misdemeanour proved with serious evidences to be occurred.*

*Any interested party may, in case of declaring one's wealth on the occasion of reserving a site with one of the banks that are subject to the provisions of the present Law, submit the request referred to in the previous clause to the concerned court of appeal.*

*The court, held in camera, shall decide the request within the three days subsequent to the date of its submission, after the statement of the public prosecution or the concerned party.*

*The Attorney General or the one he delegates from at least the first advocates general, and the concerned party, according to each case, shall notify the bank and interested parties of the order to be ruled by the court, within three days subsequent to passing it.*

*The time determined for declaring one's wealth shall begin from the date of notifying the bank with the said court order.*

*The Attorney General or the one he delegates from at least the first advocates general shall directly order reviewing or obtaining any data or information connected with the accounts, deposits, trusts, or safes prescribed in article (97) of the present Law, or their related dealings, if this necessitates uncovering the fact in one of the crimes prescribed in Book -2 Part-2 , Section 1 of Penal Code, and in the crimes prescribed in the Money Laundering Combat Law as promulgated by Law No.80 of the year 2002.*

Failing that, an alternative measure with the same purpose.

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*This measure may not be taken unless there is a criminal investigation being conducted in the requested State (Egypt) and in accordance with the abovementioned rules, as Egypt did not organize access to customer accounts if there is an investigation going on in the requesting State despite it signed the UN Convention against Corruption, taking into account that this measure may be organized to be taken within the framework of judicial cooperation agreements on mutual legal assistance.*

##### Body competent to authorize the measure

*The Court that examines the case or Public Prosecution in crimes of money laundering and the crimes set forth in Section I of Part II of the Second Book of the Penal Code, which is the encroachment on state security from abroad.*

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State).

*This measure is implemented through the Public Prosecutor's office and within the framework of the provisions listed in Judicial Cooperation Agreements related to mutual judicial assistance or within the framework of International Conventions that Egypt adhered thereto. This measure is implemented according to the laws of the requested State and according to the manner specified by the requesting State.*

Assistance or participation of agents of the requesting State in the execution of the measure.

*It will be implemented according to the aforementioned procedures.*

#### Access to public documents in judicial files (404)

##### Definition and scope of measure

*The general principle is confidentiality of investigations; if the documents are related to a case being subject of an investigation by the Public Prosecution, then the general principle is inadmissibility of obtaining such documents as they are related to the investigation process conducted by the Public Prosecution ; while if the case or the crime being subject of investigation is referred to the court, in this case it will be possible requesting the obtaining of a copy of the documents or having access thereto.*

Failing that, an alternative measure with the same purpose.

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*This measure may be taken under Mutual Judicial Assistance or under International Conventions that Egypt adhered thereto, provided that that measure is not related to a crime being subject of an investigation or a trial in the requested State.*

##### Body competent to authorize the measure

*Competent court or Public Prosecution.*

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State).

*This measure is implemented through the competent court and under the provisions of Mutual Judicial Assistance Agreements and under International Conventions that Egypt adhered thereto.*

Assistance or participation of agents of the requesting State in the execution of the measure.

*This measure is implemented under the agreements whether bilateral or multilateral.*

#### Communication of individual police records (405)

##### Definition and scope of measure

*This measure is executed by the Ministry of Interior directly or upon a request from the concerned person to verify if the suspected person or the person subject of investigation has committed*

*previous crimes and nature of such crimes, relevant sentences and date of issuing.*

Failing that, an alternative measure with the same purpose.

*N/A*

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*Yes, under mutual judicial assistance and international agreements that Egypt adhered thereto.*

Body competent to authorize the measure

*Ministry of Interior*

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State).

*This measure is conducted by the central authority in the requested state that send it to the investigating authority or the trial in accordance with the procedures provided for in agreements and domestic laws of the requested state.*

Assistance or participation of agents of the requesting State in the execution of the measure.

*Benefit of that State's legislations if available.*

#### Sending and service of procedural documents (406)

Definition and scope of measure

*The requesting state shall send and service abroad the documents that relate to a case being subject of investigation or trial before courts, and the requested state shall implement the service of any document sent by the requesting state and return it back after implementation under the provisions of judicial cooperation agreements whether bilateral or multilateral. This measure is implemented by the Public Prosecution that sends summons to the Ministry of Foreign Affairs to send them by diplomatic channels and it may, on reciprocity clause, deliver the copy directly to the diplomatic mission premises of the State where the domicile of the person to be notified is existent*

Failing that, an alternative measure with the same purpose.

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*Yes*

Body competent to authorize the measure.

*Public Prosecution according to the provisions listed in Pleadings Law and related to the service abroad of summons and documents.*

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State).

*A translation of the documents into a language of the requested State. This procedure shall be executed by the general prosecution which shall send the service the procedural documents to the Ministry of Interior to be delivered through the diplomatic channels. It may also, under the condition of reciprocity, deliver the copy directly to the headquarters of the diplomatic mission of the State where the home of the person who is to be serviced is located so as to be delivered.*

Assistance or participation of agents of the requesting State in the execution of the measure.

*As mentioned before this measure is implemented within the framework of the abovementioned procedures.*

#### Transfer of proceedings (407)

##### Definition and scope of measure

*There is no domestic legislation regulating the transfer of criminal proceedings but Egypt ratified the UN Convention on organized crime and UN Convention against Corruption which include that measure and Egypt is committed to the provisions listed in those conventions. Additionally, Egypt has finalized the preparation of a draft law on international judicial cooperation in criminal matters that legalize all provisions listed in international instruments. The idea is based on the following: a State submits a request to transfer procedures of pursuing related to an act criminalized in both States with the aim of concentrating the pursuing as the person subject of pursuing holds the nationality of that State and the committed act is subject to the law of the requesting state.*

Failing that, an alternative measure with the same purpose.

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*Yes, this measure may be taken under Mutual Judicial Assistance and under International Conventions that Egypt adhered thereto*

##### Body competent to authorise the measure

*Public prosecution and investigative judge*

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*This measure may be executed by the public prosecutor office and under the mutual agreements or the international conventions framework which Egypt has adhered thereto*

Assistance or participation of agents of the requesting State in the execution of the measure

*Please refer to answer given in the previous item*

#### 5. ASSETS – SEQUESTRATION, CONFISCATION AND RESTITUTION

##### Sequestration of assets (501)

##### Definition and scope of the measure

*The Egyptian legislator in Article 208 bis 1 of the Code of Criminal Procedure permitted the sequestration of the money of the accused according to certain controls as it stipulates that in the circumstances in which there are enough evidences of the seriousness of the charge in any of the crimes stipulated in Part IV of the Second Book of the Penal Code and other crimes, which committed against property owned by the State or public bodies and institutions and its subordinate units or other public legal persons, as well as the crimes where the law stipulates that the Court must directly decide that amounts or the value of things subject of the crime shall be refunded or compensate the victim entity if Public Prosecution sees that precautionary measures*

*management of it . It shall submit the matter to the competent Criminal Court requesting the issuance of a judgment to ensure the implementation what will be ordered in terms of a fine or restitution or compensation. The Public Prosecutor in case of necessity or in case of urgency can order temporarily preventing the defendant or his spouse or his children to act in their property, or its management, and the injunction of the administration should include the appointment of someone who runs reserved property the and the Attorney General in all cases should submit the matter to the competent criminal court within seven days from the date of issuance, requesting an order that prevents disposal or management. The Criminal Court shall issue its ruling in previous cases after hearing the testimony of the concerned parties within a period not exceeding fifteen days from the date of the matter, and the Court shall decide on the extent of the continuing temporal order referred to in the preceding paragraph whenever sees to postpone consideration of the request.*

*The judgment should include reasons that it builds thereon and prevention of management should include the appointment of who runs of reserved property after consulting the public prosecution. And the court may - at the request of public prosecution - include in its ruling any money of the accused spouse or minor children if there is sufficient evidence that it is proceeds of crime subject of the investigation and the funds went to them from the accused after their inclusion in demand. Who will be appointed to undertake the administration shall receive the reserved funds and initiates inventoried in the presence of the concerned parties and representative of the public prosecution or an expert delegated by the court. The inventory shall be conducted according to the provisions of Articles 965 and 989 of the Code of Civil and Commercial Procedure. And who will be appointed shall be committed to maintaining and well management of the property and return them back with its profits in accordance with the provisions set forth in the Civil Code on the agency in the work of the administration, deposit and guard it as organized by a decision of the Minister of Justice.*

**Failing that, an alternative measure with the same purpose**

**Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?**

*This measure may be executed under the judicial cooperation agreements related to mutual judicial assistance or under the multilateral international conventions which Egypt adhered thereto. Taking into account the controls mentioned in the above article , bearing in mind that Egypt had not been modified - so far - procedural legislation in that regard in a manner consistent with the text of Article 54 of the Convention against Corruption, signed by Egypt in 2004. This matter is being prepared to be amended in the coming period.*

**Body competent to authorize the measure**

*The affected body upon a request of the public prosecution and under the supervision of judges in case of urgency and upon a decision from the court in the other cases.*

**Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)**

*This measure may be executed by the affected body from the crime, whether a department, Ministry or public authority under the provisions stated in the mutual agreements or international conventions framework which Egypt has adhered thereto.*

**Assistance or participation of agents of the requesting State in the execution of the measure**

*This measure may be executed under the bilateral or multilateral agreements framework*



## Freezing of bank accounts (502)

### Definition and scope of the measure

*Under this measure, a sequestration measures concerning the money of the accused person may be adopted and preventing him from disposing or managing it .In this case, the Attorney General may give a temporarily order to prevent the accused person or his wife or minor children from disposing or managing their money. This Prevention from disposition may be referred to the court within maximally seven days from the date of its issuance requesting for a judgment to prevent the disposition or the management. The Court must pass a judgment within 15 days from the date of referring.*

**Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?**

*This measure may be executed under the mutual judicial assistance framework and the relevant international conventions which Egypt has adhered thereto, provided that they do not conflict with the laws of the requested State. In Egypt, the aforementioned Article 208 bis A is regulating this matter.*

### Body competent to authorize the measure

*The affected body upon a request of the public prosecution and under the supervision of judges in case of urgency and upon a decision from the court in the other cases.*

**Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)**

*This measure may be executed under the bilateral and the multilateral agreements framework.*

**Assistance or participation of agents of the requesting State in the execution of the measure**

*As previously noted, this measure may be executed under the bilateral and the multilateral agreements framework which Egypt has adhered thereto.*

## Restitution (503)

### Definition and scope of the measure

*The Restitution of the smuggled money to its rightful owner after a final court judgment which convicts the accused person and proves the illegality of the money which he obtained illegally. It may be executed under the bilateral and international conventions. Note that the Egyptian Law stipulates in Article 208 bis C that the court may judge to restitute the amounts or the value of the things of the crime referred to in Article 208 bis A or compensate the affected body . The court shall, upon a request of the public prosecution or the civil rights attorney after hearing the testimony of the persons, concerned, enforce the sentence on the money of the accused person's wife and his minor children if it is proved that it was devolved to them by the accused person and it is obtained from a crime decided thereon. As stipulated in Article 208 bis D : Does not preclude the expiration of the criminal case of death before or after referral to the Court without passing judgments concerning the crimes stipulated in Articles 112,113,paragraph 1,2,4,Article 113 bis ,paragraph 1 ,Articles 114,115 of the Penal Code. The court shall pass a judgment which shall be applied on the heirs, legatees and each person who had a valuable benefit from the crime, the judgment shall take effect on the money of each person as much as he benefited.*

Failing that, an alternative measure with the same purpose

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*This measure may be executed under the mutual judicial assistance framework.*

Body competent to authorize the measure

*The Public prosecution and the Egyptian Ministry of justice after issuing a court ruling.*

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*This measure may be conducted by the central authority in the Ministry of Justice which may deem to be The Department of The International and Cultural Cooperation at Ministry of Justice. It may be responsible for Preparing all the requests on mutual judicial assistance for asset recovery and send them to the Ministry of Foreign Affairs which may send them to the relevant State authorities by the Egyptian embassies abroad and with the coordination of the national committee to retrieve funds smuggled abroad.*

Assistance or participation of agents of the requesting State in the execution of the measure

Please refer to the answer given in the previous item.

#### Interim measures in view of confiscation (504)

Definition and scope of the measure

*The interim measures for confiscation is a decision by the Attorney General to prevent the accused person, his wife and his children from disposing or managing their money as described in the item on confiscation of assets or by a decision from the illicit gain device to confiscate their money and property until a final judgment is issued from the competent court.*

Failing that, an alternative measure with the same purpose

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*It may be executed under the mutual judicial assistance framework.*

Body competent to authorize the measure

*The affected body upon a request of the public prosecution and under the supervision of judges in case of urgency and upon a decision from the court in the other cases.*

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*“Public prosecution” or the investigative judge under the mutual judicial assistance framework.*

#### Confiscation (505)

Definition and scope of the measure

*Confiscation is a measure the purpose thereof is the State shall own controlled stuff related to a crime against the desire of its owner and without consideration. It is a permissive punishment in felonies and*

*misdemeanours unless the law provides otherwise. It may be mandatory and required by the public order as it is related to something outside nature circle of dealings and it is a preventive unavoidable measure for erga omnes. And general confiscation of property without a court ruling is prohibited by the Constitution.*

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist

*This measure may be executed under the mutual judicial assistance framework subject to the domestic laws of the requesting and the requested States*

Body competent to authorize the measure

*Court is the competent authority authorized to confiscate assets upon a court judgement*

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*May be conducted by the public prosecution under the mutual agreements framework*

Assistance or participation of agents of the requesting State in the execution of the measure

*May be executed in the light of the aforementioned measures*

## 6. PLACES - VISIT AND SEARCH

### Visit to and search of homes (601)

#### Definition and scope of the measure

*Search of homes is one of the acts of the preliminary investigation and it assumes the commission of a crime. It authorizes the investigator to issue a search order based on an accusation charging a person who is living in the home ,which to be searched, with a felony or a misdemeanour or if evidences which suggest that he holds things related to the crime were found. Because Search of homes is one of the personal rights, thus Constitution guarantee not to be used except in cases defined by law and there may be an alert for those who are in the home before entering or searching it.*

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*This measure may be executed under the mutual judicial assistance framework or the relevant international conventions which Egypt has adhered thereto and in conformity with the laws of the requested state.*

Body competent to authorize the measure

*Public prosecution or the investigative judge is the competent body authorized for issuing visit and search homes order.*

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*This procedure is executed by the investigating authority represented by the Public Prosecution, as in searching the lawyers' offices, or by the judicial officer who are authorized to do so .This procedure shall be regulated by the legal assistance within the framework of the international conventions and the bilateral agreements.*

Assistance or participation of agents of the requesting State in the execution of the measure

*Please refer to the answer given to the previous item.*

#### Visit and search on the site of an offence (602)

##### Definition and scope of the measure

*The investigator may go to the place where the offence was committed where traces and evidences of the crime exist; examining means viewing and proving the crime and its material effects at the crime scene. The investigative judge may go to any place whenever it deems necessary to prove the status of places, objects and people and the material existence of the crime and all matters needed to prove the case. The investigative judge may, whenever it deems necessary to move to or inspect any place, notify the Public Prosecution and a report of moving and examining may be made.*

Failing that, an alternative measure with the same purpose

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*This measure may be executed under the mutual judicial assistance.*

##### Body competent to authorize the measure

*The Public prosecution, investigative judge or judicial officer in case of Flagrante delicto or in case of authorization from the public prosecution.*

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*This measure is obligatory conducted by the investigating authority represented by the Public Prosecution such as inspection of the offices of lawyers or who delegates to do so from the judicial officer. This measure can be regulated under the legal assistance within the framework of international and bilateral agreements.*

Assistance or participation of agents of the requesting State in the execution of the measure

*Same answer given to the previous item.*

#### 7. WITNESSES, VICTIMS, SUSPECTS - SUMMONING AND HEARING.

##### Summoning witnesses (701)

##### Definition and scope of the measure

*The Public Prosecution shall service a notice to the witnesses, whom the investigating judge decides hearing them, and shall summon them by a Process Server or by the Public Authority Officials. The investigating judge has the right to hear the given testimony of any witness who attends personally, and in this case he shall record that in a minute.*

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*This measure may be taken under the mutual judicial assistance.*

Body competent to authorize the measure

*The Public Prosecution or the Investigating Judge.*

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting state)

*This measure shall be executed by the process server or representatives of executive authority, at a permission of the Public Prosecution or the Investigating Judge or the court that examines the criminal case.*

Assistance or participation of agent of the requesting State in the execution of the measure

*As mentioned before, this measure shall be taken under the mutual judicial assistance agreements.*

#### Hearing witnesses: standard procedure (702)

Definition and scope of the measure

*For hearing witnesses the standard scope is to hear each witness separately, so as not to be influenced by the information given by other witnesses as well as the confrontation of witnesses against each other and against the accused, if there is conflict in the information given by them. The investigating judge shall ask each witness to show his name, surname, age, profession, residence and relationship with the accused. The data and the evidence taken from the witnesses shall be recorded without scraping or interlineations. The investigating judge, the clerk and the witness shall sign on the given testimony after reading it out to the witness and after his declaration that he is insisting on that testimony, and they shall sign each page of the minute.*

Failing that, an alternative measure with the same purpose

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*This measure may be taken under the mutual judicial assistance agreements.*

Body competent to authorize the measure

*The Public Prosecution or the Investigating Judge or the court that examines the criminal case.*

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting state)

*This measure shall be executed by the Public Prosecution.*

Assistance or participation of agent of the requesting State in the execution of the measure

*This measure shall be executed under the mutual judicial assistance agreements, the international conventions and the bilateral agreements, which Egypt had adhered thereto.*

## Hearing witnesses by video conference (703)

### Definition and scope of the measure

*Literal interpretation of the criminal procedures code does not allow hearing witnesses by video conference, taking into account that Egypt had ratified the United Nation Convention against Organized crime and United Nation Convention Against corruption and they contained the same provisions. Egypt is committed to the international conventions to which it had adhered thereto. Currently a law on protection of witness is being prepared and it will permit the matter.*

Failing that, an alternative measure with the same purpose

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*This measure may be executed under the provisions of the international conventions and the bilateral agreements, which Egypt had adhered thereto.*

Body competent to authorize the measure

*The Public Prosecution or the Investigating Judge or the court that examines the criminal case.*

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting state)

*This measure shall be executed by the Public Prosecution or the Investigating Judge.*

Assistance or participation of agent of the requesting State in the execution of the measure

*This measure shall be executed under the mutual judicial assistance agreements, the international conventions and the bilateral agreements, which Egypt had adhered thereto.*

## Hearing witnesses by telephone (704)

### Definition and scope of the measure

*Literal interpretation of the criminal procedures code does not allow hearing witnesses by telephone, taking into account that Egypt had ratified the United Nation Convention against Organized crime and United Nation Convention Against corruption and they contained the same provisions. Egypt is committed to the international conventions to which it had adhered thereto.*

Failing that, an alternative measure with the same purpose

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*This measure shall be executed under the provisions of the international conventions and the bilateral agreements, which Egypt had adhered thereto.*

Body competent to authorize the measure

*The Public Prosecution or the Investigating Judge or the court that examines the criminal case.*

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting state)

*This measure shall be executed under the international conventions and the bilateral agreements.*

Assistance or participation of agent of the requesting State in the execution of the measure

*This measure shall be executed under the mutual judicial assistance agreements, the international conventions and the bilateral agreements, which Egypt had adhered thereto.*

#### Hearing children (705)

Definition and scope of the measure

*The basic rule in the Criminal Procedure Act is the inadmissibility of hearing witnesses but only those who meet the criminal eligibility, but it may be as an exception to hear children over seven years and have not completed four years as Inference without take oath, and the judge may take it for Inference according to his consideration, as for the child who cannot discern, his testimony shall not be accepted.*

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*The international conventions and the bilateral agreements did not contain provisions to allow hearing children.*

Body competent to authorize the measure

*The Public Prosecution and the Investigating Judge.*

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting state)

*The international conventions and the bilateral agreements did not contain provisions to allow hearing children. But the Egyptian law did not prevent that matter according to the aforementioned controls.*

Assistance or participation of agent of the requesting State in the execution of the measure

*As mentioned before in previous items.*

#### Hearing persons collaborating with the inquiry (706)

Definition and scope of the measure

*In this measure, the Public Prosecution allow any witness who attend willingly to give testimony, and in this case his statements must be included in a minute, and he must sign it, taking into account the fact that the Egyptian Law did no discriminate between collaborating witness and not collaborating witness.*

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*This measure shall be executed under the mutual judicial assistance agreements.*

Body competent to authorize the measure

*The Public Prosecution and the Investigating Judge.*

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting state)

*As previously mentioned, the collaborating witness attends willingly to give evidence about a*

*particular incident and thus there are no particular modes of execution for this measure.*

Assistance or participation of agent of the requesting State in the execution of the measure

*As mentioned before in previous items.*

#### Hearing victims/ plaintiffs (707)

Definition and scope of the measure

*The complaint of the victim shall be heard by the investigator, whether he were a member of the Public prosecution or an investigating judge, concerning the incident contained in the complaint or the communiqué, and here the role of the investigator is only to give the victim absolute liberty to relate what he says about the incident, with no question from the investigator except for clarifying something ambiguous about the victim's statements. Currently a law on protection of witness and experts and whistleblower is preparing.*

Failing that, an alternative measure with the same purpose

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*This measure shall be executed under the mutual judicial assistance agreements.*

Body competent to authorize the measure

*The Public Prosecution or the Investigating Judge or the court that examines the criminal case.*

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting state)

*This measure shall be executed under the mutual judicial assistance agreements, the international conventions and the bilateral agreements and not inconsistent with the internal laws of the State which is requested to take the measure.*

Assistance or participation of agent of the requesting State in the execution of the measure

*This measure shall be executed under the mutual judicial assistance agreements.*

#### Hearing experts (708)

Definition and scope of the measure

*To give a technical opinion from a specialized technician concerning an important incident in the criminal action, where the judge was not able to give a decision as it requires technical competency that he lacks. Currently a law on protection of witness and experts and whistleblower is preparing.*

Failing that, an alternative measure with the same purpose

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*This measure shall be executed under the mutual judicial assistance agreements.*

Body competent to authorize the measure



*The Public Prosecution, investigating judge and the Court examining the criminal case.*

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting state)

*This measure shall be taken by the Experts Office in Ministry of Justice.*

Assistance or participation of agent of the requesting State in the execution of the measure

*This measure shall be executed under the mutual judicial assistance agreements, concerning this matter.*

#### Summoning suspects/persons accused (709)

Definition and scope of the measure

*The suspected and accused persons will be notified by the Public Prosecution. The notification will be delivered by court server from the Public Prosecution, signed by the Public Prosecutor Deputy. It will include the name of the accused, type of crime, according to the delay fixed at 8:00 AM till 5:00 PM and that's not include the arresting.*

Failing that, an alternative measure with the same purpose

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*This measure is possible within the mutual legal assistance agreements.*

Body competent to authorize the measure

*Public Prosecution and Investigating Judge.*

Practical modes of execution of the measures (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*This measure will be executed by the court server according to the mutual legal assistance agreements and the international relevant conventions*

Assistance or participation of agent of the requesting State in the execution of the measure

*This will be executed under the mutual legal assistance agreements*

#### Hearing suspects/persons accused: standard procedures (710)

Definition and scope of the measure

*The standard measure of suspects and accused persons investigations represented in letting them know their accusation , their reply, make sure they are free from Diseases, enable them to check out the record, the permission to attend a lawyer and the beginning of investigation.*

Failing that, an alternative measure with the same purpose

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*This will be executed under the mutual legal assistance agreements.*

### *Public Prosecution and investigative judge*

Practical modes of execution of the measures (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*This will be executed by the court servers according to the Public Prosecution and investigating judge request within the International conventions and bilateral agreements.*

Assistance or participation of agent of the requesting State in the execution of the measure

*This will be executed under the mutual legal assistance agreements.*

### Hearing suspects / persons accused by video conference (711)

Definition and scope of the measure

*Criminal measure's law was devoid of any text which rule the hearing of the suspected and accused persons by the video conference, with taking into consideration that Egypt rectified on the two United Nations conventions for combating organized crime and corruption these conventions included this measure. Knowing that Egypt is committed to all the international provisions which had been acceded to it.*

Failing that, an alternative measure with the same purpose

*Technical assistance, implement the Legislation of different countries, modification of Legislation.*

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

Body competent to authorize the measure

*The whole matter is not regulated in the Egyptian Law.*

Practical modes of execution of the measures (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*This measure can be executed within the Bilateral agreements and multi-lateral agreements.*

Assistance or participation of agents of the requesting State in the execution of the measure.

*This will be executed under the mutual legal assistance agreements.*

### Hearing suspects/persons accused by telephone (712)

Definition and scope of the measure

*Criminal measures law was devoid of any text which rule the hearing of suspected and accused persons by the telephone with taking into consideration that Egypt rectified on the two United Nations conventions for combating organized crimes and corruption. These conventions included this measure.*

Failing that, an alternative measure with the same purpose

*Technical assistance, implement the legislation of different countries, modification of legislation.*

Is the measure possible under mutual judicial assistance? If not, does an alternative measure

exist?

*It is possible under the provision within the international conventions which Egypt had been acceded to it, on condition that it is not opposed to the Egyptian legislation.*

Body competent to authorize the measure

*The whole matter is not regulated in the Egyptian Law*

Practical modes of execution of the measures (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State

Assistance or participation of agents of the requesting State in the execution of the measure.

## Confrontation (713)

Definition and scope of the measure

*Confrontation means that the accused person is faced up to evidences against him and the essential principle is inadmissibility of questioning the accused person or facing him to the criminal crimes without a lawyer attending, in case it is exist; it was excluded from that two cases: caught red handed and fast actions to prevent the lose of evidences to ensure his right of defence.*

Failing that, an alternative measure with the same purpose

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*It is possible under the provisions within the mutual legal assistance agreements and international conventions which Egypt had been acceded to, and on condition that it is not opposed to the Egyptian legislations.*

Body competent to authorize the measure

*Public Prosecution and Investigating Judge.*

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State).

*This measure will be executed by Public Prosecution or the investigating judge under the bilateral agreements and International conventions.*

Assistance or participation of agents of the requesting State in the execution of the measure.

*It will be executed within the bilateral agreements and international conventions.*

## 8. CROSS-BORDER OPERATIONS

### Cross-border observation (801)

#### Definition and scope of the measure

*It is a preventive measure which taken by the police service follow some crimes prepared outside the Egyptian territory or follow the criminals flee from Egypt's orders.*

Body competent to authorize the measure.

*Egyptian Interpol in coordination with investigative authorities.*

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State).

*This measure is implemented under Security Cooperation Agreements and Extradition Agreements.*

Assistance or participation of agents of the requesting State in the execution of the measure.

*The authorities responsible for executing this measure are security and police bodies in coordination with competent judicial bodies*

### Cross-border hot pursuit (802)

#### Definition and scope of measure

*Cross-border hot pursuit procedures start in territorial water of the State and that pursuit may continue outside the territorial water. This matter requires coordination with neighbouring State or with the State through which such pursuit is made, in order to respect the principle of the State sovereignty over its territory as it is not admissible penetrating the borders of any State except with coordination therewith the other State respecting the principle of regional sovereignty.*

Failing that, an alternative measure with the same purpose.

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*This measure may be executed under the UN Convention on the Law of the Sea, without prejudice to the domestic laws of the requested state.*

Body competent to authorize the measure.

*Interpol in coordination with the Ministry of Foreign Affairs and competent judicial authorities.*

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State).

*Practical modes of execution of the measure within the framework of the UN Convention on the Law of the Sea, Security agreements and extradition agreements.*

Assistance or participation of agents of the requesting State in the execution of the measure.

## Cross-border tracking (by placing a beeper on a vehicle or person) (803)

### Definition and scope of measure

*This mechanism is not used in Egypt.*

Failing that, an alternative measure with the same purpose.

*Technical assistance, acquaintance of various State's legislations and exchange of information.*

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*This measure is implemented under mutual judicial assistance taking into consideration that Egypt exerts all efforts to use reciprocity principle and international courtesy.*

Body competent to authorize the measure.

*Ministry of Internal Affairs (Egyptian Interpol) in coordination with judicial bodies.*

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State).

*There is no practical method to implement this mechanism as it is not used in Egypt.*

Assistance or participation of agents of the requesting State in the execution of the measure.

*Within the framework of the above mentioned agreements.*

## Controlled deliveries (804)

### Definition and scope of measure

*There is no Egyptian legislation regulating the controlled deliveries but the Ministry of Justice has finalized the preparation of a draft law on international judicial cooperation in criminal matters that organize all aspects of cooperation including the controlled deliveries, in addition to bilateral agreements which addressed controlled deliveries and Egypt adhered thereto . Such agreements have the power of domestic laws.*

Failing that, an alternative measure with the same purpose.

*Technical assistance, having access to various State's legislations and exchange of information.*

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*This measure is implemented under extradition agreements according to the conditions and provisions regulating such agreements.*

Body competent to authorize the measure.

*Public prosecution in coordination with the Ministry of internal Affairs.*

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State).

*Conditions and procedures concerning controlled deliveries stipulated in extradition agreements and it is implemented in coordination between the Ministry of internal Affairs and Public prosecution.*

Assistance or participation of agents of the requesting State in the execution of the measure.

#### Joint investigation teams (805)

##### Definition and scope of measure

*There are no joint investigation teams in Egypt despite that this measure is included in the UN Convention against organized crime and UN Convention against corruption which Egypt adhered thereto.*

Failing that, an alternative measure with the same purpose.

*Technical assistance, having access to various State's legislations and exchange of information.*

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*This measure is implemented under mutual judicial assistance in the light of the international conventions that Egypt adhered thereto and include such a measure.*

Body competent to authorize the measure.

*Public prosecution.*

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State).

*Coordination with the office of the Egyptian Public Prosecutor and investigative authorities in various countries without prejudice to the domestic laws of the requested state.*

Assistance or participation of agents of the requesting State in the execution of the measure.

*Within the framework of the abovementioned procedures.*

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## EUROMED JUSTICE III PROJECT

Criminal and Penitentiary Law

WG 3

Working Group on Criminal Law in order  
to prepare a tool equivalent to the so-  
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**ISRAEL**

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EUROMED JUSTICE III PROJECT

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Tool equivalent to the so-called "fiches belges"

ISRAEL

1. TRACING AND INTERCEPTION OF (TELE) COMMUNICATIONS

Interception, recording and transcription of telecommunications (101)

- Definition and scope of the measure

*The relevant law relating to the subject is the Wiretapping Law, 1979*

*The law permits monitoring, recording or copying of conversations of others without the consent of any of the participants. A Conversation is defined in the law as speech, telephone, mobile phone, radio waves, fax, telex, teleprinter, and communication between computers. The measure may be used when necessary for the discovery, investigation, or prevention of an offence in the category of felony (offences punishable by at least 3 years of imprisonment), or for the discovery or capture of criminals who have committed such offences, or in an investigation for purposes of confiscating property connected to these offences.*

- Failing that, an alternative measure with the same purpose

*No.*

- Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*Yes, according to the Legal Assistance between States Law, 1998, the measure is possible if it is necessary in connection with a criminal matter in the requesting state, regarding one of the following:*

- *An offence which under the laws of the requesting state is punishable by over 3 years of imprisonment.*
- *An offence which if committed in Israel would have provided grounds for permitting wiretapping.*
- *For purposes of confiscation*

- Body competent to authorize the measure

*The President of the District Court or his authorized deputy is the body authorized to permit wiretapping by a warrant.*

*An application for a warrant as stated shall be filed by a police officer with a rank of commander (Nitzav Mishneh) and above.*

*The application shall be filed using a standard form, and shall specify, inter alia, the factual foundation upon which the application is based, the reasons for the application, and the details of the action requested,*

*The application shall be heard ex parte.*

*The permit in the warrant shall be given after the competent body has considered the severity of the infringement of privacy, and the measure is necessary for the discovery, investigation, and prevention of an offence in the category of felony (offences punishable by at least 3 years of imprisonment), or for the discovery or capture of criminals who have committed such crimes, or in an investigation for purposes of confiscating property connected to such offences.*

*The permit shall specify the identity of the person, the identity of the line or the installation, place or type of conversations and the methods of wiretapping. The duration of the permit shall be for a period of up to three months, and it may be extended from time to time.*

*Once a month, the Police Commissioner will report on the permits issued.*

*The Police Commissioner is authorized to issue an urgent permit for 48 hours when there is no time to obtain a permit and it is necessary for the prevention of a felony and the discovery of its perpetrator. The Commissioner shall report to the Attorney General immediately upon issuing the permit and the latter has the authority to revoke it.*

- Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*By law, incoming requests for legal assistance in criminal matters may be received by the Directorate of Courts, the Director of the Department of International Affairs of the State Attorney's Office or the Inspector General of the Israel Police or the Head of the Intelligence Division. In practice, requests are sent to the Directorate of Courts and then forwarded by them to the Legal Assistance Unit of the Israel Police who oversees the execution of the requests by the competent authorities. In certain cases, the Legal Assistance Unit will consult with the Department of International Affairs regarding the execution of a request.*

*While decisions regarding the execution of requests may be made by the Department for International Affairs of the State Attorney's Office and by the Legal Assistance Unit, only the Minister of Justice is authorized to deny an incoming request.*

*A request for legal assistance shall specify the type of proceeding for which the assistance is requested, the facts that constitute the foundation for the suspicion of the commission of an offence, and the connection to the assistance requested. In a request for assistance of this kind, consideration shall be had, inter alia, for whether it complies with the requirements of Israeli law for issuing a warrant for wiretapping, as stipulated in section 1.1 above.*

*The Police execute the measures requested within the framework of the request.*

- Assistance or participation of agents of the requesting State in the execution of the measure

*It is possible and dependent, inter alia, on the type of action requested and other circumstances of the matter.*

#### **Tracing of telecommunications (102)**

- Definition and scope of the measure

*The relevant law for this subject is the Criminal Procedure (Enforcement Powers – Communications Data) Law, 2007.*

*The law permits receiving of identification data, location data, subscription data, traffic data and telecommunications data, and all other data relating to means of communications and transmissions, apart from the contents of the transmission.*

*The condition for receiving a warrant under the law is that it is requested in relation to an offence in the category of a felony or misdemeanour (offences punishable by over 3 months imprisonment) and that it is requested for the purpose of saving or protection of a human life, for the discovery of offences or criminals, or for the confiscation of property.*

- Failing that, an alternative measure with the same purpose

*No.*

- Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*Yes. In accordance with the conditions set forth in the Legal Assistance between States, 1998, and the conditions specified above in Criminal Procedure (Enforcement Powers – Communications Data) Law, 2007.*

- Body competent to authorize the measure

*The competent body is the Magistrates Court, which is authorized to issue a warrant for the receipt of the communications data at the request of the police officer or other investigating authority. The application should be submitted in writing, and be supported by a statement that includes, inter alia, the facts*

*constituting the basis of the application, its purpose, the data requested, the requested period, and identification details of the client or device.*

*The warrant will include the communications data which may be received under the warrant, the time period during which the data can be received, and the date of coming into effect.*

*In urgent cases, an authorized officer (chief superintendent and above) may permit receiving communications data, if persuaded that the data is necessary for the prevention of an offence in the category of felony (offences punishable by at least 3 years of imprisonment), or the discovery of its perpetrator or to save human life. This is permitted when the matter does not admit of postponement, and it is not possible to receive the warrant from a court in a timely manner. The permit is valid for 24 hours only.*

- Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*By law, incoming requests for legal assistance in criminal matters may be received by the Directorate of Courts, the Director of the Department of International Affairs of the State Attorney's Office or the Inspector General of the Israel Police or the Head of the Intelligence Division. In practice, requests are sent to the Directorate of Courts and then forwarded by them to the Legal Assistance Unit of the Israel Police who oversees the execution of the requests by the competent authorities. In certain cases, the Legal Assistance Unit will consult with the Department of International Affairs regarding the execution of a request.*

*While decisions regarding the execution of requests may be made by the Department for International Affairs of the State Attorney's Office and by the Legal Assistance Unit, only the Minister of Justice is authorized to deny an incoming request.*

*A request for legal assistance shall specify the type of proceeding for which the assistance is requested, the facts that constitute the foundation for the suspicion of the commission of an offence, and the connection to the assistance requested. The Police execute the measures requested within the framework of the request.*

- Assistance or participation of agents of the requesting State in the execution of the measure

*It is possible and dependent, inter alia, on the type of action requested and other circumstances of the matter.*

#### **Interception and recording of other forms of communication (103)**

- Definition and scope of the measure

*The relevant law relating to the subject is the Wiretapping Law, 1979*

*The law permits monitoring a conversation, its recording or copying by way of an appliance without the consent of any of the participants, when it is necessary for the discovery, investigation, or the prevention of an offence in the category of felony (offences punishable by at least 3 years of imprisonment), or for the discovery or capture of criminals who have committed such crimes, or in an investigations for purposes of confiscating property connected to such offences.*

*The body authorized to permit monitoring as stated, is also permitted to allow intrusion into a private place to install the means necessary for that purpose.*

- Failing that, an alternative measure with the same purpose

*No.*

- Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*Yes, under the conditions set forth in the Legal Assistance between States Law, 1998, and the terms specified above.*

- **Body competent to authorize the measure**

*The President of the District Court or his authorized deputy is the body authorized to permit wiretapping by a warrant.*

*An application for a warrant as stated shall be filed by a police officer of the rank of commander (Nitzav Mishneh) and above.*

*The application shall be filed using a standard form, and shall specify, inter alia, the factual foundation upon which the application is based, the reasons for the application, and the details of the action requested,*

*The application shall be heard ex parte.*

*The permit shall be given after the competent body has considered the severity of the infringement of privacy, and the measure is necessary for the discovery, investigation, and prevention of offences in the category of felony (offences punishable by at least 3 years of imprisonment), or for the discovery or capture of criminals who have committed such offences, or in an investigation for purposes of confiscating property connected to an offence as stated.*

*The permit shall specify - the identity of the person, the identity of the line or the installation, place or type of conversations, the methods of monitoring, the duration of the permit shall be for a period of up to three months, and it may be extended from time to time.*

*Once a month, the Police Commissioner will report on the permits issued.*

*The Police Commissioner is authorized to issue an urgent permit for 48 hours when there is no time to obtain a permit and it is necessary for the prevention of a felony and the discovery of its perpetrator. The Commissioner shall report to the Attorney General immediately upon issuing the permit and the latter has the authority to revoke it.*

- **Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)**

*By law, incoming requests for legal assistance in criminal matters may be received by the Directorate of Courts, the Director of the Department of International Affairs of the State Attorney's Office or the Inspector General of the Israel Police or the Head of the Intelligence Division. In practice, requests are sent to the Directorate of Courts and then forwarded by them to the Legal Assistance Unit of the Israel Police who oversees the execution of the requests by the competent authorities. In certain cases, the Legal Assistance Unit will consult with the Department of International Affairs regarding the execution of a request.*

*While decisions regarding the execution of requests may be made by the Department for International Affairs of the State Attorney's Office and by the Legal Assistance Unit, only the Minister of Justice is authorized to deny an incoming request.*

*A request for legal assistance shall specify the type of proceeding for which the assistance is requested, the facts that constitute the foundation for the suspicion of the commission of an offence, and the connection to the assistance requested. The Police execute the measures requested within the framework of the request.*

- **Assistance or participation of agents of the requesting State in the execution of the measure**

*It is possible and dependent, inter alia, on the type of action requested and other circumstances of the matter.*

#### **Interception of mail (104)**

- **Definition and scope of the measure**

*The relevant law relating to the subject is Criminal Procedure (Arrest and Search) Ordinance, 1969.*

*The law permits the seizing of objects, including postal items, when it is necessary in order to ensure the presentation of the object for purposes of investigation, trial or other proceeding.*

- **Failing that, an alternative measure with the same purpose**

*No.*

- Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*Yes, under the conditions set forth in the Legal Assistance between States Law, 1998, and the conditions set in Criminal Procedure (Arrest and Search) Ordinance, 1969, as specified above.*

- Body competent to authorize the measure

*The body competent to authorize the measure is a Magistrates Court Judge.*

*The police may apply to the court to issue a search warrant. The application shall include, inter alia, the details of the offence in respect of which the search warrant is requested, the details of object requested and the place where the search is to be conducted.*

*The warrant is issued ex parte, specifying the place where the search will be conducted, the details of the object looked for and its effective date.*

- Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*By law, incoming requests for legal assistance in criminal matters may be received by the Directorate of Courts, the Director of the Department of International Affairs of the State Attorney's Office or the Inspector General of the Israel Police or the Head of the Intelligence Division. In practice, requests are sent to the Directorate of Courts and then forwarded by them to the Legal Assistance Unit of the Israel Police who oversees the execution of the requests by the competent authorities. In certain cases, the Legal Assistance Unit will consult with the Department of International Affairs regarding the execution of a request.*

*While decisions regarding the execution of requests may be made by the Department for International Affairs of the State Attorney's Office and by the Legal Assistance Unit, only the Minister of Justice is authorized to deny an incoming request.*

*A request for legal assistance shall specify the type of proceeding for which the assistance is requested, the facts that constitute the foundation for the suspicion of the commission of an offence, and the connection to the assistance requested. The Police execute the measures requested within the framework of the request.*

- Assistance or participation of agents of the requesting State in the execution of the measure

*It is possible and dependent, inter alia, on the type of action requested and other circumstances of the matter.*

#### **Observation (105)**

- Definition and scope of the measure

*Observation, surveillance in the public domain with or without technical means, is permitted to the Police and a person who is a member thereof if conducted in a reasonable manner in the framework of and in the fulfilment of their duties.*

- Failing that, an alternative measure with the same purpose

*No.*

- Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*Yes, under the conditions set forth in the Legal Assistance between States Law, 1998, and the terms specified above.*

- Body competent to authorize the measure

*There is no need for a permit to utilize the measure.*

- Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*By law, incoming requests for legal assistance in criminal matters may be received by the Directorate of Courts, the Director of the Department of International Affairs of the State Attorney's Office or the Inspector General of the Israel Police or the Head of the Intelligence Division. In practice, requests are sent to the Directorate of Courts and then forwarded by them to the Legal Assistance Unit of the Israel Police who oversees the execution of the requests by the competent authorities. In certain cases, the Legal Assistance Unit will consult with the Department of International Affairs regarding the execution of a request.*

*While decisions regarding the execution of requests may be made by the Department for International Affairs of the State Attorney's Office and by the Legal Assistance Unit, only the Minister of Justice is authorized to deny an incoming request.*

*A request for legal assistance shall specify the type of proceeding for which the assistance is requested, the facts that constitute the foundation for the suspicion of the commission of an offence, and the connection to the assistance requested. The Police execute the measures requested within the framework of the request.*

- Assistance or participation of agents of the requesting State in the execution of the measure

*It is possible and dependent, inter alia, on the type of action requested and other circumstances of the matter.*

#### Interception of telecommunication (106)

Definition and scope of the measure

Failing that, an alternative measure with the same purpose

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

Body competent to authorize the measure

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

Assistance or participation of agents of the requesting State in the execution of the measure

#### Interception of telecommunication without the technical assistance of another Member State (107)

Scope and alternative measures

Definition and scope of the measure

Failing that, an alternative measure with the same purpose

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

Body competent to authorize the measure

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

Assistance or participation of agents of the requesting State in the execution of the measure

## 2. AGENTS AND INFORMERS – INFILTRATION

#### Infiltration by undercover agents of the requested State (201)

- Definition and scope of the measure

*An agent may be a policeman or a citizen (who may also be a criminal who is prepared to cooperate with the police).*

*A Police-agent is an agent who is secretly activated in order to gather information, and once completing this activity, continues to serve as a policeman.*

*A Source, or a citizen agent, is a criminal, intelligence source or other person secretly activated by the Police in the gathering of evidence. His activation is managed within the framework of a "Activation Agreement"*

*The activation of an agent is dependent upon the fact there is a basis for the suspicion that the target against whom the agent is activated is involved in the commission of criminal offences, generally in the category of felony (offences punishable by at least 3 years of imprisonment).*

- Failing that, an alternative measure with the same purpose

*No.*

- Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*Yes, under the conditions set forth in the Legal Assistance between States Law, 1998, and the terms specified above.*

- Body competent to authorize the measure

*The body competent to authorize the measure is police, with the approval of District Attorney.*

- Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*By law, incoming requests for legal assistance in criminal matters may be received by the Directorate of Courts, the Director of the Department of International Affairs of the State Attorney's Office or the Inspector General of the Israel Police or the Head of the Intelligence Division. In practice, requests are sent to the Directorate of Courts and then forwarded by them to the Legal Assistance Unit of the Israel Police who oversees the execution of the requests by the competent authorities. In certain cases, the Legal Assistance Unit will consult with the Department of International Affairs regarding the execution of a request.*

*While decisions regarding the execution of requests may be made by the Department for International Affairs of the State Attorney's Office and by the Legal Assistance Unit, only the Minister of Justice is authorized to deny an incoming request.*

*A request for legal assistance shall specify the type of proceeding for which the assistance is requested, the facts that constitute the foundation for the suspicion of the commission of an offence, and the connection to the assistance requested. The Police execute the measures requested within the framework of the request. In the Police, the investigating unit escorts the activities of the agent by way of "activators" (policemen trained for that purpose), and reports on his activities to the District Attorney's Office. The agent is obligated to give a report to his activators concerning every act that he does.*

- Assistance or participation of agents of the requesting State in the execution of the measure

*It is possible and dependent, inter alia, on the type of action requested and other circumstances of the matter.*

#### **Infiltration by agents of the requesting State in the territory of the requested State (202)**

- Definition and scope of the measure

*The measure is not defined in Israeli legislation, but like any other investigatory activity, it may be requested within the framework of the Legal Assistance Law, 1998, and the application will be considered by the authorized body.*

- Failing that, an alternative measure with the same purpose

*No.*

- Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*Yes, under the conditions set forth in the Legal Assistance between States Law, 1998, and the terms specified above.*



- Body competent to authorize the measure

*The authority competent of receiving an application for legal assistance from another state and approving it is the Minister of Justice. The application shall specify the type of proceeding of which assistance is requested, the facts that constitute the foundation for the suspicion of the commission of an offence, and the connection between them and the assistance requested.*

*The Police shall be responsible for the execution of the measure requested in the framework of the assistance.*

- Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*See Article 2.1 above.*

- Assistance or participation of agents of the requesting State in the execution of the measure

*It is possible and dependent, inter alia, on the type of action requested and other circumstances of the matter.*

### Infiltration by an informer of the requested State (203)

- Definition and scope of the measure

*An "Informer" may be activated on a long term or one time basis, and a privilege is imposed on his identity. Despite the above, in accordance with the Evidence Ordinance, 1971, the court, at the request of the defendant, may order the disclosure of the identity of the informer if it is crucial to the defence of the defendant. In that situation, the prosecution has the choice of either revealing the identity of the informer or withdrawing the indictment.*

*The "informer" is a citizen who does not belong to the law enforcement authorities, but is prepared to assist them by giving information concerning offences or criminals, of any kind.*

- Failing that, an alternative measure with the same purpose

*No.*

- Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*Yes, according to the Legal Assistance between States Law, 1998 and the terms specified above.*

- Body competent to authorize the measure

*The body competent to authorize the measure is police, according to the internal guidelines.*

- Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*By law, incoming requests for legal assistance in criminal matters may be received by the Directorate of Courts, the Director of the Department of International Affairs of the State Attorney's Office or the Inspector General of the Israel Police or the Head of the Intelligence Division. In practice, requests are sent to the Directorate of Courts and then forwarded by them to the Legal Assistance Unit of the Israel Police who oversees the execution of the requests by the competent authorities. In certain cases, the Legal Assistance Unit will consult with the Department of International Affairs regarding the execution of a request.*

*While decisions regarding the execution of requests may be made by the Department for International Affairs of the State Attorney's Office and by the Legal Assistance Unit, only the Minister of Justice is authorized to deny an incoming request.*

*A request for legal assistance shall specify the type of proceeding for which the assistance is requested, the facts that constitute the foundation for the suspicion of the commission of an offence, and the connection to the assistance requested. The Police execute the measures requested within the framework of the request.*

- Assistance or participation of agents of the requesting State in the execution of the measure

*It is possible and dependent, inter alia, on the type of action requested and other circumstances of the matter.*

#### Handling of informers (204)

- Definition and scope of the measure

*See section 203 above.*

- Failing that, an alternative measure with the same purpose

*See section 203 above.*

- Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*See section 203 above.*

- Body competent to authorize the measure

*See section 203 above.*

- Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*See section 203 above.*

- Assistance or participation of agents of the requesting State in the execution of the measure

*See section 203 above.*

### 3. EXAMINATION, BODY SEARCH AND EXPERT EVALUATION

#### Superficial body search (301)

- Definition and scope of the measure

*The scope of the search is finding evidence when arresting a suspect, and asserting the safety of an arrester, the public, and the person being searched. This search is not an autonomous power, but it is leaning on the authority to arrest a suspect (see The criminal Procedure Ordinance (arrest & search)[New Version] 5729-1969 . meaning only when you arrest a suspect the policeman may perform the search. An exception to this rule is the suspicion that a person is carrying drugs (Dangers Drugs Ordinance [New Version] 5733-1973) or weapon (Enforcement Powers for the Safety of the Public, 5765-2005) . In those cases no arrest is needed. Another exception, was ruled by the high court in Israel, and it refers to the option of a policeman to ask a person consent to perform the search. The definition of this search is a search on the body or in the person clothes or close belongings, which is not external or internal search (see p. 302).*

- Failing that, an alternative measure with the same purpose

*No*

- Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*Yes, under the conditions set forth in the Legal Assistance between States Law, 1998, and the terms specified above.*

- Body competent to authorize the measure

*Policeman and sometimes other public officer with authority to arrest a suspect.*

- Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*By law, incoming requests for legal assistance in criminal matters may be received by the Directorate of Courts, the Director of the Department of International Affairs of the State Attorney's Office or the Inspector General of the Israel Police or the Head of the Intelligence Division. In practice, requests are sent to the Directorate of Courts and then forwarded by them to the Legal Assistance Unit of the Israel Police who oversees the execution of the requests by the competent authorities. In certain cases, the Legal Assistance Unit will consult with the Department of International Affairs regarding the execution of a request.*

*While decisions regarding the execution of requests may be made by the Department for International Affairs of the State Attorney's Office and by the Legal Assistance Unit, only the Minister of Justice is authorized to deny an incoming request.*

*A request for legal assistance shall specify the type of proceeding for which the assistance is requested, the facts that constitute the foundation for the suspicion of the commission of an offence, and the connection to the assistance requested. The Police execute the measures requested within the framework of the request.*

- Assistance or participation of agents of the requesting State in the execution of the measure

*It is possible and dependent, inter alia, on the type of action requested and other circumstances of the matter.*

### Invasive body search (302)

- Definition and scope of the measure

*The scope of invasive body search is finding evidence of the offence, or of the connection between the suspect and the offence. Criminal Procedure (Enforcement Powers - Body Search and taking the means of identification), 5756 - 1996 divides invasive search to two types: external search and internal search, both are defined in detailed lists.*

*External search is: A visual examination of a person's naked body, including photographing; Taking body print or impression of any part of the body; Taking fingernail scrapings; Cutting nails; Taking material from the nostrils; Taking hair, including the roots; Taking material from the body; Testing on the skin; Providing a urine sample; Providing a saliva sample; Providing a sample of breath by breath test; Taking a sample of cheek cells.*

*Internal search: Blood test; Simulation of the body using ultrasound; Mirroring inside of the body using x-ray machine; body Simulation using a scanner of some kind; Gynaecological examination, including the taking of material Taking tiny blood sample.*

*If a policeman has a reasonable suspicion that in a suspect body there is evidence, he may ask the suspect consent to perform an external search. Some types of the external search can be performed with force and some not. When force is needed, the search must be approved by a police officer. If the search can damage the suspects' health, there is a need for a M.D approval. Exposer of body parts that are usually concealed are to be done privately.*

*If a police officer has a reasonable suspicion that in a suspect body there is evidence of a crime (offence with a punishment of more than 3 years imprisonment), he may ask the suspect consent to perform an internal search. If the suspect did not consent, the police officer may ask the court for an order.*

*Some types of external or internal searches have to be done by a relevant professional (dentist, x-ray technician and so on)*

*Concerning both types of searches, refuse to the search in a way that the search could not be performed - might be a felony in some cases, and can be held against the suspect in evidence aspects.*

- Failing that, an alternative measure with the same purpose

*No*

- Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*Yes, under the conditions set forth in the Legal Assistance between States Law, 1998, and the terms specified above.*

- Body competent to authorize the measure

*Policeman (external search); Police officer (internal search) and in some cases also Magistrate's Court order.*

- Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*By law, incoming requests for legal assistance in criminal matters may be received by the Directorate of Courts, the Director of the Department of International Affairs of the State Attorney's Office or the Inspector General of the Israel Police or the Head of the Intelligence Division. In practice, requests are sent to the Directorate of Courts and then forwarded by them to the Legal Assistance Unit of the Israel Police who oversees the execution of the requests by the competent authorities. In certain cases, the Legal Assistance Unit will consult with the Department of International Affairs regarding the execution of a request.*

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*A request for legal assistance shall specify the type of proceeding for which the assistance is requested, the facts that constitute the foundation for the suspicion of the commission of an offence, and the connection to the assistance requested. The Police execute the measures requested within the framework of the request.*

- Assistance or participation of agents of the requesting State in the execution of the measure

*It is possible and dependent, inter alia, on the type of action requested and other circumstances of the matter*

### **Psychiatric medical examination (303)**

- Definition and scope of the measure

*A psychiatric medical examination examines the mental state of the person checked, and the findings are set forth in an opinion, answering the question if the person checked can understand what he did or his ability to understand wrong from right, or his ability to avoid what he did, while committing the offence, and so to the question of the fitness of the person to understand the legal actions taken against him. A psychiatric medical examination is performed by a doctor specializing in psychiatry.*

*A psychiatric medical examination is performed according to the Law of Treatment of Mentally Ill, 5751-1991, articles 15-17.*

*According to the law, a court may order the psychiatric medical examination of a person who is a suspect, or who has been arrested or has been charged, by a psychiatric specialist, either following the request of one of the parties or upon the initiative of the court, if a suspicion has arisen that the person is mentally ill.*

*The exam shall be conducted by the District Psychiatrist or psychiatrist appointed by the District Psychiatrist. The District Psychiatrist is a psychiatrist working in the public service, appointed by the Minister of Health. The findings of the exam will be transferred to the court presiding over the case. If it was found that due to mental illness the defendant did not know right from wrong at the time of the act, then he would exempt from criminal liability under Section 34H of the Penal Law 5777-1977, and he cannot be punished for the act committed. The legal proceedings against him will be stopped under Section 15 (b) of the Treatment of Mental Patients Law 5751-1991, and the court may make an order for the patient's treatment in a psychiatric hospital, either as an outpatient or in ambulatory care.*

*If the exam finds that the defendant, because of mental illness, is unable to understand the legal proceedings against him, but when he committed the offence attributed to him, he knew right from wrong, and could refrain from doing the offence, the court may give an order for the treatment of the defendant, and the court will order the termination of the proceedings against the according to Section 15 (a) of the Treatment of Mental Patients Law 5751-1991. The prosecution may order the resumption of proceedings in such a case, and legal proceedings against him, after the person being tested was treated and found to be able to understand the legal proceedings against him.*

*The suspect / detainee / accused may submit to the court an expert opinion in psychiatry on his own behalf, with finding that contradict the opinion of the District Psychiatrist, in which case the court will determine which of the expert opinions to accept.*

*If the court determines, based on the expert opinions, that the defendant can stand trial and that time of the offence knew right from wrong and could avoid committing the offence, but is mentally ill or suffers from mental health problems that does not justify an exemption from criminal liability, the results of the psychiatric exam may have an effect on the type of punishment and its severity, if he is convicted.*

*In addition, according to of the Treatment of Mental Patients Law 5751-1991, a District Psychiatrist may order a forced exam of a person or the person's involuntary hospitalization, even if no offence has been committed, if evidence was brought to him that he was sick and that his illness may be pose immediate physical risk to him or to others, and if he does not agree to be tested or to be hospitalized voluntarily.*

- Failing that, an alternative measure with the same purpose

*None*

- Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*Depends on the circumstances, but sometimes it is possible, under the conditions set forth in the Legal Assistance between States Law, 1998, and the terms specified above.*

- Body competent to authorize the measure

*The court presiding over the case.*

- Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*By law, incoming requests for legal assistance in criminal matters may be received by the Directorate of Courts, the Director of the Department of International Affairs of the State Attorney's Office or the Inspector General of the Israel Police or the Head of the Intelligence Division. In practice, requests are sent to the Directorate of Courts and then forwarded by them to the Legal Assistance Unit of the Israel Police who oversees the execution of the requests by the competent authorities. In certain cases, the Legal Assistance Unit will consult with the Department of International Affairs regarding the execution of a request.*

*While decisions regarding the execution of requests may be made by the Department for International Affairs of the State Attorney's Office and by the Legal Assistance Unit, only the Minister of Justice is authorized to deny an incoming request.*

*A request for legal assistance shall specify the type of proceeding for which the assistance is requested, the facts that constitute the foundation for the suspicion of the commission of an offence, and the connection to the assistance requested. The Police execute the measures requested within the framework of the request.*

- Assistance or participation of agents of the requesting State in the execution of the measure

*According to the Treatment of Mental Patients Law 5751-1991, the psychiatric medical examination is conducted by specialist in psychiatry that has a license to practice medicine from the Ministry of Health of Israel. It is possible that in special circumstances the District Psychiatrist could collaborate with a psychologist from the requesting state.*

#### Control of identity, measures for judicial identification (304)

- Definition and scope of the measure

*According to the Identity Card Law 1982, anyone, above 16, must carry on him identity card (or other formal card for non citizens) and show the card on demand.*

- Failing that, an alternative measure with the same purpose

*Policeman may detain a suspect or a witness for the inquiry of his identity (sec. 67 The criminal Procedure Law (Enforcement Powers – Arrests) ) 5756 – 1996*

- Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*Yes, under the conditions set forth in the Legal Assistance between States Law, 1998, and the terms specified above.*

- Body competent to authorize the measure

*The Police*

- Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*By law, incoming requests for legal assistance in criminal matters may be received by the Directorate of Courts, the Director of the Department of International Affairs of the State Attorney's Office or the Inspector General of the Israel Police or the Head of the Intelligence Division. In practice, requests are sent to the Directorate of Courts and then forwarded by them to the Legal Assistance Unit of the Israel Police who oversees the execution of the requests by the competent authorities. In certain cases, the Legal Assistance Unit will consult with the Department of International Affairs regarding the execution of a request.*

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- Assistance or participation of agents of the requesting State in the execution of the measure

*It is possible and dependent, inter alia, on the type of action requested and other circumstances of the matter.*

#### Technical or scientific examinations or expert evaluations (305)

- Definition and scope of the measure

*Bringing an expert opinion on behalf of the prosecution or the defence is possible under article 20 of the Evidence Law [New Version] 5771-1971. The court is permitted to accept as evidence, if it doesn't see it as*

*a miscarriage of justice, a written opinion on an expert regarding a question of research, art, professional knowledge, or a medical document regarding a person's health.*

*In addition, in special circumstances that must be noted in the decision of the court, the court is permitted to appoint an expert in accounting or another topic that requires a technical examination or calculation (article 111 to the Criminal Procedure Law [Consolidated Version] 5742-1982).*

*The expert opinion is initiated in most cases by the Police or Prosecution, and in some cases it is initiated by the defendant or the defense. The court decided if to accept the expert opinion as evidence or not.*

*The investigative body, the Israel Police, has experts on finger prints, drugs, pathology, weapons, DNA, computers, graphology etc. and during the course of the investigation they examine the relevant evidence and they write reports about their area of expertise. There is not a closed list of topics on which an expert opinion can be submitted.*

*In his expert opinion, the expert will describe his academic and practical backgrounds that establish the base to his expertise.*

*The defendant can present an expert opinion on his behalf, and he must allow the prosecution the right to see and copy the opinion ahead of time (article 83 to the Criminal Procedure Law [Consolidated Version] 5742-1982). If the court is presented two contradicting opinions, it must decide which opinion to accept while deciding the case.*

- Failing that, an alternative measure with the same purpose  
No.

- Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*Yes, under the conditions set forth in the Legal Assistance between States Law, 1998, and the terms specified above.*

- Body competent to authorize the measure

*The court presiding over the case.*

- Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*By law, incoming requests for legal assistance in criminal matters may be received by the Directorate of Courts, the Director of the Department of International Affairs of the State Attorney's Office or the Inspector General of the Israel Police or the Head of the Intelligence Division. In practice, requests are sent to the Directorate of Courts and then forwarded by them to the Legal Assistance Unit of the Israel Police who oversees the execution of the requests by the competent authorities. In certain cases, the Legal Assistance Unit will consult with the Department of International Affairs regarding the execution of a request.*

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*A request for legal assistance shall specify the type of proceeding for which the assistance is requested, the facts that constitute the foundation for the suspicion of the commission of an offence, and the connection to the assistance requested. The Police execute the measures requested within the framework of the request.*

- Assistance or participation of agents of the requesting State in the execution of the measure

*It is possible and dependent, inter alia, on the type of action requested and other circumstances of the matter.*



**Spontaneous exchange of information (401)**

- Definition and scope of the measure

*Spontaneous exchange of information can be made through the investigating authority and prosecuting authority. The transfer of information held by one of these authorities is subject to the Privacy Act, 5741-1981, and Privacy Regulations (transfer of information to data bases outside state borders) 5761-2001. Concerning specific information there are specific restrictions (DNA data, of individual police records).*

- Failing that, an alternative measure with the same purpose

*An order to show documents or objects under sec. 43 to the Criminal Procedure Ordinance (arrest & search)[New Version] 5729-1969*

- Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*Sec. 32 to the Legal Assistance Between Countries Law -5758 -1998 authorizes the component authority to transfer information on her initiative to another state in criminal matters if the information can be transferred to another public authority in Israel.*

- Body competent to authorize the measure

*Police, or other investigating authority or prosecuting authority, depends on the circumstances.*

- Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*By law, incoming requests for legal assistance in criminal matters may be received by the Directorate of Courts, the Director of the Department of International Affairs of the State Attorney's Office or the Inspector General of the Israel Police or the Head of the Intelligence Division. In practice, requests are sent to the Directorate of Courts and then forwarded by them to the Legal Assistance Unit of the Israel Police who oversees the execution of the requests by the competent authorities. In certain cases, the Legal Assistance Unit will consult with the Department of International Affairs regarding the execution of a request.*

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- Assistance or participation of agents of the requesting State in the execution of the measure

*It is possible and dependent, inter alia, on the type of action requested and other circumstances of the matter.*

**Order to produce documents (402)**

- Definition and scope of the measure

*There are law provisions regarding service of documents and seizing the legal proceedings from the stage of the investigation until the suit is brought in front of the court, and for the stage of the trial until the case is decided by the court.*



*Criminal Procedure Ordinance (Arrest and Search) [New Version] 5729-1969, regulates the ways in which you can catch documents or seize them. Sec. 43 authorises the court to give an order to anyone to produce documents (or other objects) that are needed in trial or investigation.*

*According to Article 108 of the Criminal Procedure Law [Consolidated Version] 5752-1982, the court may at the request of a party or on the court's initiative instruct a witness or any other person to submit to the court documents in his possession. The court will grant the request if the requesting party presents reasons to establish that the documents is relevant to the questions considered by the court.*

- Failing that, an alternative measure with the same purpose

*According to Article 23 to the Criminal Procedure Ordinance (Arrest and Search) the court will grant an order to search the house or anywhere else if the search is necessary to ensure the presentation of object for investigation or trial, or where requested search is used for the storage or sale of an object which was used for an offence or was used for any illegal purpose, or that the Judge has reasonable grounds to believe that an offence has been committed in that place or there is a plan to commit an offence against a person in that place. The request shall be submitted to the court by a police officer, and it will include details regarding object or document requested for the investigation and reasons for the request. Discussion in the request and the court decision made ex parte.*

- Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*Yes, under the conditions set forth in the Legal Assistance between States Law, 1998, and the terms specified above.*

- Body competent to authorize the measure

*During the investigation the Magistrate Court has authority, and during the trial- the court presiding over the case.*

- Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*By law, incoming requests for legal assistance in criminal matters may be received by the Directorate of Courts, the Director of the Department of International Affairs of the State Attorney's Office or the Inspector General of the Israel Police or the Head of the Intelligence Division. In practice, requests are sent to the Directorate of Courts and then forwarded by them to the Legal Assistance Unit of the Israel Police who oversees the execution of the requests by the competent authorities. In certain cases, the Legal Assistance Unit will consult with the Department of International Affairs regarding the execution of a request.*

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- Assistance or participation of agents of the requesting State in the execution of the measure

*It is possible and dependent, inter alia, on the type of action requested and other circumstances of the matter.*

#### **Other possibilities of obtaining information concerning taxes or bank accounts (403)**

- Definition and scope of the measure

*Information concerning bank accounts can be received as any other information and documents. See sec. 402 above.*

*Information regarding tax is confidential, and in order to obtain such information there is a procedure to remove the confidentiality.*

- Failing that, an alternative measure with the same purpose

*None*

- Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*Yes*

- Body competent to authorize the measure
- Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*By law, incoming requests for legal assistance in criminal matters may be received by the Directorate of Courts, the Director of the Department of International Affairs of the State Attorney's Office or the Inspector General of the Israel Police or the Head of the Intelligence Division. In practice, requests are sent to the Directorate of Courts and then forwarded by them to the Legal Assistance Unit of the Israel Police who oversees the execution of the requests by the competent authorities. In certain cases, the Legal Assistance Unit will consult with the Department of International Affairs regarding the execution of a request.*

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- Assistance or participation of agents of the requesting State in the execution of the measure

*It is possible and dependent, inter alia, on the type of action requested and other circumstances of the matter.*

*No.*

#### **Access to public documents in judicial files (404)**

- Definition and scope of the measure

*Generally, documents gathered during the investigation in a criminal case and submitted as part of the criminal case to court, are open to the parties to the case, (the prosecution and the defendant), and so too are protocols of court discussions. A person requesting documents received during a criminal case, who is not a party to the proceeding, may apply to the Court presiding over the case requesting to receive the requested document and pointing to the need for the document, if for the purpose of a tortuous claim following the hearing of the case, or whether for research or for any other purpose.*

- Failing that, an alternative measure with the same purpose

*An order to show documents or objects under sec. 43 to the criminal Procedure Ordinance (arrest & search)[New Version] 5729-1969*

- Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*Yes, under the conditions set forth in the Legal Assistance between States Law, 1998, and the terms specified above.*

- Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*By law, incoming requests for legal assistance in criminal matters may be received by the Directorate of Courts, the Director of the Department of International Affairs of the State Attorney's Office or the Inspector General of the Israel Police or the Head of the Intelligence Division. In practice, requests are sent to the Directorate of Courts and then forwarded by them to the Legal Assistance Unit of the Israel Police who oversees the execution of the requests by the competent authorities. In certain cases, the Legal Assistance Unit will consult with the Department of International Affairs regarding the execution of a request.*

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- Assistance or participation of agents of the requesting State in the execution of the measure

*It is possible and dependent, inter alia, on the type of action requested and other circumstances of the matter.*

#### Communication of individual police records (405)

- Definition and scope of the measure

*Providing information about criminal records is governed by the provisions of the Criminal Register and Rehabilitation of Offenders Law, 5741- 1981. Regarding providing information to another country, the law limits the possibility of providing information concerning cases closed, and information relating to convictions deleted (deletion period is ten years after the period of limitation, which varies depending on the sentence imposed).*

- Failing that, an alternative measure with the same purpose

*No*

- Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*Yes, under the conditions set forth in the Legal Assistance between States Law, 1998, and the terms specified above.*

- Body competent to authorize the measure

*The police*

- Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*By law, incoming requests for legal assistance in criminal matters may be received by the Directorate of Courts, the Director of the Department of International Affairs of the State Attorney's Office or the Inspector General of the Israel Police or the Head of the Intelligence Division. In practice, requests are sent to the Directorate of Courts and then forwarded by them to the Legal Assistance Unit of the Israel Police who oversees the execution of the requests by the competent authorities. In certain cases, the Legal Assistance Unit will consult with the Department of International Affairs regarding the execution of a request.*

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- Assistance or participation of agents of the requesting State in the execution of the measure

*It is possible and dependent, inter alia, on the type of action requested and other circumstances of the matter.*

#### Sending and service of procedural documents (406)

Definition and scope of the measure

Failing that, an alternative measure with the same purpose

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

Body competent to authorize the measure

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

Assistance or participation of agents of the requesting State in the execution of the measure

#### Transfer of proceedings (407)

Definition and scope of the measure

Failing that, an alternative measure with the same purpose

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

Body competent to authorize the measure

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

Assistance or participation of agents of the requesting State in the execution of the measure

## 5. ASSETS - SEQUESTRATION, CONFISCATION AND RESTITUTION

#### Sequestration of assets (501)

- Definition and scope of the measure

*Assets related to an offence may be seized by the police (Sec 32 of The criminal Procedure Ordinance (arrest & search)[New Version] 5729-1969). , the police may seize an item if they have reason to believe that the item was used or is about to be used for the commission of an offence, that it is likely to serve as evidence in a legal proceeding, or that it was given as payment for the commission of an offence or as means of committing it. Under section 34, 35, court may order the extension of the period which the police entitled to seize the item and may make an order what to do with the seized asset.*

- Failing that, an alternative measure with the same purpose

*Depending on the type of offence – there are many specific laws with confiscation and Sequestration provisions. The main provisions are: Dangerous Drugs Ordinance; Prohibition on Money Laundering Law; Combating Criminal Organizations Law; Prohibition on Financing of Terrorism Law; Prohibition on Trafficking in Humans. In some of these provisions there is a wider possibility of seizing also Property of the accused worth of the property related to the offence.*

- Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*Yes, under the conditions set forth in the Legal Assistance between States Law, 1998, and the terms specified above.*

- Body competent to authorize the measure

*Police, and in some cases Magistrate's Court*

- Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*By law, incoming requests for legal assistance in criminal matters may be received by the Directorate of Courts, the Director of the Department of International Affairs of the State Attorney's Office or the Inspector General of the Israel Police or the Head of the Intelligence Division. In practice, requests are sent to the Directorate of Courts and then forwarded by them to the Legal Assistance Unit of the Israel Police who oversees the execution of the requests by the competent authorities. In certain cases, the Legal Assistance Unit will consult with the Department of International Affairs regarding the execution of a request.*

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*A request for legal assistance shall specify the type of proceeding for which the assistance is requested, the facts that constitute the foundation for the suspicion of the commission of an offence, and the connection to the assistance requested. The Police execute the measures requested within the framework of the request.*

*The Legal Assistance Law contains a requirement for an undertaking of the requesting state guarantee that the foreign jurisdiction will cover any damages arising to private parties as a result of the seizure and forfeiture, should the forfeiture ultimately not take place or be found invalid. The Minister of Justice has the authority on a case by case basis and for appropriate cause, to exempt requesting foreign jurisdictions from providing undertakings for compensation.*

*A freeze order issued by an Israeli court on the basis of a foreign request is limited to the maximum duration of one year. At the end of that period, a final forfeiture order had to be issued in the foreign state or the frozen assets would have to be released.*

- Assistance or participation of agents of the requesting State in the execution of the measure

*It is possible and dependent, inter alia, on the type of action requested and other circumstances of the matter*

#### **Freezing of bank accounts (502)**

- Definition and scope of the measure

*Bank account may be frozen with court order, where there are reasonable grounds for believing, that proceeds of offence will be subject to confiscation*

- Failing that, an alternative measure with the same purpose

*No*

- Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*Yes, under the conditions set forth in the Legal Assistance between States Law, 1998, and the terms specified above.*

- Body competent to authorize the measure

*Request of the investigating body, or the prosecution to the Magistrate's Court, and in some cases the District Court (depends on the type of offence)*

- Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*By law, incoming requests for legal assistance in criminal matters may be received by the Directorate of Courts, the Director of the Department of International Affairs of the State Attorney's Office or the Inspector General of the Israel Police or the Head of the Intelligence Division. In practice, requests are sent to the Directorate of Courts and then forwarded by them to the Legal Assistance Unit of the Israel Police who oversees the execution of the requests by the competent authorities. In certain cases, the Legal Assistance Unit will consult with the Department of International Affairs regarding the execution of a request.*

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*The Legal Assistance Law contains a requirement for an undertaking of the requesting state guarantee that the foreign jurisdiction will cover any damages arising to private parties as a result of the seizure and forfeiture, should the forfeiture ultimately not take place or be found invalid. The Minister of Justice has the authority on a case by case basis and for appropriate cause, to exempt requesting foreign jurisdictions from providing undertakings for compensation.*

*A freeze order issued by an Israeli court on the basis of a foreign request is limited to the maximum duration of one year. At the end of that period, a final forfeiture order had to be issued in the foreign state or the frozen assets would have to be released.*

- Assistance or participation of agents of the requesting State in the execution of the measure

*It is possible and dependent, inter alia, on the type of action requested and other circumstances of the matter*

### Restitution (503)

- Definition and scope of the measure

*The return of assets or objects, to their rightful owners, can be done throughout the criminal trial by an order of the court (sec 34 to The criminal Procedure Ordinance (arrest & search) [New Version] 5729-1969). In some cases the confiscation will overcome the right of the rightful owner and in other cases the right of the rightful owner is first in line.*

*The rightful owner may have a civil claim regardless of the criminal procedure. If a person is convicted in court, and there is a civil claim against him, the criminal court can decide on the civil claim after the conviction.*

*Israeli law regarding civil recovery of damages allows a foreign state to bring suit for the recovery of such damages. Damages in such cases would not necessarily be limited to proceeds present in Israel but temporary measures, such as effective means, can be taken by a court with respect to such assets.*

- Failing that, an alternative measure with the same purpose

*No*

- Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*No.*

- Body competent to authorize the measure

*Magistrate's Court and in some cases the court sitting in judgment of the criminal case*

- Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)
- Assistance or participation of agents of the requesting State in the execution of the measure

#### Interim measures in view of confiscation (504)

- Definition and scope of the measure

*Interim measures, will be the seizure of assets or objects related to the offence, or a court order for interim measure. For details see measure 501.*

#### Confiscation (505)

- Definition and scope of the measure

*Confiscation in Israel can be made under deferent provisions, including deferent conditions for confiscation. Relating to all offences, Section 39 of the Criminal Procedure Ordinance enables confiscation of objects related to the offence, that were seized Objects seized under section 32 or which the police obtained under section 33 (see sec. 501 above). "Objects" includes a document, computer material, bank account, and rights*

*Other main provisions are Dangerous Drugs Ordinance; Prohibition on Money Laundering Law; Combating Criminal Organizations Law; Prohibition on Financing of Terrorism Law; Prohibition on Trafficking in Humans.. In the mentioned laws there is broad confiscation regarding connection between the property and the offence, procedural proceedings, rights of third party, evidentiary presumptions, and change in the burden of proof (for example "civil forfeiture"). "Property" includes real estate, personal property, money and rights, including property that is consideration for the aforesaid property, and any property that was generated or obtained in consideration from profits of such property.*

- Failing that, an alternative measure with the same purpose

*No*

- Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*Yes, under the conditions set forth in the Legal Assistance between States Law, 1998, and the terms specified above.*

- Body competent to authorize the measure

*The relevant prosecution agency request, flowing an court order of confiscation.*

- Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*By law, incoming requests for legal assistance in criminal matters may be received by the Directorate of Courts, the Director of the Department of International Affairs of the State Attorney's Office or the Inspector General of the Israel Police or the Head of the Intelligence Division. In practice, requests are sent to the Directorate of Courts and then forwarded by them to the Legal Assistance Unit of the Israel Police who oversees the execution of the requests by the competent authorities. In certain cases, the Legal Assistance Unit will consult with the Department of International Affairs regarding the execution of a request.*



*While decisions regarding the execution of requests may be made by the Department for International Affairs of the State Attorney's Office and by the Legal Assistance Unit, only the Minister of Justice is authorized to deny an incoming request.*

*A request for legal assistance shall specify the type of proceeding for which the assistance is requested, the facts that constitute the foundation for the suspicion of the commission of an offence, and the connection to the assistance requested. The Police execute the measures requested within the framework of the request.*

*The Legal Assistance Law contains a requirement for an undertaking of the requesting state guarantee that the foreign jurisdiction will cover any damages arising to private parties as a result of the seizure and forfeiture, should the forfeiture ultimately not take place or be found invalid. The Minister of Justice has the authority on a case by case basis and for appropriate cause, to exempt requesting foreign jurisdictions from providing undertakings for compensation.*

*A freeze order issued by an Israeli court on the basis of a foreign request, is limited to the maximum duration of one year. At the end of that period, a final forfeiture order had to be issued in the foreign state or the frozen assets would have to be released.*

- Assistance or participation of agents of the requesting State in the execution of the measure

*It is possible and dependent, inter alia, on the type of action requested and other circumstances of the matter.*

## 6. PLACES – VISIT AND SEARCH

### Visit to and search of homes (601)

- Definition and scope of the measure

*A judge is authorized to instruct the police to perform a search at home if (1) it is needed in order to secure a display of an object during investigation, a trial or other procedure, or (2) if there is a ground to assume that the home is being used to storage or to sell a stolen object, or (3) an object that was used to committing an offence is storage or being kept there or (4) it is used to illegal purpose, or (5) there is a ground to assume that an offence has been committed or is going to be committed against a person staying at that home. (Section 23 of The Criminal Procedure Ordinance (arrest & search)[New Version] 5729-1969).*

*A policeman is authorized, without a court ordinance, to go into a home and search there, if he (1) has a ground to assume that a felony is being committed or has been committed there lately, or (2) the holder of the home asked for the police help or (3) a person staying there asked for the help of the police and there is a grounds to assume that an offence is being committed there or (4) the policeman is chasing a man who is evading an arrest or escaping a lawful custody. (Section 25 of The Criminal Procedure Ordinance (arrest & search)[New Version] 5729-1969).*

- Failing that, an alternative measure with the same purpose

*An alternative measure was ruled by the high court of Israel, and it refers to the option of a policeman to ask for a person's consent to perform the search.*

- Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*Yes, under the conditions set forth in the Legal Assistance between States Law, 1998, and the terms specified above.*

- Body competent to authorize the measure

*A judge or a policeman, as described above.*



- Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*By law, incoming requests for legal assistance in criminal matters may be received by the Directorate of Courts, the Director of the Department of International Affairs of the State Attorney's Office or the Inspector General of the Israel Police or the Head of the Intelligence Division. In practice, requests are sent to the Directorate of Courts and then forwarded by them to the Legal Assistance Unit of the Israel Police who oversees the execution of the requests by the competent authorities. In certain cases, the Legal Assistance Unit will consult with the Department of International Affairs regarding the execution of a request.*

*While decisions regarding the execution of requests may be made by the Department for International Affairs of the State Attorney's Office and by the Legal Assistance Unit, only the Minister of Justice is authorized to deny an incoming request.*

*A request for legal assistance shall specify the type of proceeding for which the assistance is requested, the facts that constitute the foundation for the suspicion of the commission of an offence, and the connection to the assistance requested. The Police execute the measures requested within the framework of the request.*

- Assistance or participation of agents of the requesting State in the execution of the measure

*It is possible and depends, inter alia, on the type of action requested and other circumstances of the matter.*

#### Visit and search on the site of an offence (602)

- Definition and scope of the measure

*A judge is authorized to instruct the police to perform a search on a site if (1) it is needed in order to secure a display of an object during investigation, a trial or other procedure, or (2) if there is a ground to assume that the site is being used to storage or to sell a stolen object, or (3) an object that was used to committing an offence is storage or being kept there or it is used to illegal purpose, or (4) there is a ground to assume that an offence has been committed or is going to be committed against a person staying at that site. (Section 23 of The Criminal Procedure Ordinance (arrest & search)[New Version] 5729-1969).*

*A policeman is authorized, without a court ordinance, to go into a site and search there, if he (1) has a ground to assume that a felony is being committed or has being committed there lately, or (2) the holder of the site asked for the police help or (3) a person staying there asked for the help of the police and there is a grounds to assume that an offence is being committed there or (4) the policeman is chasing a man who is evading an arrest or escaping a lawful custody. (Section 25 of The Criminal Procedure Ordinance (arrest & search)[New Version] 5729-1969).*

- Failing that, an alternative measure with the same purpose

*An alternative measure was ruled by the high court of Israel, and it refers to the option of a policeman to ask for a person's consent to perform the search.*

- Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*Yes, under the conditions set forth in the Legal Assistance between States Law, 1998, and the terms specified above.*

- Body competent to authorize the measure

*A judge or a policeman, as described above*

- Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*By law, incoming requests for legal assistance in criminal matters may be received by the Directorate of Courts, the Director of the Department of International Affairs of the State Attorney's Office or the*

*Inspector General of the Israel Police or the Head of the Intelligence Division. In practice, requests are sent to the Directorate of Courts and then forwarded by them to the Legal Assistance Unit of the Israel Police who oversees the execution of the requests by the competent authorities. In certain cases, the Legal Assistance Unit will consult with the Department of International Affairs regarding the execution of a request.*

*While decisions regarding the execution of requests may be made by the Department for International Affairs of the State Attorney's Office and by the Legal Assistance Unit, only the Minister of Justice is authorized to deny an incoming request.*

*A request for legal assistance shall specify the type of proceeding for which the assistance is requested, the facts that constitute the foundation for the suspicion of the commission of an offence, and the connection to the assistance requested. The Police execute the measures requested within the framework of the request.*

- Assistance or participation of agents of the requesting State in the execution of the measure

*It is possible and depends, inter alia, on the type of action requested and other circumstances of the matter.*

## 7. WITNESSES, VICTIMS, SUSPECTS - SUMMONING AND HEARING

### Summoning witnesses (701)

- Definition and scope of the measure

*An Investigator is authorized to summon witnesses, who might have information about an offence that has been committed, to secure their attendance at the investigation. The Summoning may be in writing, by telephone or face to face, depending on the circumstances of the case.*

*Witnesses can be questioned at the site of an offence or can be brought to the police station by a policeman, if a policeman has a reasonable basis to assume that a crime has been committed and that the person can give information concerning that crime. (Section 68 of the Criminal Procedure (Enforcement Powers – Arrests), 5756- 1996.*

*Summoning witnesses to the court:*

*Under section 106 of the Criminal Procedure Law [Consolidated Version] 5742-1982, any person can be summoned to give a testimony in court, following the request of the prosecution or the defense, unless the court decides that a certain person cannot contribute to the clarifying of the issues which are relevant to the trial. The court may decide to summon a witness at his own discretion. The summoning is done by issuing a written summons or by an oral announcement at the time of a court hearing.*

- Failing that, an alternative measure with the same purpose

*No*

- Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*Yes, under the conditions set forth in the Legal Assistance between States Law, 1998, and the terms specified above.*

- Body competent to authorize the measure

*The body competent to authorize the measure is the investigator at the police investigation stage. At the trial stage, the court is the competent body. The summons will be signed by the judge, a registrar, or by a court clerk.*

- Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*By law, incoming requests for legal assistance in criminal matters may be received by the Directorate of Courts, the Director of the Department of International Affairs of the State Attorney's Office or the Inspector General of the Israel Police or the Head of the Intelligence Division. In practice, requests are sent to the Directorate of Courts and then forwarded by them to the Legal Assistance Unit of the Israel Police who oversees the execution of the requests by the competent authorities. In certain cases, the Legal Assistance Unit will consult with the Department of International Affairs regarding the execution of a request.*

*While decisions regarding the execution of requests may be made by the Department for International Affairs of the State Attorney's Office and by the Legal Assistance Unit, only the Minister of Justice is authorized to deny an incoming request.*

*A request for legal assistance shall specify the type of proceeding for which the assistance is requested, the facts that constitute the foundation for the suspicion of the commission of an offence, and the connection to the assistance requested. The Police execute the measures requested within the framework of the request.*

- Assistance or participation of agents of the requesting State in the execution of the measure

*It is possible and depends, inter alia, on the type of action requested and other circumstances of the matter.*

#### **Hearing witnesses: standard procedure (702)**

- Definition and scope of the measure

*Section 2 of the Criminal Procedure Ordinance (testimony), 1927 authorizes an investigator to orally question any person who may have information concerning an offence that is being investigated. The person questioned must answer truthfully the questions he or she is being asked, unless the answers might incriminate them.*

*Hearing at the court: Section 172 of the Criminal Procedure Law [Consolidated Version] 5742-1982 holds that different witnesses will not testify one in the presence of the other. The court will warn the witness that he must say the truth only and the whole truth and that he would be subject to penalties prescribed by law (section 173). Section 174 holds that the witness is questioned first by the side who asked for his testimony. Later on, the cross-examination will take place, and then the re-examination. Questions may also be posed by the court.*

- Failing that, an alternative measure with the same purpose

*No*

- Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*Yes, under the conditions set forth in the Legal Assistance between States Law, 1998, and the terms specified above.*

- Body competent to authorize the measure

*At the investigation stage: the Investigator.*

*At the trial stage: the court.*

- Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*By law, incoming requests for legal assistance in criminal matters may be received by the Directorate of Courts, the Director of the Department of International Affairs of the State Attorney's Office or the Inspector General of the Israel Police or the Head of the Intelligence Division. In practice, requests are sent to the Directorate of Courts and then forwarded by them to the Legal Assistance Unit of the Israel Police who oversees the execution of the requests by the competent authorities. In certain cases, the Legal*

*Assistance Unit will consult with the Department of International Affairs regarding the execution of a request.*

*While decisions regarding the execution of requests may be made by the Department for International Affairs of the State Attorney's Office and by the Legal Assistance Unit, only the Minister of Justice is authorized to deny an incoming request.*

*A request for legal assistance shall specify the type of proceeding for which the assistance is requested, the facts that constitute the foundation for the suspicion of the commission of an offence, and the connection to the assistance requested. The Police execute the measures requested within the framework of the request.*

- Assistance or participation of agents of the requesting State in the execution of the measure

*It is possible and depends, inter alia, on the type of action requested and other circumstances of the matter.*

#### Hearing witnesses: by video conference (703)

- Definition and scope of the measure

*Hearing witnesses, who stay in another country, by video conference, is possible.*

- Failing that, an alternative measure with the same purpose

*No*

- Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*Yes, under the conditions set forth in the Legal Assistance between States Law, 1998, and the terms specified above.*

- Body competent to authorize the measure

*The Court at the trial stage.*

- Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*By law, incoming requests for legal assistance in criminal matters may be received by the Directorate of Courts, the Director of the Department of International Affairs of the State Attorney's Office or the Inspector General of the Israel Police or the Head of the Intelligence Division. In practice, requests are sent to the Directorate of Courts and then forwarded by them to the Legal Assistance Unit of the Israel Police who oversees the execution of the requests by the competent authorities. In certain cases, the Legal Assistance Unit will consult with the Department of International Affairs regarding the execution of a request.*

*While decisions regarding the execution of requests may be made by the Department for International Affairs of the State Attorney's Office and by the Legal Assistance Unit, only the Minister of Justice is authorized to deny an incoming request.*

*A request for legal assistance shall specify the type of proceeding for which the assistance is requested, the facts that constitute the foundation for the suspicion of the commission of an offence, and the connection to the assistance requested. The Police execute the measures requested within the framework of the request.*

- Assistance or participation of agents of the requesting State in the execution of the measure

*It is possible and depends, inter alia, on the type of action requested and other circumstances of the matter.*

#### Hearing witnesses: by telephone (704)

- Definition and scope of the measure

*None*

- Failing that, an alternative measure with the same purpose

*None*

- Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*None*

- Body competent to authorize the measure

*None*

- Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*None*

- Assistance or participation of agents of the requesting State in the execution of the measure

*None*

#### Hearing children (705)

- Definition and scope of the measure

*The Youth Act (adjudication, punishment and methods of treatment), 1971-5731 states that a parent has a right to know if his son or daughter is summoned to give testimony at the police. A minor who is a suspect has a right to consult his or her parent before the investigation begins, and of course to consult an attorney as well. A minor has a right that his or her parent will be present during the investigation. A minor will not be investigated during night hours, only in exceptional cases defined by the law.*

*Witnesses who are less than the age of 14, and suspects between the ages 12 to 14, who are questioned about certain offences, e.g. sex and violent crimes, will be questioned by special investigators who were trained to investigate children. The minors will testify at the court only if the special investigator approved the testimony of the minor. In certain cases, the special investigator will testify instead of the minor.*

*The court may hold that a hearing of a testimony of a child at the court will be conducted in special condition, e.g. in close circuit television.*

- Failing that, an alternative measure with the same purpose

*No*

- Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*Yes, under the conditions set forth in the Legal Assistance between States Law, 1998, and the terms specified above.*

- Body competent to authorize the measure

*The investigator at the investigation stage, and the court the trial stage.*

- Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*By law, incoming requests for legal assistance in criminal matters may be received by the Directorate of Courts, the Director of the Department of International Affairs of the State Attorney's Office or the Inspector General of the Israel Police or the Head of the Intelligence Division. In practice, requests are sent to the Directorate of Courts and then forwarded by them to the Legal Assistance Unit of the Israel Police who oversees the execution of the requests by the competent authorities. In certain cases, the Legal Assistance Unit will consult with the Department of International Affairs regarding the execution of a request.*

*While decisions regarding the execution of requests may be made by the Department for International Affairs of the State Attorney's Office and by the Legal Assistance Unit, only the Minister of Justice is authorized to deny an incoming request.*

*A request for legal assistance shall specify the type of proceeding for which the assistance is requested, the facts that constitute the foundation for the suspicion of the commission of an offence, and the connection to the assistance requested. The Police execute the measures requested within the framework of the request.*

- Assistance or participation of agents of the requesting State in the execution of the measure

*It is possible and depends, inter alia, on the type of action requested and other circumstances of the matter*

#### Hearing persons collaborating with the inquiry (706)

- Definition and scope of the measure

*The ministry of public security may decide that a person collaborating with the inquiry will not be brought before the court and that this person's identity will not be disclosed, if disclosing that information will pose a serious threat to his life or if it will expose confidential police practice. In this case, the statement or information which that person gave will not be admissible at court. The court is authorized to disclose the above information if it is needed for justice. In exceptional cases, and only if it does not hurt the defense of the defendant, there is an option for a witness to testify without exposing his or her identity.*

*In addition, a judge is authorized to decide that a hearing of an intimidated witness will be conducted "in camera", for the purpose of protecting the witness and encourage him or her to freely testify.*

*In addition, threatened witnesses may participate, in certain conditions, in a witness protection program, administrated by the Israeli Witness Protection Authority. The program is designated to protect threatened witnesses and their families, before the trial, during the trial and after it ends. The program may include, inter alia, relocation, change of identity, etc. One of the duties of the witness protection authority is to promote international cooperation, in conjunction with other relevant government offices, in the field of witness protection.*

- Failing that, an alternative measure with the same purpose

*No*

- Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*Yes, under the conditions set forth in the Legal Assistance between States Law, 1998, and the terms specified above.*

- Body competent to authorize the measure

*The ministry of Public Security, the court or by the Israeli Witness Protection Authority, as elaborated above.*

- Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*By law, incoming requests for legal assistance in criminal matters may be received by the Directorate of Courts, the Director of the Department of International Affairs of the State Attorney's Office or the Inspector General of the Israel Police or the Head of the Intelligence Division. In practice, requests are sent to the Directorate of Courts and then forwarded by them to the Legal Assistance Unit of the Israel Police who oversees the execution of the requests by the competent authorities. In certain cases, the Legal Assistance Unit will consult with the Department of International Affairs regarding the execution of a request.*

*While decisions regarding the execution of requests may be made by the Department for International Affairs of the State Attorney's Office and by the Legal Assistance Unit, only the Minister of Justice is authorized to deny an incoming request.*

*A request for legal assistance shall specify the type of proceeding for which the assistance is requested, the facts that constitute the foundation for the suspicion of the commission of an offence, and the connection to the assistance requested. The Police execute the measures requested within the framework of the request.*

- Assistance or participation of agents of the requesting State in the execution of the measure

*It is possible and depends, inter alia, on the type of action requested and other circumstances of the matter.*

#### Hearing victims/plaintiffs (707)

- Definition and scope of the measure

*Generally, the hearing of victims during the investigation of crime is similar to other witnesses. Nevertheless, a victim of certain sexual offences or crimes of violence has a right that a person who accompanies him or her will be present during the police questioning, subject to the restrictions set in The Rights of Victims Crime Law. (Section 14 of The Rights of Victims Crime Law (5761 - 2001). Also, in general, a victim as aforesaid has the right not to be questioned during the police investigation or in Court as to his or her sexual history other than according to the exception in the law (Section 13).*

*Generally, the hearing of the victim of a crime at the trial is similar to any other witness (for details see 702 below). A victim has a right that at the court he will be protected as possible from an unnecessary contact with the suspect or defendant or their relatives.*

*The victim has a right to be present during the court hearings concerning the crime, even if they are held in camera, and to have a person accompany him or her to such hearings, subject to restrictions in the law.*

- Failing that, an alternative measure with the same purpose

*No*

- Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*Yes, under the conditions set forth in the Legal Assistance between States Law, 1998, and the terms specified above.*

- Body competent to authorize the measure

*At the investigation stage – the Investigator.*

*At the trial stage – the court.*

- Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*By law, incoming requests for legal assistance in criminal matters may be received by the Directorate of Courts, the Director of the Department of International Affairs of the State Attorney's Office or the Inspector General of the Israel Police or the Head of the Intelligence Division. In practice, requests are sent to the Directorate of Courts and then forwarded by them to the Legal Assistance Unit of the Israel Police who oversees the execution of the requests by the competent authorities. In certain cases, the Legal*

*Assistance Unit will consult with the Department of International Affairs regarding the execution of a request.*

*While decisions regarding the execution of requests may be made by the Department for International Affairs of the State Attorney's Office and by the Legal Assistance Unit, only the Minister of Justice is authorized to deny an incoming request.*

*A request for legal assistance shall specify the type of proceeding for which the assistance is requested, the facts that constitute the foundation for the suspicion of the commission of an offence, and the connection to the assistance requested. The Police execute the measures requested within the framework of the request.*

- Assistance or participation of agents of the requesting State in the execution of the measure

*It is possible and depends, inter alia, on the type of action requested and other circumstances of the matter.*

#### Hearing experts (708)

- Definition and scope of the measure

*Experts will be heard at court in the same manner as other witnesses. The defense, as well as the prosecution, may invite experts in order to prove their case. The expert's written opinion should be given to the other party a reasonable time before the hearing*

- Failing that, an alternative measure with the same purpose

*None*

- Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*Yes, under the conditions set forth in the Legal Assistance between States Law, 1998, and the terms specified above.*

- Body competent to authorize the measure

*The Court*

- Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*By law, incoming requests for legal assistance in criminal matters may be received by the Directorate of Courts, the Director of the Department of International Affairs of the State Attorney's Office or the Inspector General of the Israel Police or the Head of the Intelligence Division. In practice, requests are sent to the Directorate of Courts and then forwarded by them to the Legal Assistance Unit of the Israel Police who oversees the execution of the requests by the competent authorities. In certain cases, the Legal Assistance Unit will consult with the Department of International Affairs regarding the execution of a request.*

*While decisions regarding the execution of requests may be made by the Department for International Affairs of the State Attorney's Office and by the Legal Assistance Unit, only the Minister of Justice is authorized to deny an incoming request.*

*A request for legal assistance shall specify the type of proceeding for which the assistance is requested, the facts that constitute the foundation for the suspicion of the commission of an offence, and the connection to the assistance requested. The Police execute the measures requested within the framework of the request.*

- Assistance or participation of agents of the requesting State in the execution of the measure



*It is possible and depends, inter alia, on the type of action requested and other circumstances of the matter.*

#### **Summoning suspects/persons accused (709)**

- Definition and scope of the measure

*An Investigator is authorized to summon suspects. The Summoning can be in writing, by telephone, or face to face, depending on the circumstances of the case.*

*A suspect can be questioned at the site of an offence or can be brought to the police station for the purpose of investigation, if a policeman has a reasonable suspect that he has committed a crime. Section 67 of the Criminal Procedure (Enforcement Powers – Arrests) 5756- 1996*

*Summoning defendant to the court – The court issues summons to the defendant together with a copy of the indictment. A copy of these documents will be sent to the defense counsel of the defendant. Section 95 of the Criminal Procedure Law [Consolidated Version] 5742-1982.*

- Failing that, an alternative measure with the same purpose

**No**

- Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*Yes, under the conditions set forth in the Legal Assistance between States Law, 1998, and the terms specified above.*

- Body competent to authorize the measure

*The body competent to authorize the measure is the investigator at the police investigation stage. At the trial stage, the court is the competent body. The summons will be signed by the judge, a registrar, or by a court clerk*

- Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*By law, incoming requests for legal assistance in criminal matters may be received by the Directorate of Courts, the Director of the Department of International Affairs of the State Attorney's Office or the Inspector General of the Israel Police or the Head of the Intelligence Division. In practice, requests are sent to the Directorate of Courts and then forwarded by them to the Legal Assistance Unit of the Israel Police who oversees the execution of the requests by the competent authorities. In certain cases, the Legal Assistance Unit will consult with the Department of International Affairs regarding the execution of a request.*

*While decisions regarding the execution of requests may be made by the Department for International Affairs of the State Attorney's Office and by the Legal Assistance Unit, only the Minister of Justice is authorized to deny an incoming request.*

*A request for legal assistance shall specify the type of proceeding for which the assistance is requested, the facts that constitute the foundation for the suspicion of the commission of an offence, and the connection to the assistance requested. The Police execute the measures requested within the framework of the request.*

- Assistance or participation of agents of the requesting State in the execution of the measure

*It is possible and depends, inter alia, on the type of action requested and other circumstances of the matter.*

#### **Hearing suspects/persons accused: standard procedure (710)**

- Definition and scope of the measure

*Section 2 of the Criminal Procedure Ordinance (testimony), 1927 authorizes an investigator to orally question any person who may have information concerning an offence that he is investigating, including a suspect. The section states that the person questioned must answer truthfully the questions he is being asked, unless the answers might incriminate him.*

*The right to remain silent is stated only partially in the Israeli law. Nevertheless, practically, a suspect has a right to remain silent and not to answer any question. The suspect has also a right to consult a lawyer before questioned, and if the inquiry has begun, and the suspect asks.*

*There is a formal indictment, and the prosecutor is the competent body who is in charge of it.*

*At the trial, the defendant is entitled to testify as a defense witness, and if he or she chose to do so, they will testify at the beginning of the defense's evidence. The defendant has the right to avoid testifying. At that case, the avoidance might strengthen the evidence of the prosecution or be supporting evidence or corroborating evidence, when needed. (Section 161 of the Criminal Procedure Law [Consolidated Version] 5742-1982).*

*The defendant can consult with his lawyer during the trial.*

*There is a duty to appoint a defense lawyer for the defendant in certain circumstances, inter alia, when a prosecutor asks the court to pose an imprisonment, when the defendant is defendant of committing severe offences with punishment of 10 years imprisonment or more, minor defendants, etc.*

- Failing that, an alternative measure with the same purpose

*No*

- Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*Yes, under the conditions set forth in the Legal Assistance between States Law, 1998, and the terms specified above.*

- Body competent to authorize the measure

*The body competent to authorize the measure is the investigator at the police investigation stage. At the trial stage, the court is the competent body.*

- Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*By law, incoming requests for legal assistance in criminal matters may be received by the Directorate of Courts, the Director of the Department of International Affairs of the State Attorney's Office or the Inspector General of the Israel Police or the Head of the Intelligence Division. In practice, requests are sent to the Directorate of Courts and then forwarded by them to the Legal Assistance Unit of the Israel Police who oversees the execution of the requests by the competent authorities. In certain cases, the Legal Assistance Unit will consult with the Department of International Affairs regarding the execution of a request.*

*While decisions regarding the execution of requests may be made by the Department for International Affairs of the State Attorney's Office and by the Legal Assistance Unit, only the Minister of Justice is authorized to deny an incoming request.*

*A request for legal assistance shall specify the type of proceeding for which the assistance is requested, the facts that constitute the foundation for the suspicion of the commission of an offence, and the connection to the assistance requested. The Police execute the measures requested within the framework of the request.*

- Assistance or participation of agents of the requesting State in the execution of the measure

*It is possible and depends, inter alia, on the type of action requested and other circumstances of the matter.*

**Hearing suspects/persons accused: by video conference (711)**

- Definition and scope of the measure

*In principle, there is a possibility to use that measure, if the suspect or the defendant agrees. Nevertheless, it is problematic due to aspects of due process and defendant's rights.*

- Failing that, an alternative measure with the same purpose

*No*

- Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*Yes, under the conditions set forth in the Legal Assistance between States Law, 1998, and the terms specified above.*

- Body competent to authorize the measure

*The court at the trial stage*

- Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*By law, incoming requests for legal assistance in criminal matters may be received by the Directorate of Courts, the Director of the Department of International Affairs of the State Attorney's Office or the Inspector General of the Israel Police or the Head of the Intelligence Division. In practice, requests are sent to the Directorate of Courts and then forwarded by them to the Legal Assistance Unit of the Israel Police who oversees the execution of the requests by the competent authorities. In certain cases, the Legal Assistance Unit will consult with the Department of International Affairs regarding the execution of a request.*

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*A request for legal assistance shall specify the type of proceeding for which the assistance is requested, the facts that constitute the foundation for the suspicion of the commission of an offence, and the connection to the assistance requested. The Police execute the measures requested within the framework of the request.*

- Assistance or participation of agents of the requesting State in the execution of the measure

*It is possible and depends, inter alia, on the type of action requested and other circumstances of the matter*

#### Hearing suspects/persons accused: by telephone (712)

- Definition and scope of the measure

*None*

- Failing that, an alternative measure with the same purpose

*None*

- Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*None*

- Body competent to authorize the measure

*None*

- Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)
- Assistance or participation of agents of the requesting State in the execution of the measure

#### Confrontation (713)

- Definition and scope of the measure

*A confrontation of the suspect with other witnesses may be conducted only at the police investigation. Usually it is recorded by video, and is submitted to the court as evidence at the trial.*

- Failing that, an alternative measure with the same purpose

*No*

- Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*Yes, under the conditions set forth in the Legal Assistance between States Law, 1998, and the terms specified above.*

- Body competent to authorize the measure

#### *The investigator*

- Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*By law, incoming requests for legal assistance in criminal matters may be received by the Directorate of Courts, the Director of the Department of International Affairs of the State Attorney's Office or the Inspector General of the Israel Police or the Head of the Intelligence Division. In practice, requests are sent to the Directorate of Courts and then forwarded by them to the Legal Assistance Unit of the Israel Police who oversees the execution of the requests by the competent authorities. In certain cases, the Legal Assistance Unit will consult with the Department of International Affairs regarding the execution of a request.*

*While decisions regarding the execution of requests may be made by the Department for International Affairs of the State Attorney's Office and by the Legal Assistance Unit, only the Minister of Justice is authorized to deny an incoming request.*

*A request for legal assistance shall specify the type of proceeding for which the assistance is requested, the facts that constitute the foundation for the suspicion of the commission of an offence, and the connection to the assistance requested. The Police execute the measures requested within the framework of the request.*

- Assistance or participation of agents of the requesting State in the execution of the measure

*It is possible and depends, inter alia, on the type of action requested and other circumstances of the matter.*

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## **EUROMED JUSTICE III PROJECT**

**Criminal and Penitentiary Law**

**WG 3**

**Working Group on Criminal Law in order to  
prepare a tool equivalent to the so-called  
“fiches belges”**

**JORDAN**

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## EUROMED JUSTICE III PROJECT

Criminal and Penitentiary Law

Tool equivalent to the so-called “fiches belges”

### JORDAN

#### 1. TRACING AND INTERCEPTION OF (TELE) COMMUNICATIONS

##### Interception, recording and transcription of telecommunications (101)

Definition and scope of the measure

Failing that, an alternative measure with the same purpose

Jordanian Constitution

Article 18

*All postal and telegraphic correspondence as well as telephone calls and other means of communication shall be considered confidentiality not subject to control, check, arrest or confiscation except by judicial order in accordance with the provisions of the Jordanian Constitution.*

*Communications Act, as amended, No. 13 of 1995*

Article 56

*The phone calls and private communication are considered confidential that may not violated t subject to legal liability.*

Article 65

*A. The commission shall have the right to track down the source of any radio waves to verify the license of that source without considering it as a breach of the confidentiality of messages or violation of the provisions of the applicable laws.*

*B. Dissemination or rumour that the content of messages that have been captured in during the tracing of the source of the letter under paragraph (a) of this Article, the employee who publishes or rumour that the content of those messages shall be punished as prescribed by the law.*

Article 71

*Whoever posted or disseminated the content of any communication by a public or a private telecommunications network or a telephone message seen by virtue of his job or was recorded without legal basis, shall be punished by imprisonment for not less than one month nor more than one year or a fine of not less than 100 dinars and not more than 300 dinars, or both penalties.*

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*If there is a bilateral or international agreement stipulating that provided it that does not violate the Constitution or laws or regulations.*

Body competent to authorize the measure

*The competent court or the pubic prosecutor.*



Practical modes of execution of the *measure* (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*If there is a bilateral or international agreement stipulating that provided that it does not violate the Constitution or laws or regulations.*

Assistance or participation of agents of the requesting State in the execution of the measure

*Not applicable*

### Tracing of telecommunications (102)

Definition and scope of the measure

*No*

Failing that, an alternative measure with the same purpose

*Communications Act, as amended, No. 13 of 1995*

*Article 77*

*The person who hides a message which he has to transmit by communication networks to someone else or rejects the transmission of messages which he was asked transmit, whether by the licensee or the Commission, divulges a message or tampers with data related to one of the participants, including the unannounced phone numbers, messages sent or received, shall be punishable by imprisonment for a term not exceeding six months or a fine not exceeding (1000) dinars, or both penalties.*

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*If there is a bilateral or international agreement stipulating that provided it does not violate the Constitution or laws or regulations.*

Body competent to authorize the measure

*The court and the prosecutor have the powers to track the communications.*

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*If there is a bilateral or international agreement stipulating that provided it does not violate the Constitution or laws or regulations.*

Assistance or participation of agents of the requesting State in the execution of the measure

*Not applicable*

### Interception and recording of other forms of communication (103)

Definition and scope of the measure

*None*

Failing that, an alternative measure with the same purpose

*Penal Law*

*Article 148*

*1. Conspiracy is to commit a terrorist act or acts, punishable by temporary hard labour.*

2. Every act of terrorism that requires hard labour for at least five years.

3. Hard labour for life if the act resulted in the following:

A. Damage, even in part, to a public or private building, industrial enterprise, a ship or aircraft, or any means of transport, or any other facilities.

B. Disable the means of communication and computer systems, penetrates and jam their networks, disable transport or cause damage in whole or in part.

*Communications Act, as amended, No. 13 of 1995*

*Article 77*

*The person who hides a message which he has to transmit by communication networks to someone else or rejects the transmission of messages which he was asked transmit, whether by the licensee or the Commission, divulges a message or tampers with data related to one of the participants, including the unannounced phone numbers, messages sent or received, shall be punishable by imprisonment for a term not exceeding six months or a fine not exceeding (1000) dinars, or both penalties*

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*Not applicable*

Body competent to authorize the measure

*Not applicable*

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*Not applicable*

Assistance or participation of agents of the requesting State in the execution of the measure

*Not applicable*

#### **Interception of mail (104)**

Definition and scope of the measure

*None*

Failing that, an alternative measure with the same purpose

*Provisional Information Systems Crimes Act No. 30 of 2010*

*Article 3*

*A. Whoever intentionally enters a website or information system in any way without a permit or in violation of, or exceeding authorization, shall be punished by imprisonment for not less than a week and no more than three months or a fine of not less than (100) one hundred dinars and not more than (200) two hundred dinars, or both penalties*

*B. If the access provided for in paragraph (a) of this article in order to cancel, delete, add, or destruct, disclose, damage, withhold, amend, modify, transfer or copy data or information, or arrest or disrupt the work of an information system or change the website, cancel or destroy or modify its contents or occupancy, spoof or impersonate active owner, the person shall be punishable by imprisonment for not less than three months and not exceeding one year or a fine of not less than (200) two hundred dinars and not more than (1000) thousand dinars, or both penalties.*

#### Article 4

*Whoever intentionally logins, posts or uses a program through the Internet or by using an information system in order to cancel, delete, add, or destruct, disclose, damage, withhold, amend, modify, transfer or copy data or information, or arrest or disrupt the work of an information system or change the website, cancel or destroy or modify its contents or occupancy, spoof or impersonate active owner, the person shall be punishable by imprisonment for not less than three months and not exceeding one year or a fine of not less than (200) two hundred dinars and not more than (1000) thousand dinars, or both penalties.*

#### Article 5

*Any person who intentionally captures or intercepts or eavesdrops on what is sent through the Internet or any information system shall be punished by imprisonment for not less than one month nor more than one year or a fine of not less than (200) two hundred dinars and not more than (1000) thousand dinars, or both penalties.*

#### Article 12

*A. Taking into account the terms and conditions prescribed in the legislation in force and taking into account the personal rights of the defendant, Judicial Police employees may, after obtaining permission from the Attorney General concerned or of the competent court, access anywhere with indications of being used to commit any of the offences set forth in this law, also they may inspect the equipment, tools, programs, regulations and the means by which the evidence suggest that they are used to commit any of those crimes, and in all cases, the employee who inspected shall draw up the minutes of this and submit it to the competent prosecutor.*

*B. Subject to paragraph (a) of this Article, taking into account the rights of others bona fide, excluding those licensed under the provisions of the Telecommunications Law, who did not participate in any offence under this Act, Judicial Police employees may control the devices, tools, programs, systems and the means used to commit any of the crimes stipulated or covered by this law and the money earned from them and reserve the information and data relating to commit any of them.*

*C. The competent court may rule to confiscate the equipment and tools, stop or disrupt the work of any information system or website used to commit any of the offences set forth or covered by this law, confiscate the money earned from these crimes, and decide to remove the violation at the expense of the perpetrator.*

**Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?**

*If there is a bilateral or international agreement stipulating that provided it does not violate the Constitution or laws or regulations.*

**Body competent to authorize the measure**

*The competent court or the public prosecutor.*

**Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)**

*If there is a bilateral or international agreement stipulating that provided it does not violate the Constitution or laws or regulations.*

**Assistance or participation of agents of the requesting State in the execution of the measure**

*Not applicable.*

#### **Observation (105)**

**Definition and scope of the measure**

*Not applicable*

Failing that, an alternative measure with the same purpose

### *The Jordanian Constitution*

#### *Article 18*

*All postal, telegraphic correspondence and telephone calls and other means of communication are considered confidential not subject to control or check or arrest or confiscation except by court order in accordance with the Jordanian Constitution.*

*Code of Criminal Procedure:*

#### *Article 88*

*The prosecutor may control at all post offices correspondence, letters, newspapers, publications, parcels and at all telegraphic offices the telegraphic letters, and may also monitor the telephone conversations when it had use to show the fact.*

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*If there is a bilateral or international agreement stipulating that provided it that does not violate the Constitution or laws or regulations.*

Body competent to authorize the measure

*The competent court or the public prosecutor.*

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*If there is a bilateral or international agreement stipulating that provided that it does not violate the Constitution or laws or regulations.*

Assistance or participation of agents of the requesting State in the execution of the measure

*Not applicable*

### **Interception of telecommunication (106)**

*Paragraphs 1.3, 1.4 apply to it.*

Definition and scope of the measure

Failing that, an alternative measure with the same purpose

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

Body competent to authorize the measure

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

Assistance or participation of agents of the requesting State in the execution of the measure

### **Interception of telecommunication without the technical assistance of another State (107)**

*Paragraphs 1.3, 1.4 & 1.6 apply to it.*

Definition and scope of the measure

Failing that, an alternative measure with the same purpose

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

Body competent to authorize the measure

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

Assistance or participation of agents of the requesting State in the execution of the measure

## **2. AGENTS AND INFORMERS - INFILTRATION**

### **Infiltration by undercover agents of the requested State (201)**

Definition and scope of the measure

Failing that, an alternative measure with the same purpose

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

Body competent to authorize the measure

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

Assistance or participation of agents of the requesting State in the execution of the measure

### **Infiltration by agents of the requesting State in the territory of the requested State (202)**

Definition and scope of the measure

Failing that, an alternative measure with the same purpose

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

Body competent to authorize the measure

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

Assistance or participation of agents of the requesting State in the execution of the measure

### **Infiltration by an informer of the requested State (203)**

Definition and scope of the measure

Failing that, an alternative measure with the same purpose

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

Body competent to authorize the measure

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

Assistance or participation of agents of the requesting State in the execution of the measure

### Handling of informers (204)

Definition and scope of the measure

Failing that, an alternative measure with the same purpose

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist

Body competent to authorize the measure

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

Assistance or participation of agents of the requesting State in the execution of the measure

### 3. EXAMINATION, BODY SEARCH AND EXPERT EVALUATION

#### Superficial body search (301)

Definition and scope of the measure

*There is no specific definition*

Failing that, an alternative measure with the same purpose

#### *Criminal Procedural Law*

##### *Article 86*

*1. The prosecutor may search the suspect or other if there are strong signs he was hiding things useful in revealing the truth.*

*2. If the inspected person is female, the inspection must be a female assigned to it.*

##### *Article 97*

*1. Upon investigation and inspection in some place, if a person is suspected of hiding an object being investigated for, such person may be inspected on the spot.*

*2. A list must be made for the items found and seized from this person and make witnesses sign as described in Article (95) and shall be given a copy if requested.*

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*.If there is a bilateral or international agreement containing provisions for it, the assistance will be implemented.*

Body competent to authorize the measure

*The public prosecutor or whom he delegates from police officers.*

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*Not applicable.*

Assistance or participation of agents of the requesting State in the execution of the measure

*Not applicable.*

### Invasive body search (302)

Definition and scope of the measure

*There is no definition.*

Failing that, an alternative measure with the same purpose

*Criminal Procedural Law*

*Article 97*

*1. Upon investigation and inspection in some place, if a person is suspected of hiding an object being investigated for, such person may be inspected on the spot.*

*2. A list must be made for the items found and seized from this person and make witnesses sign as described*

*Article (95) and shall be given a copy if requested.*

*Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?*

*If there is a bilateral or international agreement containing provisions for it, the assistance will be implemented.*

Body competent to authorize the measure

*The public prosecutor and the Police office*

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*If the bilateral or international agreement provides for it, it shall be applied.*

Assistance or participation of agents of the requesting State in the execution of the measure

*Not applicable.*

### Psychiatric medical examination (303)

Definition and scope of the measure

*There is no definition.*

Failing that, an alternative measure with the same purpose

*Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?*

*Not applicable*

Body competent to authorize the measure

*The competent court and the public prosecutor.*

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*If the bilateral or international agreement provides for it, it shall be applied.*

Assistance or participation of agents of the requesting State in the execution of the measure

*Not applicable.*

### Control of identity, measures for judicial identification (304)

Definition and scope of the measure

*No*

Failing that, an alternative measure with the same purpose

*Criminal Procedural Law*

*Article 110*

*1. Whoever accused of committing an offence and was arrested lawfully because of that charge, he shall comply with any action taken to secure proof of identity and take a drawing of him with his physical descriptions or fingerprints and all other signs that prove his identity at the request of any police officer or gendarmerie responsible for the police centre or prison officer.*

*2. Whoever refused to comply with the action taken to prove identity or objected to it, he shall be regarded as he has committed an offence and shall be punishable by a magistrate to imprisonment for up to fourteen days, but it shall not be relieved of the duty to work under the regulation.*

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*If there is a bilateral or international agreement containing provisions for it, the assistance will be implemented.*

Body competent to authorize the measure

*The competent court and the public prosecutor.*

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*Not applicable.*

Assistance or participation of agents of the requesting State in the execution of the measure

*Not applicable.*

### Technical or scientific examinations or expert evaluations (305)

Definition and scope of the measure

*No*

Failing that, an alternative measure with the same purpose

*Criminal Procedure Article 39*

*If knowing the nature of the offence and its conditions requires knowledge of some of arts and workmanship, the prosecutor shall accompany with him one or more people of such arts and workmanship.*

*Article 40*

*If a person got killed or died by unknown reasons conducive to suspicion, the Prosecutor shall seek the help of a doctor or more to draw up a report of the cause of death and the body of the deceased condition.*



#### Article 41

1. *The doctors and experts referred to in articles (39 and 40) shall take the oath before they start to carry out the task entrusted to them sincerely and honestly.*

2. *The prosecutor determines the date for the submission of expert report in writing and if the expert fails to submit in a timely manner, the Prosecutor may decide to recover the wages which the expert received, all or some of it, and replace him for another expert.*

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*If there is a bilateral or international agreement containing provisions for it, the assistance will be implemented.*

Body competent to authorize the measure

*The competent court and the public prosecutor.*

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*If the bilateral or international agreement provides for it, it shall be applied.*

Assistance or participation of agents of the requesting State in the execution of the measure

*If there is a bilateral or international agreement containing provisions for it.*

#### 4. DOCUMENTS - OBTAINING

##### Spontaneous exchange of information (401)

Definition and scope of the measure

*No*

Failing that, an alternative measure with the same purpose

*There is no definition for the automatic exchange of information, but there is a definition for the information contained in the law to guarantee the right of access to information No. 47 of 2007.*

*Article (2):*

*Information: any oral or written statements, records, statistics, written, illustrated, registered or stored electronically documents or in any way under the official's management or mandate.*

*Documents classified: any oral information, written, printed, recorded or stored electronically documents or in any manner or printed on waxed or photocopy paper, tapes or photographs, films, drawings, maps or other similar things classified as confidential or protected documents in accordance with the provisions of the legislation in force.*

*Regular documents: any unclassified information that is under the official's management or mandate.*

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist

*If there is a bilateral or international agreement containing provisions for that, the assistance will be implemented under it.*

Body competent to authorize the measure

*The bodies in charge of enforcing the law.*

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*Not applicable.*

#### Order to produce documents (402)

Definition and scope of the measure

*None*

Failing that, an alternative measure with the same purpose

*Criminal Procedure:*

*Article 98*

*If the prosecutor sees that there is a need to produce any document or anything to do with the investigation or trial, or if he finds it good to produce, he may issue a note to any person whom he believes that the document or thing is in his possession or custody to appear before him at the time and place appointed in the note or to produce the said document or thing.*

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*If there is a bilateral or international agreement containing provisions for that, the assistance will be implemented under it.*

Body competent to authorize the measure

*The competent court or the prosecutor.*

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

Assistance or participation of agents of the requesting State in the execution of the measure

*Not applicable.*

#### Other possibilities of obtaining information concerning taxes or bank accounts (403)

Definition and scope of the measure

*No*

Failing that, an alternative measure with the same purpose

*No*

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*If there is a bilateral or international agreement containing provisions for that, the assistance will be implemented under it.*

Body competent to authorize the measure

*The competent court or the prosecutor.*

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*Based on the agreements if they provide for it.*

Assistance or participation of agents of the requesting State in the execution of the measure

*Not applicable.*

#### Access to public documents in judicial files (404)

Definition and scope of the measure

*No*

Failing that, an alternative measure with the same purpose

*Civil Procedure*

*Article 25:*

##### *1. Reporting*

*Every official authority or employee who knew while carrying out the job of a felony or a misdemeanour shall immediately report it to the competent prosecutor and send him all the information, records and papers relating to the felony or misdemeanour.*

*Article 88*

*The prosecutor may seize at the post offices any letters, correspondence, newspapers, publications, and parcels, as well as any messages at the telegraph offices, and may also monitor the telephone conversations when it was useful for the facts.*

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*If there is a bilateral or international agreement containing provisions for that, the assistance will be implemented under it.*

Body competent to authorize the measure

*The competent court or the prosecutor.*

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*If provided by the agreements.*

Assistance or participation of agents of the requesting State in the execution of the measure

*Not applicable*

#### Communication of individual police records (405)

Definition and scope of the measure

*No*

Failing that, an alternative measure with the same purpose

*Criminal Procedural Law*

*Article 49*

*The staff of the Judicial Police Assistants of the Attorney General shall give the prosecutor without slow the reports and minutes they make in the cases in which they are authorized together with the rest of papers.*

*Article 50*

*If law enforcement officials were informed of a felony or a misdemeanour, the law does not authorize them to investigate directly. They should immediately send the information to the Prosecutor General.*

Body competent to authorize the measure

*The police*

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*If the agreements provide otherwise.*

Sending and service of procedural documents (406)

Definition and scope of the measure

*No*

Failing that, an alternative measure with the same purpose

*Criminal Procedural aw*

*Article 146*

*Judicial papers shall be served with the knowledge of a plaintiff or a member of the police or gendarmerie in accordance with the rules specified in the Civil Procedure Law taking into account the special provisions contained in this Act.*

*Civil Procedure Code*

*Article 4*

*No service shall be carried out before seven o'clock in the morning, nor after seven o'clock in the evening and in the days of public holidays, except in cases of necessity and with the written permission of the court.*

*Article 5*

*The service paper shall include the following data:*

- 1. Today's date, month, year and time of service*
- 2. Full name and address of the person requesting service and the name of his representative, if any.*
- 3. The name of the court or the party ordering the service.*
- 4. Full name and address of the served, or his representative, if any.*

*5. Full name of the bailiff and his signature on the original and the copy.*

*6. Subject of the service.*

*7. Name of the person who received the service, his signature on the original copy or his proof of failure to sign and its cause*

#### *Article 6*

*1. Service shall be carried out by bailiffs unless the law provides otherwise. The person carrying out the service shall include a statement of how the service was carried out by followed his name and signature.*

*2. If the person required to be served resides in another court area in the Kingdom, the papers shall be sent to the that court to assume the service and return it to the court that issued it attached with a minute stating the actions taken about it.*

*3. A. The judicial papers may be served by one or more private company approved by the Council of Ministers upon the recommendation of the Minister of Justice. A special regulation shall be issued for this purpose to enable the company to carry out its work and monitor its performance in accordance with the provisions of this law*

*B. The company employee who is carrying out the service shall be regarded as bailiff in the meaning intended in this law.*

*C. The expenses for the service by the company shall be paid by the litigant who wishes to make the service in this way, and these expenses are not considered among the expenses of the proceeding*

#### *Article 7*

*1. Service of judicial papers is carried out by will delivering a copy to the person to be served wherever found, unless otherwise stated.*

*2 .Any person may appoint another residing in the jurisdiction of the court as his agent to accept the service of judicial papers.*

*3 .This appointment may be private or public and must be a written instrument signed by the principal in the presence of the chief clerk who attests the validity of the signature and keeps it among the papers of the proceedings.*

#### *Article 8*

*If the bailiff does not find the person to be served in his home or place of work, he shall hand over the paper to his agent, employer, or those who live with him of his ancestors, descendents, spouses, brothers or sisters who show that they have completed eighteen years of age, provided that the interest of whom is required to be served does not conflict with their own interest.*

#### *Article 9*

*If the bailiff finds no one fit to be served in accordance with what is stated in Article (8) of this Act, or those mentioned above whom he found (not the person to be served) declined to sign the acknowledgment, the bailiff shall affix a copy of the paper to be served on the outer door or on a visible side of the place of the person to be served or place of work in the presence of at least one witness, and then return the paper of service to the court that issued it with an explanation of what happened, and if there are documents attached to the paper to be served, the bailiff shall write down that the person required to be served need to see the Court Registry to receive the said documents. Affixing the papers in this way is regarded a legal service.*

#### *Article 10*

*Taking into account the service procedures set forth in any other law, judicial Papers shall be delivered as follows:*

*1 .With respect to government or public institutions represented by the Civil Attorney General, the*

*judicial papers shall be delivered to the Civil Attorney General or one of his aides or the Chief of Staff.*

*2 .With respect to other public institutions, municipalities and village councils shall be handed over to the President or director or Chief or its legal deputy or who represents them or the chief of employee..*

*3 .With regard to prisoners, judicial papers shall be handed over to the prison director or his representative to serve them.*

*4. Regarding sailors of merchant ships or their workers, legal papers shall be delivered to the master or agent of the ship.*

*5 .With respect to companies, associations and other legal persons, judicial papers shall be delivered to their representatives in management centres, or the ones in charge of management, or joint partners or who takes the place of any of these, and if they do not have a management centre, they shall be delivered to any of the people mentioned not-used in their centres, either in person or in the place of work or in his native or chosen home, and if the service is related to the branch company, they shall be delivered to the person responsible for the administration or on behalf of them lawfully.*

*6 .With respect to foreign companies which have a branch or agent in the Kingdom, judicial papers shall be delivered to the person responsible for the administration of this section or to his legal deputy or delivered to the agent in person or in his home or place of business.*

*7 .With respect to military men or men of Public Security and General Intelligence and Civil Defense and their affiliates, judicial papers shall be delivered to the legal departments to which they belong in order to be served whenever the service is requested in their place of work.*

*8 .With respect to government employees and personnel, judicial papers shall be sent to the Director of the Department to which the employee or personnel belong whenever the service is requested in the workplace, and the Director of the Department shall serve the judicial paper as soon as it is received by him and return it signed by him to the court, the court may in any case order to serve the paper to the government employee or personnel by the bailiff directly.*

*9 .If the defendant is a minor or incompetent, judicial papers shall be delivered to his guardian or trustee. In all previous cases, if the bailiff does not find the right person to serve on, he shall return the papers to the judicial party that issued them with a detailed explanation of the situation.*

#### **Article 11**

*Witnesses are served on in accordance with the procedures of service for litigants by a subpoena issued by the court.*

#### **Article 12**

*1.If the court finds out that service can not conducted in accordance with the stipulated provisions in this Law, it may make the service by publication in two local daily newspapers, provided that the person to be served on need to see the court registry to collect the documents, if any.*

*2 .If the court decides to follow this service method, despite what is stated in this Act, the said decision shall contain the date for the required person to appear before the court and present his defense if necessary to do so, as required by the situation.*

#### **Article 13**

*If the person required to be served on is a resident in a foreign country and his address is known, the judicial papers shall be delivered to the Ministry of Justice to be served on him through diplomatic channels unless otherwise provided or through the legal process followed in the country of residence.*

#### **Article 14**

*When judicial papers are returned to the court served in accordance with the methods shown in previous articles, the court shall go on in the case if it considers that the service observed the rules.*

*Otherwise, it may decide to make the service again, and if the court finds out that the service was not in compliance with the rules and was actually not carried out due to the negligence of the bailiff or failure, the court may also decide to fine the bailiff of not less than twenty dinars and not exceeding fifty dinars, and its decision is considered in this matter final.*

#### **Article 15**

*The service shall be deemed effective from the time of signing of the person required to be served on the paper, or from the time of refraining to sign, or from the time of carrying it out in accordance with the provisions of this law.*

**Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?**

*If there is a bilateral or international agreement containing provisions for that, the assistance will be implemented under it.*

**Body competent to authorize the measure**

*The competent court or the prosecutor.*

**Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)**

*If provided by the agreements.*

**Assistance or participation of agents of the requesting State in the execution of the measure**

*Not applicable.*

#### **Transfer of proceedings (407)**

**Definition and scope of the measure**

*No*

**Failing that, an alternative measure with the same purpose**

*No*

**Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?**

*If there is a bilateral or international agreement containing provisions for that, the assistance will be implemented under the constitution and the law.*

**Body competent to authorize the measure**

*The competent court.*

**Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)**

*If provided by the agreements.*

**Assistance or participation of agents of the requesting State in the execution of the measure**

*Not applicable*

## **5. ASSETS - SEQUESTRATION, CONFISCATION AND RESTITUTION**

### **Sequestration of assets (501)**

Definition and scope of the measure

*There is nothing in the Criminal Procedure and Penal Codes as regards a definition of seizure.*

Failing that, an alternative measure with the same purpose

*The law settled that the seizure is to prevent the disposition of property, whether movable or immovable until the case is decided.*

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*Money laundering law*

*Article 22*

*A. To achieve the purposes of this Act, the Jordanian judicial authorities shall cooperate with non-Jordanian judicial authorities particularly with regard to assistance, representations, extradition of accused and convicted persons, as well as requests of non-Jordanian parties to track, freeze or reserve the monies of crimes of money laundering or terrorist financing or the proceeds of any of them, in accordance with rules set by the bilateral or multilateral Jordanian laws, conventions and agreements ratified by the Kingdom or in accordance with the principle of reciprocity without prejudice to the rights of bona fide third parties.*

Body competent to authorize the measure

*The public prosecutor – The competent court.*

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*If the international, regional or bilateral agreement provides for, it shall be applicable.*

Assistance or participation of agents of the requesting State in the execution of the measure

*Not applicable.*

### **Freezing of bank accounts (502)**

Definition and scope of the measure

*The law against money laundering and the financing of terrorism, as amended, No. 46 for the year 2007*

*Article (22 / B)*

*For the purposes of paragraph (a) of this Article, freezing the funds means to impose a temporary ban to transfer, convert, dispose, move, subject to custody or temporary control the money based on a decision issued by a court or competent authority.*

Failing that, an alternative measure with the same purpose

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*Money laundering law*

*Article 22*

*A. To achieve the purposes of this Act, the Jordanian judicial authorities shall cooperate with non-Jordanian judicial authorities particularly with regard to assistance, representations, extradition of accused and convicted persons, as well as requests of non-Jordanian parties to track, freeze or reserve the monies of crimes of money laundering or terrorist financing or the proceeds of any of them, in accordance with rules set by the bilateral or multilateral Jordanian laws, conventions and agreements ratified by the*



*Kingdom or in accordance with the principle of reciprocity without prejudice to the rights of bona fide third parties.*

Body competent to authorize the measure

*The public prosecutor – The competent court.*

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*If the international, regional or bilateral agreement provides for, it shall be applicable.*

Assistance or participation of agents of the requesting State in the execution of the measure

*Not applicable.*

### **Restitution (503)**

Definition and scope of the measure

*Civil Law No. 43 of 1976*

*Article 48*

*The person unlawful assaulted in one of his inherent rights may request to stop this assault and have compensation for the damage caused to him.*

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*If the international, regional or bilateral agreement provides for, it shall be applicable.*

Body competent to authorize the measure

*The competent court.*

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*If the international, regional or bilateral agreement provides for, it shall be applicable.*

Assistance or participation of agents of the requesting State in the execution of the measure

*Not applicable.*

### **Interim measures in view of confiscation (504)**

Definition and scope of the measure

*Code of Criminal Procedure*

*Article 34*

*1. If found in the defendant residence papers or things that support the charge or innocence, the Prosecutor shall seize them and draw up a minute.*

*2. The prosecutor alone and the people recruited in the Articles (36 and 89) shall see the papers before making the decision to seize them.*

### Article 35

1. *The seized items shall be saved in the exact situation in which they were. The said items shall be wrapped or placed in a pot if so require and sealed.*

2. *If money papers found not requiring to keep same to show the truth or to preserve the rights of the parties or the rights of others, the Prosecutor may authorize to deposit them in treasury box.*

### Article 87

*The Prosecutor shall bring his clerk and seize or order to seize all the items that he deems necessary to show the truth and regulates minutes as well as save according to the provisions of the first paragraph of Article (35).*

### Article 90

*The seized items that are not asked for by their owners within a period of three years from the date of termination of proceedings relating thereto, they shall be the property of the State without the need for a court decision.*

### Article 91

*If the seized item gets damaged over time or requires expenses over its value to save it, the Prosecutor may order to sell it in auction when permitted by the investigation. In this case, the right holder may demand it within the time limit set out in the previous Article at the price it was sold.*

**Failing that, an alternative measure with the same purpose**

*The law against money laundering and the financing of terrorism, as amended, No. 46 for the year 2007*

### Article (8)

*The unit in case of availability of information relating to the existence of a suspected action linked to money laundering or the financing of terrorism shall draw up a report accompanied by information, data and documents. The head of the unit shall refer it to the competent public prosecutor to conduct investigation, and the Prosecutor-General shall at the request of the head of the unit reserve the money the object of the suspected action and track it.*

**Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?**

*If the international, regional or bilateral agreement provides for, it shall be applicable.*

**Body competent to authorize the measure**

*The public prosecutor – The competent court*

**Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)**

*If the international, regional or bilateral agreement provides for, it shall be applicable.*

**Assistance or participation of agents of the requesting State in the execution of the measure**

*Not applicable.*

### Confiscation (505)

**Definition and scope of the measure**

**No**

Failing that, an alternative measure with the same purpose

*Customs Act, as amended, No. 20 of 1998*

*Article (206 / d)*

*The decision to confiscate the transport means and materials used in smuggling or to fine of not more than 50% of the value of the smuggled goods should not exceed the value of the transportation vehicle, with the exception of ships, planes and trains unless prepared or rented for this purpose or decide the equivalent value when it is not seized or survived from custody.*

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*If the international, regional or bilateral agreement provides for, it shall be applicable.*

Body competent to authorize the measure

*The public prosecutor – The competent court*

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*If the international, regional or bilateral agreement provides for, it shall be applicable.*

Assistance or participation of agents of the requesting State in the execution of the measure

*Not applicable.*

## **6. PLACES - VISIT AND SEARCH**

### **Visit to and search of homes (601)**

Definition and scope of the measure

*No*

Failing that, an alternative measure with the same purpose

*Jordanian Constitution*

*Article: 10*

*People's living houses are inviolable and shall not be entered except in the cases set out in the law, and in the manner set forth therein.*

*Penal Procedure Law*

*Article 33*

*If the nature of the crime shows that the papers and items in the possession of the defendant can lead to his commission of the crime, the prosecutor general or his deputy shall move off to the residence of the defendant to search for things which he sees leading to the show the fact.*

*Article 83*

*1. The search shall be carried out in the presence of the defendant if he was arrested.*

*2. If not arrested or refused to attend or could not do so or was arrested outside the area in which the search should be carried out or he was absent, the search shall be made in the presence of a well known person in his area or his representative or in the presence of two of his relatives or two witnesses summoned by the Prosecutor.*

#### **Article 84**

*If the defendant is not arrested and was present at the place of the search, he shall be invited to attend the search and he should not be informed of it in advance.*

#### **Article 85**

*1. If the search is to be carried out at the home of a person other than the defendant, this person shall be called to attend the search.*

*2. If he is absent or unable to attend, the search shall be carried out in the presence of a well known person in his area or his representative or in the presence of two of his relatives or two witnesses summoned by the Prosecutor.*

#### **Article 86**

*1. The prosecutor may search the defendant or other if there are strong signs that he is hiding things useful in revealing the truth.*

*2. If the person to be searched is Female, the search shall be carried out by a female assigned to do so.*

#### **Article 93**

*Any police officer may enter any home or place without a warrant and investigate if:*

*1. He had a reason to believe that a crime is being committed in that place or that it was committed a short time ago.*

*2. The person living in that place asked for the help of the police.*

*3. A person in that place police asked for the help of the police and there was a reason to believe that a crime was being committed in it.*

*4. He was tracking a person fled from the place where he was legally detained and entered that place.*

#### **Article 94**

*Except in the cases mentioned in the previous article, it shall be prohibited for any police officer with or without a warrant to enter into any place and search anyone or anything unless he is accompanied by a well known person or two people in his area.*

*The items that are seized from others shall be kept in the search, and the seized items that are not claimed by their owners within a period of three years from the date of disposition of the lawsuit relating to, they shall be the property of the state without the need to issue a court ruling thereto. Also the seized items may be sold if they perishable.*

#### **Article 90**

*The seized items that are not claimed by their owners within a period of three years from the date of disposition of the lawsuit relating to, they shall be the property of the state without the need to issue a court ruling thereto.*

**Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?**

*If there is a bilateral or international agreement containing provisions therefore, the assistance shall be implemented according to it. If there isn't any, the request for assistance shall be performed according to the rules of international courtesies in accordance with national laws provided that it does not violate the Constitution or laws.*

**Body competent to authorize the measure**

*The Prosecutor General or his deputy.*

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*If the international, regional or bilateral provides therefore, then it shall be applicable.*

Assistance or participation of agents of the requesting State in the execution of the measure

*Not applicable.*

### Visit and search on the site of an offence (602)

Definition and scope of the measure

Failing that, an alternative measure with the same purpose

*Criminal Procedural Law*

#### *Article 29*

- 1. If a crime takes place, the prosecutor shall move immediately to the scene of the crime.*
- 2. If the prosecutor general moved to the place where it was said that a crime occurred, and did not find evidence of its occurrence or on what requires him to move, he may start proceedings against the person who gave the information in order to get reimbursement of the expenses for the said moving and may also sue him for false call or giving false statements as the case may be.*

#### *Article 30*

- 1. The prosecutor general shall draw up a report of the incident, how it occurred and its place, and shall write down the statement of whoever watched it or had information about it or useful for the investigation.*
- 2. The persons who give their statements shall sign them. If they refuse, it shall be stated in the minutes.*

#### *Article 32*

- 1. The Prosecutor shall seize any weapons and everything that appeared to be used in the commission of the crime or prepared for this purpose. Also, everything seen of the traces of the crime and other things that help to show the truth shall be seized.*
- 2. The prosecutor shall question the defendant about the items seized after showing them to him. Then he makes a report to be signed by him and the defendant. If the latter refuses to sign, it shall be stated in the report.*

#### *Article 33*

*If the nature of the crime shows that the papers and items in the possession of the defendant can lead to the commission of the crime, the prosecutor general or his deputy shall move off to the residence of the defendant to search for the things which he sees leading to the revealing the truth.*

#### *Article 34*

- 1. If papers or things that support the charge or innocence are found in the defendant's residence, the Prosecutor shall draw up and write it down in the minutes.*
- 2. The prosecutor only and people specified in the articles (36 and 89) may see the papers before making the decision to seize them.*

#### *Article 35*

- 1. The items seized shall be saved in the exact condition they were in. They shall be wrapped up or put in a pot if they require so. They also shall be sealed in both cases.*

*2. If found paper money not required to be kept in particular to reveal the truth or to preserve the rights of the parties or the rights of others, the Prosecutor may authorize to be deposited in Treasury Fund.*

#### Article 38

*1. The prosecutor general, the clerk and the persons mentioned in article 36 shall sign on every page of minutes in accordance with the preceding provisions.*

*2. If the presence of those people is not possible, the prosecutor may draw up the minutes alone and state that in the minutes.*

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*If there is a bilateral or international agreement containing provisions therefore, the assistance shall be implemented according to it. If there isn't any, the request for assistance shall be performed according to the rules of international courtesies in accordance with national laws provided that it does not violate the Constitution or laws.*

Body competent to authorize the measure

*The Prosecutor General or his deputy.*

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*If the international, regional or bilateral provides therefore, then it shall be applicable.*

Assistance or participation of agents of the requesting State in the execution of the measure

*Not applicable.*

## **7. WITNESSES, VICTIMS, SUSPECTS – SUMMONING AND HEARING**

### **Summoning witnesses (701)**

Definition and scope of the measure

*No definition*

Failing that, an alternative measure with the same purpose

*Criminal Procedure*

#### Article 68

*The prosecutor may call the people listed in the complaint, the people whom he knew that they have information on the crime or its conditions and the people who are specified by the defendant.*

#### Article 69

*Call warrants shall be served on the witnesses twenty-four hours at least before the appointed day for hearing.*

#### Article 75

1. *The person called to testify shall be bound to appear before the public prosecutor.*
2. *The public prosecutor in the case of a witness fails to appear may decide to bring him and fine him twenty dinars or to absolve him of the fine if his failure was due to reasonable reason.*

#### Article 78

*If the witness is a resident in the area of the prosecutor and was unable to attend because of illness confirmed by a medical report or because of another reasonable reason, the prosecutor shall move to his home to hear his testimony.*

#### Article 79

*The prosecutor, when the witness is a resident outside his area, may ask the prosecutor at the home of the witness to represent him to hear his testimony and state in the representation the facts that are helpful.*

#### Article 80

*The represented prosecutor according to the two preceding articles shall execute the warrant and send the minutes of the warrant to the representing Prosecutor.*

#### Article 163

*If the summoned witness did not appear to testify, the court shall issue a subpoena for him and have him fined up to twenty dinars.*

#### Article 164

*If the fined witness appeared during or after the trial, and gave a legitimate reason for his absence, the court may relieve him of the said fine.*

#### Article 165

*If the witness declines without legal justification to take the oath or answer the questions directed to him, the court may imprison him for a period not exceeding one month. If during the period of prison and before the conclusion of the proceedings accepts to take the oath and answer the question, he shall be released immediately After doing so.*

#### Article 217

*The prosecutor and the plaintiff may not summon anyone to testify not named in the list of the witnesses unless the defendant or his counsel have been served with a notice with the name of the witness to be summoned.*

**Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?**

*If there is an international or bilateral agreement contains provisions relating to that, the assistance will be carried out. If there isn't any, the request for assistance will be implemented according to the rules of international courtesies under national laws provided that it does not violate the Constitution or laws.*

**Body competent to authorize the measure**

*The public prosecutor or the competent judge.*

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*If the international or bilateral agreement states so provided that it does not violate the laws and regulations.*

Assistance or participation of agents of the requesting State in the execution of the measure

*Not applicable*

#### Hearing witnesses: standard procedure (702)

Definition and scope of the measure

*There is no definition.*

Failing that, an alternative measure with the same purpose

*Criminal Procedure*

#### *Article 70*

*The prosecutor in the presence of his writer shall hear each witness separately and make the witnesses face each other if required by the investigation.*

#### *Article 71*

*The prosecutor shall make sure of the identity of the witness and then ask him for his name, nickname, age, career and his home, and whether he is in the service of one of the parties or a kin and the degree of kinship and make him take the oath to tell the truth and nothing but the truth to be recorded.*

#### *Article 72*

*1. The testimony of each witness shall be recorded including the questions addressed to him and his answers.*

*2. The testimony of the witness shall be read out back to him to sign it or put his fingerprint if illiterate, and if he refuses or could not do so, this shall be referred to in the record.*

*3. In the end of the record, the number of pages that included the testimony of the witness shall be stated. Each page shall include the signatures of the prosecutor and the writer.*

*4. The same procedures shall be followed for other testimonies taken by the prosecutor in the records.*

*5. When the investigation is finished, a list of the people who were heard shall be organized, the date of the hearing and number of pages of the minutes of their testimony.*

#### *Article 75*

*1. Any person called to testify shall be forced to appear before the public prosecutor to give testimony.*

*2. The prosecutor in the case of a witness fails to appear shall decide to bring him and fine him twenty dinars or absolve him of the fine if his failure was due to a reasonable reason.*

#### *Article 78*

*If the witness is a resident in the area of the prosecutor and was unable to attend because of illness confirmed by a medical report or because of another reasonable reason, the prosecutor shall move to his*



*home to hear his testimony.*

#### **Article 79**

*The prosecutor, when the witness is a resident outside his area, may ask the prosecutor at the home of the witness to represent him to hear his testimony and state in the representation the facts that are helpful.*

#### **Article 80**

*The represented prosecutor according to the two preceding articles shall execute the warrant and send the minutes of the warrant to the representing Prosecutor.*

#### **Article 219**

*1. Every witness shall give testimony separately.*

*2. The prosecutor shall make sure of the identity of the witness and then ask him for his name, nickname, age, career and his home, and whether he is in the service of one of the parties or a kin and the degree of kinship and make him take the oath to tell the truth and nothing but the truth to be recorded.*

*3. The court may not take the testimony of a witness who did not take the oath or rejected to do so.*

*4. If the witness decides that he no longer remembers a fact, he may be reminded from his testimony which he approved in the investigation part of the said fact.*

*5. The previous testimonies of the witness shall be read out, and the prosecutor shall order the court clerk to write down the differences that appear between them and his testimony of the addition or subtraction or change or contrast after clarification from him about them.*

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

Body competent to authorize the measure

*The public prosecutor or the competent judge.*

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*If the international or bilateral agreement states so provided that it does not violate the laws and regulations.*

Assistance or participation of agents of the requesting State in the execution of the measure

*Not applicable.*

#### **Hearing witnesses: by video conference (703)**

Definition and scope of the measure

*No*

Failing that, an alternative measure with the same purpose

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*Criminal Procedural Law*

#### **Article 158**

*1. Witnesses who have not attained fifteen years may be heard without oath for inference if it turns out that they do not realize what oath is.*

*2. The testimony, which is taken as evidence, is alone not enough to condemn if not supported by other evidence.*

*3. Subject to the provisions of Article (74) of the Act and paragraphs (1) and (2) of this Article, the prosecutor or the court if necessary, with a reasoned decision, may use of modern technology for the protection of witnesses who have not completed eighteen years of age when testify provided that this means enables any opponent to discuss the witness during the trial. This testimony shall be an admissible evidence in the case*

Body competent to authorize the measure

*The competent court.*

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*If the international or bilateral agreement states so provided that it does not violate the laws and regulations.*

Assistance or participation of agents of the requesting State in the execution of the measure

*If the international or bilateral agreement states so provided that it does not violate the laws and regulations.*

#### Hearing witnesses: by telephone (704)

Definition and scope of the measure

*No*

Failing that, an alternative measure with the same purpose

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*No*

Body competent to authorize the measure

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*If the international or bilateral agreement states so provided that it does not violate the laws and regulations.*

Assistance or participation of agents of the requesting State in the execution of the measure

*Not applicable.*

#### Hearing children (705)

Definition and scope of the measure

*Not applicable*

Failing that, an alternative measure with the same purpose

*Criminal Procedure*

#### **Article 74**

*1. For information, witnesses who have not attained fourteen years of age may be heard without taking the oath provided for in Article 71 if the prosecutor finds out that they do not realize what oath is.*

#### **Article 158**

*1. Witnesses who have not attained fifteen years may be heard without oath for inference if it turns out that they do not realize what oath is.*

*2. The testimony, which is taken as evidence, is alone not enough to condemn if not supported by other evidence.*

*3. Subject to the provisions of Article (74) of the Act and paragraphs (1) and (2) of this Article, the prosecutor or the court if necessary, with a reasoned decision, may use of modern technology for the protection of witnesses who have not completed eighteen years of age when testify provided that this means enables any opponent to discuss the witness during the trial. This testimony shall be an admissible evidence in the case.*

#### **Juvenile Act and its amendments No. 24 of 1968**

#### **Article 10**

##### **Trial confidentiality**

*The juvenile is tried in secret, and no one allowed to enter the court other than the probation officers, juvenile's parents or guardian, his lawyer, and the people who have a direct relationship to the case.*

#### **Article 11**

##### **Probation report**

*The court, before deciding the case, shall get from the probation officer a written report containing all information relating to the financial and social conditions of the juvenile's family, his manners and degree of intelligence and the environment in which he grew up and raised, as well as his school and education, the workplace, health, previous violations of the law, and the proposed measures for remedy.*

#### **Article 12**

##### **Ban the publication of a photo of the juvenile or judgment**

*It is prohibited to publish the name and photo of the offending juvenile, the proceedings of the trial, or summary in any means of publishing, such as books, newspapers, cinema. Whoever contravenes that shall be punished by imprisonment not exceeding thirty days or a fine not exceeding one hundred dinars, or both penalties, and the judgment can be published without reference to the name of the juvenile or nickname.*

#### **Article 13**

##### **Notifying the guardian**

*The sponsor, guardian or person in charge of the juvenile must be summoned as from the investigation stage with the juvenile and hearing by a subpoena provided that the probation officer is notified of that.*

#### **Article 14**

##### **Age of the juvenile**

*1. The personal status department's entry shall be considered evidence of the date of birth unless proved that it was forged.*

*2. If any accused not entered in the records of the personal status department claims that he is a juvenile or younger than he appears which will affect the outcome of the proceedings, the court shall make sure of the date of his birth, if that is not possible, it has to refer him to the medical committee to estimate his age, and the court out of its own shall stir this matter.*

## Article 15

### Investigation and trial

1. *The investigation with the juvenile may not be conducted but in the presence of the guardian, custodian, person in charge of him or his lawyer. In case any of them could not attend, the probation officer shall be called to attend the hearings.*
2. *The court at the start of the trial shall make a brief of the charge assigned to the juvenile in a simple language, and then ask him if he admits it or not.*
3. *If the juvenile admitted guilty, his confession shall be recorded in words that are closer to the ones he used by his confession, and the court shall decide the case, unless it has sufficient reasons to require otherwise.*
4. *If he did not confess to the guilt, the court shall begin to hear the prosecution witnesses, and his guardian, custodian, or his lawyer, may cross-examine witnesses.*
5. *If the court finds out, upon completion of the hearing of the evidence, that there is a case against the accused, it shall hear the testimony of defense witnesses, and the juvenile shall be allowed to submit his defense. Also, his guardian, custodian or lawyer may help him to defend himself. In case any of them could not attend, the probation officer shall be called to help him in that.*
6. *The juvenile, his guardian, custodian, or lawyer, may cross-examine the probation officer about his report. The court may do so as well.*

## Article 20

### Transfer of sentenced to prison

*If the juvenile completes eighteen years of age, before the completion of his sentence, he shall be transferred to the prison to complete the rest of his sentence by a decision of the court that issued the judgment. The said court may upon a written request from the Director of Social Defense extend the stay of the juvenile in the House of Juvenile Rehabilitation until he completes twenty years in order to complete his education and rehabilitation, which began in the house.*

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*If there is an international or bilateral agreement contains provisions relating to that, the assistance will be carried out. If there isn't any, the request for assistance will be implemented according to the rules of international courtesies under national laws provided that it does not violate the Constitution or laws.*

Body competent to authorize the measure

*The competent court and the prosecutor.*

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in)

*If the international or bilateral agreement states so provided that it does not violate the laws and regulations.*

Assistance or participation of agents of the requesting State in the execution of the measure

*If the international or bilateral agreement states so provided that it does not violate the laws and regulations.*

### Hearing persons collaborating with the inquiry (706)

Definition and scope of the measure

No

Failing that, an alternative measure with the same purpose

*Staff of the Judicial Police, the Anti-Corruption Commission, public or private villages' guards, companies control officers, health and customs officers.*

*Criminal Procedure*

*1. Law enforcement officers are charged to investigate crimes, collect evidence and bring perpetrators before the courts entrusted to sentence them. 2. The functions of the judicial police are undertaken by the public prosecutor and his assistants, as well as by magistrates in centres where there are no prosecutors, all within the rules set out in the law.*

*Anti-Corruption Commission*

*The Anti-Corruption Commission shall provide protection for those notified, witnesses, bailiffs, experts in corruption cases and their relatives keep from any aggression, retaliation or intimidation, through the following:*

- 1. to provide protection for them in their places of residence.*
- 2. not to disclose information concerning their identity and whereabouts.*
- 3. to hear their testimony through the use of communication technologies.*
- 4. to protect them in their workplace, immunize them against any discrimination or mistreatment.*
- 5. to provide places to house them when necessary.*
- 6. to take any action and make any necessary action to ensure their safety.*

**Body competent to authorize the measure**

*The competent court and the prosecutor.*

**Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)**

*If there is an international or bilateral agreement contains provisions relating to that, the assistance will be carried out. If there isn't any, the request for assistance will be implemented according to the rules of international courtesies under national laws provided that it does not violate the Constitution or laws.*

**Assistance or participation of agents of the requesting State in the execution of the measure**

*If the international or bilateral agreement states so provided that it does not violate the laws and regulations.*

### **Hearing victims/plaintiffs (707)**

**Definition and scope of the measure**

*No*

Failing that, an alternative measure with the same purpose

*Article 173*

*1. The court may summon the prosecutor's witnesses and the claimant of personal right to hear their testimonies directly and offer them the real materials (if any), and the prosecutor and the claimant of personal right may pose questions to each witness. Also the defendant or his agent may direct such questions to the witnesses for discussion with them.*

*2. If the defendant did not authorize a lawyer, the court when questioning each witness may ask the defendant if he wants to pose questions to the witness to be recorded including the answers.*

**Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?**

*If there is an international or bilateral agreement contains provisions relating to that, the assistance will be carried out. If there isn't any, the request for assistance will be implemented according to the rules of international courtesies under national laws provided that it does not violate the Constitution or laws.*

**Body competent to authorize the measure**

*The competent court and the prosecutor.*

**Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)**

*If the international or bilateral agreement states so provided that it does not violate the laws and regulations.*

**Assistance or participation of agents of the requesting State in the execution of the measure**

*If the international or bilateral agreement states so provided that it does not violate the laws and regulations.*

### **Hearing experts (708)**

**Definition and scope of the measure**

*No*

**Failing that, an alternative measure with the same purpose**

*Code of Civil Procedure No. (24) of 1988*

*Article 83*

*1. The Court in any stage of the trial may decide to make inspection and expertise by one or more experts on any movable or immovable property or for any matter it deems requiring an expert. If the parties agree to elect the expert or experts, the court will approve their election, otherwise, the court will elect them on its own. The court is required to show in its decisions the reasons for requiring the inspection and expertise and the purpose of them. It shall also order to deposit the expenses and the party for paying them.*

*2. The Court may carry out the inspection and expertise by its whole panel or assign one of its members to do so.*

*3. After depositing the expenses for the inspection and the expertise, the President of the Court or judge who is appointed by the Court of its members shall call the expert(s) and the parties to a meeting at the time and place specified, and the expert or experts assigned shall be given the necessary documents or copies of them and shall take the oath his job with honesty and integrity, and shall determine the time for the expert or experts for filing the report. If he could not show the report during the inspection, a report shall be drawn up to be signed by those present.*

*4. After submitting the expert's report, the parties shall be given a copy of it. The report shall be read out openly in the session, and the court out of its own or at the request of one litigant may call the expert for discussion, and may decide to return the report to him or them to complete what it sees as a lack or assign the expertise to others duly elected.*

#### Article 84

*If it is decided to make an inspection and expertise on any property located outside the court area that issued the decision, the court may delegate the president of the court or the judge whom the inspection and expertise are in his constituency to carry out the said inspection and expertise as determined by the court that made the decision of representation provided that the court which has been delegated shall elect the experts in accordance with the provisions of Article (83) of this law.*

#### Article 85

*If the expenses not deposited by the party charged to do so within the specified time limit, the other litigant may deposit this amount without prejudice to the right to refer it to his opponent. And the court may also take the non-depositing of the amount by the party charged to do so as a proof for giving up the fact which he asked the expertise for.*

#### Article 86

*1.If the expert did not file the report on time, he must file a note in the Registry Office before the expiration of the term showing what he has done and the reasons that have prevented completion of his report. If the court finds in the note of the expert a justification for his delay, it shall grant him another deadline for completion and filing his report. If there was no justification for the delay, the court may fine him not exceeding twenty dinars and give him another time to complete and deposit his report, or replace him by another, and compel him to give back the expenses to the Registry Office. The decision to replace the expert and return the expenses can not be appealed.*

*2 . The expert's decision does not bind the court*

#### Article 91

*The experts shall meet in the time and place appointed by the court or the assigned judge, and after they take the oath to perform their work with honesty and integrity, they begin their investigation and comparison under his supervision and in the presence of the parties as follows:*

*1. If the parties have agreed on the papers to be taken as the basis and the measure for investigation and comparison upon their agreement, otherwise the following papers are considered valid for what was said:*

*A. The official papers which the denier wrote, signed, sealed or finger-printed in front of a competent public officer or court.*

*B. The papers which he wrote, signed, sealed or finger-printed outside the government departments, and confessed before a court or notary public or the competent government department of the writing or signature or seal or fingerprint on them.*

*C. The official papers which he wrote or signed while occupying a government position.*

*D. Regular bonds and other documents which the denier confesses in the presence of the assigned judge and the experts that the writing, signature, seal or fingerprint is his writing, signature, seal or fingerprint.*

*2. The signature, seal or fingerprint used on a regular bond denied by the opponent shall not be taken as a basis for investigation or emulation even if a court decided in a previous case upon the report of the experts that it was his signature, seal, or fingerprint.*

*3. In all cases on which the procedures for the validation of documents are based on the laboratory work, and the lab was governmental or belonging to a public institution, the court may not be bound by any action in the previous articles including taking the oath measures, and may out of its own refer the issue with the necessary documents to the laboratory with showing the task required from it. In this case the expenses deposited for the expertise shall be transferred to the state treasury.*

#### Civil Procedure

#### Article 160

*1.To prove the identity of the accused or suspect or defendant or the identity of whoever is related to the*

*offence, it is accepted as evidence the fingerprints, palm prints and feet prints during trials or investigation if made by a witness or witnesses and were supported by technical evidence. Photographs may also be accepted in the evidence to identify its owner.*

*2. When applying the provisions of this Article, Part III of the second book of this law shall be taken into account.*

#### **Article 161**

*1. The report, which obviously indicates that it is issued by the official responsible for the government chemical laboratory or the government chemical analyst and signed by him, containing the results of the chemical test or the analysis conducted by himself on any suspected substance, shall be accepted as evidence in penal procedure without calling that official or analyst as a witness.*

*2. Notwithstanding the provisions of paragraph (1), the employee or the analyst shall attend as a witness in criminal proceedings before any court, including the Magistrate's Court if deemed appropriate by the court or magistrate that his presence is necessary to secure justice.*

#### **Article 312**

*The court may in a fraud case make the suspect or the accused do some writing or by the expert. If he refused, this would be taken down in the minute.*

**Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?**

*If there is an international or bilateral agreement contains provisions relating to that, the assistance will be carried out. If there isn't any, the request for assistance will be implemented according to the rules of international courtesies under national laws provided that it does not violate the Constitution or laws.*

**Body competent to authorize the measure**

*The competent court.*

**Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)**

*If the international or bilateral agreement states so provided that it does not violate the laws and regulations.*

**Assistance or participation of agents of the requesting State in the execution of the measure**

*Not applicable.*

#### **Summoning suspects/persons accused (709)**

**Definition and scope of the measure**

*No*

**Failing that, an alternative measure with the same purpose**

*Civil Procedure*

#### **Article 61**

*If the Prosecutor finds out that the complaint is not clear, the perpetrator is unknown or the papers produced do not support it adequately, he may start the investigation to reach for the perpetrator, and then he may hear the person or persons intended in the complaint in accordance with the rules set forth in Article (68 ) et seq.*



### Article 63

1. When a defendant appears before the prosecutor, he shall verify his identity and read out the charge against him and ask for his answer by informing him that he has the right not to answer, but in the presence of a lawyer, and this informing will be taken down in the minutes of the investigation. If the defendant rejected to hire a lawyer or did not bring a lawyer in twenty-four hours, he will be investigated solely.

2. It is permissible in the case of hurry because of the fear of loss of evidence and by a reasoned decision question the defendant of the charges assigned to him prior to calling the lawyer to appear. The lawyer may subsequently see his client's testimony

3. If the defendant makes a statement, the court clerk shall write it down and then read out back to him to sign or finger print it, and then the prosecutor and the clerk will endorse it. If the defendant declines to sign or finger print it, the court clerk will record this in the minute together with showing the reason for not doing so, and then the prosecutor and the clerk will endorse that.

4. The prosecutor's failure to observe the provisions of paragraphs 1, 2 and 3 of this Article will make the defendant's statement invalid.

### Article 64

1. The defendant, the claimant of personal right and their agents shall have the right to attend all the investigation stages except to hear witnesses.

2. The people mentioned in the first paragraph shall have the right to see all the investigations that took place in their absence.

3. The prosecutor has the right to decide to investigate independently of the persons mentioned in the case of urgency or when he deems necessary to show the truth. His decision in this matter does not accept appeal, but he must upon completing the scheduled investigation in this manner brief those involved on it.

### Article 66

1. The prosecutor has the right to decide to prevent contact with the defendant in custody for a period not exceeding 10 days renewable.

2. This prohibition does not include the defendant's lawyer who can reach him all the time and in isolation from any officer.

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*If there is an international or bilateral agreement contains provisions relating to that, the assistance will be carried out. If there isn't any, the request for assistance will be implemented according to the rules of international courtesies under national laws provided that it does not violate the Constitution or laws.*

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*If the international or bilateral agreement states so provided that it does not violate the laws and regulations.*

Assistance or participation of agents of the requesting State in the execution of the measure

*If the international or bilateral agreement states so provided that it does not violate the laws and regulations.*

### Hearing suspects/persons accused: standard procedure (710)

Definition and scope of the measure

No

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*If there is an international or bilateral agreement contains provisions relating to that, the assistance will be carried out. If there isn't any, the request for assistance will be implemented according to the rules of international courtesies under national laws provided that it does not violate the Constitution or law*

Body competent to authorize the measure

*The competent court or the prosecutor.*

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*If there is an international or bilateral agreement contains provisions relating to that, the assistance will be carried out. If there isn't any, the request for assistance will be implemented according to the rules of international courtesies under national laws provided that it does not violate the Constitution or laws.*

Assistance or participation of agents of the requesting State in the execution of the measure

#### Hearing suspects/persons accused: by video conference (711)

Definition and scope of the measure

*No*

Failing that, an alternative measure with the same purpose

*No*

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

Body competent to authorize the measure

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

Assistance or participation of agents of the requesting State in the execution of the measure

#### Hearing suspects/persons accused: by telephone (712)

Definition and scope of the measure

*No*

Failing that, an alternative measure with the same purpose

*No*

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

Body competent to authorize the measure

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

Assistance or participation of agents of the requesting State in the execution of the measure

## Confrontation (713)

Definition and scope of the measure

*No*

Failing that, an alternative measure with the same purpose

*Criminal Procedure*

*Article 70*

*The prosecutor in the presence of the court clerk shall hear each witness separately. The witnesses may face each other if the investigation required so.*

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*If there is an international or bilateral agreement contains provisions relating to that, the assistance will be carried out. If there isn't any, the request for assistance will be implemented according to the rules of international courtesies under national laws provided that it does not violate the Constitution or laws*

Body competent to authorize the measure

*The public prosecutor.*

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*If the international or bilateral agreement states so provided that it does not violate the laws and regulations.*

Assistance or participation of agents of the requesting State in the execution of the measure

*If the international or bilateral agreement states so provided that it does not violate the laws and regulation*

## 8. CROSS-BORDER OPERATIONS

### Cross-border observation (801)

Definition and scope of the measure

*There is no definition.*

Failing that, an alternative measure with the same purpose

*No*

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*If the international or bilateral agreement provides therefore provided that they do not violate the rules and the regulation.*

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

Assistance or participation of agents of the requesting State in the execution of the measure

### Cross-border hot pursuit (802)

#### *The competence of the Public Security Directorate*

Definition and scope of the measure

Failing that, an alternative measure with the same purpose

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

Body competent to authorize the measure

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

Assistance or participation of agents of the requesting State in the execution of the measure

### Cross-border tracking (by placing a beeper on a vehicle or a person) (803)

Definition and scope of the measure

Failing that, an alternative measure with the same purpose

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

Body competent to authorize the measure

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

Assistance or participation of agents of the requesting State in the execution of the measure

### Controlled deliveries (804)

Definition and scope of the measure

*No*

Failing that, an alternative measure with the same purpose

*There is no such prosecution in the Code of Criminal Procedure. This may happen in the case of receiving news from neighbouring states that there is smuggling or drug trade. Based on this news from the neighbouring country, the State with its security organs, whether the police or Al-Badiah or the Customs Department, shall prosecute that person and try him on the charge if he was captured according to the Code of Criminal Procedure or the applicable laws governing such matters as the Customs Act, the Narcotics Act and psychotropic substances, as amended, No. 11 of 1988.*

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

Body competent to authorize the measure

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

Assistance or participation of agents of the requesting State in the execution of the measure

## **Joint investigation teams (805)**

### **Definition and scope of the measure**

**Failing that, an alternative measure with the same purpose**

**Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?**

**Body competent to authorize the measure**

**Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)**

**Assistance or participation of agents of the requesting State in the execution of the measure**

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## EUROMED JUSTICE III PROJECT

### Criminal and Penitentiary Law

#### WG 3

Working Group on Criminal Law in order to  
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LEBANON

**1. TRACING AND INTERCEPTION OF (TELE) COMMUNICATIONS**

**Interception, recording and transcription of telecommunications (101)**

**Definition and scope of the measure**

*The rules about invasion of privacy of communications, including interception, listening, and surveilling of communication, are regulated by the law 140/99, amended by the law 158/99.*

*It covers interception of all means of communication (telephones, mobiles, fax, e-mails...)*

*Thus the interception allowed as an exception of the general provision can only take place after a judicial or an administrative decision has been taken as prescribed by the articles 2 and 3 of the law 140/99.*

**Failing that, an alternative measure with the same purpose**

*None.*

**Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?**

*Yes, a request for judicial assistance in criminal matters is essential.*

**Body competent to authorize the measure**

*The first examining judge in each region, within the article 2 of law 140/99, can order this measure to be taken ,in very urgent cases, for offences that are sanctioned for a duration of imprisonment not less than a year.*

*Moreover, the article 9 of the law 140/99 allowed the minister of defence and the minister of interior to order this measure, after the approval of the prime minister ,in the purpose of collecting information that help to fight terrorism and organized crime*

**Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)**

*The order of intercepting communications, in both cases mentioned above, must be issued in written form and justified. There must be stipulated the mean of communication, the offence, and the period of the measure which must not be longer than two months, renewable according to the same conditions applied.*

**Assistance or participation of agents of the requesting State in the execution of the measure**

*No assistance or participation of the officials of the requesting state is admitted during the execution of the measure.*



### Tracing of telecommunications (102)

Definition and scope of the measure

*There is no special regulation with respect to the tracing of telecommunications.*

Failing that, an alternative measure with the same purpose

*None.*

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*See answer 101.*

Body competent to authorize the measure

*See answer 101*

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*No special regulation.*

Assistance or participation of agents of the requesting State in the execution of the measure

*See answer 101.*

### Interception and recording of other forms of communication (103)

Definition and scope of the measure

*See answer 101.*

Failing that, an alternative measure with the same purpose

*None.*

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*See answer 101.*

Body competent to authorize the measure

*See answer 101.*

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*The measure is undertaken by the judicial officer under the supervision of the judge who issued the order. It is not possible to execute the measure according to the procedures of the requesting state.*

Assistance or participation of agents of the requesting State in the execution of the measure

*See answer 101.*

### Interception of mail (104)

Definition and scope of the measure

*No special regulation.*

Failing that, an alternative measure with the same purpose

*None.*

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*See answer 101.*

Body competent to authorize the measure

*See answer 101.*

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*See answer 101.*

Assistance or participation of agents of the requesting State in the execution of the measure

*See answer 101.*

### Observation (105)

Definition and scope of the measures

*See answer 101.*

Failing that, an alternative measure with the same purpose

*None.*

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*See answer 101.*

Body competent to authorize the measure

*See answer 101.*

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*See answer 101.*

Assistance or participation of agents of the requesting State in the execution of the measure

*See answer 101.*

### Interception of telecommunication (106)

Definition and scope of the measure

Failing that, an alternative measure with the same purpose

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

Body competent to authorize the measure

Practical modes of execution of the measure (among others, the possibility to execute the measure in

conformity with the procedure applicable in the requesting State)

Assistance or participation of agents of the requesting State in the execution of the measure

### Interception of telecommunication without the technical assistance of another Member State (107)

Definition and scope of the measure

Failing that, an alternative measure with the same purpose

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

Body competent to authorize the measure

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

Assistance or participation of agents of the requesting State in the execution of the measure

## 2. AGENTS AND INFORMERS - INFILTRATION

### Infiltration by undercover agents of the requested State (201)

Definition and scope of the measure

*Not regulated in the criminal procedure, it may be applied only by the police.*

Failing that, an alternative measure with the same purpose

*No.*

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*No.*

Body competent to authorize the measure

*Public prosecutor before the cassation court.*

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*Not provided.*

Assistance or participation of agents of the requesting State in the execution of the measure

*No*

### Infiltration by agents of the requesting State in the territory of the requested State (202)

Definition and scope of the measure

*Not specified.*

Failing that, an alternative measure with the same purpose

*None.*

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

No

Body competent to authorize the measure

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*Not provided.*

Assistance or participation of agents of the requesting State in the execution of the measure

*Not provided.*

#### Infiltration by an informer of the requested State (203)

Definition and scope of the measure

*Not specified.*

Failing that, an alternative measure with the same purpose

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

Body competent to authorize the measure

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

Assistance or participation of agents of the requesting State in the execution of the measure.

#### Handling of informers (204)

Definition and scope of the measure

*Not specified.*

Failing that, an alternative measure with the same purpose

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

Body competent to authorize the measure

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

Assistance or participation of agents of the requesting State in the execution of the measure

### 3. EXAMINATION, BODY SEARCH AND EXPERT EVALUATION

#### Superficial body search (301)

Definition and scope of the measure.

*Body searches tend to look for objects, documents and any other traces, evidence or clues suggesting that a crime of whatever nature has occurred. The competent administrative body will undertake a detailed examination of the detainee's body, clothes and any objects he or she is carrying.*

Failing that, an alternative measure with the same purpose

N/A

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

N/A

Body competent to authorize the measure

*The police (in cases of flagrante delicto) and the judicial police (in other cases) under the direct supervision of public prosecutor.*

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*A body search may be carried out on any person who took part in an offence and has documents relating to the incriminating facts in their possession. Body searches may be carried out in police stations, General Security offices and customs posts.*

Assistance or participation of agents of the requesting State in the execution of the measure

*There is no special provision but, in practice and within the limits of Lebanese law, there is nothing to prevent a foreign suspect being assisted by an agent of the requesting State under the supervision of the senior public prosecutor*

### Invasive body search (302)

Definition and scope of the measure

*These are practical measures. A medical examination (at which a medical examiner must assist) may be undertaken in particular in cases of sexual assaults and x-rays may be used in certain cases where the presence of drugs is suspected.*

Failing that, an alternative measure with the same purpose

N/A

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*Nothing prevents it (see above 301-6)*

Body competent to authorize the measure

*The public prosecutor or the examining magistrate to whom the case has been referred (depending on the investigation)*

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*In general, the competent police officer will take the suspect's fingerprints at the police station and these will be examined at a later stage. Moreover, it is the public prosecutor or examining magistrate in charge of the case who will appoint the forensic examiner to assist the competent administrative body, depending on the investigation. The examination will take place in a police station, doctor's surgery or a certified clinic (as the case may be).*

Assistance or participation of agents of the requesting State in the execution of the measure

*There is no special provision but, in practice and within the limits of Lebanese law, there is nothing to prevent a foreign suspect being assisted by an agent of the requesting State under the supervision of the senior public prosecutor.*

### Psychiatric medical examination (303)

#### Definition and scope of the measure

*These are examinations carried out by psychiatrists with a view to establishing the suspect's criminal liability or lack of it (since a person suffering psychological problems will be exempt of all liability. However, it is always possible that the act will still be punishable, depending on the circumstances if the suspect's neurological-psychiatric condition is a consequence of his or her own actions.*

Failing that, an alternative measure with the same purpose

*N/A*

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist

*Yes, in principle, subject to letters rogatory.*

Body competent to authorize the measure

*The senior public prosecutor or examining magistrate in charge of the investigation*

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*The psychiatrist (a medical examiner or sworn-in) will be appointed by the public prosecutor or the examining magistrate in charge of the investigation. He or she will be expected to carry out his or her tasks quickly, under the supervision of the magistrate who has appointed him or her. He or she may ask the necessary questions for carrying out his or her tasks without the presence or intervention of the magistrate who appointed him or her. The person concerned will be kept informed throughout the procedure under the direct supervision of the public prosecutor or examining magistrate in charge of the investigation.*

Assistance or participation of agents of the requesting State in the execution of the measure

*There is no special provision but, in practice and within the limits of Lebanese law, there is nothing to prevent a foreign suspect being assisted by an agent of the requesting State under the supervision of the senior public prosecutor.*

#### Control of identity, measures for judicial identification (304)

#### Definition and scope of the measure

*Identity checks are aimed at coercively establishing the real identity of a suspect who has been arrested or a person who is unwilling or unable to prove his or her identity with a view to detaining the person subject to the measure.*

Failing that, an alternative measure with the same purpose

*N/A*

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*Yes, in principle, subject to letter rogatory.*

Body competent to authorise the measure

*Police officers, judicial police officers and customs officers may check the identity of a person subject to the measure, in the context of preventative policing and subject to the supervision of the prosecution.*

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*Police officers are bound to respect law and order, in particular as regards the safety of persons and property as well as the personal data of the person subject to the measure, acting on the request of the public prosecutor as soon as there is a clue that (at least) gives rise to a presumption that the person committed (or attempted to commit) an offence or that he or she may be capable of providing necessary information to an*

*investigation.*

Assistance or participation of agents of the requesting State in the execution of the measure

*No special provision, nothing prevents it in principle. But it has to be within the limits of Lebanese law and subject to the principle of reciprocity.*

#### Technical or scientific examinations or expert evaluations (305)

Definition and scope of the measure

*These are technical or even scientific investigative measures that can help an investigation to discover a crime, in particular in the medical area (DNA, blood, urine or tissues sample, for example), the area of intellectual property, cybercrime, civil, mechanical, electric or electronic engineering, aviation, graphology, etc. with a view to discovering evidence or information that may be useful to an enquiry.*

Failing that, an alternative measure with the same purpose

*N/A*

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*Yes, in principle, provided that there are letters rogatory and subject to the limits of the principle of reciprocity.*

Body competent to authorize the measure

*Officers of the specialised judicial police in the course of preventative policing subject to the supervision of the prosecution or sworn-in experts appointed by order of the Minister for Justice or appointed by the prosecution, examining magistrate, criminal court of appeal or the judge at the court seized of the case.*

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*Officers of the specialised police, firstly experts in graphology, intellectual property, cybercrime, genetic engineering or various categories of arms, munitions and landmines will undertake technical or even scientific examinations that cannot be undertaken by any other police officers, under the direct supervision of the public prosecutor or examining magistrate, criminal court of appeal or even the court seized. These officers and experts will communicate their conclusions to the magistrate who appointed them. The magistrate in charge of the case may ask the said officers or experts for an additional evaluation and he or she must communicate their conclusions to the parties so that they can present their observations or, if applicable, request a second expert opinion.*

Assistance or participation of agents of the requesting State in the execution of the measure

*No special provision. Nothing prevents it in principle, but it has to be within the limits of Lebanese law and subject to the principle of reciprocity.*

#### 4. DOCUMENTS - OBTAINING

##### Spontaneous exchange of information (401)

Definition and scope of the measure

*This is an exchange of what is believed to be information concerning acts punishable under the criminal law. Lebanese law prohibits any spontaneous exchange of information concerning information in any file unless there are letters rogatory. The exchange and transmission of information are undertaken on the basis of requests and subject to the limits of Lebanese law and the principle of reciprocity.*

Failing that, an alternative measure with the same purpose

Body competent to authorize the measure

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

Assistance or participation of agents of the requesting State in the execution of the measure

#### Order to produce documents (402)

Definition and scope of the measure

*Lebanese law prohibits the production of documents or information concerning a file to anyone in the absence of a request and letters rogatory.*

Failing that, an alternative measure with the same purpose

Body competent to authorize the measure

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

Assistance or participation of agents of the requesting State in the execution of the measure

#### Other possibilities of obtaining information concerning taxes or bank accounts (403)

Definition and scope of the measure

*The public prosecutor, the first examining magistrate or the court seized of the case may obtain from the parties involved, the administration, banks and financial institutions or any person holding funds belonging to the suspect, the production of information of a fiscal or financial nature, without this conflicting with the 1967 law on banking secrecy.*

Failing that, an alternative measure with the same purpose

Body competent to authorize the measure

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

Assistance or participation of agents of the requesting State in the execution of the measure

#### Access to public documents in judicial files (404)

Definition and scope of the measure

Failing that, an alternative measure with the same purpose

Body competent to authorize the measure

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

Assistance or participation of agents of the requesting State in the execution of the measure



### Communication of individual police records (405)

Definition and scope of the measure

Failing that, an alternative measure with the same purpose

Body competent to authorize the measure

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

Assistance or participation of agents of the requesting State in the execution of the measure

### Sending and service of procedural documents (406)

Definition and scope of the measure

No handover of documents or information existing.

Failing that, an alternative measure with the same purpose

Body competent to authorize the measure

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

Assistance or participation of agents of the requesting State in the execution of the measure

## 5. ASSETS - SEQUESTRATION, CONFISCATION AND RESTITUTION

### Sequestration of assets (501)

Definition and scope of the measure

*Seizure (Seizure consists of placing objects, including intangible objects or documents that may be useful for ascertaining the truth, in the hands of the justice system. Its aim is to avoid the deterioration of evidence and to allow anything that appears to be the fruits of a crime to be retained, if necessary. It does not necessarily mean losing physical possession of the object seized, as the owner may be appointed guardian of the object placed in the hands of the justice system.*

Failing that, an alternative measure with the same purpose

*N/A*

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*Yes but there is no legal framework regulating mutual judicial assistance in the area of seizure. However, Law No. 673/1998 on narcotics and Law No. 318/2001 on the fight against money-laundering regulate the methods for implementing mutual judicial assistance in a more specific manner. Requests for mutual judicial assistance can generally be implemented in compliance with the bilateral or international conventions or, in*

*the absence of such, subject to the principle of reciprocity.*

**Body competent to authorize the measure**

*The officer of the judicial police*

*The public prosecutor at the Court of Appeal or Supreme Court [cour de cassation]*

*The examining magistrate*

*The single criminal-court judge in a case of flagrante delicto*

**Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)**

*Seizure is a real measure that can be used anywhere and regardless of whose possession the objects and documents are in, subject to provisions relating to searches, professional secrecy and the regime constituting a derogation that concerns the seizure procedures for certain specific offences.*

*Thus, in the area of drug trafficking, seizures may be operated outside of the legal hours in premises where narcotics are used, manufactured, processed or stored. These operations must be authorised at the request of the competent public prosecutor for the place in which the offence was committed. The examining magistrate may also authorise it if an investigation is underway (Code of Criminal Procedure, article 31 b), articles 33, 41, 44 and 45 of Law No. 17 of 6/9/1990, articles 194, 218 of Circular No. 374 of 12/12/2001*

*In the case of a crime that has just been committed and requires prompt investigation, a judicial police officer may seize the arms and instruments used or intended to be used to commit a crime. The same applies to anything that appears to be the fruits of a crime. The objects seized are made available to the public prosecutor.*

*Any objects or documents placed in the hands of the justice system are immediately inventoried and placed under seal.*

**Assistance or participation of agents of the requesting State in the execution of the measure**

*Under the same conditions as those applying to searches.*

### **Freezing of bank accounts (502)**

**Definition and scope of the measure**

*Freezing bank accounts means blocking them. The holder of the accounts is no longer authorised to use them, and as a result of this measure the bank secrecy is lifted and the judicial authorities can have access to all account's movements until the moment the account was frozen.*

**Failing that, an alternative measure with the same purpose**

**No**

**Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?**

*This measure is possible in case of international letters rogatory, provided it is not in conflict with any regulations and legislation in force on bank secrecy.*

**Body competent to authorize the measure**

*Bank accounts are frozen through the special investigations committee at the Banque du Liban that is entitled to order lifting of the bank secrecy and freezing accounts in case of suspected money laundering.*

**Practical modes of execution of the measure (among others, the possibility to execute the measure in**

conformity with the procedure applicable in the requesting State)

No

Assistance or participation of agents of the requesting State in the execution of the measure

No

### Restitution (503)

Definition and scope of the measure

*Restitution of seized goods is possible after a final court judgment ordering their restitution. Restitution means returning to their rightful owners any objects, belongings, sums and assets of any nature seized by justice in case of an offence. Restitution can be requested by any person who can prove entitlement to hold rightfully the claimed objects (owner, holder, holder of a use right....). Restitution shall be refused when it is likely to be an obstacle to making the truth appear or to safeguarding the parties' rights, or when it represents a danger for persons or goods. Restitution can also be refused when confiscation of the object is provided for by law.*

Failing that, an alternative measure with the same purpose

No

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*Restitution is possible in case of mutual judicial assistance provided that the MJA request is received in compliance with the procedures in force and the domestic laws and regulations.*

Body competent to authorize the measure

*Any court ruling on the merits of the case. The authorities that are competent to order confiscation are also competent to order restitution. For the examining magistrate, article 103 of criminal code. For the single criminal judge, article 201 of the criminal code.*

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*General framework: the judgment ordering restitution is enforced according to the procedures of the requested State.*

Assistance or participation of agents of the requesting State in the execution of the measure

*Not possible unless there is a special convention or authorisation.*

### Interim measures in view of confiscation (504)

Definition and scope of the measure

*Precautionary measures aimed at ensuring the confiscation of property, an object or the fruits of a crime (placed under seal; preventative seizure). The provisions relating to the fight against drug-trafficking in article 179 of Law 673/1998*

Failing that, an alternative measure with the same purpose

N/A

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*The measure is possible in the case of bilateral or international conventions, provided that the competent*

*bodies deem the measure appropriate and in compliance with internal law and order and the regulations concerning confidentiality.*

Body competent to authorize the measure

*The examining magistrate of the place in which the property is located in connection with an investigation. Any court ruling on the merits of the case. The competent bodies to order confiscation also have the power to order restitution.*

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*In the case of a recently committed crime requiring a rapid response, the judicial police officer can seize the arms and instruments used or intended to be used to commit the crime and also anything that appears to be the fruits of the crime. The objects seized will be made available to the public prosecutor in charge of the case.*

Assistance or participation of agents of the requesting State in the execution of the measure

*Not possible unless there is a convention or special and limited authorisation*

### **Confiscation (505)**

Definition and scope of the measure

*Confiscation is a measure accompanying a criminal-law sanction*

Failing that, an alternative measure with the same purpose

*N/A*

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*N/A*

Body competent to authorize the measure

*Any court ruling on the merits*

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*It is possible in the course of enforcing judgements issued in the requesting State, provided that the measure does not contravene the rules of law and order in the requested State*

Assistance or participation of agents of the requesting State in the execution of the measure

*Possible in the case of a bilateral convention*

## **6. PLACES – VISIT AND SEARCH**

### **Visit to and search of homes (601)**

Definition and scope of the measure

*A search is an investigative measure aimed at looking for, finding and seizing material objects that can be used as evidence or for comparative purposes. It may also be used for looking for suspects in a place who benefit from a particular legal regime, in particular the suspect's home or an enclosed area.*

**Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?**

*Yes, provided that there is no infringement of public law and order or of sovereignty and provided that there is no breach to the regulations on security and confidentiality*

**Body competent to authorize the measure**

*The prosecution at the Court of Appeal and Supreme Court [Cour de Cassation]. The examining magistrate may also order searches*

**Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)**

*In the case of a recently committed crime requiring prompt action [to secure evidence]*

*The public prosecutor may enter the suspect's home to look for any evidence there capable of throwing light on the investigation. He or she may seize any such evidence, writing a report and inventory concerning same and ordering that it be preserved according to its nature. The search will be carried out in the presence of the suspect or defendant. If the latter is absent or refuses to attend or has escaped, the search will be conducted in the presence of his or her counsel, two adult family members or two witnesses selected by the public prosecutor. Once the search and seizure are over, the public prosecutor will draw up an inventory of objects seized before the suspect or defendant, counsel or the abovementioned persons and ask each of the interested parties to sign the search report. If one of the interested parties refuses to sign, this will be mentioned in the report. The public prosecutor may instruct an officer of the judicial police to carry out a search at the home of the suspect or defendant, under his or her authority and supervision and in accordance with the procedures which the public prosecutor is bound to follow. Entry into homes in order to carry out searches or look for criminals can only occur between five a.m. and eight p.m. unless the owner of the residence expressly consents to the search being conducted outside of these hours. The public prosecutor or judicial police officer appointed by the former may at any time proceed to a search or look for a suspect in public places or anywhere regarded as equivalent to a public place according to custom [article 33 CCP [Code of Criminal Procedure]]. If the judicial police officer takes the view that a person who is not suspected of any offence may have in their possession documents or objects that could be useful to the enquiry, it will be up to the public prosecutor or examining magistrate, not the judicial police officer, to decide whether to proceed to a search of that person's home, unless the latter freely consented to having a search carried out by the judicial police officer (article 43 CCP).*

*In other cases*

*Judicial police officers inform the prosecution of any measures they take and comply with the instructions of the latter. They may not proceed to search a home or conducting a body search on a person without the prior authorisation of the prosecution service. If they obtain this authorisation, they have to comply with the regulations that the law imposes on the public prosecutor in a case where a rapid response is required (article 47 C.C.P.).*

**Assistance or participation of agents of the requesting State in the execution of the measure**

*In principle, it is not possible for officers of the requesting State to execute the measure, subject to*

*conventions or special and limited authorisations.*

### **Visit and search on the site of an offence (602)**

#### **Definition and scope of the measure**

*Visiting the scene of an offence makes it possible to ascertain the various circumstances directly (traces, spaces or objects that are likely to provide information on the commission of the offence or the identity of the perpetrator. This option is of particular interest in the case of a crime that is being or has just been committed and requires a rapid response.*

Failing that, an alternative measure with the same purpose

*N/A*

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*Within the framework of bilateral conventions or, in the absence thereof, according to the principle of reciprocity on condition that the competent judicial bodies deem the measure appropriate and authorise it in advance.*

#### **Body competent to authorize the measure**

*The competent public prosecutor may personally visit the scene and will have exclusive competence to exercise the powers listed in articles 33, 41, 44, 47 C.C.P.). Upon his or her arrival, the judicial police officers present will forfeit these powers. The examining magistrate may also visit the scene to make any useful observations there and carry out searches or any other acts necessary to obtain information.*

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State

*Where an offence has just been or is in the process of being committed and a rapid response is required, an officer of the judicial police will immediately go to the location and will inform the competent public prosecutor of this. He or she will ensure that any traces, clues and evidence that are capable of disappearing and any information that may contribute to ascertaining the truth are preserved. He or she will look for and seize arms and objects used to commit the offence or which are the fruits of the offence. He or she will question witnesses without making them take an oath. He or she will investigate and arrest any person strongly suspected of having committed the offence or taken part in it. He or she will search the homes of such persons and seize any evidence or illicit objects found there, if applicable with the assistance of experts. He or she may question a suspect provided that the latter makes a statement voluntarily, in full awareness and freely, without being subjected to force of any kind.*

*The measure will be applied in accordance with the law of the requested State.*

#### **Assistance or participation of agents of the requesting State in the execution of the measure**

*In principle, it is not possible for officers of the requesting State to execute the measure, subject to conventions or special and limited authorisations.*

## **7. WITNESSES, VICTIMS, SUSPECTS - SUMMONING AND HEARING**

### **Summoning witnesses (701)**

#### **Definition and scope of the measure**

*This is the writ by which an authority calls a witness to the place and at the time and hour determined by it to question him or her about a certain fact of which he or she may have learned through any of the five*

senses.

*A summons must be produced in writing. However, a witness' testimony will be heard without him or her having been summoned if he or she appears voluntarily or by coincidence before the authority without needing to be summoned.*

*A witness may appear of his or her own volition before the authority without being summoned to provide information about an attack on law and order or security or on the life and property of another person.*

*The examining magistrate, criminal court, single criminal-court judge, criminal court of appeal or judicial adviser may hear the testimony of witnesses appearing before them, even if they have not been summoned. Witnesses may not refuse to testify.*

**Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?**

*The judicial authorities of the requesting State can ask the Lebanese authorities to serve a summons on a witness to appear and this is undertaken in accordance with the ordinary procedure for requests for mutual judicial assistance.*

**Body competent to authorize the measure**

*In the course of a criminal investigation, the choice of witnesses is made by officers of the judicial police and the summons will not take any particular form. Witnesses are always summoned upon instruction by the prosecution. The competent bodies for authorising a summons are the general prosecution, examining magistrate, criminal court of appeal, single criminal-court judge, the court of appeal, the criminal court and judicial adviser.*

**Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)**

*Witnesses are summoned by special units directly answerable to the public prosecutor, first examining magistrate and the presidents of the competent courts and tribunals. These units are answerable to the president of the court who has authorised or instructed them to serve documents or implement the abovementioned measures. If the addressee is absent from his or her place of residence or domicile, the summons will be served through a relative, servant or person residing at this domicile, provided that that person's appearance suggests that they have reached the age of majority and that there is no conflict of interests between that person and the addressee. If the person in question refuses to give his or her name or state their connection with the addressee or to accept a copy of the writ, the representative of the law will mention it on the document, of which he or she will hand over a copy. Members of the diplomatic corps and consulate will receive service of their trial documents through the Ministry of Foreign Affairs. Military servicemen will receive service of their trial documents through the commander of the unit to which they belong. Service occurs at least three days before the date of the addressee's appearance before the requesting court subject to provisions to the contrary.*

**Assistance or participation of agents of the requesting State in the execution of the measure**

*In principle, it is not possible for officers of the requesting State to execute the measure, subject to conventions or special and limited authorisations.*

### **Hearing witnesses: standard procedure (702)**

**Definition and scope of the measure**

*The hearing of witnesses is defined as the disclosure before an authority of a certain fact of which one has learned through one of one's senses. It may be written or verbal and relate information one has concerning the act in question, one of its stages or a fact or person connected with the commission of the offence.*

**Failing that, an alternative measure with the same purpose**

N/A

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

Yes.

Body competent to authorize the measure

*The competent bodies for authorising the hearing are: the public prosecution, the examining magistrate, the criminal court of appeal, the single criminal-court judge, the court of appeal, the criminal court, the judicial adviser and the judicial police.*

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*The hearing of witnesses is accompanied by a transcript. All the witness statements are recorded in a transcript signed by the public prosecutor or assistant public prosecutor, the court clerk and the witness. If the latter refuses to sign, this will be mentioned in the transcript. If the witness does not speak fluent Arabic or is deaf or mute, the judge will assign an interpreter who will provide a prior undertaking under oath to carry out his or her task faithfully and honestly, unless he or she is already a sworn-in court interpreter.*

*When the witness cannot go to the office of the judicial authority due to illness, disability or force majeure, the judge or his clerk go where the witness is to hear him/her.*

*The measure is implemented in accordance with the rules of procedure of the requested State.*

Assistance or participation of agents of the requesting State in the execution of the measure

#### Hearing witnesses: by video conference (703)

Definition and scope

*Not available. However a draft law is currently being prepared on this topic.*

Failing that, an alternative measure with the same purpose

NA

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

NA

Body competent to authorize the measure

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

Assistance or participation of agents of the requesting State in the execution of the measure

#### Hearing witnesses: by telephone (704)

Definition and scope of the measure

NA



Failing that, an alternative measure with the same purpose

NA

Failing that, an alternative measure with the same purpose

NA

Failing that, an alternative measure with the same purpose

NA

#### Hearing children (705)

Definition and scope of the measure

*The hearing of a child who is a victim or witness is defined as disclosure by a person aged under eighteen years before an authority concerning a certain act of which he or she has learned or of which he or she has been a victim*

Failing that, an alternative measure with the same purpose

N/A

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*Yes, provided that the procedures laid down in Law No. 422/2002 concerning the protection of minors in danger or in conflict with the law are respected*

Body competent to authorize the measure

*The competent bodies for authorising a hearing are the public prosecution, examining magistrate, criminal court of appeal, single criminal-court judge, court of appeal, criminal court and judicial adviser.*

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*Minors aged under eighteen years are heard for informational purposes and accompanied by a social worker or one of their parents in a separate room from that in which other persons of the department who do not have any direct link with the investigation underway are staying.*

*It is mandatory for hearings concerning minors to be held in camera.*

*A minor will always be assisted by a lawyer, in the absence of which the judge may appoint one in the course of the hearing.*

*A minor who is a victim of sexual abuse will be heard in a chamber in the Court of Justice in Beirut set up for this purpose in such a way that the minor has no contact with any police officers and his or her testimony will be recorded in audio.*

*The recording and a psychological report are handed over to the judge concerned, who may make do with these two exhibits so that the minor will not have to be heard again.*

*Minors aged under eighteen are heard for informational purposes only.*

*Children under seven years of age are only heard for informational purposes and on foot of a reasoned decision.*

Assistance or participation of agents of the requesting State in the execution of the measure

N/A

#### Hearing persons collaborating with the inquiry (706)

#### Definition and scope of the measure

*These are persons who are familiar with the structures and activities of criminal organisations and their links with other local or foreign criminal groups and they are charged with or convicted of other serious offences.*

Failing that, an alternative measure with the same purpose

N/A

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

N/A

Competent Body

*Before any criminal court seized of the case.*

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*In order to have the status of an informant, the prior authorisation of the public prosecutor at the Supreme Court is required. The latter will approve this status in a written deed.*

*The testimony of an informant who has advised the competent bodies of the offence without receiving any remuneration or reward in exchange for the information provided will be deemed admissible. For such testimony to be admitted, the public prosecutor must indicate the informant's status as such prior to his or her hearing. If the informant has received any remuneration or reward in exchange for information provided, his or her testimony will be inadmissible if any of the parties in the trial objects to it. It will then be up to the president to decide whether to hear him or her for informational purposes. The judicial police officer testifying is bound to name the informant in the course of his or her witness statement. A draft law on the protection of witnesses is currently being prepared.*

Assistance or participation of agents of the requesting State in the execution of the measure

N/A

#### Hearing victims/plaintiffs (707)

Definition and scope

*This is a report of an offence by a person who is a victim or his or her lawyer requesting that justice be done with regard to the harm he or she has suffered. The hearing of the victim or his or her lawyer (unless the authority decides that it is necessary to hear the victim in person) may take place before any criminal court and during the preliminary investigation.*

Failing that, an alternative measure with the same purpose

N/A

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*Yes, mutual judicial assistance is possible for the hearing of victims and plaintiffs and is implemented in accordance with the ordinary procedures for requesting mutual judicial assistance and in compliance with the domestic law of the requested State.*

Body competent to authorize the measure

*The competent bodies for the hearing of a plaintiff are any criminal-law courts.*

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*The hearing of a plaintiff is governed by the same rules of procedure as the hearing of witnesses. It is possible to file civil proceedings after a public case before the same court. It is also possible to bring a civil action separately before a civil court. Any injured party of a crime or misdemeanour may file civil proceedings before the first examining magistrate or before the single judge in the case of a crime or misdemeanour. He or she may also join the public action before the criminal court. If the public prosecutor does not institute the public action, it will be up to the injured party to instigate it. He or she may withdraw their action or accept a settlement without prejudice to the public case, except save in cases where the latter is extinguished by the extinction of the civil law-suit.*

Assistance or participation of agents of the requesting State in the execution of the measure

N/A

#### Hearing experts (708)

Definition and scope of the measure

*An expert is an impartial person submitting evidence to a court regarding legally significant circumstances on the basis of his or her specialised knowledge. Experts are bound to tell the truth, their conclusions must be based on facts and their arguments must be well-founded.*

Failing that, an alternative measure with the same purpose

N/A

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*Yes, in accordance with domestic legal procedures and in the case of bilateral conventions*

Body competent to authorize the measure

*Before an examining magistrate and adjudicating court*

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*Same procedure as for witnesses.*

Assistance or participation of agents of the requesting State in the execution of the measure

N/A

#### Summoning suspects/persons accused (709)

Definition and scope of the measures

*This is the writ by which an authority summons a suspect to the place, on the date and at the time determined by it to question him or her concerning certain facts and accuse him or her of having committed an offence.*

Failing that, an alternative measure with the same purpose

N/A

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist??

N/A

Body competent to authorize the measure

*Any criminal courts, depending on their jurisdiction*

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*In a case of a crime that has just been committed and which requires rapid investigation, if the suspect has fled or is not present at the beginning of the investigation, the public prosecutor will issue a bench warrant to have him or her brought before him. The examining magistrate will serve a copy of the writ and its annexes on a defendant at least twenty-four hours in advance of his or her interrogation.*

*Before the single judge, the court clerk will prepare the documents to be served on the plaintiff, defendant, party incurring civil liability and guarantor. Each of these must receive their summons to appear three days prior to the commencement of the trial. In an emergency, the judge may decide to shorten this deadline.*

*Before the criminal court. If the accused is not in detention, the president of the court will issue an order in absentia in court, inviting the party to appear before the court within twenty-four hours at latest, to run from the opening of the case. If the accused appears by the deadline laid down, he or she will be detained until their release is ordered. If they fail to appear by this deadline without providing a valid excuse, they will be deemed to be on the run and a warrant issued for their arrest will become enforceable.*

Assistance or participation of agents of the requesting State in the execution of the measure

N/A

**Hearing suspects/persons accused: standard procedure (710)**

Definition and scope of the measure

*A person suspected of having taken part in an offence will be heard immediately in order to keep him or her available to the investigation and the justice system.*

Failing that, an alternative measure with the same purpose

N/A

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

N/A

Body competent to authorize the measure

*Any criminal courts depending on their jurisdiction.*

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*During the preliminary investigation: The suspect or person against whom an action is brought will have the following rights from the time at which he or she is taken into custody for the purposes of the investigation:*

*1) to communicate with a member of their family, their employer, a lawyer of their choice or an acquaintance;*

*2) meet a lawyer whom they personally appoint by a declaration recorded in the transcript, without any need to draw up a formal power of attorney;*

*3) avail of the assistance of an interpreter if he or she does not speak fluent Arabic;*

*4) directly request from the public prosecutor or request through their lawyer of family member, an authorisation to be examined by a doctor. The public prosecutor appoints a doctor as soon as he or she receives the request. The doctor will undertake the examination without the presence of judicial police officers. He or she will send their report to the public prosecutor by a deadline of twenty-four hours. A copy*

*of the report will also be sent to the requesting prosecutor. It is up to the person taken into custody and the abovementioned parties to request a further medical examination if the custody period is extended.*

*The judicial police inform the suspect of the abovementioned rights when he or she is taken into custody and makes a note of this procedure in the transcript (Article 47 C.C.P.)*

*Before the prosecution: The person interrogated is entitled to have a lawyer present during their interrogation. They may also, at their own request or that of their counsel or a relative, be examined by a doctor who will be appointed by the public prosecutor. (Article 32 C.P.P.)*

*Before the examining magistrate: the examining magistrate will interrogate the defendant at the court at which he or she is based unless the defendant cannot get there on grounds of illness or incapacity or for any other plausible reason.*

*The examining magistrate informs the defendant of his or her rights, in particular the right to be assisted by a lawyer during the interrogation.*

*If the defendant refuses to take up the assistance of a lawyer, the examining magistrate is not bound to appoint one. The refusal must be noted in the transcript on pain of invalidity of the interrogation and any subsequent proceedings.*

*By derogation from the provisions in articles 78 and 79 of this Code, the judge may in a order stating reasons, directly institute the interrogation of the defendant if there are any traces or evidence that could disappear.*

*He or she may interrogate the defendant in the absence of a lawyer in the case of a blatant offence that has just been committed and where swift action is needed or similar cases.*

*Before the single criminal-court judge: At the beginning of the trial, the court clerk will read out the indictment by the prosecution or the order of the examining magistrate, or will summarise the facts presented in the lawsuit brought. He or she will then present the evidence implicating the defendant.*

*The judge will hear the plaintiff or their counsel. He or she will then interrogate the defendant in the presence of the lawyer whom the latter has appointed as counsel, if the defendant has chosen to be assisted by a lawyer in the trial proceedings. (Article 180 C.C.P.)*

*Before any courts, if the defendant refuses to reply and remains silent, neither the judge nor the plaintiff can oblige him or her to speak, nor can the judge hold the defendant's silence against him or her.*

**Assistance or participation of agents of the requesting State in the execution of the measure**

*N/A*

#### **Hearing suspects/persons accused: by video conference (711)**

**Definition and scope of the measure**

*N/A*

**Failing that, an alternative measure with the same purpose**

*N/A*

**Body competent**

**Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?**

**Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)**

**Assistance or participation of agents of the requesting State in the execution of the measure**

### Hearing suspects/persons accused: by telephone (712)

#### Definition and scope of the measure

Failing that, an alternative measure with the same purpose

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist

Body competent

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

Assistance or participation of agents of the requesting State in the execution of the measure

### Confrontation (713)

#### Definition and scope of the measure

*This operation therefore consists of bringing together persons whose statements contradict each other or at least do not agree in order to confront them with their contradictions and attempt to clarify their statements.*

*There are no particular provisions concerning this operation. Confrontation may take place between the suspects, witnesses and victims, the suspect and the victim, the suspect and the witness, and the witness and the victim.*

Failing that, an alternative measure with the same purpose

N/A

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*Possible in the case of bilateral conventions and will be implemented in accordance with the rules of procedure of the requested State.*

Body competent

*Judicial police if he or she has not been questioned yet. Prosecution, examining magistrate and criminal courts.*

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*Confrontation is merely one particular form of questioning.*

*The investigator will read out the statements containing contradictions before all the participants. This confrontation is noted in the transcript.*

*Each person present is interrogated by the investigator in order to find out whether he or she stands by their statements or would like to amend them. The replies given by each person questioned in turn are conscientiously noted.*

*If the investigator establishes that the persons present are sticking precisely to their previous statements, he or she may address one of them or each of them in turn in the form of questions and answers which will be conscientiously noted.*

*Once the confrontation is over, the investigator concludes the transcript, which is communicated to each participant, who must read and sign only their own statements in it.*

Assistance or participation of agents of the requesting State in the execution of the measure

N/A

## **8. CROSS-BORDER OPERATIONS**

### **Cross-border observation (801)**

Definition and scope

*This measure does not exist in the Code of Criminal Procedure. Law No. 673/1998 on narcotics introduced a procedure for controlled circulation in article 73 that is similar to cross-border observation.*

Failing that, an alternative measure with the same purpose

N/A

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist

*Yes, within the framework of bilateral conventions and in accordance with the rules of procedure of the requested State.*

Body competent to authorize the measure

*The public prosecutor at the Supreme Court and the Director General of Customs have to authorise the measure, which is implemented by the unit in charge of the fight against narcotics.*

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*The director general of the central unit for the fight against narcotics, with the permission of the public prosecutor and the director general of customs, implements the decision to resort to controlled deliveries coming from abroad or leaving Lebanon, taking account of the provisions and financial agreements concluded with the competent bodies in the States concerned in relation to the exercise of powers.*

Assistance or participation of agents of the requesting State in the execution of the measure

*Possible in the case of bilateral conventions.*

### **Cross-border hot pursuit (802)**

Definition and scope of the measure

*This measure does not exist in the Code of Criminal Procedure*

Failing that, an alternative measure with the same purpose

N/A

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

N/A

Body competent to authorize the measure

N/A

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

N/A

Assistance or participation of agents of the requesting State in the execution of the measure

N/A

#### Cross-border tracking (by placing a beeper on a vehicle or a person) (803)

Definition and scope of the measure

*This measure does not exist in Lebanese law.*

A Failing that, an alternative measure with the same purpose

N/A

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

N/A

Body competent to authorize the measure

N/A

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

N/A

Assistance or participation of agents of the requesting State in the execution of the measure

N/A

#### Controlled deliveries (804)

Definition and scope of the measure

*Does not exist within the framework of the [general] law on criminal procedure. Law No. 673/1998 on narcotics defines and determines the conditions of application of this measure in articles 2 and 220. Controlled delivery is the act of allowing illegal dispatches of drugs to continue on their route into or out of the State with the knowledge of the competent bodies and under their supervision in order to identify the persons involved in the commission of drug-related offences.*

A Failing that, an alternative measure with the same purpose

N/A

Is the measure possible under mutual judicial assistance? If not does an alternative measure exist?

N/A

Body competent to authorize the measure

*The public prosecutor at the Supreme Court and the director general of customs must authorise the*



*measure, which will be implemented by the central unit for the fight against narcotics.*

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*The director general of the central unit for the fight against narcotics, with the permission of the public prosecutor and the director general of customs, implements the decision to resort to controlled deliveries coming from abroad or leaving Lebanon, taking account of the provisions and financial agreements concluded with the competent bodies in the States concerned in relation to the exercise of powers. The director general of the central unit will supervise the implementation of this measure and inform the senior public prosecutor of all measures taken during the operation.*

Assistance or participation of agents of the requesting State in the execution of the measure

*Possible in the case of bilateral conventions.*

### Joint investigation teams (805)

Definition and scope of the measure

*Does not exist within the framework of the [general] law on criminal procedure. Law No. 673/1998 on narcotics defines and determines the conditions of application of this measure in article 219.*

Failing that, an alternative measure with the same purpose.

*N/A*

Is the measure possible under mutual judicial assistance? If not?

*Yes, the measure is possible if there are bilateral conventions, provided that the competent bodies deem the measure appropriate and in compliance with domestic law and order.*

Body competent to authorize the measure

*Public prosecutor at the Supreme Court*

Practical modes of execution of the measure)

*Forming mixed teams of investigators is possible, having regard to the need to protect the safety of persons and capital and to ensure full respect for the sovereignty of the State on the territory where the operation is conducted.*

Assistance or participation of agents of the requesting State in the execution of the measure

*Possible in the case of bilateral conventions and subject to specific and limited authorisations in accordance with the rules of procedure of the requested State.*

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## EUROMED JUSTICE III PROJECT

### Criminal and Penitentiary Law

#### WG 3

Working Group on Criminal Law in order to prepare  
a tool equivalent to the so-called “fiches belges”

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## **EUROMED JUSTICE III PROJECT**

### **Criminal and Penitentiary Law**

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**Tool equivalent to the so-called “fiches belges”**

#### **MOROCCO**

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Working Group on Criminal Law in order to prepare a tool equivalent to the so-called “fiches belges”

Tool equivalent to the so-called “fiches belges”

MOROCCO

**1. TRACING AND INTERCEPTION OF (TELE) COMMUNICATIONS**

**Interception, recording and transcription of telecommunications (101)**

- **Definition and scope of the measures**

*Given what a serious measure this is, the law considers it an exceptional procedure and has entrusted it to the examining magistrate and, on an exceptional basis where the needs of an investigation require it, in a case that has not been submitted to an examining magistrate, the Senior public prosecutor for the Crown [procureur général du Roi, hereinafter the Senior public prosecutor] may order this measure following authorisation by the President of the Court of Appeal [Premier Président] in the case of serious crimes undermining the safety and security of the State. However, the Senior public prosecutor can order the measure in an emergency, where the needs of an investigation call for urgent action in order to avoid losing evidence. In such a case, he or she must advise the President of the Court of Appeal of this order. Within twenty-four hours the latter will issue a decision confirming, amending or overruling the decision taken by the Senior public prosecutor.*

*The legislator has determined the duration and forms of this measure with precision, providing inflexible limits in such a way as to guarantee protection for the privacy of individuals and to ensure that this measure is not implemented illegally, by providing sanctions in the case of breaches.*

- **Failing that, an alternative measure with the same purpose**

*No. This measure is laid down by Moroccan legislation (Code of Criminal Procedure)*

- **Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?**

*This measure can be taken in the context of a request for mutual judicial assistance in criminal matters using the instrument of letters rogatory. The Kingdom of Morocco can implement the measure either within the framework of bilateral and multilateral conventions or, in the absence of such, on the basis of the principle of reciprocity.*

- **Body competent to authorize the measure**

*1- The examining magistrate at the Court of First Instance or the Court of Appeal;*

*2- The President of the Court of Appeal;*

*3- The Senior public prosecutor at the Court of Appeal.*

- Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*If the needs of an investigation require this, the examining magistrate may order, in writing, the interception, recording, reproduction and seizure of telephone calls and any other long-distance communications.*

*The senior public prosecutor may also, if the needs of the investigation require this, refer in writing to the President of the Court of Appeal with a petition to order the interception, recording, reproduction and seizure of telephone calls and any other long-distance communications if the crime under investigation undermines State security or concerns organised crime, murder, poisoning, abduction and the taking of hostages, counterfeit money or securities, drug trafficking and narcotics, the trade in arms, munitions and explosives or the protection of health.*

*However, the Senior public prosecutor may in, an emergency, in writing and on an exceptional basis, order the interception, recording, reproduction seizure of telephone calls and any other long-distance communications whenever the needs of the investigation call for urgent action in order to avoid losing evidence in a case concerning State security, drug trafficking, narcotics, arms, munitions and explosives or abduction or the taking of hostages.*

- Assistance or participation of agents of the requesting State in the execution of the measure

*The Minister for Justice and Liberty may authorise the representatives of the requesting State to come and assist in the implementation of this measure in the Kingdom of Morocco.*

#### Tracing of telecommunications (102)

- Definition and scope of the measures

*This measure does not exist in Moroccan legislation (Code of Criminal Procedure).*

- Failing that, an alternative measure with the same purpose

- Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*No.*

- Body competent to authorize the measure

*N/A.*

- Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*N/A.*

- Assistance or participation of agents of the requesting State in the execution of the measures

*No, since the measure does not exist in Moroccan legislation.*

### Interception and recording of other forms of communication (103)

- Definition and scope of the measures

*This measure does not exist in Moroccan legislation (Code of Criminal Procedure).*

- Failing that, an alternative measure with the same purpose

*N/A*

- Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*N/A.*

- Body competent to authorize the measure

*N/A.*

- Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*N/A.*

- Assistance or participation of agents of the requesting State in the execution of the measure

*N/A.*

### Interception of mail (104)

- Definition and scope of the measure

*This measure does not exist in Moroccan legislation (Code of Criminal Procedure).*

- Failing that, an alternative measure with the same purpose

*N/A.*

- Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*N/A.*

- Body competent to authorize the measure

*N/A.*

- Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*N/A.*

- Assistance or participation of agents of the requesting State in the execution of the measure

*No, since the measure does not exist in Moroccan legislation.*

### Observation (105)

- Definition and scope of the measure

*This measure does not exist in Moroccan legislation (Code of Criminal Procedure).*

- Failing that, an alternative measure with the same purpose

*N/A.*

- Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*N/A.*

- Body competent to authorize the measure

*N/A.*

- Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

- Assistance or participation of agents of the requesting State in the execution of the measure

*N/A.*

#### **Interception of telecommunication (106)**

- Definition and scope of the measure.

*Given what a serious measure this is, the law considers it an exceptional procedure and has entrusted it to the examining magistrate and, on an exceptional basis where the needs of an investigation require it, in a case that has not been submitted to an examining magistrate, the Senior public prosecutor may order this measure following authorisation by the President of the Court of Appeal in the case of serious crimes undermining the safety and security of the State. However, the Senior public prosecutor can order the measure in an emergency, where the needs of an investigation call for urgent action in order to avoid losing evidence. In such a case, he or she must advise the President of the Court of Appeal of this order. Within twenty-four hours the latter will issue a decision confirming, amending or overruling the decision taken by the Senior public prosecutor.*

*The legislator has determined the duration and forms of this measure with precision, providing inflexible limits in such a way as to guarantee protection for the privacy of individuals and to ensure that this measure is not implemented illegally, by providing sanctions in the case of breaches.*

- Failing that, an alternative measure with the same purpose

*No. This measure is laid down by Moroccan legislation (Code of Criminal Procedure).*

- Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*This measure can be taken in the context of a request for mutual judicial assistance in criminal matters using the instrument of letters rogatory. The Kingdom of Morocco can implement the measure either within the framework of bilateral and multilateral conventions or, in the absence of such, on the basis of the principle of reciprocity.*

- Body competent to authorize the measure

- Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*If the needs of an investigation require this, the examining magistrate may order, in writing, the interception, recording, reproduction and seizure of telephone calls and any other long-distance communications.*



*The senior public prosecutor may also, if the needs of the investigation require this, refer in writing to the President of the Court of Appeal with a petition to order the interception, recording, reproduction and seizure of telephone calls and any other long-distance communications if the crime under investigation undermines State security or concerns organised crime, murder, poisoning, abduction and the taking of hostages, counterfeit money or securities, drug trafficking and narcotics, the trade in arms, munitions and explosives or the protection of health.*

*However, the Senior public prosecutor may in, an emergency, in writing and on an exceptional basis, order the interception, recording, reproduction seizure of telephone calls and any other long-distance communications whenever the needs of the investigation call for urgent action in order to avoid losing evidence in a case concerning State security, drug trafficking, narcotics, arms, munitions and explosives or abduction or the taking of hostages.*

- Assistance or participation of agents of the requesting State in the execution of the measure

*The Minister for Justice and Liberty may authorise the representatives of the requesting State to come and assist in the implementation of this measure in the Kingdom of Morocco.*

#### **Interception of telecommunication without the technical assistance of another State (107)**

- Definition and scope of the measure

*Given what a serious measure this is, the law considers it an exceptional procedure and has entrusted it to the examining magistrate and, on an exceptional basis where the needs of an investigation require it, in a case that has not been submitted to an examining magistrate, the Senior public prosecutor, may order this measure following authorisation by the President of the Court of Appeal in the case of serious crimes undermining the safety and security of the State. However, the Senior public prosecutor can order the measure in an emergency, where the needs of an investigation call for urgent action in order to avoid losing evidence. In such a case, he or she must advise the President of the Court of Appeal of this order. Within twenty-four hours the latter will issue a decision confirming, amending or overruling the decision taken by the Senior public prosecutor.*

*The legislator has determined the duration and forms of this measure with precision, providing inflexible limits in such a way as to guarantee protection for the privacy of individuals and to ensure that this measure is not implemented illegally, by providing sanctions in the case of breaches*

- Failing that, an alternative measure with the same purpose

*No. This measure is laid down by Moroccan legislation (Code of Criminal Procedure)*

- Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*This measure can be taken in the context of a request for mutual judicial assistance in criminal matters using the instrument of letters rogatory. The Kingdom of Morocco can implement the measure either within the framework of bilateral and multilateral conventions or, in the absence of such, on the basis of the principle of reciprocity.*

- Body competent to authorize the measure

*1- The examining magistrate at the Court of First Instance or the Court of Appeal;*

*2- The President of the Court of Appeal;*

*3-The Senior public prosecutor at the Court of Appeal.*

- Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*If the needs of an investigation require this, the examining magistrate may order, in writing, the interception, recording, reproduction and seizure of telephone calls and any other long-distance communications.*

*The senior public prosecutor may also, if the needs of the investigation require this, refer in writing to the President of the Court of Appeal with a petition to order the interception, recording, reproduction and seizure of telephone calls and any other long-distance communications if the crime under investigation undermines State security or concerns organised crime, murder, poisoning, abduction and the taking of hostages, counterfeit money or securities, drug trafficking and narcotics, the trade in arms, munitions and explosives or the protection of health.*

*However, the Senior public prosecutor may in, an emergency, in writing and on an exceptional basis, order the interception, recording, reproduction seizure of telephone calls and any other long-distance communications whenever the needs of the investigation call for urgent action in order to avoid losing evidence in a case concerning State security, drug trafficking, narcotics, arms, munitions and explosives or abduction or the taking of hostages.*

- Assistance or participation of agents of the requesting State in the execution of the measure

*The Minister for Justice and Liberty may authorise the representatives of the requesting State to come and assist in the implementation of this measure in the Kingdom of Morocco.*

## **2. AGENTS AND INFORMERS – INFILTRATION**

### **Infiltration by undercover agents of the requested State (201)**

- Definition and scope of the measure.

*This measure does not exist in Moroccan legislation (Code of Criminal Procedure).*

- Failing that, an alternative measure with the same purpose

*N/A.*

- Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*N/A.*

- Body competent to authorize the measure

*N/A.*

- Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*N/A.*

- Assistance or participation of agents of the requesting State in the execution of the measure

*N/A.*

### **Infiltration by agents of the requesting State in the territory of the requested State (202)**

- Definition and scope of the measure

*This measure does not exist in Moroccan legislation (Code of Criminal Procedure).*

- Failing that, an alternative measure with the same purpose

*N/A.*

- Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*N/A.*

- Body competent to authorize the measure

*N/A.*

- Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*N/A.*

- Assistance or participation of agents of the requesting State in the execution of the measure

*No, since the measure does not exist in Moroccan legislation*

#### Infiltration by an informer of the requested State (203)

- Definition and scope of the measure

*This measure does not exist in Moroccan legislation.*

- Failing that, an alternative measure with the same purpose

*N/A.*

- Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*N/A.*

- Body competent to authorize the measure

*N/A.*

- Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*N/A.*

- Assistance or participation of agents of the requesting State in the execution of the measure

#### Handling of informers (204)

- Definition and scope of the measure.

*In articles 82-9 and 82-10 of the Code of Criminal Procedure, the legislator guarantees the protection of informants who reveal certain crimes threatening the security and stability of society to the police and judicial authorities. It does so by introducing measures for the purpose of their protection.*

- Failing that, an alternative measure with the same purpose

*This measure is laid down by Moroccan legislation (Code of Criminal Procedure)*

- Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*This measure can be taken in the context of a request for mutual judicial assistance in criminal matters using the instrument of letters rogatory. The Kingdom of Morocco can implement the measure either within the framework of bilateral and multilateral conventions or, in the absence of such, on the basis of the principle of reciprocity.*

- Body competent to authorize the measure

*1- The Prosecution at the Court of First Instance or Court of Appeal;*

*2- The examining magistrate at the Court of First Instance or Court of Appeal)*

- Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*An informant who, acting in good faith and for good reasons, reveals a crime to the competent bodies that endangers State security or concerns an act of terrorism, organised crime, murder, poisoning, abduction and the taking of hostages, counterfeit money and securities, drug trafficking and narcotics, the trade in arms, munitions and explosives or the protection of health may apply to the senior public prosecutor, public prosecutor or the examining magistrate, as the case may be, for one or more of the measures laid down in article 82-7 of the Code of Criminal Procedure to be implemented (for the informant to be heard personally, for his or her identity to be concealed, for him or her to be given a borrowed identity, to have a special telephone number made available to him or her, to have his or her telephone line placed under surveillance, for his or her personal protection and that of family and loved ones, etc.) .*

- Assistance or participation of agents of the requesting State in the execution of the measure

*The Minister for Justice and Liberty may authorise the representatives of the requesting State to come and assist in the implementation of this measure in the Kingdom of Morocco.*

### **3. EXAMINATION, BODY SEARCH AND EXPERT EVALUATION**

#### **Superficial body search (301)**

- Definition and scope of the measure.

*The body search is one of the primary measures made available by the legislator to the judicial police and examining magistrate for the purpose of looking for any object relating to a crime that might be hidden in the body of the person being searched.*

- Failing that, an alternative measure with the same purpose

*This measure is laid down by Moroccan legislation (Code of Criminal Procedure).*

- Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*This measure can be taken in the context of a request for mutual judicial assistance in criminal matters using the instrument of letters rogatory. The Kingdom of Morocco can implement the measure either within the framework of bilateral and multilateral conventions or, in the absence of such, on the basis of the principle of reciprocity.*

- Body competent to authorize the measure

*1- The judicial police*

*2- The examining magistrate at the Court of First Instance or Court of Appeal*

- Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*An officer of the judicial police may conduct a body search on any person in custody. No offence to the dignity of women is allowed during search operations. If it is necessary for a woman to be subjected to a body search, it can only be carried out by a person of her sex appointed by the judicial police officer unless the officer in question is a woman.*

- Assistance or participation of agents of the requesting State in the execution of the measure

*The Minister for Justice and Liberty may authorise the representatives of the requesting State to come and assist in the implementation of this measure in the Kingdom of Morocco.*

### Invasive body search (302)

- Definition and scope of the measure.

*Moroccan legislation does not distinguish between superficial and invasive body searches.*

- Failing that, an alternative measure with the same purpose

*This measure is laid down by Moroccan legislation (Code of Criminal Procedure)*

- Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*This measure can be taken in the context of a request for mutual judicial assistance in criminal matters using the instrument of letters rogatory. The Kingdom of Morocco can implement the measure either within the framework of bilateral and multilateral conventions or, in the absence of such, on the basis of the principle of reciprocity.*

- Body competent to authorize the measure

*1- The judicial police;*

*2- The examining magistrate.*

- Assistance or participation of agents of the requesting State in the execution of the measure

*An officer of the judicial police may conduct a body search on any person in custody. No offence to the dignity of women is allowed during search operations. If it is necessary for a woman to be subjected to a body search, it can only be carried out by a person of her sex appointed by the judicial police officer unless the officer in question is a woman.*

- Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*The Minister for Justice and Liberty may authorise the representatives of the requesting State to come and assist in the implementation of this measure in the Kingdom of Morocco.*

### Psychiatric medical examination (303)

- Definition and scope of the measure.

*A psychiatric medical examination ordered by the judicial authorities makes it possible to establish the awareness and will of a person who has committed a crime in order to determine his or her criminal liability, which may be full, partial or non-existent depending on the case.*

- Failing that, an alternative measure with the same purpose

*This measure is laid down by Moroccan legislation (Code of Criminal Procedure)*

- Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist

*This measure can be taken in the context of a request for mutual judicial assistance in criminal matters using the instrument of letters rogatory. The Kingdom of Morocco can implement the measure either within the framework of bilateral and multilateral conventions or, in the absence of such, on the basis of the principle of reciprocity.*

- Body competent to authorize the measure.

*1- The examining magistrate at the Court of First Instance or Court of Appeal;*

*2- The Court of First Instance or Court of Appeal.*

- Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*Court-ordered internment in a psychiatric institution consists of placing the presumed perpetrator, co-perpetrator or accomplice of a crime or misdemeanour in an appropriate institution if, at the time at which the acts attributed to him or her occurred, that person's mental faculties were impaired and this has been confirmed in a medical evaluation. In that case, he or she must be held non-accountable and thus removed from the application of the sanctions laid down by the law. Where an adjudicating court takes the view, after a medical evaluation, that the individual referred to it either for the purpose of accusing him or her of a crime or for preventing an offence from occurring, is entirely non-accountable due to his or her impaired mental faculties at the time of the acts attributed to him or her, it must:*

*1- Confirm that the accused or defendant was, at the time of the acts, incapable of understanding or willing [his or her actions] due to his or her impaired mental faculties;*

*2- Declare the person entirely non-accountable and pronounce him or her not-guilty;*

*3- If his or her impaired mental state persists, order his or her internment in a psychiatric institution.*

*His or her committal order will be extended until their actual internment.*

*Where an adjudicating court takes the view that although the perpetrator of a crime or misdemeanour is in a fit state to testify in his or her own defence in the course of the trial, nevertheless at the time of the acts of which he or she stands accused, his or her mental faculties were weakened to such a degree that they led to partially diminished responsibility, it must*

*1° Confirm that the acts in question can be attributed to the accused or defendant*

*2° Declare his or her responsibility partially diminished due to a weakening of his or her mental faculties at the time of the acts*

*3 ° Pronounce sentence;*

*4° If there is reason to do so, order that the person sentenced be hospitalised in a psychiatric institution prior to serving his or her time in gaol.*

*Where an adjudicating court takes the view, after a medical evaluation, that the individual referred to it either for the purpose of accusing him or her of a crime or for preventing an offence from occurring was entirely or partially responsible at the time of the acts of which he or she stands accused but that due to an impairment of his or her mental faculties that occurred or was aggravated subsequently, he or she is unable to testify in his or her own defence at the trial, it must*

*1° Confirm that the accused or defendant is unable to defend him or herself, due to a present impairment in his or her mental faculties;*

*2° Adjourn its ruling;*

*3° Order his or her internment in a psychiatric institution.*

*His or her committal order will be extended until their actual internment.*

*The psychiatrist treating him or her must inform the Chief Public Prosecutor of the decision to release the patient, at least ten days before the release. The committal order that was in place when the accused was hospitalised will once more enter into effect and the case will be taken up again at the instigation of the public prosecution. If the accused is sentenced to a period of imprisonment, the adjudicating court may deduct the period of hospitalisation from the term of the sentence.*

- Assistance or participation of agents of the requesting State in the execution of the measure

*The Minister for Justice and Liberty may authorise the representatives of the requesting State to come and assist in the implementation of this measure in the Kingdom of Morocco.*

#### **Control of identity, measures for judicial identification (304)**

- Definition and scope of the measure

*The identity check allows the bodies in charge of an investigation to identify persons suspected of having committed a crime*

- Failing that, an alternative measure with the same purpose

*This measure is laid down by Moroccan legislation (Code of Criminal Procedure)*

- Body competent to authorize the measure

*The judicial police*

*Customs officers.*

- Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist

*This measure can be taken in the context of a request for mutual judicial assistance in criminal matters using the instrument of letters rogatory. The Kingdom of Morocco can implement the measure either within the framework of bilateral and multilateral conventions or, in the absence of such, on the basis of the principle of reciprocity.*

- Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*A judicial police officer can prohibit any person who may be of use to an investigation from leaving the scene of the offence until the officer has completed his or her operations.*

*Any person whose identity it appears necessary to establish or check in the course of judicial investigations must agree to undergo the operations required by this measure at the request of a judicial police officer.*

*Any breach of the provisions of the preceding paragraph may be punished by a custodial sentence of one to ten days and/or a fine of 200 to 1200 Dirhams.*

*Customs officers may also ask to check the identity and qualifications of persons who enter, leave or travel within the Moroccan customs zone.*

- Assistance or participation of agents of the requesting State in the execution of the measure

*The Minister for Justice and Liberty may authorise the representatives of the requesting State to come and assist in the implementation of this measure in the Kingdom of Morocco.*

#### Technical or scientific examinations or expert evaluations (305)

- Definition and scope of the measure

*If a question of a technical nature arises, any investigating or adjudicating court may order an expert report, either acting independently or at the request of the prosecution or the parties. The expert(s) will carry out their work under the supervision of the examining magistrate for the court in question or otherwise by the magistrate appointed by it.*

- Failing that, an alternative measure with the same purpose

*This measure is laid down by Moroccan legislation (Code of Criminal Procedure)*

- Body competent to authorize the measure

*1- The examining magistrate at the Court of First Instance or Court of Appeal ;*

*2- the Court of First Instance or Court of Appeal).*

- Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist

*This measure can be taken in the context of a request for mutual judicial assistance in criminal matters using the instrument of letters rogatory. The Kingdom of Morocco can implement the measure either within the framework of bilateral and multilateral conventions or, in the absence of such, on the basis of the principle of reciprocity.*

- Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*The expert appointed or expert institution will be selected from a list of approved experts unless this is impossible. In that case, he or she will be sworn in.*

*The task of the experts who may only concern themselves with examining technical questions, must always be specified in the decision ordering the evaluation.*

*If the decision ordering the evaluation is issued by an examining magistrate, it must be notified to the prosecution and the parties. The notification must indicate the name and qualifications of the expert and reproduce the statement of the task entrusted to him or her.*

*A decision ordering an evaluation is not subject to appeal*

*However, within three days of notification, the prosecution and the parties may present their observations. These may relate either to the choice of the expert or the tasks assigned to him or her.*

*If the decision has been issued by an examining magistrate and the evaluation will, inter alia, have to look at evidence, materials or products capable of undergoing alterations or disappearing, the prosecution, the parties or their counsel may, within three days select assistant experts to work alongside the appointed expert. The examining magistrate will be bound to appoint these assistants.*

*If there is more than one accused, they must act in unison to make this choice which may, exceptionally and only in the case of opposed interests, be for a maximum of two experts.*

*However, should it prove necessary, the examining magistrate may, in a reasoned decision, order the appointed expert to proceed immediately to those findings or operations of an urgent nature.*

*The expert(s) will write reports on the tasks assigned to them.*



*An assistant expert must be summoned by the appointed expert to all operations relating to the evaluation. He or she will follow their development and may make any suggestions he or she deems useful for the tasks to be accomplished more effectively.*

*If his or her suggestions are not taken into consideration by the appointed expert, the latter must mention this in his or her report and indicate the reasons for refusing to do so.*

*Any decision appointing an expert must give him or her a deadline for completion of the tasks involved.*

*If particular reasons require it, this deadline may be extended at the request of the appointed expert and by a reasoned decision delivered by the magistrate or court that appointed him.*

*An appointed expert who does not file his or her report by the deadline granted may be immediately replaced and must render an account of the operations he or she has undertaken.*

*He or she will also have to return, within forty-eight hours, the objects, exhibits and documents entrusted to him or her for the purpose of his/ her tasks. In addition, he or she may be subject to disciplinary measures.*

*The expert will liaise with the examining magistrate, court or appointed magistrate in carrying out his or her tasks. He or she must keep them informed of how operations are developing and enable them to take any useful measures at all times.*

*The examining magistrate may always be assisted by other experts in the course of his or her operations, if he or she believes this would be useful.*

*In the course of the evaluation, the parties may ask the examining magistrate or court that ordered it to insist that the experts should carry out certain searches or question any expressly named person who might be capable of providing them with information of a technical nature.*

*Once the evaluation operations are completed, the appointed expert will write a report, which must contain a description of the said operations and his or her conclusions. The expert must vouch for the fact that he or she conducted the assigned operations personally or inspected them and signed his or her report.*

*If an assistant expert has any reservations to be expressed, he or she shall set them down in a note which the appointed expert is bound to append to his or her report with his or her own observations.*

*If there is more than one appointed expert and they are of different opinions or have reservations to express in respect of their common conclusions, each of them will indicate his or her own opinion in the joint report, giving reasons for the said reservations.*

*The report and the seals or their residues will be lodged into the hands of the clerk of the court that ordered the evaluation. This lodgement will be confirmed in a written report.*

- **Assistance or participation of agents of the requesting State in the execution of the measure**

*The Minister for Justice and Liberty may authorise the representatives of the requesting State to come and assist in the implementation of this measure in the Kingdom of Morocco.*

#### **4. DOCUMENTS - OBTAINING**

##### **Spontaneous exchange of information (401)**

- **Definition and scope of the measure**

*This measure does not exist in Moroccan legislation.*

- Failing that, an alternative measure with the same purpose

N/A.

- Body competent to authorize the measure

N/A.

- Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist

N/A.

- Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

N/A.

- Assistance or participation of agents of the requesting State in the execution of the measure

N/A

#### Order to produce documents (402)

- Definition and scope of the measure

*This measure does not exist in Moroccan legislation*

- Failing that, an alternative measure with the same purpose

N/A.

- Body competent to authorize the measure

N/A

- Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist

N/A

- Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

N/A.

- Assistance or participation of agents of the requesting State in the execution of the measure

N/A.

#### Other possibilities of obtaining information concerning taxes or bank accounts (403)

- Definition and scope of the measure

*The judicial authorities (senior public prosecutor, public prosecutor and examining magistrate) may, on the occasion of a judicial investigation, request information concerning operations with or movements of funds suspected of being connected with a crime and order them to be frozen or seized.*

- Failing that, an alternative measure with the same purpose

*This measure is laid down by Moroccan legislation (Code of Criminal Procedure).*

- **Body competent to authorize the measure**

*1- The Public Prosecution at the Court of First Instance or Court of Appeal*

*2- The examining magistrate at the Court of First Instance or Court of Appeal.*

- **Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist**

*This measure can be taken in the context of a request for mutual judicial assistance in criminal matters using the instrument of letters rogatory. The Kingdom of Morocco can implement the measure either within the framework of bilateral and multilateral conventions or, in the absence of such, on the basis of the principle of reciprocity.*

- **Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)**

*In the course of an investigation into a specified crime, the senior public prosecutor, public prosecutor or examining magistrate may, at the stage of a preliminary investigation or preparatory inquiry, as the case may be, serve court orders on the revenue services and banking institutions to provide the judicial authorities with information of a fiscal nature or relating to bank accounts (the operations on and movements of funds suspected of being connected with a crime).*

- **Assistance or participation of agents of the requesting State in the execution of the measure**

*The Minister for Justice and Liberty may authorise the representatives of the requesting State to come and assist in the implementation of this measure in the Kingdom of Morocco.*

#### **Access to public documents in judicial files (404)**

- **Definition and scope of the measure**

*The judicial authorities (senior public prosecutor, public prosecutor and examining magistrate) may, on the occasion of a judicial investigation, request access to public documents in the judicial files to be used as useful aids in revealing the truth.*

- **Failing that, an alternative measure with the same purpose**

*This measure is laid down by Moroccan legislation (Code of Criminal Procedure)*

- **Body competent to authorize the measure**

*1- The Public Prosecution at the Court of First Instance or Court of Appeal*

*2- The Court of First Instance or Court of Appeal.*

- **Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist**

*This measure can be taken in the context of a request for mutual judicial assistance in criminal matters using the instrument of letters rogatory. The Kingdom of Morocco can implement the measure either within the framework of bilateral and multilateral conventions or, in the absence of such, on the basis of the principle of reciprocity.*

- **Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)**

*In the course of an investigation into a specified crime, the senior public prosecutor, public prosecutor or examining magistrate may, in the course of a preliminary investigation or preparatory inquiry, as the case may be, serve court orders on public administrations and establishments in order to gain access to public documents in the judicial files.*

- Assistance or participation of agents of the requesting State in the execution of the measure

*The Minister for Justice and Liberty may authorise the representatives of the requesting State to come and assist in the implementation of this measure in the Kingdom of Morocco.*

#### Communication of individual police records (405)

- Definition and scope of the measure

*The communication of extracts from judicial files is an important procedure which informs the judicial authorities of the person's legal record and allows them to establish his or her propensity to reoffend.*

- Failing that, an alternative measure with the same purpose

*This measure is laid down by Moroccan legislation (Code of Criminal Procedure)*

- Body competent to authorize the measure

*1- The Public Prosecution at the Court of First Instance or Court of Appeal*

*2- The examining magistrate of the Court of First Instance or Court of Appeal.*

- Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist

*This measure can be taken in the context of a request for mutual judicial assistance in criminal matters using the instrument of letters rogatory. The Kingdom of Morocco can implement the measure either within the framework of bilateral and multilateral conventions or, in the absence of such, on the basis of the principle of reciprocity.*

- Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*A duplicate of section no. 1 is drawn up for any conviction for a crime or misdemeanour to a custodial sentence or fine pronounced in respect of any foreigner originating in one of the countries with which the international exchange in question is organised.*

*This duplicate is sent to the Minister for Justice with a view to having it dispatched through diplomatic channels, subject to provisions to the contrary in the conventions.*

*The Minister for Justice sends notices of conviction from foreign authorities to the national criminal records or the competent local one, as the case may be.*

*These notices will substitute section no. 1. They will be kept in the judicial file, either in the original copy or after transcription onto one of the regulatory forms.*

- Assistance or participation of agents of the requesting State in the execution of the measure

*The Minister for Justice and Liberty may authorise the representatives of the requesting State to come and assist in the implementation of this measure in the Kingdom of Morocco.*

#### Sending and service of procedural documents (406)

- Definition and scope of the measure

*Moroccan legislation allows the sending and service of procedural documents in response to orders from the competent bodies, whether the documents concerned are summonses, notifications of first-instance judgements or final, unappealable rulings.*

- Failing that, an alternative measure with the same purpose

*This measure is laid down by Moroccan legislation (Code of Criminal Procedure)*

- Body competent to authorize the measure

*1- The Public Prosecution at the Court of First Instance or Court of Appeal*

*2- The examining magistrate at the Court of First Instance or Court of Appeal.*

- Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist

*This measure can be taken in the context of a request for mutual judicial assistance in criminal matters using the instrument of letters rogatory. The Kingdom of Morocco can implement the measure either within the framework of bilateral and multilateral conventions or, in the absence of such, on the basis of the principle of reciprocity.*

- Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*Letters rogatory are implemented in accordance with the provisions of Morocco's domestic legislation.*

- Assistance or participation of agents of the requesting State in the execution of the measure

*The Minister for Justice and Liberty may authorise the representatives of the requesting State to come and assist in the implementation of this measure in the Kingdom of Morocco.*

#### Transfer of proceedings (407)

- Definition and scope of the measure

*This measure does not exist in Moroccan legislation.*

- Failing that, an alternative measure with the same purpose

*N/A.*

- Body competent to authorize the measure

*N/A.*

- Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist

*N/A.*

- Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*N/A*

- Assistance or participation of agents of the requesting State in the execution of the measure

*N/A.*

## 5. ASSETS - SEQUESTRATION, CONFISCATION AND RESTITUTION

### Sequestration of assets (501)

- Definition and scope of the measure

*Seizure is a temporary prohibition on transferring, converting, disposing of or moving goods or the act of taking them into custody.*

*Banking institutions must provide the judicial authorities with the information requested.*

*Professional secrecy cannot be claimed by banks vis-à-vis the judicial authorities or the Bank Al-Maghrib*

- Failing that, an alternative measure with the same purpose

*This measure is laid down by Moroccan legislation (Code of Criminal Procedure)*

- Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*This measure can be taken in the context of a request for mutual judicial assistance in criminal matters using the instrument of letters rogatory. The Kingdom of Morocco can implement the measure either within the framework of bilateral and multilateral conventions or, in the absence of such, on the basis of the principle of reciprocity.*

- Body competent to authorize the measure

*1- The senior public prosecutor at the Court of Appeal*

*2- The examining magistrate.*

- Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*In the course of an investigation, the senior public prosecutor and the examining magistrate may request information concerning operations on and the movement of funds suspected of being connected with a crime and order that they be frozen or seized.*

- Assistance or participation of agents of the requesting State in the execution of the measure

*The Minister for Justice and Liberty may authorise the representatives of the requesting State to come and assist in the implementation of this measure in the Kingdom of Morocco.*

### Freezing of bank accounts (502)

- Definition and scope of the measure

*Freezing is a temporary prohibition on transferring, converting, disposing of or moving goods or the act of taking them into custody. Banking institutions must provide the judicial authorities with the information requested.*

*Professional secrecy cannot be claimed by banks vis-à-vis the judicial authorities or the Bank Al-Maghrib.*

- Failing that, an alternative measure with the same purpose

*This measure is laid down by Moroccan legislation (Code of Criminal Procedure)*

- Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*This measure can be taken in the context of a request for mutual judicial assistance in criminal matters using the instrument of letters rogatory. The Kingdom of Morocco can implement the measure either within the framework of bilateral and multilateral conventions or, in the absence of such, on the basis of the principle of reciprocity.*

- Body competent to authorize the measure

*1- The senior public prosecutor at the Court of Appeal;*

*2- The examining magistrate.*

- Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*In the course of an investigation, the senior public prosecutor and the examining magistrate may request information concerning operations on and the movement of funds suspected of being connected with a crime and order that they be frozen or seized.*

- Assistance or participation of agents of the requesting State in the execution of the measure

*The Minister for Justice and Liberty may authorise the representatives of the requesting State to come and assist in the implementation of this measure in the Kingdom of Morocco.*

### **Restitution (503)**

- Definition and scope of the measure

*Restitution means the return to their owners of objects, sums and property that have been in the possession of the justice system.*

- Failing that, an alternative measure with the same purpose

*This measure is laid down by Moroccan legislation (Code of Criminal Procedure)*

- Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*This measure can be taken in the context of a request for mutual judicial assistance in criminal matters using the instrument of letters rogatory. The Kingdom of Morocco can implement the measure either within the framework of bilateral and multilateral conventions or, in the absence of such, on the basis of the principle of reciprocity.*

- Body competent to authorize the measure

*1-The public prosecutor at the Court of First Instance and the senior public prosecutor at the Court of Appeal;*

*2- The Court of First Instance and the Court of Appeal;*

*3- The Supreme Court [cour de cassation].*

- Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

**I- Restitution by the Prosecution:**

*The public prosecutor or the senior public prosecutor may, in the absence of serious objections, order the restitution of objects seized from their owners in the course of an investigation unless they are necessary for the development of the trial or unless the objects in question are dangerous or have been confiscated.*

**II- Restitution by the Court:**

*Restitution may be ordered by the court, even if the owner does not participate in the trial discussions.*

*At the request of the victim of the offence, the court may, furthermore, in a specially reasoned instrument, order the restitution:*

*1° of sums of money from the sale of objects or chattels which should have been returned in kind;*

*2° subject to the right of third parties, restitution of objects or chattels obtained by means of the offence.*

### III- Restitution by the Supreme Court:

*In connection with extradition proceedings, at the request of the requesting State any objects deriving from an offence or that may be used as incriminating evidence that were found in the possession of the person sought at the time of his or her arrest or that were discovered subsequently will be seized.*

*The Supreme Court, at the same time as it rules in favour of extradition, may make a pronouncement on the handover of the objects to the requesting State.*

*This handover may be effected even if it is not possible for extradition to take place as a result of the person sought having escaped or died.*

*However, the Moroccan State may keep the objects seized if it deems this necessary for the proper conduct of criminal proceedings underway before its courts in respect of the same person, his or her co-perpetrators or accomplices. It may also transmit them but reserve their restitution for the same reason, undertaking in turn to send them back as soon as it is able to do so.*

*This is without prejudice to the rights that the Moroccan State or third parties may have required in respect of these objects.*

- Assistance or participation of agents of the requesting State in the execution of the measure

*The Minister for Justice and Liberty may authorise the representatives of the requesting State to come and assist in the implementation of this measure in the Kingdom of Morocco.*

### Interim measures in view of confiscation (504)

- Definition and scope of the measure

*Freezing is a temporary prohibition on transferring, converting, disposing of or moving goods or the act of taking them into custody. Banking institutions must provide the judicial authorities with the information requested within 30 days at the latest from the date the request was received.*

*Professional secrecy cannot be claimed by banks vis-à-vis the judicial authorities or the Bank Al-Maghrib*

- Failing that, an alternative measure with the same purpose

*This measure should be prescribed by the Moroccan legislation (Criminal Procedure Code).*

- Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*This measure can be taken in the context of a request for mutual judicial assistance in criminal matters using the instrument of letters rogatory. The Kingdom of Morocco can implement the measure either within the framework of bilateral and multilateral conventions or, in the absence of such, on the basis of the principle of reciprocity.*

- Body competent to authorize the measure

*1- The senior public prosecutor at the Court of Appeal ;*

*2- The examining magistrate.*

*3- The adjudicating court*



- Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*In the course of an investigation, the senior public prosecutor and the examining magistrate may request information concerning operations on and the movement of funds suspected of being connected with a crime of financing of terrorism and money-laundering and order that they be frozen or seized.*

- Assistance or participation of agents of the requesting State in the execution of the measure

*The Minister for Justice and Liberty may authorise the representatives of the requesting State to come and assist in the implementation of this measure in the Kingdom of Morocco.*

### Confiscation (505)

- Definition and scope of the measure

*Confiscation consists of allocation to the State of a fraction of the convicted person's property or certain, specially designated components of his or her property.*

- Failing that, an alternative measure with the same purpose

*This measure is laid down by Moroccan legislation (Code of Criminal Procedure)*

- Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*Yes, if there are conventions or agreements in this area.*

- Body competent to authorize the measure

*1- the senior public prosecutor at the Court of Appeal;*

*2- the Court of First Instance and the Court of Appeal.*

- Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*Within the framework of the application of the international conventions in the area of the fight against money-laundering and the financing of terrorism to which the Kingdom of Morocco is a party and which it has duly published, the government may, at the request of a foreign State, refer to the question to the senior public prosecutor in order for the following measures to be taken:*

*1-searching for and identifying the fruits of an offence involving the financing of terrorism, the property that was used or intended to be used for committing this offence or any property the value of which correspond to the fruits of this offence ;*

*2-the freezing or seizure of this property:*

*3-the instituting of precautionary measures to safeguard this property*

*The request will be rejected by the senior public prosecutor if:*

*- its execution would risk harming the sovereignty, security and essential interests of the State or law and order;*

*- the acts to which the request refers have formed the subject matter of a final and unappealable judicial decision on the national territory;*

*- the foreign judicial decision was pronounced in conditions that did not offer sufficient guarantees in terms of the right to a defence;*

*- the acts giving rise to the request are not connected with the financing of terrorism.*

*The enforcement on national territory of a decision to freeze, seize or confiscate pronounced by a foreign judicial authority and forming the subject matter of a request submitted by the said authority will be subject to an authorisation by the senior public prosecutor.*

*The decision to freeze, seize or confiscate must target property that was used or intended to be used to commit the offence and is located on the national territory or must consist of an obligation to pay a sum of money corresponding to the value of said property.*

*The execution of the foreign decision is dependent on the following double condition being met:*

*1-the foreign judicial decision must be final and enforceable pursuant to the law of the requesting State;*

*2-the property to be frozen, seized or confiscated by virtue of this decision must be capable of being frozen, seized or confiscated under analogous conditions in accordance with Moroccan legislation.*

- **Assistance or participation of agents of the requesting State in the execution of the measure**

*The Minister for Justice and Liberty may authorise the representatives of the requesting State to come and assist in the implementation of this measure in the Kingdom of Morocco.*

## **6. PLACES – VISIT AND SEARCH**

### **Visit to and search of homes (601)**

- **Definition and scope of the measure**

*The legislator has not defined visit and search but after examining the provisions regulating this measure, we can say that it is one of the procedures available to investigations and enquiries, carried out at the location where it is presumed that the instruments used to commit the crime of misdemeanour or the fruits of said crime or misdemeanour are being harboured. They are therefore seized as evidence to be presented before the court.*

*Scope of the measure:*

*This measure applies to the following places:*

- *The home of a person suspected of having participated in the crime;*
- *The home of a third party where documents or objects relating to the incriminating facts may be kept.*

*This measure also applies equally regardless of whether the act is deemed a crime or a misdemeanour but does not apply in the case of a contravention.*

*The measure is implemented in line with the following procedures, on pain of invalidity of an act that fails to comply and any others carried out subsequently :*

*1/ If the search is conducted at the home of a person suspected of having participated in a crime, it must be undertaken in the presence of the latter or his or her representative. If this is impossible, the judicial police officer will select two witnesses commandeered for this purpose in addition to persons under his management;*

*2/ If the search is conducted at the home of a third party where documents or objects relating to the incriminating facts may be held, the said third party must be present at the operation, failing which the procedure in the preceding paragraph will apply;*

*In all cases, a visit and search will be conducted in the presence of a woman appointed by the judicial police officer to undertake any body searches of persons of the female sex at locations where they may be found;*

*3/ The judicial police officer may call and question any persons who may be able to provide information regarding the facts or the objects or documents seized. If they refuse to cooperate, he or she can oblige them to appear subject to authorisation by the public prosecution.*

*4/ Reports of the operations are signed by the persons in whose homes the search took place, by their representatives or by the two witnesses. If they are unwilling or unable to cooperate, this will be mentioned in the report;*

*5/ Subject to a call for help by the head of the household or a person inside the premises or exceptions provided by the law, a visit and search conducted in a person's home may not begin before 6 a.m. and after 9 p.m. Operations that began at a legal time may continue undisturbed beyond those hours.*

*These provisions do not apply where the search must be undertaken on premises where a nocturnal activity is undertaken.*

*In the case of a terrorist offence and if the needs of the investigation, a case of extreme urgency or the fear that evidence may disappear require it, a visit and search may be conducted, on an exceptional basis, before six a.m. and after 9 p.m. subject to written authorisation from the public prosecution.*

- **Failing that, an alternative measure with the same purpose**

*This measure is laid down by Moroccan legislation (Code of Criminal Procedure).*

- **Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?**

*This measure can be taken in the context of a request for mutual judicial assistance in criminal matters using the instrument of letters rogatory. The Kingdom of Morocco can implement the measure either within the framework of bilateral and multilateral conventions or, in the absence of such, on the basis of the principle of reciprocity.*

- **Body competent to authorize the measure**

*1- The judicial police;*

*2- The prosecution at the Court of First Instance or the Court of Appeal;*

*3- The examining magistrate at the Court of First Instance or the Court of Appeal.*

- **Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)**

*Letters rogatory are implemented in accordance with the provisions of the Kingdom of Morocco's domestic legislation.*

- **Assistance or participation of agents of the requesting State in the execution of the measure**

*The Minister for Justice and Liberty may authorise the representatives of the requesting State to come and assist in the implementation of this measure in the Kingdom of Morocco.*

### **Visit and search on the site of an offence (602)**

- **Definition and scope of the measure**

*Visit and search on the site of an offence is one of the procedures available to an investigation or enquiry at the scene of a crime with a view to establishing the damage caused. This will give the judge an idea of how the crime was committed.*

*In the case of a crime or misdemeanour calling for a rapid response, the judicial police officer dealing with the matter will immediately inform the public prosecutor, go to the scene of the crime without delay and undertake any useful examinations.*

*He or she will ensure the securing of any evidence likely to disappear and anything else that may be used for ascertaining the truth. He or she will seize any arms or instruments used to commit the crime or intended to be used for this and anything that appears to be the fruits of the crime.*

*He or she will present the objects seized to those persons who appear to have participated in the crime for the purpose of recognition.*

*Moreover, the examining magistrate may go to any location to carry out any useful examinations or searches there. He or she will give his or her opinion to the public prosecution, which also has the option of accompanying the examining magistrate. The examining magistrate is always assisted by a court clerk.*

*He or she will write a report on the operations.*

- **Failing that, an alternative measure with the same purpose**

*This measure is laid down by Moroccan legislation (Code of Criminal Procedure).*

- **Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?**

*This measure can be taken in the context of a request for mutual judicial assistance in criminal matters using the instrument of letters rogatory. The Kingdom of Morocco can implement the measure either within the framework of bilateral and multilateral conventions or, in the absence of such, on the basis of the principle of reciprocity.*

- **Body competent to authorize the measure**

*1- The judicial police;*

*2- The prosecution at the Court of First Instance or Court of Appeal;*

*3- The examining magistrate at the Court of First Instance or Court of Appeal;*

- **Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)**

*Letters rogatory are implemented in accordance with the provisions of the Kingdom of Morocco's domestic legislation.*

- **Assistance or participation of agents of the requesting State in the execution of the measure**

*The Minister for Justice and Liberty may authorise the representatives of the requesting State to come and assist in the implementation of this measure in the Kingdom of Morocco.*

## **7. WITNESSES, VICTIMS, SUSPECTS - SUMMONING AND HEARING**

### **Summoning witnesses (701)**

- **Definition and scope of the measure**

*The calling of witnesses is one of the necessary procedures for notifying someone that they will have to appear before a criminal court to testify in a criminal matter.*

- **Scope of the measure**

*The summoning of witnesses by the examining magistrate:*

*The examining magistrate will have any persons whose testimony he or she considers useful summoned before him or her by a law enforcement agent. A copy of the summons will be issued to the witness.*

*Witnesses may also be summoned through the intermediary of a bailiff, by registered letter or by administrative channels. They may also appear voluntarily.*

*The summoning of witnesses by the court:*

*Any person summoned as a witness is obliged to appear, to take an oath and to testify.*

*A witness is summoned directly by the court or at the request of the prosecution, the plaintiff, an accused or party incurring civil liability, either by registered letter with confirmation of receipt or by a summons served by a notification agent or bailiff or by administrative channels.*

*The summons mentions that a failure to appear and false testimony are punished by the law.*

*Members of government, secretaries and undersecretaries of State can only be summoned as witnesses after authorisation by the Council of Ministers based on a report from the Minister for Justice.*

*Where this authorisation is granted, testimony is received in the ordinary forms.*

*Where an appearance has not been ordered or authorised, testimony may be received in writing at the place of residence of the witness by the President of the Court of Appeal or a magistrate appointed by him or her if the witness lives outside of the administrative centre in which the court is located.*

*The President or the magistrate appointed by him or her will be assisted by a court clerk.*

*For this purpose a summary of the facts as well as an inventory of requests and questions to which the witness is required to reply will be sent by the court to which the case has been referred to the President or the magistrate appointed by him or her.*

*Testimony received in this way is immediately handed over to the clerk of the court in whose jurisdiction testimony is given and sent, closed and sealed, to the clerk of the requesting court and notified, without delay, to the prosecution and the persons concerned.*

*At the hearing, testimony will be read out publicly and will be discussed, on pain of invalidity (of the proceedings).*

- **Failing that, an alternative measure with the same purpose**

*This measure is laid down by Moroccan legislation (Code of Criminal Procedure).*

- **Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?**

*This measure can be taken in the context of a request for mutual judicial assistance in criminal matters using the instrument of letters rogatory. The Kingdom of Morocco can implement the measure either within the framework of bilateral and multilateral conventions or, in the absence of such, on the basis of the principle of reciprocity.*

- **Body competent to authorize the measure**

*1- The prosecution at the Court of First Instance or the Court of Appeal;*

*2- The examining magistrate at the Court of First Instance or the Court of Appeal.*

- Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*Letters rogatory are implemented in accordance with the provisions of the Kingdom of Morocco's domestic legislation.*

- Assistance or participation of agents of the requesting State in the execution of the measure

*The Minister for Justice and Liberty may authorise the representatives of the requesting State to come and assist in the implementation of this measure in the Kingdom of Morocco.*

#### **Hearing witnesses: standard procedure (702)**

- Definition and scope of the measure

The hearing of witnesses is one of the essential procedures at the preparatory stage of the inquiry and at the trial, in the course of which the witness will make a statement before the criminal court in relation to a criminal matter. This statement will be used as evidence.

#### **Scope of the measure**

##### *I- Hearing of witnesses by the examining magistrate:*

*Any person summoned to be heard as a witness is obliged to appear, take an oath, if required to do so, and testify, on pain of the sanctions provided in the law.*

*However, persons against whom civil proceedings are filed in the course of the criminal case may refuse to be heard as a witness. The examining magistrate will advise such persons that they have been named, after telling them about the grievance. This will be mentioned in the transcript. If a party refuses to testify, he or she can only be heard as an accused.*

*Witnesses are heard separately and away from the presence of the accused, by the examining magistrate assisted by his or her clerk. Their statements are recorded in a transcript.*

*If the witnesses speak a language or dialect or in an accent that are difficult for the accused, the parties, other witnesses or the examining magistrate himself or herself to understand, the latter will, acting either on his or her own initiative or at the request of the accused or the parties, order that a person capable of providing a translation who must be at least eighteen years of age and not summoned to testify should be provided.*

*If the interpreter is not already sworn in, he or she must take an oath before the examining judge to translate faithfully.*

*If the faithfulness of the translation is contested in the course of the proceedings, the judge will assess whether another interpreter should be appointed.*

*Questions and answers will be posed and answered in writing if a witness is deaf or mute. If a witness does not know how to write, he or she will be assigned an interpreter who is accustomed to conferring with him or her or, failing that, a person capable of understanding him or her. The provisions in article 120, paragraphs 2 and 3 apply to such persons.*

*The transcript will mention the surname, first name, age, profession, place or residence and the swearing of an oath by this interpreter, who must sign same or place his or her fingerprint on it. If this is not possible, it must be mentioned.*

*Prior to being questioned concerning the facts, witnesses are asked to indicate their surnames, first names, age, civil status, profession, place of residence and, if applicable, their tribe or grouping of origin, to say whether they are relatives or allies or the parties and if so to what degree, or whether they are in their employ and also whether they have legal capacity.*

*This is mentioned in the transcript of the questions and answers.*

*They have the criminal-law provisions sanctioning false testimony read out to them.*

*Each witness will take an oath formulated as follows:*

*"I swear before God to speak without hatred or fear, to tell the whole truth and nothing but the truth".*

*Minors under eighteen years of age will be heard without taking an oath. The same applies to persons serving a criminal sentence.*

*The ascendants, descendants and spouse of the accused do not have to take an oath.*

*The taking of an oath by a person who is incapable, unworthy or exempt is not a cause of invalidity.*

*Once a witness has testified, they are invited to read the transcript that has just been written and, if they state that they are sticking to the said testimony, to sign it and initial each page.*

*If the witness is illiterate, his or her testimony will be read out by the court clerk and the signature and initial will be replaced by a fingerprint.*

*If the witness refuses to sign or place his or her fingerprint or if he or she is unable to do so, this will be mentioned in the transcript.*

*Each page of the testimony is signed by the judge and court clerk, and also by the interpreter if one is assisting.*

*The judge may question the witness, confront him or her with other witnesses or the accused in the presence of their counsel unless they expressly renounce the presence of the latter and, with their assistance, carry out any operations or reconstructions that may be useful for ascertaining the truth.*

*Transcripts must not have any spaces between the lines. Any crossings-out or cross-references must be approved by the examining magistrate, court clerk, witness and, if applicable, the interpreter, failing which they will be deemed inexistent.*

*Any witness appearing may, at his or her request, receive an allowance for their appearance and for their stay, if applicable, and have their travel expenses reimbursed.*

*These allowances and expenses will be paid immediately, after being taxed by the examining magistrate at the legal rate.*

*II- The hearing of witnesses before the court:*

*Any person summoned as a witness is obliged to appear, take an oath, if necessary, and to testify.*

*A witness is summoned directly by the court or at the request of the prosecution, the plaintiff, an accused or party incurring civil liability, either by registered letter with confirmation of receipt or by a summons served by a notification agent or bailiff or by administrative channels.*

*The summons mentions that a failure to appear and false testimony are punished by the law.*

*Members of government, secretaries and undersecretaries of State can only be summoned as witnesses after authorisation by the Council of Ministers based on a report from the Minister for Justice.*

*Where this authorisation is granted, testimony is received in the ordinary forms.*

*Where an appearance has not been requested or authorised, testimony may be received in writing at the place of residence of the witness by the President of the Court of Appeal or a magistrate appointed by him or her if the witness lives outside of the administrative centre in which the court is located.*

*The President or the magistrate appointed by him or her will be assisted by a court clerk.*

*For this purpose a summary of the facts as well as an inventory of requests and questions to which the witness is needed to reply will be sent by the court to which the case has been referred to the President or the magistrate appointed by him or her.*

*Testimony received in this way is immediately handed over to the clerk of the court in whose jurisdiction testimony is given and sent, closed and sealed, to the clerk of the requesting court and sent, without delay, to the prosecution and the persons concerned.*

*At the hearing, testimony will be read out publicly and will be discussed, on pain of invalidity [of the proceedings].*

*The written deposition of a representative of a foreign State is requested through the intermediary of the Minister of Foreign Affairs.*

*If the request is approved, this deposition will be admitted by the President of the Court of Appeal or the magistrate he or she has appointed for this purpose.*

*The president orders that the witnesses should retire to the room reserved for them and which they can only leave in order to testify.*

*Where applicable, the president will take any necessary measures to prevent the witnesses from discussing the case among themselves or with the accused.*

*After the witnesses have left, the president questions the accused in the order he or she deems useful without giving his or her own opinion.*

*Neither counsel nor the prosecution, plaintiff or the lawyer for the accused may ask the accused any questions before the president has interrogated him or her. The questions are then asked through the intermediary of the president or directly subject to his or her authorisation.*

*After the accused is questioned, the witnesses are heard separately.*

*The president will ask each witness to indicate their surname, first name, age, civil status, profession, place of residence and, if applicable their tribe or grouping of origin, to say whether they are relatives or allies or the parties and if so to what degree, or whether they are connected through employment or any other link or if there is any hostility between them.*

*He or she will also ask the witness whether they have legal capacity to testify.*

*Before testifying, the witness will take an oath, failing which the judgement or ruling will be invalid.*

*Prior to this oath, the legal provisions prohibiting false testimony may be read out to him or her.*

- **Failing that, an alternative measure with the same purpose**

*This measure is laid down by Moroccan legislation (Code of Criminal Procedure).*

- **Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?**

*This measure can be taken in the context of a request for mutual judicial assistance in criminal matters using the instrument of letters rogatory. The Kingdom of Morocco can implement the measure either within the framework of bilateral and multilateral conventions or, in the absence of such, on the basis of the principle of reciprocity.*

- **Body competent to authorize the measure**

*1- The prosecution at the Court of First Instance or the Court of Appeal;*

*2- The examining magistrate at the Court of First Instance or the Court of Appeal;*

- **Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)**

*This measure is laid down by Moroccan legislation (Code of Criminal Procedure).*



- Assistance or participation of agents of the requesting State in the execution of the measure

*The Minister for Justice and Liberty may authorise the representatives of the requesting State to come and assist in the implementation of this measure in the Kingdom of Morocco.*

**Hearing witnesses: by video conference (703)**

- Definition and scope of the measure

*This measure does not exist in Moroccan legislation.*

- Failing that, an alternative measure with the same purpose

*The submission of letters rogatory*

- Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*This measure can be taken in the context of a request for mutual judicial assistance in criminal matters using the instrument of letters rogatory. The Kingdom of Morocco can implement the measure either within the framework of bilateral and multilateral conventions or, in the absence of such, on the basis of the principle of reciprocity.*

- Body competent to authorize the measure

*The examining magistrate at the Court of First Instance or the Court of Appeal.*

- Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*Letters rogatory are implemented in accordance with the provisions of the Kingdom of Morocco's domestic legislation.*

- Assistance or participation of agents of the requesting State in the execution of the measure

*The Minister for Justice and Liberty may authorise the representatives of the requesting State to come and assist in the implementation of this measure in the Kingdom of Morocco.*

**Hearing witnesses: by telephone (704)**

- Definition and scope of the measure

*This measure does not exist in Moroccan legislation.*

- Failing that, an alternative measure with the same purpose

*N/A.*

- Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*N/A.*

- Body competent to authorize the measure

*N/A.*

- Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*N/A.*

- Assistance or participation of agents of the requesting State in the execution of the measure

N/A.

#### Hearing children (705)

- Definition and scope of the measure

*Moroccan legislation does not have any specific rules on the hearing of children who are victims of crime, including violent and sexual crimes.*

- Failing that, an alternative measure with the same purpose

N/A.

- Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

N/A.

- Body competent to authorize the measure

N/A.

- Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

N/A.

- Assistance or participation of agents of the requesting State in the execution of the measure

N/A.

#### Hearing persons collaborating with the inquiry (706)

- Definition and scope of the measure

*Moroccan legislation does not provide any special rules on the hearing of court officials.*

- Failing that, an alternative measure with the same purpose

- Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

N/A.

- Body competent to authorize the measure

N/A.

- Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

N/A.

- Assistance or participation of agents of the requesting State in the execution of the measure

N/A.

## Hearing victims/plaintiffs (707)

- **Definition and scope of the measure**

*The civil action for compensation for damage caused by a crime, misdemeanour or contravention is open to anyone who personally suffered physical injury, material loss or mental harm, directly caused by the offence.*

### **Scope of the measure**

*A plaintiff who has correctly followed procedure may be assisted by counsel from his or her first hearing onwards.*

*The accused and plaintiff may at any stage in the enquiry, notify the examining magistrate of the name of the counsel they have chosen.*

*The accused and plaintiff can only be heard or confronted [with each other] in the presence of their duly summoned counsel, unless they expressly renounce the latter.*

*Counsel must be summoned at latest two days prior to each interrogation, either by registered letter or a notice handed over to him or her in return for a receipt, unless he or she has already been notified in the course of a hearing prior to the investigation and the said notification was mentioned in the transcript.*

*The documents for the proceedings must be made available to the counsel for the accused, at latest on the day before each interrogation.*

*They must also be made available to the plaintiff's lawyer, at latest on the day before each hearing.*

*The Public Prosecutor may present any requests he or she deems useful.*

*The confirmation in the transcript for the interrogation, confrontation or hearing of the presence of counsel and of the absence of any objection raised by the latter to an irregularity of any kind in relation to the summons or communication of the file will prevent the counsel or the party he or she is defending from raising that objection at a later stage.*

*In the course of interrogations and confrontations of the accused and also hearings of the plaintiff, the counsel of the accused and plaintiff may only speak to ask questions and only after being authorised to do so by the examining magistrate. If that authorisation is refused, the text of the questions must be reproduced in or appended to the transcript.*

- **Failing that, an alternative measure with the same purpose**

*This measure is laid down by Moroccan legislation (Code of Criminal Procedure)*

- **Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?**

*This measure can be taken in the context of a request for mutual judicial assistance in criminal matters using the instrument of letters rogatory. The Kingdom of Morocco can implement the measure either within the framework of bilateral and multilateral conventions or, in the absence of such, on the basis of the principle of reciprocity.*

- **Body competent to authorize the measure**

*1- The prosecution at the Court of First Instance or the Court of Appeal;*

*2- The examining magistrate at the Court of First Instance or the Court of Appeal*

- Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*Letters rogatory are implemented in accordance with the provisions of the Kingdom of Morocco's domestic legislation.*

- Assistance or participation of agents of the requesting State in the execution of the measure

*The Minister for Justice and Liberty may authorise the representatives of the requesting State to come and assist in the implementation of this measure in the Kingdom of Morocco.*

#### **Hearing experts (708)**

- Definition and scope of the measure

*The examining magistrate and the court may hear experts to obtain explanations concerning reports they have written on questions of a technical nature.*

##### **Scope of the measure:**

*Experts may be questioned at the hearing as witnesses under the conditions laid down in this code.*

*If the witnesses speak a language or dialect or in an accent that are difficult to understand, a person capable of providing a translation after taking an oath will be called for.*

*If the witness is deaf or mute, he or she will be given an interpreter who is used to conferring with him or her.*

*Non-sworn-in experts will take an oath before the court, as follow: "I swear before God to assist justice by my honour and conscience".*

*Experts are heard and in the course of the hearing they explain the results of the technical operations they undertook. They may consult their report and its appendices in so doing.*

*The president, either on his or her own initiative or at the request of the prosecution or the parties or their counsel, may ask the expert all kinds of questions coming within the scope of the tasks assigned to him or her. The president may also authorise them to ask the questions directly.*

*After they are heard, the experts will remain at the hearing, unless they are exempted from doing so by the president and in the absence of opposition by the prosecution or parties.*

*If a person questioned as a witness or for informational purposes at a hearing in an adjudicating court contradicts the conclusions of an expert or provides new information from a technical point of view, the president will request that the expert, the prosecution and the parties should submit their observations in relation to this.*

*The court, in a reasoned decision, will declare either that it dispensing with [further] discussions or that the case will be adjourned to a later date. In the latter case, the court may take any measure it deems useful in relation to the expert report.*

- Failing that, an alternative measure with the same purpose

*This measure is laid down by Moroccan legislation (Code of Criminal Procedure).*

- Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*This measure can be taken in the context of a request for mutual judicial assistance in criminal matters using the instrument of letters rogatory. The Kingdom of Morocco can implement the measure either within the framework of bilateral and multilateral conventions or, in the absence of such, on the basis of the principle of reciprocity.*

- Body competent to authorize the measure

*1- The examining magistrate at the Court of First Instance or the Court of Appeal;*

*2- The Court of First Instance or the Court of Appeal.*

- Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*Letters rogatory are implemented in accordance with the provisions in the Kingdom of Morocco's domestic legislation.*

- Assistance or participation of agents of the requesting State in the execution of the measure

*The Minister for Justice and Liberty may authorise the representatives of the requesting State to come and assist in the implementation of this measure in the Kingdom of Morocco.*

#### **Summoning suspects/persons accused (709)**

- Definition and scope of the measure

*Moroccan legislation provides the possibility of summoning suspected and accused persons at the preliminary investigation, preparatory inquiry or judgement hearing. Scope of the measure:*

*I-Before the examining magistrate:*

*The summons to appear serves to put the accused on notice that he or she will have to appear before the judge on the date and at the time indicated in this summons.*

*The summons to appear is served on the person in question by a bailiff or officer of the judicial police or by a law enforcement agent, who will provide him or her with a copy of same.*

*II-Before the adjudicating court:*

*The summons to appear is handed over to the accused, the person incurring civil liability and the plaintiff in compliance with the conditions set out in articles 37, 38 and 39 of the Code of Civil Procedure.*

*The summons must, on pain of invalidity, indicate the date, hour and place of the hearing as well as the type of offence, the date and place of its commission and the applicable legal provisions.*

*The summons and the judgement will be invalid unless a minimum period of eight days is provided between the date on which the summons is served and the date set for the hearing.*

*If the accused or one of the parties lives outside of Morocco, the abovementioned period must be no less than:*

*-two months if they live in another Maghreb country or in a European country;*

*-three months if they live in any countries other than those mentioned above*

- Failing that, an alternative measure with the same purpose

*This measure is laid down by Moroccan legislation (Code of Criminal Procedure)*

- Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*This measure can be taken in the context of a request for mutual judicial assistance in criminal matters using the instrument of letters rogatory. The Kingdom of Morocco can implement the measure either within the framework of bilateral and multilateral conventions or, in the absence of such, on the basis of the principle of reciprocity.*

- Body competent to authorize the measure

*1- The examining magistrate at the Court of First Instance or the Court of Appeal;*

*2- The Court of First Instance or the Court of Appeal.*

- Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*Letters rogatory are implemented in accordance with the provisions in the Kingdom of Morocco's domestic legislation.*

- Assistance or participation of agents of the requesting State in the execution of the measure

*The Minister for Justice and Liberty may authorise the representatives of the requesting State to come and assist in the implementation of this measure in the Kingdom of Morocco.*

#### **Hearing suspects/persons accused: standard procedure (710)**

- Definition and scope of the measure

*The procedures of the investigation and the judgement require that suspects and accused persons be heard in order to confront them with the acts attributed to them. This hearing unfolds in accordance with rules laid down by the legislator in the Code of Criminal Procedure which take account of the principles of human rights in order to ensure a fair trial.*

#### **Scope of the measure**

*1- Before the examining magistrate:*

*At the first appearance, the examining magistrate will confirm the family name, first name, data and place of birth, civil status, profession, place of residence and previous record of the accused. If applicable, he or she may order any investigative measures in order to verify the identity of the accused, including submitting the accused to the police records department or a medical examination.*

*The magistrate will advise the accused immediately of his or her right to choose a lawyer and, in the absence of such choice being made and at the request of the accused, the magistrate may appoint a lawyer to assist the accused. This will be mentioned in the transcript.*

*The lawyer may attend the interrogation conducted with a view to verifying the identity of the accused.*

*The examining magistrate informs the accused of each of the acts attributed to him or her and advises him or her that he or she is free to refrain from making any statement. This warning is mentioned in the transcript.*

*The examining magistrate must accede to the request for a medical examination by an accused placed in custody or his or her lawyer. The examining magistrate may also take the initiative in ordering such an examination, if he or she sees evidence in the [state of] the accused to justify it. For this purpose, he or she appoints a medical expert.*

*The judge will also advise the accused that he or she must inform the court of any change of address. The accused may elect domicile within the jurisdiction of the court.*

*If the initial indictment by the prosecution includes the issue of a deposit order and the examining magistrate believes that the matter should not be deferred, he or she must issue an order within twenty-four hours, which must be immediately notified to the prosecution.*

*Furthermore, the examining magistrate must proceed immediately to an interrogation or confrontation in an emergency, either in the case of a witness in danger of dying or if the evidence is on the point of disappearing. The transcript must mention the causes of the emergency.*

## *II- Before the adjudicating court*

*In principle, any accused is bound to appear at the hearing.*

*In the case of a misdemeanour, the accused may, without a prior summons, be taken to the hearing to be judged by a decision in which both sides are heard.*

*However, if the accused is in a state of health that does not permit him or her to appear at the hearing and if the judgement cannot be postponed for serious reasons, the court will, in a special and reasoned decision, instruct one of its members, assisted by a court clerk, to interrogate the accused in the place in which he or she is currently located.*

*If applicable, the court will determine the questions asked by the magistrate, the prosecution and the parties.*

*The questioning will be undertaken in the presence of the counsel for the accused, if applicable.*

*The magistrate will ask the accused the questions he or she deems necessary, the questions determined by the court and those presented by the defence for the accused.*

*The public prosecution, the parties and their counsel, through the intermediary of the president or directly, with the latter's authorisation, may ask the accused questions. The same applies to the individual judges in a court that has a panel of judges.*

*If the president refuses to ask a question and if an objection is raised, the court will rule.*

- **Failing that, an alternative measure with the same purpose**

*This measure is laid down by Moroccan legislation (Code of Criminal Procedure).*

- **Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?**

*This measure can be taken in the context of a request for mutual judicial assistance in criminal matters using the instrument of letters rogatory. The Kingdom of Morocco can implement the measure either within the framework of bilateral and multilateral conventions or, in the absence of such, on the basis of the principle of reciprocity*

- **Body competent to authorize the measure**

*1- The examining magistrate at the Court of First Instance or the Court of Appeal;*

*2- The Court of First Instance or the Court of Appeal*

- **Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)**

*Letters rogatory are implemented in accordance with the provisions in the Kingdom of Morocco's domestic legislation.*

- **Assistance or participation of agents of the requesting State in the execution of the measure**

*The Minister for Justice and Liberty may authorise the representatives of the requesting State to come and assist in the implementation of this measure in the Kingdom of Morocco.*

### Hearing suspects/persons accused: by video conference (711)

- **Definition and scope of the measure**

*This measure does not exist in Moroccan legislation.*

- Failing that, an alternative measure with the same purpose

N/A.

- Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

N/A.

- Body competent to authorize the measure

N/A.

- Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

N/A.

- Assistance or participation of agents of the requesting State in the execution of the measure

N/A.

#### Hearing suspects/persons accused: by telephone (712)

- Definition and scope of the measure

*This measure does not exist in Moroccan legislation.*

- Failing that, an alternative measure with the same purpose

N/A.

- Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

N/A.

- Body competent to authorize the measure

N/A.

- Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

N/A.

- Assistance or participation of agents of the requesting State in the execution of the measure

#### Confrontation (713)

- Definition and scope of the measure

*Confrontation is one of the criminal-law procedures that allows two or more suspects, accused persons, witnesses or victims to be confronted with each other, in order to compare the statements made by one of them with those made by the others.*

##### Scope of the measure

*- The judge may question the witness, confront him or her with other witnesses or the accused in the presence of their counsel unless they expressly renounce the presence of the latter and, with their*



*assistance, carry out any operations or reconstructions that may be useful for ascertaining the truth.*

*- The accused and plaintiff can only be heard or confronted in the presence of their duly summoned counsel unless they expressly renounce legal representation.*

*Counsel must be summoned at latest two full days prior to each interrogation, either by registered letter or a notice handed over to him or her in return for a receipt, unless he or she has already been notified in the course of a hearing prior to the investigation and the said notification was mentioned in the transcript.*

*- The president may, at his or her own initiative or at the request of the prosecution or the parties, order that the witnesses he or she designates be removed from the room in which the hearing is taking place in order to have them brought in and questioned all together or separately with or without confrontations.*

*-Any individual detained in a Moroccan penitentiary whose personal appearance as a witness or for the purpose of a confrontation is required by the requesting State may be temporarily transferred into the territory of that state on condition that he or she is returned by a deadline set by the Moroccan State.*

*A request by the diplomatic channel will be answered.*

*The transfer may be refused,*

*\*If the detainee does not consent;*

*\*If his or her presence seems necessary in criminal proceedings underway in Morocco;*

*\*If the transfer is likely to prolong his or her detention;*

*\*if other, particular considerations militate against his or her transfer into the territory of the requesting State.*

*An individual transferred in this way will remain in detention on the territory of the requesting State unless, in the case of a convicted party, the Moroccan State requests his or her release at the end of his or her sentence.*

*The time in detention spent by the party in question in the requesting State will count towards his or her sentence in Morocco and will be deducted from it.*

- **Failing that, an alternative measure with the same purpose**

*This measure is laid down by Moroccan legislation (Code of Criminal Procedure)*

- **Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?**

*This measure can be taken in the context of a request for mutual judicial assistance in criminal matters using the instrument of letters rogatory. The Kingdom of Morocco can implement the measure either within the framework of bilateral and multilateral conventions or, in the absence of such, on the basis of the principle of reciprocity*

- **Body competent to authorize the measure**

*The examining magistrate at the Court of First Instance or the Court of Appeal.*

- **Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)**

*Letters rogatory are implemented in accordance with the provisions in the Kingdom of Morocco's domestic legislation.*

- Assistance or participation of agents of the requesting State in the execution of the measure

*The Minister for Justice and Liberty may authorise the representatives of the requesting State to come and assist in the implementation of this measure in the Kingdom of Morocco.*

## 8. CROSS-BORDER OPERATIONS

### Cross-border observation (801)

- Definition and scope of the measure

*This measure does not exist in Moroccan legislation.*

- Failing that, an alternative measure with the same purpose

*N/A.*

- Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*N/A.*

- Body competent to authorize the measure

*N/A.*

- Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*N/A.*

- Assistance or participation of agents of the requesting State in the execution of the measure

*N/A.*

### Cross-border hot pursuit (802)

- Definition and scope of the measure

*This measure does not exist in Moroccan legislation.*

- Failing that, an alternative measure with the same purpose

*N/A.*

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist? *N/A.*

- Body competent to authorize the measure

*N/A.*

- Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*N/A.*

- Assistance or participation of agents of the requesting State in the execution of the measure

*N/A.*

#### Cross-border tracking (by placing a beeper on a vehicle or a person) (803)

Definition and scope of the measure

*This measure does not exist in Moroccan legislation.*

- Failing that, an alternative measure with the same purpose

*N/A.*

- Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*N/A*

- Body competent to authorize the measure

*N/A*

- Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*N/A*

- Assistance or participation of agents of the requesting State in the execution of the measure

*N/A*

#### Controlled deliveries (804)

- Definition and scope of the measure

*Article 82-1 of the Code of Criminal Procedure defines controlled delivery as "a method, consisting of allowing, under the supervision of the competent authorities, the passage from Moroccan territory of an illicit dispatch or one suspected of being illicit without being seized or after having been removed and replaced in full or in part with a view to identifying the final destination of said dispatch, investigating an offence and identifying and arresting the perpetrators and incriminated parties."*

Scope of the measure

*Controlled delivery is authorised by the senior public prosecutor at the Court of Appeal. The judicial police will implement the authorisation and keep the senior public prosecutor informed of any measures taken.*

*At the end of a controlled delivery operation, the officers of the judicial police will draw up one or more reports on the measures implemented.*

*The officers and constables of the judicial police are bound to keep these measures secret.*

*The senior public prosecutor who authorised the controlled delivery must defer all investigative measures connected with the controlled delivery or the arrest of the perpetrators and incriminated persons until he or she has made certain that the dispatch has reached its final destination.*

- **Failing that, an alternative measure with the same purpose**

*This measure is laid down by Moroccan legislation (Code of Criminal Procedure)*

- **Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?**

*A foreign State may ask the Moroccan authorities to carry out a controlled delivery operation within Morocco.*

*However, requests for controlled delivery will not be met if their implementation is capable of harming Morocco's sovereignty, its security, law and order or other fundamental interests.*

- **Body competent to authorize the measure**

*The senior public prosecutor authorises a controlled delivery, after obtaining the agreement of the Minister for Justice and Liberty.*

- **Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)**

*Controlled delivery operations are more security-related than judicial in nature.*

*This measure is distinguished by total discretion in the course of all the procedures and operations relating to its execution. Coordination between the Moroccan "services de lutte" and their foreign equivalents are needed to guarantee the success of a controlled delivery operation.*

*In practice, the management of national security will receive requests from foreign authorities through their liaison officer for an authorisation of the passage of an illicit dispatch (drugs) through Moroccan territory without being seized at the border posts. The requests will indicate the probable date of the passage, the make of vehicle used, its registration number and the identity of the party who will be driving it.*

*This request is transmitted to the Ministry of Justice and Liberty, Department of Criminal Matters and Exonerations and, after studying it, the Minister for Justice and Liberty will agree to the request and transmit it to the competent public prosecutor who will authorise the execution of the controlled delivery while continuing to coordinate with the foreign authorities to obtain all the information concerning criminal networks to be used in investigations undertaken by the Moroccan security and judicial authorities.*

- **Assistance or participation of agents of the requesting State in the execution of the measure**

*There is no obstacle to officials of the requesting State assisting and undertaking discreet surveillance during the passage of the illicit dispatch through Moroccan territory in coordination with the competent Moroccan security services.*

#### **Joint investigation teams (805)**

- **Definition and scope of the measure**

*The Moroccan legislation does not provide for such measure.*

- **Failing that, an alternative measure with the same purpose**

*N/A.*

- Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

N/A.

- Body competent to authorize the measure

N/A.

- Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

N/A.

- Assistance or participation of agents of the requesting State in the execution of the measure

N/A

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## **EUROMED JUSTICE III PROJECT**

**Criminal and Penitentiary Law**

**WG 3**

**Working Group on Criminal Law in order to  
prepare a tool equivalent to the so-called  
“fiches belges”**

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## EUROMED JUSTICE III

Criminal and Penitentiary Law

WG 3

Working Group on Criminal Law in order to prepare a tool equivalent to the so-called “fiches belges”

### PALESTINE

#### 1. TRACING AND INTERCEPTION OF (TELE) COMMUNICATIONS

##### Interception, recording and transcription of telecommunications (101)

###### Definition and scope of the measure

*The Palestinian criminal code of procedure number 3 of 2001 covers the question of tracing, recording and recording of the communications in its article 51 which stipulates: “(1)The prosecutor general or one of his assistants must seize at the Postal and Telegraph Office the mail, letters, newspapers, prints, parcels and telegrams linked to the crime or its perpetrator”.*

*(2)He can control telecommunications and undertake the recording of conversations in a specified place upon authorization of a district judge when this is useful to bring out the truth in cases of misdemeanour or crime punishable of at least a year of imprisonment.*

*(3)The seizure order, the authorization to intercept and record must be substantiated and for a time limit not exceeding 15 days renewable once.*

Failing that, an alternative measure with the same purpose

Does not exist

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*Yes the district judge intervenes by ordering the public prosecution to record conversations in a specified place when this is useful in bringing out the truth in cases of misdemeanour or crime punishable of at least a year of imprisonment.*

Body competent to authorize the measure

The prosecutor general or one of his assistants.

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*The prosecutor general or one of his assistants order the seizure at the Postal and Telegraph Office of the mail, letters, newspapers, prints, parcels and telegrams linked to the crime or its perpetrator. He can also trace phone and radio conversations, record them in a specified place upon authorization of the district judge when this is useful in bringing out the truth in cases of misdemeanour or crime punishable of at least a year of imprisonment. The seizure order, the authorization to intercept and record must be substantiated and for a time limit not exceeding 15 days renewable.*

Assistance or participation of agents of the requesting State in the execution of the measure

*Does not exist*

#### Tracing of telecommunications (102)

Definition and scope of the measures

*The previous point (1). The same details as those pertaining to article 51*

Failing that, an alternative measure with the same purpose

*Does not exist*

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*Yes, the district judge can order the public prosecution to record conversations in a specified place when this is useful in bringing out the truth in cases of misdemeanour or crime punishable of at least a year of imprisonment.*

Body competent to authorize the measure

*The prosecutor general or one of his assistants.*

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*The prosecutor general or one of his assistants can trace telephone conversations and record them in a specified place upon authorization of the district judge when this is useful in bringing out the truth in cases of misdemeanour or crime punishable of at least a year of imprisonment. The seizure order, the authorization to intercept and record must be substantiated and for a time limit not exceeding 15 days renewable once.*

Assistance or participation of agents of the requesting State in the execution of the measure

*Does not exist*

#### Interception and recording of other forms of communication (103)

Definition and scope of the measures.

*See previous point (1). The same details as those of article 51*

Failing that, an alternative measure with the same purpose

*See previous point (1). The same details as those of article 51*

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

Body competent to authorize the measure

*The prosecutor general or one of his assistants*

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*See previous point (1). The same details as those of article 51*

Assistance or participation of agents of the requesting State in the execution of the measure

*Does not exist*

#### Interception of mail (104)

Definition and scope of the measure

*The Palestinian legislation does not cover the interception of electronic mail, but the draft Palestinian criminal code covers it in the chapter on electronic crimes and this text is awaiting adoption.*

Failing that, an alternative measure with the same purpose

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

Body competent to authorize the measure

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

Assistance or participation of agents of the requesting State in the execution of the measure

#### Observation (105)

Definition and scope of the measures.

*The Palestinian legislation deals with tracing communications and correspondence in article 51 which stipulates: "(2) He can also trace the telecommunications and record conversations in a specified place upon authorization of the district judge when this is useful in bringing out the truth in cases of misdemeanour or crime punishable of at least a year of imprisonment. (3) The seizure order, the authorization to intercept and record must be substantiated and for a time limit not exceeding 15 days renewable once.*

Failing that, an alternative measure with the same purpose

*Does not exist*

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*Yes, the district judge intervenes by ordering the public prosecution to record conversations in a specified place when this is useful in bringing out the truth in cases of misdemeanour or crime punishable of at least a year of imprisonment.*

Body competent to authorize the measure

*The prosecutor general or one of his assistants*

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*The prosecutor general or one of his assistants can trace telephone conversations and record them in a specified place upon authorization of the district judge when this is useful in bringing out the truth in cases of misdemeanour or crime punishable of at least a year of imprisonment. The seizure order, the authorization to intercept and record must be substantiated and for a time limit not exceeding 15 days renewable once.*

Assistance or participation of agents of the requesting State in the execution of the measure

*Does not exist*

#### Interception of telecommunication (106)

Definition and scope of the measure.

*The Palestinian legislation does not cover interception of phone or radio conversations but the draft Palestinian criminal code covers them in the chapter on electronic crime and this text is awaiting adoption.*

Failing that, an alternative measure with the same purpose

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

Body competent to authorize the measure

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

Assistance or participation of agents of the requesting State in the execution of the measure

#### Interception of telecommunication without the technical assistance of another State (107)

Definition and scope of the measure

*The Palestinian legislation does not cover interception of landlines and radio communications without the technical support of another country.*

Failing that, an alternative measure with the same purpose

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

Body competent to authorize the measure

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

Assistance or participation of agents of the requesting State in the execution of the measure

## 2. AGENTS AND INFORMERS – INFILTRATION

#### Infiltration by undercover agents of the requested State (201)

Definition and scope of the measure.

*The infiltration by undercover agents of the requested state is not covered by the Palestinian legislation.*

Failing that, an alternative measure with the same purpose

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

Body competent to authorize the measure

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

Assistance or participation of agents of the requesting State in the execution of the measure

#### Infiltration by agents of the requesting State in the territory of the requested State (202)

Definition and scope of the measure

*The infiltration by agents of the requesting state in the territories of the state from which extradition is requested.*

Failing that, an alternative measure with the same purpose

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

Body competent to authorize the measure

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

Assistance or participation of agents of the requesting State in the execution of the measure

#### Infiltration by an informer of the requested State (203)

Definition and scope of the measure

Failing that, an alternative measure with the same purpose

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

Body competent to authorize the measure

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

Assistance or participation of agents of the requesting State in the execution of the measure

#### Handling of informers (204)

Definition and scope of the measure.

*Infiltrating the informer in the requested state is not covered by the Palestinian legislation.*

Failing that, an alternative measure with the same purpose

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

Body competent to authorize the measure

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

Assistance or participation of agents of the requesting State in the execution of the measure

### **3. EXAMINATION, BODY SEARCH AND EXPERT EVALUATION**

#### **Superficial body search (301)**

##### **Definition and scope of the measure**

*1-The Palestinian code of criminal procedure deals with body search in its article 99 which stipulates that: "Before questioning the accused the deputy prosecutor must examine his body, note the apparent injuries and determine their cause."*

*2-Body search is covered by the law in article 38 which stipulates that:"(1)In cases where it is legally possible to apprehend the accused, the judicial police officer can search the accused and establishes a list of the items seized. He and the accused sign this list and the whole is deposited in a dedicated place. (2) He gives the arrested person a copy of this list if he so requires."*

*Article 47 on searches of women stipulates that: "If the person who must be searched is a woman, she can only be so by a woman mandated by the officer in charge."*

*3-The evaluation by experts is covered by the code of criminal procedure in its article 64 which stipulates that: "The deputy prosecutor can resort to the competent doctor or any other expert to prove the commission of a crime. The mandated doctor and the other experts take the necessary measures under the control of the party in charge of the investigation and the latter is present during all the procedures if he so deems necessary in the interest of the investigation."*

##### **Failing that, an alternative measure with the same purpose**

*The deputy prosecutor can order the examination of the accused by experts under article 100: "The deputy prosecutor orders, of his own initiative, the medical and psychological examination of the accused by experts if he so deems necessary or upon request of the accused or his counsel."*

**Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?**

*It is possible for the purpose of the examination and inspection to resort to experts such as a forensic doctor or experts, as it is possible to resort to a woman which is mandated to search women.*

##### **Body competent to authorize the measure**

*1-Examination of the accused: Upon orders by the competent deputy prosecutor. He can undertake it himself or resort to competent parties.*

*2-Body search: It is ordered by the deputy prosecutor and undertaken by a judicial police officer.*

*3-Evaluation by experts: Used by the competent deputy prosecutor.*

**Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)**

*The body search of the accused and his examination is undertaken by the competent deputy prosecutor who examines and certifies all the apparent injuries and determines their cause. He can resort to the competent parties. Whilst the body search is undertaken by a judicial police officer upon instruction of the deputy prosecutor and mandates a woman in case of searches on women. On resorting to experts, the deputy prosecutor can resort to a competent doctor or any other specialist to prove the commission of the crime.*

Assistance or participation of agents of the requesting State in the execution of the measure

*Does not exist*

### Invasive body search (302)

Definition and scope of the measure

*Not covered by the Palestinian legislation.*

Failing that, an alternative measure with the same purpose

Is the measure possible under mutual judicial assistance? If not, is there an alternative measure?

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

Assistance or participation of agents of the requesting State in the execution of the measure

### Psychiatric medical examination (303)

Definition and scope of the measure

*The Palestinian code of criminal procedure covers it in article 64 which stipulates that: "The deputy prosecutor can resort to the competent doctor or any other expert to prove the commission of a crime. The mandated doctor and the other experts take the necessary measures under the control of the party in charge of the investigation and the latter is present during all the procedures if he so deems necessary in the interest of the investigation". Article 100 covers also the question and stipulates that: "The deputy prosecutor orders, of his own initiative, the medical and psychological examination of the accused by experts if he so deems necessary or upon request of the accused or his counsel."*

Failing that, an alternative measure with the same purpose

*Does not exist*

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*It is possible to resort to the Administration of Forensic Medicine under the Ministry of Justice.*

Body competent to authorize the measure

*The competent deputy prosecutor.*

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*The deputy prosecutor orders, of his own initiative, the medical and psychological examination of the accused by experts if he so deems necessary or upon request of the accused or his counsel.*

Assistance or participation of agents of the requesting State in the execution of the measure

*Does not exist*

## Control of identity, measures for judicial identification (304)

### Definition and scope of the measure

*Control of identity is covered by the code of criminal procedure both for the witness and the accused before the public prosecutor during the investigation, as well as for the detainee in prison and the accused during the trial before the competent court. Article 79 stipulates that: "The deputy prosecutor controls the identity of the witness, his name, age, occupation, place of residence, potential links to one of the parties. He puts this in the minutes before listening to the witness and noting his words." Article 96/1 stipulates that: "The deputy prosecutor must, during the first presentation of the accused during the investigation, control his identity, name, occupation, address and questions him on the acts he is accused of and asks him to answer to that. He informs him of his right to call in a defense counsel and that all he will say can be used against him during the proceedings." Article 129 stipulates that: "Any person arrested or detained in a rehabilitation centre or a place of detention must undergo identity control. His fingerprints will be taken; he will be photographed and examined to note any distinctive sign that allows his identification..." [prison] 246/1 (1) The court asks the accused to give his name, surname, occupation, place of birth, age, place of residence and social status.*

Failing that, an alternative measure with the same purpose

*Does not exist*

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*The judge steps in during the proceedings to control the identity of the accused.*

Body competent to authorize the measure

*1-For the witness the competent party is the deputy prosecutor.*

*2-For the accused during the investigation the competent party is the deputy prosecutor.*

*3-For the accused during the proceedings the competent party is the court.*

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*See Introduction and Scope above.*

Assistance or participation of agents of the requesting State in the execution of the measure

*Does not exist*

## Technical or scientific examinations or expert evaluations (305)

### Definition and scope of the measure

*The Palestinian code of criminal procedure covers the possibility to resort to technical experts in articles 64 to 70. Article 64 stipulates: "The deputy prosecutor can resort to the competent doctor or any other expert to prove the commission of a crime. The mandated doctor and the other experts take the necessary measures under the control of the party in charge of the investigation and the latter is present during all the procedures if he so deems necessary in the interest of the investigation." Article 65 stipulates: "The expert can undertake his task in the absence of the parties". Article 66 stipulates: "The expert commits to delivering his technical report within the time limits set by the deputy prosecutor who investigates the case and bearing the necessary attention to perishable*



*evidence". Article 67 stipulates: "The deputy prosecutor can replace an expert if he has violated his obligations or if he hasn't delivered his report within the time limits set." Article 68 stipulates that: "The expert must take an oath to fulfil his duties honestly and in good faith and this must be done before he starts his work unless he is registered on a list of certified experts." Article 69 stipulates that: "The expert presents a substantiated report and signs each page." Article 70 stipulates that: "The accused can resort to an expert consultant and ask for him to have access to the exhibits upon the condition that it does not delay the procedure." Article 71 stipulates that: "The parties can challenge an expert if they have serious reasons to do so and present their request for recusal to the deputy prosecutor in charge of the investigation, this request must be substantiated and the deputy must present it to the prosecutor general or one of his assistants to decide within a time limit of 3 days as of the date of the request. Following such a request the expert cannot continue his work until the question is decided upon and the decision must be substantiated."*

Failing that, an alternative measure with the same purpose

*Does not exist*

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*No*

Body competent to authorize the measure

*The competent deputy prosecutor*

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*The details are in the first part (introduction and scope)*

Assistance or participation of agents of the requesting State in the execution of the measure

*Does not exist.*

#### **4. DOCUMENTS-OBTAINING**

##### **Spontaneous exchange of information (401)**

Definition and scope of the measure

*Amongst the most important forms of spontaneous exchange of information are:*

*1-The precautionary measures such as the sequestration of the assets of an accused Palestinian abroad, this actually happens in corruption files when the accused have fled Palestine.*

*2-Measures of judicial arrest*

*3-The investigation*

*4-Hearing the witnesses or travelling abroad to hear witnesses*

*5-Arrest and search*

*6-Hearing of experts*

*The Palestinian code of criminal procedures number 3 of 2001 does not mention measures of judicial cooperation in matters of exchange of information but judicial cooperation in Palestine is implemented in a pragmatic fashion through sending and accepting requests for judicial cooperation to and from countries.*

*The legal framework that organizes the exchanges between Palestine and the Arab countries signatories of the Riyadh agreement is the Riyadh Agreement of 1983 and the Arab Agreement on Fighting Corruption, the Arab Agreement on Fighting Money Laundering, the Arab Agreement on Transborder Crime and the Arab Agreement on Fighting Terrorism.*

*For countries not member of the Riyadh Agreement the principle which abides is reciprocity.*

Failing that, an alternative measure with the same purpose

*Does not exist*

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*Yes the exchange of information is done upon authorization of the competent court. There can be no exchange of information without MLA.*

Body competent to authorize the measure

*The Ministry of Justice*

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*Upon request of the body in charge of fighting corruption or the public prosecution, the ministry of justice send an official request for precautionary measures to be taken for instance against a Palestinian in the Arab countries such as Jordan, Egypt or the Emirates.*

Assistance or participation of agents of the requesting State in the execution of the measure

*Cooperation is done at official level between the Palestinian ministry of justice and that of the country concerned following the measures described above.*

### **Order to produce documents (402)**

Definition and scope of the measure

*The order to produce documents can take several forms:*

*1-In corruption cases, the public prosecutor can ask the financial authorities to produce documents on the case being investigated.*

*2-In criminal cases, the public prosecutor during the investigation or the court during the trial can ask any party to produce documents that allow the trial to run smoothly, such as asking for a technical report (article 64 of the code of criminal procedures).*

*3-In crimes of money laundering*

*4-Cooperation and exchange of information in crimes of money laundering*

*5-MLA and exchange of information in transborder crimes*

Failing that, an alternative measure with the same purpose

*Does not exist*

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*Yes this measure exists in MLA, one can contact the competent parties in the other country in order to submit to Palestine the documents that will allow the trial to run smoothly or the information necessary in relation to MLA. The framework organizing such measures is the Arab MLA for relations with the Arab countries and the principle of reciprocity with the others.*

Body competent to authorize the measure

*The competent office of the prosecutor or the court during the trial.*

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*In cases of corruption the public prosecution entrusted with corruption cases can ask the financial authorities to provide them with the documents pertaining to the investigation or the court during the trial can ask any party to produce documents that allow the trial to run smoothly, such as asking for a technical report (article 64 of the code of criminal procedures).*

Assistance or participation of agents of the requesting State in the execution of the measure

*The cooperation takes place between the competent parties in Palestine and the Arab requesting or requested state according to the MLA.*

#### **Other possibilities of obtaining information concerning taxes or bank accounts (403)**

Definition and scope of the measure

*1-In cases of corruption, according to article (4/9) of the Palestinian law on fighting corruption (number 1) of 2005 which stipulates that: -4 Competence of the authority fighting corruption: Ask for any file, statement, document, exhibits, information or consult them or obtain a copy from the custodians including those that consider that the documents are confidential in accordance with the law.*

*Thus the prosecutor or the court investigating a case of corruption can ask the financial authorities to produce documents on the case such as, for instance, the details of bank accounts.*

*2-The cooperation and exchange of information in cases of money laundering, law 9 of 2007 stipulates that : The competent authority can exchange information with its counterpart on the basis of the agreements signed by the PLO on this point and which are not contrary to applicable law in the territories of the Palestinian Authority.*

*3-MLA and the exchange of information in transborder crime.*

Failing that, an alternative measure with the same purpose

*Does not exist*

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*No*

Body competent to authorize the measure

*The competent office of the prosecutor during the investigation or the court during the trial.*

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*During the investigation of corruption cases the prosecutor considers necessary to obtain the details of bank accounts of the person accused of corruption.*

Assistance or participation of agents of the requesting State in the execution of the measure

#### Access to public documents in judicial files (404)

Definition and scope of the measure

*The Palestinian law does cover access to public documents in judicial files.*

Failing that, an alternative measure with the same purpose

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

Body competent to authorize the measure

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

Assistance or participation of agents of the requesting State in the execution of the measure

#### Communication of individual police records (405)

Definition and scope of the measure

*The Palestinian law does not cover this question.*

Failing that, an alternative measure with the same purpose

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

Body competent to authorize the measure

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

Assistance or participation of agents of the requesting State in the execution of the measure.

#### Sending and service of procedural documents (406)

Definition and scope of the measure

*Sending and service of procedural documents is covered by the Palestinian code of criminal procedure in article 152 which stipulates under the title "Behaviour during the trial" that :*

*"(1) If the deputy prosecutor considers that an action is a felony, he proceeds by way of indictment and sends the file to the prosecutor general or one of his assistants.*

*(2) If the prosecutor general or one of his assistants considers that it is necessary to request additional investigation, the file is sent back to the deputy prosecutor for further investigation.*

*(3) If the prosecutor general or one of his assistants considers that the indictment is well-founded he refers the case to the competent court.*

*(4) If the prosecutor general or one of his assistants considers that the act is not a felony, he orders a modification of the charges and returns the file to the deputy prosecutor who refers it to the competent court.*

*(5) If the prosecutor general or one of his assistants notes that the act is not punishable by law or that there is prescription or general amnesty or that the accused has already been tried for this crime or that he is not fully responsible for his acts because of age (minor) or mental retardation or the absence of proof or when we ignore the identity of the perpetrator, when the conditions or uncertainties require a withdrawal of the proceedings, the case is withdrawn.*

*(6) If the public prosecution decides a withdrawal it must inform the victim and the civil party. In case of death of those people it must inform their heirs.*

Failing that, an alternative measure with the same purpose

*Does not exist*

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*No*

Body competent to authorize the measure

*The public prosecution*

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*The details are clear in the introduction*

Assistance or participation of agents of the requesting State in the execution of the measure

*Does not exist*

### **Transfer of proceedings (407)**

Definition and scope of the measure

*By delegation of criminal prosecution we mean: The possibility to transfer competence to follow a case to another party to which the law gives competence in this matter. The code of criminal procedure stipulates in its article 57 that: "The deputy prosecutor who must undertake procedures outside his jurisdiction can transfer the proceedings to a deputy of this other jurisdiction which is competent in this case". Article 86 stipulates in another case that: "If the witness cannot come before the court because of health problems, the deputy prosecutor goes to his place of residence to listen to his says if he is located in his jurisdiction and if he resides outside this zone, the deputy mandates his colleague of the competent jurisdiction and the testimony is sent under sealed envelope to the deputy in charge of the case.*

Failing that, an alternative measure with the same purpose

*Does not exist.*

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

Body competent to authorize the measure

*The public prosecution*

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*The deputy prosecutor transfers the investigation file to another deputy in cases where measures must be taken outside his jurisdiction and the latter has full competence to act.*

Assistance or participation of agents of the requesting State in the execution of the measure

*Does not exist*

## **5. ASSETS - SEQUESTRATION, CONFISCATION AND RESTITUTION**

### **Sequestration of assets (501)**

Definition and scope of the measure

*The seizure of assets or items is intended to restrain everything that may contain traces which could be useful to the investigation. Documents (papers), weapons, machines are also seized and all items that may have been used in the perpetration of a crime or came about as a result of its perpetration or was the subject of the crime and all that is useful in revealing the truth, noting, with the aid of a police officer or an expert from the relevant forensics department, when appropriate, any evidential features relating to the weapons seized such as serial numbers and marks. The descriptions of the seized items are to be recorded accurately in the police report stating how they were seized. The aim of this measure is to preserve the seized items in safe keeping and to prevent loss of evidence. In the event of property being sequestered, the matter is referred to the Property Administrator in accordance to the Anti-corruption Law No. (1) for 2005, where an Administrator/Sequester is assigned for its management pursuant to a decision/ruling issued by the department in charge of the prosecution in Anti-corruption cases or from the Court during proceedings.*

*- The Palestinian Code of Criminal Procedure No. (3) for 2001 is devoid of a clear definition for seizure or restraint.*

*- Chapter 3 of the Code of Criminal Procedure, mentioned above, addressed the disposal of seized items through*

*Article (72) Restraint and Disposal of Seized Items*

*Article (73) Returning Seized Items*

*Article (74) Return of Seized Items Order*

*Article (75) How to dispose of documents (papers)*

*Article (76) Disputes over Seized Items*

Failing that, an alternative measure with the same purpose

*None*

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*The Palestinian Code of Criminal Procedure and the domestic laws are devoid of procedures relating to judicial cooperation in this field. However, we can say that the Criminal Procedures applicable in this regard are as those stipulated under the domestic Palestinian laws for judicial cooperation. It is possible in this regard to adopt the principle of reciprocity, or what is stipulated in the Arab conventions signed and ratified by the State of Palestine, namely:*

- *Riyadh Arab Agreement for Judicial Cooperation for the year 1983*
- *Arab Convention for Anti-Corruption 21/12/2010*
- *Arab Convention for Combating Transnational Organized Crime*
- *Arab Convention for the Combat of Money Laundering and Financing Terrorism for the year 2010.*

**Body competent to authorize the measure**

*The competent authority is the public prosecution during the investigation process or the competent court during the trial stage pursuant to Article (73) of the Palestinian Code of Criminal Procedure No.(3) for the year 2001.*

**Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)**

*Article (72) of the Palestinian Code of Criminal Procedure on the restraint and disposal of seized items stipulates that:*

*Seized items are to be securely contained with the information of contents clearly indicated in writing thereon. They are to be deposited at the Prosecution service stores or at a place otherwise designated for this purpose. If the item seized is liable to perish with the passage of time or if the cost of keeping it far outweighs its value, the Public Prosecution or the Courts can order its sale by public auction – if the investigation requirement permits this - and the sale proceeds to be deposited at the Court's treasury. The owner shall have the right to claim the price for which the item was sold within one year from the conclusion of the case; otherwise it shall become the property of the State without the need for a ruling on the matter.*

**Assistance or participation of agents of the requesting State in the execution of the measure**

#### **Freezing of bank accounts (502)**

*Bank accounts are frozen in cases of crimes of corruption (illicit gain and money laundering) and pursuant to the decree Law No. (9) for the year 2007 on money laundering (articles 33,32,31). If there is a suspicion that an offence of money laundering has been committed a report shall be submitted to the Attorney General through the unit situated within the National Committee for the combat of money laundering, which in turn ratifies the indictment decision and refers it to the competent court (Article 33), "the Attorney General in accordance with the decision of the competent court has the authority to check bank accounts and other similar accounts and to impose a protective seizure measure over the assets/ funds related to money laundering for a period not exceeding 15 days" .In the case of an illicit gain, the competent authority which imposes a freeze on bank accounts is the Anti-corruption Court.*

**Failing that, an alternative measure with the same purpose**

*None.*

**Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?**

*If necessary, the Financial Authority may intervene.*

**Body competent to authorize the measure**

*The competent court.*

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*Article (33) of the decree Law No. (9) for the year 2007 on money laundering stipulates that : (if there is a suspicion that an offence of money laundering was committed a report shall be submitted to the Attorney General through the unit in the National Committee for the combat of money laundering, which in turn ratifies the indictment decision and refers it to the competent court and, "the Attorney General in accordance with the decision of the competent court has the authority to check bank accounts and other similar accounts and to impose a protective seizure measure on the assets/ funds related to money laundering for a period not exceeding 15 days" In the case of illicit gain, the competent authority which imposes a freeze on bank accounts is the Anti-corruption Court.*

Assistance or participation of agents of the requesting State in the execution of the measure

*None.*

### **Restitution (503)**

Definition and scope of the measure

*Subsequent to the process of item seizure previously clarified, the seized items relevant to the crime shall be returned in accordance with the provisions of Article (73) of the Palestinian Code of Criminal Procedure No. (3) for the year 2001 "[1] Seized items may be returned prior to the judgment being passed as long as they are not essential for the proceedings, or are subject to mandatory confiscation at the request of those who had possession of the items at the time of seizure. [2] If the seized items are those subject to the crime or obtained through it, they shall be returned to those who lost their possession by virtue of the crime, unless those who were found to have the seized items at the time of seizure had the right to retain them in accordance with the law. "Article (74) granted the powers to the Public Prosecution to issue an order for the return during the investigation or the court during the hearing of the case". Furthermore, Article (76) indicated that opponents may resort to the competent civil courts when a dispute arises with regards to the seized items.*

Failing that, an alternative measure with the same purpose

*Article (72) of the Palestinian Code of Criminal Procedure provided that in the event of the seized items being perishable, they shall be sold by public auction and the proceeds from the sale to be deposited at the Court's treasury.*

Is the measure possible under mutual judicial Assistance? If not, does an alternative measure exist?

*The principle of reciprocity and international customary law could be relied upon to apply the procedures set forth in the domestic laws of the State of Palestine and those governing seized items, confiscation and seizure in the area of international judicial cooperation and the application of the provisions in the Arabic conventions ratified and signed by the State of Palestine in this regard, namely:*

- *Riyadh Arab Agreement for Judicial Cooperation for 1983.*
- *Arab Convention for Anti- corruption 21/12/2010.*
- *Arab Convention for Combating of Transnational Organized Crime.*
- *Arab Convention for the combat of Money Laundering and Financing Terrorism for the year 2010.*

Body competent to authorize the measure

*The Public Prosecution during the investigation and the competent Court during the trial proceedings.*



Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*Article (73) paragraph (1) of the Palestinian Code of Criminal Procedure ( Seized items may be returned, prior to a ruling as long as they are not essential for the proceedings, or subject to mandatory confiscation at the request of those who had possession of the items at the time of seizure. If the seized items are those subject to the crime or obtained through it, they shall be returned to those who lost its possession by virtue of the crime, unless those who were found to have the seized items at the time of its seizure had the right to retain them in accordance with the law).*

Assistance or participation of agents of the requesting State in the execution of the measure

#### **Interim measures in view of confiscation (504)**

Definition and scope of the measure

*The financial, business, and non-financial institutions when this is not in contradiction with paragraphs 3, 4 and 5 of this article, which suspect or base their suspicion on solid proof that some assets are the benefit of crime, or that they had knowledge of a fact or an activity which represents an evidence of the crime of money laundering; such institutions must rapidly send a report to the unit in compliance with the instructions set by the unit for such cases.*

Failing that, an alternative measure with the same purpose

*Does not exist*

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

Body competent to authorize the measure

*The Financial Tracking Unit under the authority of the National Commission for Fighting Money Laundering and which is an independent unit. (According to the provisions of this law an independent unit fighting the crime of money laundering entitled Financial Tracking Unit is created. It is a national centre for information located within the Monetary Authority and entrusted with the following tasks: -1 Receiving and asking for information on the operations it suspects of being involved in operations of money laundering by the parties that are subject to the provisions of this law.-2 The analysis of the information mentioned in paragraph (1) of this article. -3 The disclosure of the information and the analysis of the information linked to the benefits of crimes suspected of involvement in money laundering according to the provisions of this law.*

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*Article 31 of the law on money laundering clarifies those measures and stipulates that: "In case of reasonable suspicion that an operation involves money laundering, the Unit must take the following measures: -1 Stop the implementation of the financial operation for a time limit not exceeding 3 working*

days. -2 Forward to the prosecutor general a report on the activities suspected of being involved in money laundering in the time limit indicated in paragraph (1) of this article. -3 The report of the Unit mentioned in paragraph (2) of this article is official and is admissible as evidence.

Assistance or participation of agents of the requesting State in the execution of the measure

*The cooperation in this field is organized by the agreement on judicial cooperation.*

### Confiscation (505)

Definition and scope of the measure

*Confiscation is one of the forms of precautionary measures stipulated by the Jordanian Penal Code No. 16 of 1960 applicable in articles (30 +31) of our laws, "Confiscation in kind, taking into account the rights of other well intended persons, all items that came about as a result of an intended felony or misdemeanour or were used in the perpetration or in preparation for the perpetration thereof may be confiscated. As for the unintended misdemeanour or offence items may not be confiscated unless there is a provision in the law to do so" and " items that were made or acquired, sold or used unlawfully are among the things that shall be confiscated and if they are not the property of the accused or the prosecution did not result in a judgment."*

Failing that, an alternative measure with the same purpose

*The same provisions contained in the item on restraint of seized items (501)*

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*The same provisions contained in the item on restraint of seized items (501)*

Body competent to authorize the measure

*The same provisions contained in the item on restraint of seized items (501)*

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*The same provisions contained in the item on restraint of seized items (501)*

Assistance or participation of agents of the requesting State in the execution of the measure

*The same provisions contained in the item on restraint of seized items (501)*

*Recommendation: The Code of Criminal Procedure should be amended so that it could address with the procedures for international judicial cooperation on matters of confiscation, seizure and restraint or, efforts can be made to pass a law on international judicial cooperation in order for the domestic Palestinian laws, addressing with criminal procedures in these matters, to be applicable and to be presumed applicable in cases of judicial cooperation. In case such a method is not followed, the application of the reciprocity principle could be stipulated, when signing any agreement.*

## 6. PLACES - VISIT AND SEARCH

### Visit to and search of homes (601)

Definition and scope of the measure

*The Palestinian Code of Criminal Procedure No. (3) of 2001 addressed the issue of searches in Articles (39-46) and Articles (48-50),*

*1 - Article (39): "[1] Entering and searching houses (homes) is a part of the investigative work that cannot be carried out without a warrant obtained from the public prosecutor or without their presence, to be carried out on the basis of an accusation directed at a person living in the house to be searched of having committed a*

*felony or a misdemeanour or participated in its commission or, due to the presence of strong evidence that he possesses items related to the crime. [2] The search warrant must list the reasons for the search. [3] The warrant should be written in the name of one or more of Judicial law enforcement officers. "*

*2 - Article (40): " Search warrants shall be signed by the competent member of the prosecution service and include the following:[1] Name of the person who owns the house to be searched, and his alias. [2] Address of the house to be searched.[3] Purpose of the search. [4] Name of the judicial officer authorized to carry out the search. [5] Duration of search warrant validity. [6] Date and time of issue. "*

*3 - Article (41): "house searches should be carried out during the day and [houses] should not be entered at night, unless while the crime is being committed, or for reasons of urgency."*

*4 - Article (42): "The person resident at the house or in charge of the premises to be searched must allow access, and provide the necessary facilities. If he refuses to allow entry, the judicial officer is allowed to enter by force."*

*5 - Article (43): "The search is to be carried out in the presence of the accused or the house holder, if he cannot attend; the search shall carried out in the presence of two witnesses, relatives or neighbours, and this shall be noted in the search record."*

*6 - Article (44): "If it is suspected on reasonable grounds that a person present at the premises, where the search is conducted, is hiding one of the items being searched for, the law enforcement officer is entitled to search him".*

*7 - Article (45): "If there are people present in the house during the search process, the person carrying out the search can restrain them if he feared them disrupting or disabling the search. Once the search is concluded they can be released ".*

*8 - Article (46): "If the prosecutor felt the need for the production of any document or anything related to the investigation and that the person in possession of such item declined to produce it, without a reasonable excuse, he may order the necessary search and seizure to be carried out."*

*9 - Article (48): "Competent authorities may not enter houses without a warrant, except in the following cases: [1] a request for help from within the house. [2] In cases of fire or drowning. [3] In the case of a crime being committed. [4] In the case of pursuing a person that should be arrested, or a person who absconded from a place where he was lawfully detained. "*

*10 - Article (49): "Judicial enforcement officers may directly enlist the help of police officers or a military force while carrying out their duties during a search operation if necessary."*

*Article (50): "[1] searches may only be carried out to locate objects relating to the crime being investigated. However if during the search, there were items found by chance that constitute a crime in themselves, or might be useful in revealing the truth in another crime, it is permissible for the judicial officer to seize them. [2] All items found during the search which are relevant to the crime are to seized, bagged, preserved and noted down in the search record and referred to the competent authorities. [3] If there were any papers sealed or closed in any other way found in the house, it is not permissible for Judicial officer to open them. [4] The search record must be written and signed by the officer in charge, stating items that have been seized, where they were found and who attended the search procedure. "*

**Failing that, an alternative measure with the same purpose**

*The Search of Lawyers offices was a matter that was addressed by the law regulating the legal profession (No. 3) of 1999, article (20) which stipulates that "It is prohibited to search a lawyer during the conduct of a trial; furthermore, a lawyer's office is not to be searched except in the presence of chief clerk or his representative."*

**Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?**

*The Law did not address the issue of judicial cooperation in the process of searching homes but we can say that it is possible to apply the provisions of the internal domestic laws in this respect, be it in the Code of Criminal Procedure with regards to house searches or the law regulating the Palestinian legal profession with regards to the searching of lawyers and their homes and offices in the event of international judicial cooperation whereby*

*the procedures of the requested State are applied or rely on the principle of reciprocity and international customary law between the requesting State or the State requested to act and the application of the provisions of the Riyadh Convention on international judicial cooperation between the State of Palestine and the other State Parties to the Convention where the domestic law of each State is applied with regards to procedures.*

**Body competent to authorize the measure**

*The competent authority for issuing a search warrant is the Public Prosecution and the competent authority to implementation is the Judicial Enforcement Office.*

**Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)**

*Details are mentioned in item 1 (Definition and Scope)*

**Assistance or participation of agents of the requesting State in the execution of the measure**

*There is no text on the intervention of others in the matter of house searches.*

### **Visit and search on the site of an offence (602)**

**Definition and scope of the measure**

*.Article (27) of the Palestinian Code of Criminal Procedure addressed this issue where it stipulates: "In the event of a felony or a misdemeanour being committed, the judicial officer must immediately go to the scene of the crime, and examines the physical traces of the crime and secure them, noting down the condition of the places and people and all that is useful in revealing the truth, and hears the statements of those present or those who can provide clarifications regarding the crime and the perpetrators. He must notify the public prosecutor immediately of his movements and a competent member of the prosecutor's team must at once go to the scene of the crime as soon as he is notified that a felony is being committed ".*

**Failing that, an alternative measure with the same purpose**

*The text is clear, there is no alternative measure.*

**Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?**

*Mutual Judicial Assistance cannot be envisaged in the matter of going to a place where an assault had taken place.*

**Body competent to authorize the measure**

*The Competent authority is the Judicial Arrest Officer.*

**Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)**

*In the event of a felony or a misdemeanour being committed, the judicial officer must immediately go to the scene of the crime, and examines the physical traces of the crime and secure them, noting down the condition of the places and people and all that is useful in revealing the truth, and hears the statements of those present or those who can provide clarifications regarding the crime and the perpetrators. He must notify the public prosecutor immediately of his movements and a competent member of the prosecutor's team must at once go to the scene of the crime as soon as he is notified that a felony is being committed.*

**Assistance or participation of agents of the requesting State in the execution of the measure**

*There is no provision on the intervention of other bodies in this matter.*

## **7. WITNESSES, VICTIMS, SUSPECTS – SUMMONING AND HEARING**

### **Summoning witnesses (701)**

#### **Definition and scope of the measure**

*The Palestinian Criminal Procedure Law No. (3) for the year 2001 addressed the issue of summoning witnesses in Articles (77-78), where it states : (Article 77): "The prosecutor or the investigator in charge can summon all persons whom he deems as possibly useful in providing a testimony to help uncover the truth, whether or not their names were mentioned in (crime) reports or complaints. He can hear the statements of any witness who comes forward of his own accord and in such case; this should be noted down on record ". Article (78) states:" The prosecutor is to assign the competent authorities to summon witnesses by serving them with summons at least 24 hours before the deadline for hearing their statements. If the implementation of the aforementioned procedure was not possible, Articles (85-87) addressed this issue whereby Article (85) states: "If the witness fails to attend after being summoned for the first time, a second summons is further served, following which, if the witness fails to attend the prosecutor shall issue the witness with a subpoena."*

#### **Failing that, an alternative measure with the same purpose**

*Article (86) states: "If the witness is unable to attend for health reasons, the prosecutor shall go to his place of residence to hear his testimony if he resides within this area where he has jurisdiction. However, if the witness resides outside that area, he should delegate the competent prosecutor in that district to hear his testimony, with the testimony to be sent in a sealed envelope to the prosecutor in charge of the investigation. Article (87): "If the prosecutor finds that the health condition of the witness would not have prevented him from attending, he may issue him with a subpoena."*

**Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?**

*No.*

#### **Body competent to authorize the measure**

*The competent body for calling witnesses is the Prosecutor or the Investigator in Charge.*

**Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)**

*The Prosecutor assigns the competent bodies to summon witnesses to issue witness summons to be served at least 24 hours before the appointed time for hearing their testimony.*

#### **Assistance or participation of agents of the requesting State in the execution of the measure**

*In the cases where international cooperation is required, Palestinian domestic law is applied according to international customary law i.e., the procedure stipulated under the Palestinian Code of Criminal Procedure.*

### **Hearing witnesses: standard procedure (702)**

#### **Definition and scope of the measure**

*The Palestinian Code of Criminal Procedure addressed the question of hearing witnesses in articles (79-84) and articles (88-90), which stipulate:*

*1 - Article (79): "The prosecutor ascertains the witness's identity, name, age, occupation, home address and the extent of his relationship to one of the opponents noting this down in the record, before hearing and recording the witness statements."*

*2 - Article (80): "Witnesses shall testify individually before the prosecutor after taking the oath in the presence of the investigation clerk, writing down their statements and questions directed to them."*

3 - Article (81): "The testimony shall be recited to the witness and approved by him either by signing or making a thumb print. If he declines or was unable to do so, this should be noted in the record, and the statement shall be signed by both the prosecutor and the investigation clerk"

4 - Article (82): "[1] The opponents may, after hearing the statements of the witness, request from the prosecutor or the investigator in charge to question the witness about points not mentioned in his testimony. [2] The prosecutor may refuse to direct at the witness any question which is unrelated to the case or not conducive to uncovering the truth. "

5 - Article (83): "[1] Testimonies of persons who have not yet reached the age of fifteen without taking the oath is heard by way of a consultation. [2] The defendant's father and mother, close relatives and spouse are exempt from taking the oath unless the crime was committed against one of them. "

6 - Article (84): "The prosecutor may have the witnesses confront one another, and confront the accused, if necessary"

Failing that, an alternative measure with the same purpose

*There is no alternative measure to hear the witnesses, except for the traditional method mentioned above. There is nothing in the Palestinian Code of Criminal Procedure or any other Palestinian law that provides for the possibility of hearing witnesses via video conference which means that this code did not keep pace with modern development and technology in the matter of hearing witnesses, which kept the issue of hearing witnesses in the conventional way. Besides, we can say that the presence of the Israeli occupation is still an obstacle to the possibility of calling witnesses and accessing the competent courts in Palestine as a result of the presence of military checkpoints.*

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist

*In the cases that require international cooperation, the Palestinian national law is applied, according to international custom i.e., the procedures stipulated in the Palestinian Code of Criminal Procedure.*

Body competent to authorize the measure

*The competent body during the investigation is the Public Prosecution and during the proceedings it's the competent judge.*

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*The competent prosecutor or the judge during the trial verifies the identity of the witness and have him take an oath before hearing his testimony in the case.*

Assistance or participation of agents of the requesting State in the execution of the measure

*There is no provision in the Palestinian Code of Criminal Procedure with regards to hearing of witnesses within the framework of international cooperation but stipulated procedures in the domestic Palestinian Code of Criminal Procedure can be applied in accordance to international custom and the principle of reciprocity*

### **Hearing witnesses: by video conference (703)**

Definition and scope of the measure

*Palestinian law did not address the issue of hearing witnesses via video conference.*

Failing that, an alternative measure with the same purpose

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

Body competent to authorize the measure

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

Assistance or participation of agents of the requesting State in the execution of the measure

#### Hearing witnesses: by telephone (704)

Definition and scope of the measure

Failing that, an alternative measure with the same purpose

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

Body competent to authorize the measure

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

Assistance or participation of agents of the requesting State in the execution of the measure

#### Hearing children (705)

Definition and scope of the measure

*The Palestinian law of the child raised the threshold of the age of reason for the child to be “everyone who has not attained the age of eighteen years old”. The Palestinian Code of Criminal Procedure No. (3) for 2001 was devoid of provisions that provide protection to the child while testifying and only Article (83/1) stated: “the testimony of persons who have not reached 15 years of age can be heard without taking an oath by way of an advice”.*

Failing that, an alternative measure with the same purpose

*There is no alternative measure.*

Is the measure possible under mutual judicial assistance? If not, is there an alternative measure?

*There is no provision in the Palestinian Code of Criminal Procedure with regards to hearing of children as witnesses within the framework of international cooperation but stipulated procedures in the domestic Palestinian Code of Criminal Procedure can be applied in accordance with international custom and the principle of reciprocity.*

Body competent to authorize the measure

*The competent body to hear the child’s testimony during the investigation is the Public Prosecution and during the proceedings it’s the judge who is competent to hear the child.*

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*According to the provisions of the Palestinian Code of Criminal Procedure, a child’s testimony is taken only as advisory, Article (83/1) and cannot be relied upon as evidence of guilt without being corroborated by other evidence. The language used to speak with the child must be clear and simple. Usually the court hearings where a child is present are closed (confidential) hearings, such as with the cases of domestic violence. An interrogation cannot be carried out with a minor without his lawyer or parent being present, if this was not possible, a probation officer attends the interview.*

Assistance or participation of agents of the requesting State in the execution of the measure

*None.*

#### Hearing persons collaborating with the inquiry (706)

Definition and scope of the measure

*The Palestinian law did not address the issue of hearing persons who cooperate with the investigation.*

Failing that, an alternative measure with the same purpose

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

Body competent to authorize the measure

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

Assistance or participation of agents of the requesting State in the execution of the measure

#### Hearing victims/plaintiffs (707)

Definition and scope of the measure

*The testimony of the victim or claimant of civil right is heard according to the Palestinian law, Article (228) "The claimant of civil rights is heard as a witness and takes an oath."*

Failing that, an alternative measure with the same purpose

*None.*

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*International cooperation in this matter is not envisaged but it is possible to apply the stipulated procedures in the domestic Palestinian Code of Criminal Procedure in accordance to international custom and the principle of reciprocity.*

Body competent to authorize the measure

*The Bench (The Court Judges).*

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*The victim and the claimant of civil right swear an oath and their testimony is heard in court as witnesses.*

Assistance or participation of agents of the requesting State in the execution of the measure

*None.*

#### Hearing experts (708)

Definition and scope of the measure

*The Palestinian Code of Criminal Procedure addressed the question of delegating experts in Articles (64-71), where Article 64 states: "The prosecutor shall be assisted by a specialist physician and other experts to prove the conditions of the crime committed. The delegated physician and other experts shall take the necessary measures under the supervision of the competent investigation authority, the investigator shall be present while the experts*



*do their work, if this would serve the interest of the investigation"; Article (65) states: " the technical expert may carry out his work without the presence of adversaries, "; Article (66) states: " the expert shall be obliged to submit his technical report within the time scale specified by the prosecutor in charge of the case, taking into account the existence of perishable items"; Article (67) states: " The prosecutor may replace an expert if he is in breach of his duties, or does not submit his report within the prescribed period " ; Article ( 68) states: The expert shall take an oath to carry out his duty with integrity and honesty before starting the work unless his name is registered in the roster of legally authorised experts"; Article (69) states: " The expert shall submit his reasoned report, having signed every page thereof " ; Article (70) states: "The accused may be assisted by an advisory expert and requests to be able to view the papers, provided that this shall not cause a delay in the proceedings" ; Article (71) states: "The adversaries may refute the expert if there were serious reasons for that, The request to refute is to be submitted to the prosecutor in charge of the investigation, and must be justified with reasons. The prosecutor must present this to the Attorney General or one of his aides for a decision to be made within three days from the date of submission, and the consequent to the submission of this application the expert discontinues his work, unless instructed otherwise. Such a decision must be justified. "*

**Failing that, an alternative measure with the same purpose**

*There are no alternative measures.*

**Is the measure possible under mutual judicial assistance? If not, is there an alternative measure?**

*There are no provisions with regards to Judicial assistance in this field within the framework of international cooperation but stipulated procedures in the domestic Palestinian Code of Criminal Procedure can be applied in accordance with international custom and the principle of reciprocity.*

**Body competent to authorize the measure**

*The competent body during the investigation is the Public Prosecution and the judge during the proceedings.*

**Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)**

*1-The prosecutor shall be assisted by a specialist physician and other experts to prove the conditions of the crime committed, the delegated physician and other experts shall take the necessary measures under the supervision of the competent investigation authority, the investigator shall be present while the experts do their work, if this would serve the interest of the investigation.*

*2- The technical expert may carry out his work without the presence of adversaries*

*3-The expert is obliged to submit his technical report within the time scale specified by the prosecutor in charge of the case, taking into account the existence of perishable items.*

*4- The expert shall take an oath to carry out his duty with integrity and honesty before starting the work unless his name is registered in the roster of legally authorised experts.*

*5- The accused may be assisted by an advisory expert and request to be able to view the papers, provided that this shall not cause a delay in the proceedings.*

*6- The adversaries may refute the expert if there were serious reasons for that, The request to refute is to be submitted to the prosecutor in charge of the investigation, and must be justified with reasons. The prosecutor must present this to the Attorney General or one of his aides for a decision to be made within three days from the date of submission, and the consequent to the submission of this application the expert discontinues his work, unless instructed otherwise. Such a decision must be justified.*

**Assistance or participation of agents of the requesting State in the execution of the measure**

*In case of international cooperation, the provisions found in domestic law ( the aforementioned rules) are applied as the procedures stipulated in the domestic Palestinian Code of Criminal Procedure can be applied in accordance with international custom and the principle of reciprocity.*

## Summoning suspects/persons accused (709)

### Definition and scope of the measure

*The Palestinian Code of Criminal Procedure addressed the issue of summoning the suspects and those held in custody in Articles (106), (107), (109) and (114) where Article (106) stipulates: "[1] The Prosecutor can issue a summons for the accused to attend interviewed for the investigation. [2] If the accused does not attend or there is fear that he may escape, the prosecutor may issue him with a subpoena."*

*Article 107 states:*

*" [1] The manager of the centre or the place where the accused is held in custody must surrender him within twenty-four hours to the public prosecutor for investigation.*

*[2] The prosecutor questions (interviews) the accused/person wanted with a summons immediately whereas the prosecutor has to question the accused who has been served a subpoena within twenty-four hours from the date of his arrest."*

*Article 109 states:"*

*[1] Summons orders and subpoenas are to be executed forthwith and remain effective until implemented. [2] The subpoena may not be implemented after three months from the date of issuance unless approved by its issuer for a further period of time."*

*Article (31) addressed cases of the suspected crimes being committed where it stipulates*

*"[1] If the defendant is not present under the conditions set forth in the preceding Article, the judicial officer may obtain an arrest warrant and bring the suspect. This shall be noted in the record.*

*[2] If there is sufficient evidence to accuse someone of committing a felony or misdemeanour punishable by imprisonment for more than six months, it is permissible for judicial officer to request the public prosecutor to issue an arrest warrant. "*

Failing that, an alternative measure with the same purpose

*Article (114) states: "If the condition of health of the accused does not allow him to be brought forward, the prosecutor may go to his place of residence to conduct the interview with him, he can order his admission to hospital for treatment if necessary, making the necessary arrangements for guarding him if he is to be under arrest.*

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*There are no provisions on judicial assistance at this stage as the Palestinian Code of Criminal Procedure stipulated the provision of judicial assistance i.e., appointing a lawyer for people who are unable to hire a lawyer only at the trial stage. This is a shortcoming and a deficiency in the Palestinian Code of Criminal Procedure.*

Body competent to authorize the measure

*The summons is issued through the public prosecution and is carried out by the judicial enforcement officer.*

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*The Prosecutor can issue a summons for the accused to attend an interview for the investigation. If the accused does not attend or there is fear that he may escape, the prosecutor may issue him with a subpoena. The manager of the centre or the place where the accused is held in custody must surrender him within twenty-four hours to the public prosecutor for investigation.*

Assistance or participation of agents of the requesting State in the execution of the measure

*In case of international cooperation, the provisions as stated in the domestic law are applied (the abovementioned rules).*

#### Hearing suspects/persons accused: standard procedure (710)

Definition and scope of the measure

*It is to examine (question) the accused in detail about the acts attributed to him and confront him with queries, questions and suspicions concerning the charge, and asking him to answer them. Article (95) of the Palestinian Code of Criminal Procedure states "The prosecutor shall question the accused about all crimes and misdemeanours, which he sees fit to question him about them. Article (96) states: "[1] When the accused attends questioning for the first time, the prosecutor has to verify his identity, name, address and occupation and question him about the charge against him asking him to answer it. He should inform him of his right to have a lawyer, and read him his rights that everything he says may be submitted in evidence against him in a court of law at his trial. [2] The statements of the accused must be noted down on the record of the interrogation." Article 97 states: "[1] The accused has the right to remain silent and not answer questions directed at him. [2] The accused has the right to postpone the questioning for 24 hours until the presence of his lawyer. Should his lawyer not attend or if he declined to have legal representation, he may be questioned at once. "*

Failing that, an alternative measure with the same purpose

*Yes, Article (98) states that "the prosecutor can question the accused before inviting a lawyer to attend in cases of flagrante delicto, and due to necessity and urgency as well as fear of losing evidence, on condition that such reasons should be noted down on record. The lawyer shall have the right to see the statements of the accused at the end of the interrogation"*

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*No judicial assistance can be envisaged at this stage.*

Body competent to authorize the measure

*The competent public prosecutor.*

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*After verification of the identity of the accused his name, address and occupation, and questioning him about the charge against him asking him to respond and informing him of his right to have a lawyer, and that everything he says may be submitted as evidence against him in a court of law at his trial, and that he may remain silent until the presence of his lawyer.*

Assistance or participation of agents of the requesting State in the execution of the measure

*In case of international cooperation, the provisions as stated in the domestic law are applied (the abovementioned rules).*

#### Hearing suspects/persons accused: by video conference (711)

Definition and scope of the measure

*Palestinian Law did not address hearing experts via video conference.*

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

Body competent to authorize the measure

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

Assistance or participation of agents of the requesting State in the execution of the measure

#### Hearing suspects/persons accused: by telephone (712)

Definition and scope of the measure

*Palestinian Law did not address the hearing of experts via the telephone.*

Failing that, an alternative measure with the same purpose

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

Body competent to authorize the measure

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

Assistance or participation of agents of the requesting State in the execution of the measure

#### Confrontation (713)

Definition and scope of the measure

*Witnesses may be confronted with one another or they may confront the accused. The Palestinian Code of Criminal Procedure addressed this issue in Article (84) "the Prosecutor may confront witnesses with one another and with the accused, if necessary.*

Failing that, an alternative measure with the same purpose

*The text is clear and there is no alternative.*

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*Judicial cooperation cannot be envisaged in this matter.*

Body competent to authorize the measure

*The competent public prosecutor.*

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*Confrontation takes place during the investigation and can be ordered by the public prosecution if necessary.*

Assistance or participation of agents of the requesting State in the execution of the measure

*In cases of international cooperation, provisions found in the domestic law are applied (the aforementioned rules)*

*Note: There are no provisions dealing with the issue of hearing witnesses and experts via video Conference under the Code of Criminal Procedure. Furthermore, it is devoid of provisions on the protection of witnesses, experts or the child as a witness, and this is a shortcoming in the Palestinian Code of Criminal Procedure. Therefore, it is important to modify these conventional procedures.*

## **8. CROSS-BORDER OPERATIONS**

*In fact, there are no specific legal provisions governing the issue of cross-border operations in the Palestinian legislation, due to the presence of the Israeli occupation, which has full control over the border crossings which in turn impedes the process of prosecuting criminals and having them returned from other countries. However, there is the law for extraditing fleeing criminals of 1927 applicable in Palestine which needs to be modified, since it has not kept pace with the modern and technological developments as well as the development of modern and cybercrimes trends in addition to the new procedures for international judicial cooperation associated with this. There is also a number of regional agreements signed by Palestine in this regard the provisions of which can be referred to, namely:*

- *Riyadh Arab Agreement for Judicial Cooperation of 1983*
- *Arab Convention for the Combating of Corruption of 21/12/2010.*
- *Arab Convention for the Combating Terrorism Act of 1999.*
- *Arab Convention for Combating Transnational Organized Crime.*
- *Arab Convention to combat money laundering and terrorist financing of 2010.*

*- The Palestinian State has no control across the border or over the Palestinian crossings, with the exception of Jericho crossing.*

*- There is the so-called Palestinian Interpol affiliated to the Arab and international relations Unit at the Palestinian Ministry of Interior which is considered a member of the Arab Interpol, and can make contacts with the Arab Interpol and in the Arab members States to inquire about the whereabouts of any fleeing accused Palestinian and vice versa.*

*- Article 28 of the Palestinian Foundation Law states: "No Palestinian may be deported from the homeland or deprived of returning or prevented from leaving or stripped of his citizenship or handed over to any foreign entity."*

*We need to pass a law on international judicial cooperation so that it would include clear provisions to control cross-border operations, hot pursuit of fugitive criminals and organized delivery other matters. This is due to the fact that the law on extradition of 1927 is the old law and does not contain innovative provisions and the lack of any provisions in the Palestinian Code of Criminal Procedure governing such matters as mentioned above.*

### **Cross-border observation (801)**

Definition and scope of the measure

Failing that, an alternative measure with the same purpose

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

Body competent to authorize the measure

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

Assistance or participation of agents of the requesting State in the execution of the measure

### **Cross-border hot pursuit (802)**

Definition and scope of the measure

Failing that, an alternative measure with the same purpose

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

**Body competent to authorize the measure**

**Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)**

**Assistance or participation of agents of the requesting State in the execution of the measure**

**Cross-border tracking (by placing a beeper on a vehicle or a person) (803)**

**Definition and scope of the measure**

**Failing that, an alternative measure with the same purpose**

**Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?**

**Body competent to authorize the measure**

**Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)**

**Assistance or participation of agents of the requesting State in the execution of the measure**

**Controlled deliveries (804)**

**Definition and scope of the measure**

**Failing that, an alternative measure with the same purpose**

**Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?**

**Body competent to authorize the measure**

**Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)**

**Assistance or participation of agents of the requesting State in the execution of the measure**

**Joint investigation teams (805)**

**Definition and scope of the measure**

**Failing that, an alternative measure with the same purpose**

**Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?**

**Body competent to authorize the measure**

**Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)**

**Assistance or participation of agents of the requesting State in the execution of the measure**

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## **EUROMED JUSTICE III PROJECT**

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**Working Group on Criminal Law in order to  
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**“fiches belges”**

**TUNISIA**







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Tool equivalent to the so-called "fiches belges"

TUNISIA

**1. TRACING AND INTERCEPTION OF (TELE) COMMUNICATIONS**

**Interception, recording and transcription of telecommunications (101)**

Definition and scope of the measures

*No definition in Law No. 2001\1 of 15 January 2001 promulgating the Telecommunications Code.*

*Article 85 of that code provides that regardless of the cases laid down by the law, anyone who discloses, incites or participates in the disclosure of the contents of telecommunications and exchanges transmitted through the telecommunications networks will be sanctioned pursuant to article 253 of the Criminal Code.*

*The examining magistrate is tasked with preparing a case for criminal proceedings, diligently seeking the truth and establishing all the facts that the adjudicating court can use to reach a decision pursuant to article 50 of the Code of Criminal Procedure.*

Failing that, an alternative measure with the same purpose

*N/A*

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*Yes, if this is provided for in the bilateral convention concluded by Tunisia and the requesting State.*

*In the absence of a convention, the question will be dealt with on a case-by-case basis.*

Body competent to authorize the measure

*The examining magistrate*

*-the prosecution in the case of flagrants crimens [crimes or misdemeanours that have just been or are being committed and where a rapid response is required]*

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*Letters rogatory from the examining magistrate to the judicial police including a summary of the facts of the case and a precise mission.*

Assistance or participation of agents of the requesting State in the execution of the measure

*Assistance is possible in principle; it is assessed on a case-by-case basis.*

**Tracing of telecommunications (102)**

Definition and scope of the measures

*See reply to fiche 101*

Failing that, an alternative measure with the same purpose

*N/A*

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*See reply to fiche 101*

Body competent to authorize the measure

*See reply to fiche 101*

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*See reply to fiche 101*

Assistance or participation of agents of the requesting State in the execution of the measures

*Assistance is possible in principle; it is assessed on a case-by-case basis.*

### **Interception and recording of other forms of communication (103)**

Definition and scope of the measures

*No specific text regulating this measure, but article 150 of the Code of Criminal Procedure provides that apart from cases where there are legal provisions to the contrary, offences may be established by any means of proof and the judge will decide according to his or her fundamental convictions.*

Failing that, an alternative measure with the same purpose

*N/A*

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*Same reply as for fiche 101.*

Body competent to authorize the measure

*The examining magistrate*

*-the prosecution in the case of crimes or misdemeanours that have just been or are being committed and where a rapid response is required.*

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*The examining magistrate*

*The prosecution in the case of crimes or misdemeanours that have just been or are being committed and where a rapid response is required.*

Assistance or participation of agents of the requesting State in the execution of the measure

*It is possible in principle and assessed on a case by case basis.*

### **Interception of mail (104)**

Definition and scope of the measure

*No definition*

*-The privacy of correspondence is guaranteed in accordance with the legislation in force*

*-The examining magistrate may order the seizure of any object, correspondence and other dispatches he or she deems useful for ascertaining the truth. Even apart from cases of crimes or misdemeanours requiring a rapid response, the prosecution always has the option of ordering correspondence addressed to or sent by the accused to be seized. He or she may only avail of this when there is danger in delay.*

*-Dispatches that by their nature are capable of harming law and order and public security will not be delivered to their addressees or returned to the sender. They will be confiscated by the competent body and the public prosecutor will be informed (art.20-21 of the Postal Code and art.29 of the Code of Criminal Procedure).*

Failing that, an alternative measure with the same purpose

*N/A*

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*Yes, if this is provided for in the bilateral convention concluded by Tunisia and the requesting State.*

*In the absence of a convention, the question will be dealt with on a case-by-case basis.*

Body competent to authorize the measure

*The examining magistrate*

*The prosecution*

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*See the reply in fiche 101.*

Assistance or participation of agents of the requesting State in the execution of the measure

*See the reply in fiche 101.*

### **Observation (105)**

Definition and scope of the measure

*No definition.*

*There is no specific legislation on this subject, but agents authorised to prevent the perpetration of offences and public nuisances within the general framework of the Police Law may undertake observation.*

Failing that, an alternative measure with the same purpose

*N/A*

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*N/A*

Body competent to authorize the measure

*Ministry for the Interior*

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*The normal procedures to be followed to ensure the safety of citizens*

Assistance or participation of agents of the requesting State in the execution of the measure

*No, in principle.*

#### Interception of telecommunication (106)

Definition and scope of the measure.

Failing that, an alternative measure with the same purpose

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

Body competent to authorize the measure

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

Assistance or participation of agents of the requesting State in the execution of the measure

#### Interception of telecommunication without the technical assistance of another State (107)

Definition and scope of the measure

Failing that, an alternative measure with the same purpose

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

Body competent to authorize the measure

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

Assistance or participation of agents of the requesting State in the execution of the measure

## 2. AGENTS AND INFORMERS – INFILTRATION

### Infiltration by undercover agents of the requested State (201)

Definition and scope of the measure.

*No legislation regulating this measure*

Failing that, an alternative measure with the same purpose

*N/A*

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*N/A*

Body competent to authorize the measure

*N/A*

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*N/A*

Assistance or participation of agents of the requesting State in the execution of the measure *N/A*

*N/A*

#### Infiltration by agents of the requesting State in the territory of the requested State (202)

Definition and scope of the measure

*Same replies as for fiche 201*

Failing that, an alternative measure with the same purpose

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

Body competent to authorize the measure

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

Assistance or participation of agents of the requesting State in the execution of the measure

#### Infiltration by an informer of the requested State (203)

Definition and scope of the measure

*Same replies as for fiche 201*

Failing that, an alternative measure with the same purpose

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

Body competent to authorize the measure

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

Assistance or participation of agents of the requesting State in the execution of the measure

#### Handling of informers (204)

Definition and scope of the measure.

*Same replies as for fiche 201*

Failing that, an alternative measure with the same purpose

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

Body competent to authorize the measure

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

Assistance or participation of agents of the requesting State in the execution of the measure

### **3. EXAMINATION, BODY SEARCH AND EXPERT EVALUATION**

#### **Superficial body search (301)**

Definition and scope of the measure.

*Body searches have the objective of finding clues, objects or documents allowing the existence of an offence to be established. In addition to the general principle set forth in the Code of Criminal Procedure, article 56a12 of the Customs Code provides that body searches will take place inside premises reserved for this purpose and are undertaken when there are suspicions that a person may be hiding goods on their body.*

Failing that, an alternative measure with the same purpose

*N/A*

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*Yes, if this is provided for in the bilateral convention concluded by Tunisia and the requesting State.*

*In the absence of a convention, the question will be dealt with on a case-by-case basis.*

Body competent to authorize the measure

*the examining magistrate*

*-the prosecution*

*Officers of the judicial police (cantonal judges, police superintendents, chief National Guard officers, government officials authorised by special laws) in cases requiring a rapid response.*

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*Body searches are carried out at police stations, National Guard stations and special premises at the customs office. A report will be drawn up.*

Assistance or participation of agents of the requesting State in the execution of the measure

*Yes, if this is provided for in the bilateral convention concluded by Tunisia and the requesting State.*

#### **Invasive body search (302)**

Definition and scope of the measure.

*This is a medical examination taking the form of a medical evaluation.*

*There are no express provisions in the Code of Criminal procedure. However, in connection with looking for customs contraventions and misdemeanours, the Customs Code permits customs officers to submit a person crossing the border to medical examinations if that person is suspected of concealing prohibited products inside his or her body.*

Failing that, an alternative measure with the same purpose

*N/A*

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*Yes, if this is provided for in the bilateral convention concluded by Tunisia and the requesting State.*

*In the absence of a convention, the question will be dealt with on a case-by-case basis.*

Body competent to authorize the measure

*The examining magistrate.*

*The prosecution.*

*Officers of the judicial police (cantonal judges, police superintendents, chief National Guard officers, government officials authorised by special laws) in cases requiring a rapid response.*

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*The suspected person can be submitted to detection medical examinations provided that the said person has expressly agreed to it.*

*In case of refusal, the customs officers and other officers of the judicial police send the senior public prosecutor a request asking permission to proceed to such examinations, and the latter appoints the competent doctor in charge of carrying out the said examinations.*

*This will be mentioned in the transcript that shall be sent to the senior public prosecutor.*

Assistance or participation of agents of the requesting State in the execution of the measure

*Yes, if this is provided for in the bilateral convention concluded by Tunisia and the requesting State.*

*In the absence of a convention, the question will be dealt with on a case-by-case basis.*

### **Psychiatric medical examination (303)**

Definition and scope of the measure.

*The examining magistrate may proceed or have the judicial police officers referred to in paragraphs 3 and 4 of article 10 proceed to an investigation into the personality of the accused and their material, familial or social situation. He or she may also order a medical-psychological examination of the accused.*

*"A medical-psychological examination is mandatory where the accused commits an offence before a deadline of ten years has passed since the first sentence was imposed, deferred or required and the two offences add up to a term of imprisonment greater than or equal to ten years."*

Failing that, an alternative measure with the same purpose

*N/A*

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*Yes, if this is provided for in the bilateral convention concluded by Tunisia and the requesting State. In the absence of a convention, the question will be dealt with on a case-by-case basis.*

The body competent

*the examining magistrate*

*the prosecution in the case of crimes or misdemeanours that have just been or are being committed and where a rapid response is required*

*-the criminal court of appeal*

*-the adjudicating court*



Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*A medical and psychiatric expert will be appointed by the examining magistrate or the Public Prosecutor.*

*In the course of pending criminal proceedings, the adjudicating court may, upon the opinion of a medical expert, opt for the mandatory internment of a detainee suffering from mental problems in a specialised public institution in order for him or her to undergo analyses of their mental faculties and to determine their criminal liability by application of the Mental Health Act, law No. 83-1992 of 3-8-1992 as amended and supplemented by Law 2004-40 of 3-5-2004.*

Assistance or participation of agents of the requesting State in the execution of the measure

*Yes, if this is provided for in the bilateral convention concluded by Tunisia and the requesting State.*

*- In the absence of a convention, the question will be dealt with on a case-by-case basis*

### Control of identity, measures for judicial identification (304)

Definition and scope of the measure

*An identity check is an act by a law enforcement agent the aim of which is, while respecting the legal conditions, to ask a private individual to prove his or her identity. Article 7 of the Law of 22 March 1993 concerning the national identity card states that all citizens for whom it is mandatory to hold a national identity card pursuant to the said law, must present it when requested to do so by police National Guard officers.*

Failing that, an alternative measure with the same purpose

*N/A*

Body competent to authorize the measure

*Officers of the judicial police*

*-the examining magistrate.*

*-the Public Prosecutor.*

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist

*Yes, if this is provided for in the bilateral convention concluded by Tunisia and the requesting State.*

*In the absence of a convention, the question will be dealt with on a case-by-case basis.*

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*Officers of the judicial police, police superintendents, National Guard chiefs and government officials authorised by special laws to request that citizens present their national identity card for inspection may request identification in order to prevent an offence against law and order, in particular an offence against the safety of people and property.*

*The accused will be examined by the police records department with a view to establishing his or her identity and checking their background.*

Assistance or participation of agents of the requesting State in the execution of the measure

*Yes, if this is provided for in the bilateral convention concluded by Tunisia and the requesting State.*

*In the absence of a convention, the question will be dealt with on a case-by-case basis.*

#### **Technical or scientific examinations or expert evaluations (305)**

Definition and scope of the measure

*It is possible to avail of technical or scientific examinations or evaluations where the circumstances call for this.*

Failing that, an alternative measure with the same purpose

*N/A*

Body competent to authorize the measure

*the examining magistrate*

*-the public prosecutor*

*-the criminal court of appeal*

*-the adjudicating courts*

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist

*Yes, if this is provided for in the bilateral convention concluded by Tunisia and the requesting State.*

*In the absence of a convention, the question will be dealt with on a case-by-case basis*

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*Experts must carry out their tasks in coordination with the authority that appointed them*

Assistance or participation of agents of the requesting State in the execution of the measure

*Yes, if this is provided for in the bilateral convention concluded by Tunisia and the requesting State.*

*In the absence of a convention, the question will be dealt with on a case-by-case basis.*

#### **4. DOCUMENTS - OBTAINING**

##### **Spontaneous exchange of information (401)**

Definition and scope of the measure

*There are no express provisions in the Code of Criminal Procedure*

Failing that, an alternative measure with the same purpose

*N/A*

Body competent to authorize the measure

*The examining magistrate*

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist

*Yes, if this is provided for in the bilateral convention concluded by Tunisia and the requesting State.*

*- In the absence of a convention, the question will be dealt with on a case-by-case basis and according to the principle of reciprocity.*

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*Through the dispatch of international letters rogatory through the diplomatic channel*

Assistance or participation of agents of the requesting State in the execution of the measure

*Yes, if this is provided for in the bilateral convention concluded by Tunisia and the requesting State.*

*In the absence of a convention, the question will be dealt with on a case-by-case basis*

### **Order to produce documents (402)**

Definition and scope of the measure

*All the authorities and all public officials are bound to report to the Public Prosecutor any offences of which they become aware in the exercise of their duties and to provide the Public Prosecutor with all information, minutes and documents relating to this.*

*In any case, they cannot have a defamation action brought against them or an action for compensation for damages in relation to opinions that they are bound to provide pursuant to this article, unless it is proved that they were acting in bad faith (Article 29 of the Code of Criminal Procedure). The officers of the judicial police referred to in points 3° and 4 of article 10 must:*

*1) provide an opinion to the Public Prosecutor concerning any offence of which they become aware in the exercise of their duties and provide the Public Prosecutor with all information, minutes and documents relating to this (Article 13 par. 1 of the Code of Criminal Procedure).*

*Whether the proceedings in question are civil, commercial or investigative and even if they are dismissed, the prosecution must inform the customs department of any information it may gather that gives rise to a presumption that an offence has occurred in the area of customs law or a manoeuvre aimed at infringing legislative or regulatory provisions connected with the application of the Customs Code. (Article 319 of the Code of Criminal Procedure).*

Failing that, an alternative measure with the same purpose

N/A

Body competent to authorize the measure

*The public prosecutor*

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist

*Yes, if this is provided for in the bilateral convention concluded by Tunisia and the requesting State.*

*- In the absence of a convention, the question will be dealt with on a case-by-case basis.*

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*Through the transmission of all information, minutes and documents relating to this to the Public Prosecutor with territorial jurisdiction. The Public Prosecutor will decide how to follow up on the complaints and reports he or she receives or that are transmitted to him or her.*

Assistance or participation of agents of the requesting State in the execution of the measure

*Yes, if this is provided for in the bilateral convention concluded by Tunisia and the requesting State. In the absence of a convention, the question will be dealt with on a case-by-case basis.*

#### Other possibilities of obtaining information concerning taxes or bank accounts (403)

Definition and scope of the measure

*The public prosecutor, examining magistrate or criminal court of appeal may obtain any useful information of a financial or fiscal nature from any government authority or financial institution*

Failing that, an alternative measure with the same purpose

*N/A*

Body competent to authorize the measure

*The Public Prosecutor*

*The examining magistrate*

*The Minister for Finance*

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist

*Yes, if this is provided for in the bilateral convention concluded by Tunisia and the requesting State.*

*In the absence of a convention, the question will be dealt with on a case-by-case basis.*

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*All the authorities and all public officials are bound to report to the Public Prosecutor any offences of which they become aware in the exercise of their duties and to provide the Public Prosecutor with all information, minutes and documents relating to this.*

*Within the framework of Law No. 2003-75 of 10/12/2003 relating to international efforts in the fight against terrorism and the prohibition of money-laundering, the Tunisian Financial Analysis Committee was created under the auspices of the Tunisian Central Bank. This is tasked, among other things, with establishing general guidelines capable of allowing banking and non-banking financial institutions to detect and report suspicious or unusual operations and transactions, to collect and process reports concerning suspicious or unusual operations and transactions and notify the follow-up (Article 80 of the said law).*

Assistance or participation of agents of the requesting State in the execution of the measure

*Yes, if this is provided for in the bilateral convention concluded by Tunisia and the requesting State.*

*In the absence of a convention, the question will be dealt with on a case-by-case basis*

## Access to public documents in judicial files (404)

### Definition and scope of the measure

*The counsel of parties referred to or summoned before the adjudicating court have a right to communication of the trial documents.*

*The file, whose exhibits must be numbered and initialled, is consulted at the court secretariat. (Article 193 of the Code of Criminal Procedure).*

*It may be issued to the parties at their expense:*

*1) at their request, a copy or authenticated copy of the complaint or denunciation, the final orders, rulings and judgements;*

*2) subject to authorisation by the Public Prosecutor, a copy or authenticated copy of the other trial documents.*

*If the request is issued by a third party, the authorisation of the Public Prosecutor is necessary, regardless of what the document is, a copy or authenticated copy of which is requested.*

*If the documents form part of a file lodged with the secretariat of a court of appeal, the authorisation must come from the senior public prosecutor.*

*The refusal to issue an authorisation must be reasoned and notified in the correct administrative form.*

*There is no provision for an appeal against it.*

*Criminal trial documents may be sent and addressed to the courts that issued a decision in this connection and to the Secretary of State in the Department of Justice. An inventory drawn up by the clerk will be enclosed with the file (Article 194 of the Code of Criminal Procedure).*

*... "If the implementation of letters rogatory requires the suspect to be heard, officers of the judicial police must inform him or her that he or she is entitled to assistance from a lawyer of his or her choice. This is mentioned in the report. If the suspect appoints a lawyer, the latter will be immediately informed by the judicial police officer of the date set for his or her client's hearing. This will also be mentioned in the report. In that case, the hearing will only take place in the presence of the lawyer authorised in advance to familiarise him or herself with the trial documents unless the suspect has expressly renounced his or her right to assistance from a lawyer or the latter fails to present him or herself on the scheduled date. This will also be mentioned in the report". (Article 57 paragraph 2 of the Code of Criminal Procedure)*

*In the initial indictment and at any stage in the investigation in additional indictments, the Public Prosecutor may request that the examining magistrate should take any actions that appear useful to the Public Prosecutor for the purpose of ascertaining the truth.*

*To this end, he or she may have the trial documents sent to him or her, on condition that he or she will return them within forty-eight hours (Article 55 paragraphs 1 and 2 of the Code of Criminal Procedure).*

Failing that, an alternative measure with the same purpose

N/A

Body competent to authorize the measure

*Depending on the stage of the proceedings: the Public Prosecutor, examining magistrate, the court to which the case has been referred*

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist

*Yes, if this is provided for in the bilateral convention concluded by Tunisia and the requesting State.*

*In the absence of a convention, the question will be dealt with on a case-by-case basis.*

*In all cases, the application from the requesting State must be presented in the form of international letters rogatory sent through diplomatic channels containing all useful information regarding the facts of the case and the tasks entrusted to the requested authority*

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*See the above-mentioned articles 55, 57, 193 and 194 of the Code of Criminal Procedure*

Assistance or participation of agents of the requesting State in the execution of the measure

*Yes, if this is provided for in the bilateral convention concluded by Tunisia and the requesting State.*

*In the absence of a convention, the question will be dealt with on a case-by-case basis*

#### **Communication of individual police records (405)**

**Definition and scope of the measure**

*The police records department is tasked with the centralisation of sections 1 [of police record forms] and issuing statements or extracts from sections 2 and 3 under the conditions laid down in the following articles (Article 362 of the Code of Criminal Procedure):*

*Section 1 provides a statement of:*

- 1) any convictions in the course of proceedings where both sides have a right to be heard or, by default, convictions that were unopposed, pronounced in relation to crimes or misdemeanours by any court;*
- 2) decisions pronounced in relation to minors aged under thirteen years of age;*
- 3) disciplinary decisions pronounced by a judicial authority or by a government administration that lead to or declare incapacity;*
- 4) decisions refusing entry or stays and orders for public surveillance*
- 5) deportation decisions taken against foreigners;*
- 6) judgements declaring bankruptcy..*

*Section 1 will also mention exonerations, commutations or reductions in sentences, parole or rehabilitation decisions and decisions deferring deportation orders, refusals of entry or stays and public surveillance orders as well as the date on which the sentence ends or the date of payment of a fine).*

*Section 1 concerning sentences erased by amnesty or revised by a judgement correcting the police record will be removed from an individual's police record (Article 363 of the Code of Criminal Procedure). The full Section 1 statement applicable to the same person is contained in a Section 2, which will only be issued at the express requests of the judicial authority.*

*Apart from this case, a Section 3 is issued, under the conditions laid down in administrative regulations, which reports the sentences referred to in article 363.1 that have not been erased by rehabilitation and any sentences which the judge has not ordered to have stayed unless, in the latter case, a new sentence has deprived the interested party from benefiting from this stay of execution.*

*Section 3 does not report judgements sentencing persons to a term of imprisonment of less than six months or a fine that does not exceed one thousand Dinars unless judgement imposing the sentence was pronounced during the following five years.*

*In no cases may these extracts be sent to private individuals other than the persons concerned.*

*Judgements imposing community service or compensation measures are not recorded in Section 3 of a person's police record (Article 365 of the Code of Criminal Procedure).*

**Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?**

*Yes, if this is provided for in the bilateral convention concluded by Tunisia and the requesting State.*

*In the absence of a convention, the question will be dealt with on a case-by-case basis.*

**Body competent to authorize the measure**

*Depending on the stage of the proceedings: the Public Prosecutor, examining magistrate, court to which the case has been referred, the rehabilitation services within the Ministry for Justice.*

**Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)**

*See articles 362, 363 and 365 mentioned above*

Assistance or participation of agents of the requesting State in the execution of the measure

*Yes, if this is provided for in the bilateral convention concluded by Tunisia and the requesting State.*

*In the absence of a convention, the question will be dealt with on a case-by-case basis.*

#### Sending and service of procedural documents (406)

Definition and scope of the measure

*See fiche 404*

Failing that, an alternative measure with the same purpose

*See fiche 404*

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*See fiche 404*

Body competent to authorize the measure

*See fiche 404*

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*See fiche 404*

Assistance or participation of agents of the requesting State in the execution of the measure

*See fiche 404*

#### Transfer of proceedings (407)

Definition and scope of the measure

*At a national level :*

*\* "If it is impossible for the examining magistrate to undertake certain investigative acts, he or she may send letters rogatory to examining magistrates in other districts or to officers of the judicial police of his own district, each to the extent of their involvement, in respect of any acts open to him or her with the exception of judicial orders. For that purpose he or she will issue an order to be sent to the public prosecutor for enforcement." (Article 57 paragraph 1 of the Code of Criminal Procedure)*

*The cantonal judges may, within their districts, personally instigate or have the other officers of the judicial police listed in points 3 to 6 of article 10, instigate any acts coming within the remit of the preliminary investigation. They may proceed to the provisional arrest of accused persons, provided that such persons are immediately presented to the closest court.*

*Moreover, the cantonal judges receive reports of crimes and misdemeanours committed in the place in which they carry out their tasks.*

*They submit an option to the Public Prosecutor regarding all crimes and misdemeanours of which they become aware in the exercise of their tasks, sending him or her all the information, transcripts and writs relating thereto. (Article 12 of the Code of Criminal Procedure)*

*- At an international level :*

*\* Send or receive letters rogatory in the context of mutual judicial assistance in criminal-law matters. The international letters rogatory (ILR) must indicate the nature of the matter, the body issuing the request, the body to which the request is addressed, the type of offence, the name of the person sought or sentenced and*

*any useful information concerning the facts of the case and the tasks entrusted to the requested authority at an international level.*

*\* As regards extradition, Tunisia, like many countries, does not extradite its own citizens and in order to prevent persons from escaping from criminal proceedings, it is possible to request a delegation of the criminal proceedings against the person forming the subject matter of the extradition request, thus allowing the State of origin to pursue the suspect itself.*

*Similarly, Tunisia may delegate criminal proceedings to a State that refuses to extradite one of its citizens who has committed an offence in Tunisia. The competent body will send the file containing an account of the facts, a reference to the applicable articles in the criminal code, the investigation files and the evidence.*

Failing that, an alternative measure with the same purpose

*N/A*

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

Body competent to authorize the measure

*. Examining magistrate*

*Public Prosecutor*

*Senior Public Prosecutor at the Court of Appeal (depending on the stage of the case)*

*The central authority within the Ministry of Justice (as the focal point).*

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*By direct dispatch of the letters rogatory (at a national level)*

*By dispatch of international letters rogatory, the delegation of criminal proceedings as mentioned above through diplomatic channels*

Assistance or participation of agents of the requesting State in the execution of the measure

*Yes, if this is provided for in the bilateral convention concluded by Tunisia and the requesting State*

*In the absence of a convention, the question will be dealt with on a case-by-case basis.*

## **5. ASSETS - SEQUESTRATION, CONFISCATION AND RESTITUTION**

### **Sequestration of assets (501)**

Definition and scope of the measure

*Seizure consists of placing objects or documents that may be useful in ascertaining the truth in the hands of the justice system*

Failing that, an alternative measure with the same purpose

*N/A*

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*Yes, if this is provided for in the bilateral convention concluded by Tunisia and the requesting State. In the absence of a convention, the question will be dealt with on a case-by-case basis.*



Body competent to authorise the measure

*Examining magistrate*

*Public Prosecutor*

*Officers of the Judicial Police*

*Government officials authorised by special laws.*

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*The examining magistrate must look for and seize papers or belongings that may be used to ascertain the truth.*

*An inventory is made, as far as possible in the presence of the accused or a third party in whose possession the seized objects were found. This will be mentioned in the transcript.*

*The objects seized are, as the case may be, closed and placed in an envelope or sealed package or have a label placed on them indicating the date of the seizure and the case number.*

*Apart from cases requiring a rapid response, the judicial police officers only have the same powers if there is danger in delay (Article 97 of the Code of Criminal Procedure)*

*Where the object seized is likely to deteriorate or preserving it may prove onerous, the magistrate may, after obtaining an opinion from the Public Prosecutor and notification to the party from whom it has been seized, sell it at public auction as soon as the requirements of the investigation allow this. In that case, the owner's right will be to the price by the deadline laid down in article 100 (Article 98 of the Code of Criminal Procedure).*

*The examining magistrate may order the seizure of any object, correspondence and other consignments, if he or she deems this useful for ascertaining the truth.*

*Even apart from cases requiring a rapid response, the Public Prosecutor always has the option of having correspondence addressed to or sent by the accused searched for and seized. He or she may not look at it unless there is danger in delay. (Article 99 of the Code of Criminal Procedure).*

Assistance or participation of agents of the requesting State in the execution of the measure

*Yes, if this is provided for in the bilateral convention concluded by Tunisia and the requesting State. In the absence of a convention, the question will be dealt with on a case-by-case basis.*

### **Freezing of bank accounts (502)**

Definition and scope of the measure

*The freezing of bank accounts is a customary measure for certain types of crimes and misdemeanours*

Failing that, an alternative measure with the same purpose

N/A

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*Yes, if this is provided for in the bilateral convention concluded by Tunisia and the requesting State.*

*-In the absence of a convention, the question will be dealt with on a case-by-case basis.*

Body competent to authorise the measure

*The examining magistrate, the president of the Tunis Court of First Instance (law on the fight against terrorism and the suppression of money-laundering).*

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*By order of the examining magistrate referred to in the course of normal proceedings.*

*By application of Law 75-2003 of 10/12/2003 concerning support for international efforts in the fight against terrorism and the suppression of money-laundering*

**Article 87**

*The Tunisian Financial Analysis Committee (TFAC) may instruct the author of a declaration that the funds forming the subject matter of the declaration have been temporarily frozen and deposited in a temporary account. The author of the statement must refrain from informing the person concerned about the declaration made by the author and the measures resulting from it.*

**Article 94**

*The senior public prosecutor at the Tunis Court of Appeal may, despite any declarations concerning a suspicious or unusual operation or transaction, instruct the president of the Tunis Court of First Instance to order the freezing of assets belonging to natural or legal persons suspected of being linked to persons, organisations or activities relating to the offences targeted by this law, even if they were not committed on Tunisian national territory.*

**Article 95**

*The decision to freeze [assets] as per the preceding article is taken by the president of the Court of First Instance in accordance with the procedure for interim orders.*

**Assistance or participation of agents of the requesting State in the execution of the measure**

*Yes, if this is provided for in the bilateral convention concluded by Tunisia and the requesting State. In the absence of a convention, the question will be dealt with on a case-by-case basis.*

**Restitution (503)**

**Definition and scope of the measure**

*Restitution is the return to their legitimate owners of any objects, sums of money and personal belongings of any kind that were placed in the hands of the justice system on the occasion of a real or presumed offence.*

**Failing that, an alternative measure with the same purpose**

*N/A*

**Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?**

*Yes, if this is provided for in the bilateral convention concluded by Tunisia and the requesting State. In the absence of a convention, the question will be dealt with on a case-by-case basis*

**Body competent to authorize the measure**

*Examining magistrate*

*Criminal Court of Appeal*

*Adjudicating Court*

*Senior Public Prosecutor*

**Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)**

***Article 100 of the Code of Criminal Procedure:***

*Any person claiming a right to objects in the possession of the justice system may request their restitution from the examining magistrate and, if he or she refuses, from the Criminal Court of Appeal, which will rule in response to a simple request.*

*Any object seized that is not claimed by the owner within a deadline of three years to run from the dismissal of the case or from the judgement will become the property of the State.*

**Article 184 of the Code of Criminal Procedure:**

*The accused, the plaintiff or the person incurring civil liability may claim restitution of objects placed in the hands of the justice system, addressing the request to the court where the proceedings were conducted.*

**Article 185 of the Code of Criminal Procedure:**

*Any person other than the accused, the plaintiff or the person incurring civil liability who claims a right to the objects placed in the hands of the justice system may also address the request to the court where the proceedings were conducted.*

*Only the transcripts relating to the seizure may be communicated to him or her.*

*The court will rule in a separate judgement, having heard the parties.*

**Article 186 of the Code of Criminal Procedure:**

*If the court grants restitution, it may take any precautionary measures to ensure that objects restituted can be presented again up to a final decision on the merits.*

**Article 189 of the Code of Criminal Procedure:** *The Court that dealt with the case retains jurisdiction to order restitution of objects placed in the hands of the justice system if no appeal is made against the judgement on the merits.*

*It will rule at the request of any person claiming to have a right to the object or at the request of the public prosecution.*

*Its decision may be referred to the Court of Appeal, in accordance with the provisions in article 188.*

**Article 190 of the Code of Criminal Procedure:**

*Where the Court of Appeal is referred to on the merits, it will have jurisdiction to order restitution under the conditions laid down in articles 184 and 187.*

*Even after a final decision has been taken on the merits, it will retain jurisdiction to order restitution under the conditions laid down in paragraphs 1 and 2 of article 189.*

**Article 32 of the Code of Criminal Procedure:** *A complainant may request restitution of objects taken from him or her, without being obliged to file civil proceedings.*

**Assistance or participation of agents of the requesting State in the execution of the measure**

*Yes, if this is provided for in the bilateral convention concluded by Tunisia and the requesting State.*

*In the absence of a convention, the question will be dealt with on a case-by-case basis.*

#### **Interim measures in view of confiscation (504)**

**Definition and scope of the measure**

*The seizure of the fruits or instruments of a misdemeanour or crime in order to ensure confiscation is a provisional measure par excellence*

**Failing that, an alternative measure with the same purpose**

*N/A*

**Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?**

*See fiche 501*

**Body competent to authorize the measure**

*See fiche 501*

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*See fiche 501*

Assistance or participation of agents of the requesting State in the execution of the measure

*See fiche 501*

### **Confiscation (505)**

Definition and scope of the measure

*Special confiscation is the allocation to the State of the fruits of offences or the instruments which were used or may be used to commit an offence. In the case of a conviction, the judge may order the confiscation of objects that were used or intended to be used for the offence and any that are the fruits of the offence, regardless of who owns them. The confiscation of objects whose manufacture, use, transportation, keeping and sale constitutes an offence is ordered in all cases.*

Failing that, an alternative measure with the same purpose

*N/A*

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*Yes, if this is provided for in the bilateral convention concluded by Tunisia and the requesting State.*

*In the absence of a convention, the question will be dealt with on a case-by-case basis*

Body competent to authorize the measure

*The adjudicating court*

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*Confiscation is a supplementary sanction in accordance with article 5 of the Criminal Code applied by the adjudicating court.*

*Special provisions are laid down by Law 75-2003 of 10/12/2003 as amended and supplemented by Law 2009-65 of 12-8-2009 concerning support for international efforts in the fight against terrorism and the suppression of money-laundering, as follows:*

*Article 46*

*The court may also order confiscation of all or some of the chattels, real estate or financial assets belonging to a convicted person if there are serious charges concerning their use for the financing of persons, organisations or activities relating to the terrorist offences.*

*Article 67*

*The court may also order the confiscation, to the benefit of the State, of assets that have formed the subject matter of money-laundering as well as the fruits directly or indirectly generated by the offence of money-laundering and its liquidation. If actual seizure is not possible, a fine equivalent to liquidation [of same] will be pronounced, which may, in no case, be less than the value of the funds to which the offence relate.*

## Article 102

*Judgements pronouncing liquidation or confiscation of assets by application of this law may in no case harm the rights of third parties acquired in good faith.*

**Assistance or participation of agents of the requesting State in the execution of the measure**

*-Yes, if this is provided for in the bilateral convention concluded by Tunisia and the requesting State.*

*- In the absence of a convention, the question will be dealt with on a case-by-case basis.*

## **6. PLACES - VISIT AND SEARCH**

### **Visit to and search of homes (601)**

**Definition and scope of the measure**

*Searches can be carried out in any place where documents whose discovery would be useful for ascertaining the truth are located.*

**Failing that, an alternative measure with the same purpose**

**Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?**

*- Yes, if this is provided for in the bilateral convention concluded by Tunisia and the requesting State.*

*In the absence of a convention, the question will be dealt with on a case-by-case basis.*

**Body competent to authorize the measure**

*The examining magistrate*

*The public prosecutor in a case in which rapid action is required*

*Judicial police officers (in a case in which rapid action is required or letters rogatory from an examining magistrate)*

*Government officials authorised by special laws*

**Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)**

**Article 94 of the Code of Criminal Procedure:**

*Searches come under the sole jurisdiction of the examining magistrate.*

*However, the following may undertake searches of homes*

*1) judicial police officers where rapid action is required in relation to a crime or misdemeanour under the conditions laid down in the present Code;*

*2) Judicial police officers as per points 2 to 4 of article 10 delegated by the examining magistrate;*

*3) Officials and agents of an administration authorised for this purpose by a special text.*

**Article 95 of the Code of Criminal Procedure :**

*No searches may be undertaken before 6 a.m. and after 8 p.m. in houses and outbuildings, except in the case of a crime or misdemeanour requiring rapid action or where there is reason to enter, even without a call from help from the head of the household, in order to seize the accused or arrest an escaped prisoner.*

**Article 96 of the Code of Criminal Procedure**

*The examining magistrate or judicial police office who undertakes a home visit must, if necessary, be assisted by a trustworthy woman.*

*If the presence of the accused during the search is not deemed possible or useful, the magistrate will be accompanied during the operation by two witnesses selected from the people in the house or, failing that, neighbours who will sign the transcript.*

**Assistance or participation of agents of the requesting State in the execution of the measure**

*Yes, if this is provided for in the bilateral convention concluded by Tunisia and the requesting State. In the absence of a convention, the question will be dealt with on a case-by-case basis*

#### **Visit and search on the site of an offence (602)**

**Definition and scope of the measure**

*A visit and search on the site of the offence makes it possible to identify directly the various circumstances capable of providing information concerning the commission of the offence or the identity of the perpetrator.*

**Failing that, an alternative measure with the same purpose**

*N/A*

**Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?**

*Yes, if this is provided for in the bilateral convention concluded by Tunisia and the requesting State. In the absence of a convention, the question will be dealt with on a case-by-case basis*

**Body competent to authorize the measure**

**Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)**

*Assisted by his or her clerk, the examining magistrate will hear witnesses, question the accused and undertake searches on-site, house visits and the seizure of evidence.*

*Article 56 of the Code of Criminal Procedure*

*The examining magistrate, either on his or her initiative or at the request of the public prosecutor, goes to the scene of the offence, the home of the accused or any other place where it is presumed that useful information for ascertaining the truth might be found.*

*If he or she goes on his or her initiative, he or she must inform the public prosecutor and, despite the absence of the latter, he or she may undertake the necessary operations.*

*The accused will be taken to the place visited, if his or her presence appears necessary.*

**Assistance or participation of agents of the requesting State in the execution of the measure**

*Yes, if this is provided for in the bilateral convention concluded by Tunisia and the requesting State. In the absence of a convention, the question will be dealt with on a case-by-case basis.*

#### **7. WITNESSES, VICTIMS, SUSPECTS - SUMMONING AND HEARING**

##### **Summoning witnesses (701)**

**Definition and scope of the measure**

*This is a summons served on a witness obliging him or her to appear and testify before an investigating or adjudicating court.*

Failing that, an alternative measure with the same purpose

N/A

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*Yes, if this is provided for in the bilateral convention concluded by Tunisia and the requesting State. In the absence of a convention, the question will be dealt with on a case-by-case basis*

Body competent to authorize the measure

*The examining magistrate*

- The public prosecutor in a case in which rapid action is required*
- Judicial police officers (in a case in which rapid action is required or letters rogatory from an examining magistrate)*
- Government officials authorised by special laws*
- The adjudicating court.*

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*Article 60 of the Code of Criminal Procedure:*

*Witnesses are summoned by the administrative channel or by a bailiff.*

*A witness who presents him or herself voluntarily may be heard without a prior summons. This will be mentioned in the transcript.*

*Article 61 of the Code of Criminal Procedure:*

*Any person summoned as a witness is bound to appear, to take an oath and testify without prejudice to the provisions in the criminal code on professional secrecy.*

*If the witness summoned does not appear, the examining magistrate may, at the request of the public prosecutor, sentence him or her to a fine of twenty Dinars. If he or she subsequently appears, he or she may, upon production of excuses and justifications, be relieved of this fine by the investigating judge following an instruction from the public prosecutor.*

*If, having been summoned a second time, he or she still does not appear, a bench warrant may be issued against him or her.*

*A fine of ten to twenty Dinars may, at the request of the public prosecutor, be imposed on a witness who does appear but refuses to take an oath or to testify. Any sentence of the witness according to the aforesaid articles is unappealable.*

*Article 62 of the Code of Criminal Procedure:*

*Where a witness finds it impossible to comply with a summons, his or her statement can be taken at home.*

*Article 334 of the Code of Criminal Procedure:*

*If, in a criminal case, the personal appearance of a witness residing in Tunisia is deemed necessary by a foreign government, the Tunisian government, having received the summons through the diplomatic channel, undertakes to reply to the invitation sent to it.*

*Nevertheless, the summons will only be admitted and served on condition that the witness cannot have an action brought against him or her or be detained for acts or convictions predating his or her appearance.*

Assistance or participation of agents of the requesting State in the execution of the measure

*Yes, if this is provided for in the bilateral convention concluded by Tunisia and the requesting State. In the absence of a convention, the question will be dealt with on a case-by-case basis*

## Hearing witnesses: standard procedure (702)

### Definition and scope of the measure

*A person capable of having knowledge of the facts to be proved may be heard as a witness*

Failing that, an alternative measure with the same purpose

*N/A*

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*Yes, if this is provided for in the bilateral convention concluded by Tunisia and the requesting State.*

*In the absence of a convention, the question will be dealt with on a case-by-case basis*

### Body competent to authorize the measure

*The examining magistrate*

*- The public prosecutor in a case in which rapid action is required*

*- Judicial police officers (in a case in which rapid action is required or letters rogatory from an examining magistrate)*

*- Government officials authorised by special laws*

*The adjudicating court*

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*Article 53 of the Code of Criminal Procedure*

*Assisted by his or her clerk, the examining magistrate will hear witnesses, question the accused and undertake searches on-site, house visits and the seizure of evidence.*

*Article 59 of the Code of Criminal Procedure:*

*The examining magistrate has a right to hear any persons whose testimony he or she deems useful.*

*Article 65 of the Code of Criminal Procedure:*

*Witnesses are heard separately and without the presence of the accused. They testify without the aid of any document. At the beginning of their testimony, they are invited to state their identity and indicate whether there is any reason for objecting to their testimony on the basis of the relationship between them and one of the parties.*

*Once they have testified, the judge can question them, confront them with each other or with the accused and, with their assurance, undertake any operations that are useful for ascertaining the truth.*

*The testimony and confrontations are recorded in the transcript which is read out to the parties appearing and then signed by them, the magistrate and the clerk.*

*If a witness is unwilling or unable to sign, this will be mentioned.*

*Article 66 of the Code of Criminal Procedure:*

*If the accused or witnesses do not speak Arabic, an interpreter will be officially assigned by the examining magistrate.*

*If the witness or accused are deaf or dumb, the questions and answers will be in writing.*

*If he or she cannot write, he or she will be given an interpreter capable of conversing with him or her or who is accustomed to doing so.*

*If the interpreter is not already sworn in, he or she will take an oath to translate the testimony faithfully.*



*The transcript will mention the surname, first name, age, profession and domicile of this interpreter who will sign it as a witness.*

*Article 144 of the Code of Criminal Procedure:*

*The Court may hear any witnesses whose testimony he or she deems useful.*

*The representative of the public prosecution, the plaintiff and the accused may request to have witnesses heard. They must indicate the identity of these witnesses and the subject matter of their testimony.*

*The court will decide whether the request is appropriate. If it refuses to call the witnesses requested, it will do so in a reasoned judgement.*

**Assistance or participation of agents of the requesting State in the execution of the measure**

*Yes, if this is provided for in the bilateral convention concluded by Tunisia and the requesting State. In the absence of a convention, the question will be dealt with on a case-by-case basis*

### **Hearing witnesses: by video conference (703)**

**Definition and scope of the measure**

*No definition*

**Failing that, an alternative measure with the same purpose**

*N/A*

**Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?**

*Yes, if this is provided for in the bilateral convention concluded by Tunisia and the requesting State.*

*In the absence of a convention, the question will be dealt with on a case-by-case basis*

**Body competent to authorize the measure**

*- examining magistrate*

*- adjudicating court*

**Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)**

*Article 49 of Law No. 2003-75 of 10 December 2003 concerning support for international efforts in the fight against terrorism and money-laundering*

*In the case of danger in delay, the examining magistrate or president of the court may, as the case may be and if the circumstances require it, order that the investigation or hearing be held in a place other than its usual location, without prejudice to the accused person's right to a defence.*

*They may proceed to interrogate the accused and to hear any persons whose testimony they consider useful by using appropriate means of visual or aural communications without any need for them to appear personally at the hearing.*

*Suitable measures will be taken in order to avoid revealing the identity of the persons questioned.*

*It should be noted that sole jurisdiction lies with the Tunis Court of First Instance in relation to terrorist offences.*

**Assistance or participation of agents of the requesting State in the execution of the measure**

*Yes, if this is provided for in the bilateral convention concluded by Tunisia and the requesting State.*

*In the absence of a convention, the question will be dealt with on a case-by-case basis.*

### Hearing witnesses: by telephone (704)

Definition and scope of the measure

*See fiche 703*

Failing that, an alternative measure with the same purpose

NA

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*See fiche 703*

Body competent to authorize the measure

*See fiche 703*

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*See fiche 703*

Assistance or participation of agents of the requesting State in the execution of the measure

*See fiche 703*

### Hearing children (705)

Definition and scope of the measure

*See fiche 702*

Failing that, an alternative measure with the same purpose

N/A

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*Yes, if this is provided for in the bilateral convention concluded by Tunisia and the requesting State.*

*In the absence of a convention, the question will be dealt with on a case-by-case basis.*

Body competent to authorize the measure

*The examining magistrate. The public prosecutor. The adjudicating court*

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*Children aged under 13 years may be heard without taking an oath and for informational purposes. If the child is over 13 years of age, he or she may be heard as a witness in accordance with the normal procedure.*

*It should also be noted that a code concerning the protection of children was promulgated by Law 95-92 of 9 November 1995 that regulates the situation of a child in danger. By way of an example, article 20 of that code states that :*

*"The following, in particular, are considered difficult situations endangering the health of a child or his or her physical or mental well-being :*

*a) The loss of his or her parents by a child who is left without family support*

*b) The exposure of a child to negligence and vagrancy*

- c) *A manifest and continuous lack of education and protection.*
- d) *Habitual ill-treatment of the child.*
- e) *Sexual abuse of a child, whether a boy or a girl.*
- f) *Use of children in organised crime within the meaning of article 19 of this code.*
- g) *The exposure of a child to begging and his or her economic exploitation.*
- h) *The incapacity of the child's parents or guardians to ensure his or her protection and education."*

*It also regulates the child's social protection. See in particular article 30 which provides that :*

*"The representative for the protection of children is tasked with taking preventative action in all cases in which it appears that the health of a child or his or her physical or mental well-being is endangered or at risk due to the child's surroundings, the activities or actions he or she carried out, or the various types of ill treatment a child may suffer in difficult situations as set forth in article 20 of this code."*

*Articles 68 et seq. of the code regulate the protection of juvenile offenders:*

*Article 68: "There is an irrebuttable presumption that a child aged less than thirteen years does not have the capacity to infringe the criminal law. This presumption becomes rebuttable in the case of children between thirteen and fifteen years."*

*Article 71: "Children, aged thirteen to eighteen years who are accused of a defined offence, contravention, misdemeanour or crime, are not referred to the ordinary criminal courts. They can only be judged by a juvenile court judge or court."*

*Article 77: "Judicial police officers may not hear an accused child or take any proceedings against him or her before notifying the competent Public Prosecutor."*

*If the acts attributed to a child are very serious, the public prosecutor must automatically assign a lawyer to assist the child, if the latter has not selected one.*

*In all cases, children aged less than 15 years can only be heard by the judicial police in the presence of the person responsible for them, their parents, guardian, person close to them or a neighbour (who must have reached the age of majority)."*

**Assistance or participation of agents of the requesting State in the execution of the measure**

*Yes, if this is provided for in the bilateral convention concluded by Tunisia and the requesting State. In the absence of a convention, the question will be dealt with on a case-by-case basis.*

### **Hearing persons collaborating with the inquiry (706)**

**Definition and scope of the measure**

*See fiche 702*

**Failing that, an alternative measure with the same purpose**

*N/A*

**Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?**

*See fiche 702*

**Body competent to authorize the measure**

*. See fiche 702*

**Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)**

*- See fiche 702*

Assistance or participation of agents of the requesting State in the execution of the measure

*See fiche 702*

### Hearing victims/plaintiffs (707)

Definition and scope of the measure

*No definition*

Failing that, an alternative measure with the same purpose

*N/A*

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*Yes, if this is provided for in the bilateral convention concluded by Tunisia and the requesting State.*

*In the absence of a convention, the question will be dealt with on a case-by-case basis*

Body competent to authorize the measure

*The examining magistrate*

*- Public prosecutor*

*- Judicial police officers*

*- Government officials authorised by special laws.*

*The adjudicating court*

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*Article 43 of the Code of Criminal Procedure :*

*A person who files a civil action in criminal proceedings cannot be heard as a witness.*

*Article 143 of the Code of Criminal Procedure*

*The president will be in charge of the submissions and the police will be in charge of the hearing.*

*The submissions (and closing) are public and are held in the presence of a representative of the public prosecution and the parties unless the court decides to hold the proceedings in camera, either on its own initiative or at the request of the public prosecution in order to safeguard law and order and public morals. This will be mentioned in the transcript of the hearing. If the complainant is present and is not filing a civil action, he or she will be heard first.*

Assistance or participation of agents of the requesting State in the execution of the measure

*Yes, if this is provided for in the bilateral convention concluded by Tunisia and the requesting State. In the absence of a convention, the question will be dealt with on a case-by-case basis.*

### Hearing experts (708)

Definition and scope of the measure

*See fiche 706*

Failing that, an alternative measure with the same purpose

*See fiche 706*

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*See fiche 706*

Body competent to authorize the measure

*See fiche 706*

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

### Summoning suspects/persons accused (709)

Definition and scope of the measure

*A suspect/ accused person may be summoned during the police enquiry, the court investigation and the hearing.*

Failing that, an alternative measure with the same purpose

*N/A*

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*Yes, if this is provided for in the bilateral convention concluded by Tunisia and the requesting State.*

*In the absence of a convention, the question will be dealt with on a case-by-case basis.*

Body competent to authorize the measure

*- The examining magistrate*

*- The public prosecutor*

*- Officers of the judicial police*

*- Government officials authorised by special laws*

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*Article 68 of the Code of Criminal Procedure :*

*If the accused is free, he or she will be summoned in writing to be questioned. The summons will be sent by the administrative channel or served by a bailiff. It will indicate:*

*1) the surname, first name, profession and address of the accused;*

*2) the place, date and hour of the appearance*

*3) the nature of the accusation*

*Article 134 of the Code of Criminal Procedure:*

*Subject to contrary legal provisions, a subpoena is sent by the administrative channel or served by a bailiff.*

*Article 135 of the Code of Criminal Procedure:*

*A subpoena is issued at the request of the prosecution, plaintiff or any legally authorised administration.*

*A subpoena will state the act at issue and the text of the law prohibiting it.*

*It indicates the court to which the matter has been referred, the place, time and date of the hearing and specified the capacity of the addressee as accused, party incurring civil liability or witness.*

*If it is issued at the plaintiff's request, it should mention the surname, first name, profession and actual domicile of the latter.*

*A witness subpoena must also mention that a failure to appear, refusal to testify or false testimony are punishable by law.*

*Article 136 of the Code of Criminal Procedure:*

*The gap between the day on which the subpoena is served and the date set for the appearance at the hearing must be at least three days.*

*If the addressee lives outside of the territory of the Republic, this gap is extended to thirty days.*

*Article 137 of the Code of Criminal Procedure:*

*A subpoena served on an accused in detention will be made through the chief superintendent of the prison.*

*Article 139 of the Code of Criminal Procedure:*

*The subpoena must be handed to the interested party, his or her representative, his or her servant or any person living with him or her, provided that the latter is of sound mind.*

*If the party tasked with handing over the subpoena does not find anyone at home or if the person found there refuses to take the subpoena, it will be handed to the head of the district, sheikh, police station or National Guard in the district in which the interested party lives.*

*Article 140 of the Code of Criminal Procedure:*

*The original or the stub of the subpoena indicates the name and capacity of the person tasked with handing the subpoena to the interested party as well as the date of handover.*

*They will contain the signature of the party on whom the subpoena is served and if he or she is unwilling or unable to sign, this will be mentioned. They must also contain the signature of the person ensuring handover. They are sent back immediately to the clerk of the court to which the matter has been referred and are then appended by the clerk to the trial documents.*

**Assistance or participation of agents of the requesting State in the execution of the measure**

*Yes, if this is provided for in the bilateral convention concluded by Tunisia and the requesting State.*

- *In the absence of a convention, the question will be dealt with on a case-by-case basis.*

### **Hearing suspects/persons accused: standard procedure (710)**

**Definition and scope of the measure**

*This is an interrogation of the person under investigation concerning the acts and evidence giving rise to the accusation.*

Failing that, an alternative measure with the same purpose

N/A

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*Yes, if this is provided for in the bilateral convention concluded by Tunisia and the requesting State. In the absence of a convention, the question will be dealt with on a case-by-case basis*

Body competent to authorize the measure

- *The examining magistrate*
- *The public prosecutor in a case requiring rapid action*
- *Officers of the judicial police*
- *Government officials authorised by special laws*
- *The adjudicating court*

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*Article 72 of the Code of Criminal Procedure:*

*The judge first hears the accused persons separately and will then confront them with each other or with the witnesses, if applicable. The questions and answers as well as any incidents occurring during the interrogation will be recorded in the transcript of the hearing. The interrogation is read back to the accused, then all the pages are numbered and initialled and signed by the judge, court clerk, party appearing and, if applicable, the lawyer and interpreter.*

*If the accused is unwilling or unable to sign, this will be mentioned and the reason given.*

*Unless the accused expressly renounces this right, he or she will only be questioned in the presence of their counsel, who must have been duly summoned at least twenty-four hours in advance.*

*The trial documents are made available to counsel on the day before each of the interrogations of the accused.*

*The counsel for the accused may only speak after being authorised to do so by the examining magistrate.*

*If he or she is refused permission, this must be mentioned in the transcript. The counsel's statements must also be mentioned.*

*The judge will assess whether or not it is appropriate to take any additional investigative measures requested in order to ascertain the truth.*

*Article 74 of the Code of Criminal Procedure:*

*If the accused refuses to reply or simulates infirmities that would prevent him or her from doing so, the judge will warn him or her that the court will dispense with the examination and this warning will be mentioned in the transcript.*

*Article 79 of the Code of Criminal Procedure:*

*After execution of a bench warrant, the examining magistrate will question the accused within three days at latest from his or her entry into the place of detention.*

*Upon expiry of this deadline, the accused will be automatically taken, at the responsibility of the superintendent, to the Public Prosecutor, who will request an immediate interrogation with the examining magistrate.*

*If the accused is unwilling or unable to comply, the interrogation will be held by the president of the court or any judge he or she appoints, failing which the Public Prosecutor will order the immediate release of the accused.*

Assistance or participation of agents of the requesting State in the execution of the measure

- *Yes, if this is provided for in the bilateral convention concluded by Tunisia and the requesting State. In the absence of a convention, the question will be dealt with on a case-by-case basis.*

#### Hearing suspects/persons accused: by video conference (711)

Definition and scope of the measure

*See fiche 703*

Failing that, an alternative measure with the same purpose

*See fiche 703*

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*See fiche 703*

Body competent to authorize the measure

*See fiche 703*

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*See fiche 703*

Assistance or participation of agents of the requesting State in the execution of the measure

*See fiche 703*

#### Hearing suspects/persons accused: by telephone (712)

Definition and scope of the measure

*See fiche 703*

Failing that, an alternative measure with the same purpose

*See fiche 703*

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*See fiche 703*

Body competent to authorize the measure

*See fiche 703*

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*See fiche 703*

Assistance or participation of agents of the requesting State in the execution of the measure



### Confrontation (713)

#### Definition and scope of the measure

*If there is a contradiction between the suspects/ accused persons/ witnesses, a confrontation may be held.*

Failing that, an alternative measure with the same purpose

*N/A*

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*Yes, if this is provided for in the bilateral convention concluded by Tunisia and the requesting State.*

*In the absence of a convention, the question will be dealt with on a case-by-case basis*

#### Body competent to authorize the measure

*The examining magistrate, criminal court of appeal*

*- Public prosecutor*

*- Officers of the judicial police*

*- Government officials authorised by special laws.*

*- The adjudicating court.*

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*Article 65 of the Code of Criminal Procedure*

*Witnesses are heard separately and without the presence of the accused. They testify without the aid of any document. At the beginning of their testimony, they are invited to state their identity and indicate whether there is any reason for objecting to their testimony [on the basis of the relationship] between them and one of the parties.*

*Once they have testified, the judge can question them, confront them with each other or with the accused and, with their assurance, undertake any operations that are useful for ascertaining the truth.*

*The testimony and confrontations are recorded in the transcript which is read out to the parties appearing and then signed by them, the magistrate and the clerk.*

*If a witness is unwilling or unable to sign, this will be mentioned.*

*Pursuant to article 143 of the Code of Criminal Procedure, the adjudicating court may undertake any useful confrontations*

#### Assistance or participation of agents of the requesting State in the execution of the measure

*Yes, if this is provided for in the bilateral convention concluded by Tunisia and the requesting State. In the absence of a convention, the question will be dealt with on a case-by-case basis.*

## **8. CROSS-BORDER OPERATIONS**

### **Cross-border observation (801)**

Definition and scope of the measure

*No provisions in Tunisian law.*

Failing that, an alternative measure with the same purpose

*N/A*

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*This will depend on whether a bilateral or multilateral convention dealing with the question has been concluded.*

Body competent to authorize the measure

*N/A*

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*N/A*

Assistance or participation of agents of the requesting State in the execution of the measure

*This will depend on whether a bilateral or multilateral convention dealing with the question has been concluded*

### **Cross-border hot pursuit (802)**

Definition and scope of the measure

*See fiche 801*

Failing that, an alternative measure with the same purpose

*See fiche 801*

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*See fiche 801*

Body competent to authorize the measure

*See fiche 801*

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*See fiche 801*

Assistance or participation of agents of the requesting State in the execution of the measure

*See fiche 801*

### **Cross-border tracking (by placing a beeper on a vehicle or a person) (803)**

Definition and scope of the measure

*See fiche 801*

Failing that, an alternative measure with the same purpose

*See fiche 801*

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*See fiche 801*

Body competent to authorize the measure

*See fiche 801*

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*See fiche 801*

Assistance or participation of agents of the requesting State in the execution of the measure

### **Controlled deliveries (804)**

Definition and scope of the measure

*See fiche 801*

Failing that, an alternative measure with the same purpose

*See fiche 801*

Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?

*See fiche 801*

Body competent to authorize the measure

*See fiche 801*

Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)

*See fiche 801*

Assistance or participation of agents of the requesting State in the execution of the measure

## **Joint investigation teams (805)**

**Definition and scope of the measure**

*See fiche 801*

**Failing that, an alternative measure with the same purpose**

*See fiche 801*

**Is the measure possible under mutual judicial assistance? If not, does an alternative measure exist?**

*See fiche 801*

**Body competent to authorize the measure**

*See fiche 801*

**Practical modes of execution of the measure (among others, the possibility to execute the measure in conformity with the procedure applicable in the requesting State)**

*See fiche 801*

**Assistance or participation of agents of the requesting State in the execution of the measure**

“The information contained in this tool equivalent to the “fiches belges” is based on the information which has been provided by the experts and representatives of the concerned beneficiary countries in the framework of the work carried out under the Euromed Justice III Project. The Consortium implementing the project cannot be held responsible for its accuracy, actuality or exhaustiveness, nor can it be made liable for any errors or omissions contained in this document.”