

ANNEX VII: MLAR CHECKLIST

MLAR CHECKLIST

Operation name:

Subjects:

1.
2.
3.
4.

Reference:

Have alternatives to a MLAR been assessed?

Can the e-evidence requested be obtained through a direct request to the SP?

- Yes No

Is there or has there been an investigation in the requested State allowing sharing of evidence on a police-to-police basis?

- Yes No

Can the e-evidence be obtained through user consent?

- Yes No

Can the relevant user download his or her own content?

- Yes No

Correct opening paragraph

I am [insert name] of the [insert name of agency], a designated authority, and I am empowered to make this request for evidence pursuant to section [insert section] of the [insert name of Act].

- Yes No

Basis of the MLAR

For example: I make this request pursuant to article 18 of the United Nations Convention against Transnational Organized Crime, and the Protocols thereto done at Palermo in 2000 and ratified by x on x or [insert relevant bilateral, multilateral legal instrument or United Nations Convention]

Is the correct basis included (relevant bilateral, multilateral legal instrument or United Nations convention).

- Yes No

Are both the requesting and requested States contracting parties to the relevant legal instrument.

Yes No

If there is no legal instrument, confirm basis is reciprocity.

Yes No

Urgency

If an urgent request provides details of why (e.g., imminent trial date, facts included to support serious risk of harm) and any dates when the evidence is required by.

Consider writing paragraph in bold to ensure requesting State aware

Is this an urgent MLAR?

Yes No

If so, are there sufficient reasons stated in the MLAR?

Yes No

Confirm further detail required if insufficient reasons:

Confidentiality

If notification to the account holder and/or disclosure (i.e., sealing) of the application to the public would prejudice the investigation – include this section and reasons why notification or disclosure to the public would hamper the investigation, e.g., destruction of evidence or suspect would flee.

Please note that if the application is sealed in the United States this will be limited to 2 years and further grounds will have to be provided to extend.

Required?

Yes No

Are reasons clearly included to justify confidentiality?

Yes No

Is the correct paragraph used?:

FOR NON-NOTIFICATION AND CONFIDENTIALITY:

In order not to prejudice the investigation, I request that no person (including any of the above subjects) is notified by the competent authorities in your country of the existence and contents of this MLAR and any action taken in response to it. I further request that action is taken to ensure that any person from whom evidence is sought does not so notify any other person.

If the above subjects or an associated party became aware of the existence of this request [or] sensitive material, namely [identify the sensitive material – either the entire request or confirm the relevant part] [or] of action taken in response to it, it is reasonably justifiable to believe that disclosure of the fact of an investigation to the subjects will result in [insert as appropriate destruction of evidence as supported by [describe conduct in support i.e., deletion of accounts]; disclosure of the identity of the confidential informant has the potential to place his life in danger or risk of serious injury [describe conduct in support i.e., if informant close to subject and subject has a history of violence]

If it is not possible to preserve confidentiality in the above manner, please notify me prior to executing this MLAR.

IF ONLY CONFIDENTIALITY OF THE MLAR IS REQUESTED:

In order not to prejudice the investigation, I request that no disclosure is made of the contents of this Mutual Legal Assistance Request and any action taken in response to it. I further request that action is taken to ensure that any person from whom evidence is sought does not so notify any other person. We request confidentiality of the request to ensure that sensitive information contained within the MLAR is not disclosed, namely [insert sensitive information to be protected from disclosure]

If it is not possible to preserve confidentiality in the above manner, please notify me prior to executing this Mutual Legal Assistance Request.

Purpose of the request

Is this set out clearly, i.e., insert type of evidence, e.g., content of emails from Google or real-time collection of traffic data from Yahoo!?

Yes No

Does the MLAR state that the evidence will be for use in the prosecution (including any related freezing, confiscation and enforcement proceedings and any related ancillary proceedings)?

Yes No

Are all subjects listed?

Yes No

With:

Full name?

Yes No

Date of birth?

Yes No

Place of birth?

Yes No

Nationality?

Yes No

If subject details are not known, is there sufficient information provided (for example IP address, hosting company, email address, username)?

Yes No

Confirm further details required:

Law

Are the offences each suspect/defendant has been charged with listed?

Yes No

If pre-charge, are the offences being investigated listed?

Yes No

Is the relevant section and legislation listed for each offence?

Yes No

Is the maximum sentence for each offence provided?

Yes No

Is the relevant legislation for each offence provided in an annex to the MLAR?

Yes No

Do the offences have a maximum sentence to satisfy a requested State's *de minimis* requirements where relevant (e.g., United States)?

Yes No

If an offence is related to terrorism, is the terrorist organization proscribed under law?

Yes No

Factual summary

The summary of facts must be relevant to the required assistance. Therefore, provide facts to show a crime has been committed but not a summary of the complete investigation. Include those facts that are relevant to the evidence required. Also confirm the source of any supporting facts, e.g., if attribution determined through admission or consent confirm the source.

Is there a brief chronology of the investigation/proceedings to date (i.e., insert when arrested, charged, and when any trial date is fixed if known)?

Yes No

If a counter-terrorism investigation/prosecution reference to proscribed organization contrary to national law or a sanctions list.

Yes No

If domestic legal process is required, have production orders and/or relevant decisions of other competent authorities been obtained and attached?

Yes No

If only basic subscriber information (BSI) is requested, has a direct request been attempted to obtain the evidence from the SP?

Yes No N/A

If no, confirm reasons:

If MLAR is required, is there sufficient supporting information to show that BSI is relevant and related to the offences being investigated/prosecuted?

Yes No N/A

If only traffic data requested, has a direct request been attempted to obtain the evidence from the SP?

Yes No N/A

If not confirm reasons:

If MLAR is required, is there sufficient supporting information to show that traffic data is relevant and material (specify date range, with justification why relevant and material to investigation)?

Yes No N/A

If a MLAR is required for content data, traffic data or real-time collection has the author:

Provided facts to attribute each account to the user?

Yes No

If not, list accounts where attribution is still required:

MLARs to the United States for stored content data

Probable Cause

Important note

If multiple accounts requested confirm for each account

Detail the type of content to be seized (e.g., an email communication).

Yes No

Provide the reason why the content data is relevant to the criminal offence being investigated.

Yes No

Provide specific facts of the types of communications or specific examples supporting the belief that the content data sought will be found among the records of the service provider.

Yes No

Provide specific facts and their source to support the belief that the content data relates to a crime.

Yes No

If source of information has a criminal record or is anonymous, has further information been provided to show credibility and reliability.

Yes No N/A

Has the date range for content data been provided and justified on the facts (i.e., probable cause for the timespan requested).

Yes No

MLARs to other States for stored content data

If legal standard reasonable grounds to believe

Important note

If multiple accounts requested confirm for each account

Detail the type of content data to be seized (e.g., an email communication).

Yes No

Provide supporting information of the types of communications or specific examples supporting the belief that the content data sought is stored by the service provider.

Yes No

Provide the reason why the content data is relevant and material to the criminal offence being investigated.

Yes No

Provide information to support the belief that the information in support is credible.

Yes No

Has the date range for content data been provided and the timespan justified on the facts?

Yes No

For real-time collection

Important note

If multiple accounts requested confirm for each account

Does the law in the requested State allow for real-time collection? (e.g., United States law does not allow for a MLAR for real-time collection of content data).

Yes No

Sufficient supporting information to show the real-time collection is relevant to the investigation (e.g., will show the location of an offender or disclose incriminating messages)?

Yes No

Provide information to support the belief that the information in support is credible.

Yes No

Why other investigative methods have not and/or will not secure the evidence requested.

Yes No

How collateral intrusion (i.e., invasion of privacy of persons not connected to the investigation) will be avoided.

Yes No

Specific date range for the real-time collection – with justification why that timespan is relevant and material to investigation).

Yes No

Preservation

If an account isn't preserved there will be no certainty that there is stored e-evidence to seize and the MLAR will not be executed.

The preservation reference is needed so the relevant court process matches the SP account and the evidence required.

Are all relevant accounts preserved?

Yes No

Is the date of preservation included?

Yes No

Is the expiry date of preservation included?

Yes No

Is the reference number of preservation included?

Yes No

Assistance requested

Is a paragraph included to confirm the following:

After obtaining any appropriate subpoena, search warrant, court order or other order, to obtain a witness statement in writing from an administrator at [\[insert SP\]](#).

Yes No

Is the correct address of the SP included?

Yes No

Is the username/URL/email account/social media account identifier confirmed?

Yes No

For stored content data

Is the required date range confirmed?

Yes No

Is the required date range correct?

Yes No

If no confirm reasons:

Does the MLAR confirm what type of stored e-evidence is required for each account (i.e., BSI and/or traffic data and/or content data)?

Yes No

Does the list of required evidence list the e-evidence required for each account, according to what is available from each SP?

Yes No

If not, confirm evidence that still needs to be requested:

For real-time collection

Does the MLAR provide sufficient technical data, (i.e., the relevant network connection number) to ensure that the real-time collection is possible?

Yes No

Does the MLAR confirm that a lawful interception order or warrant has been issued domestically in connection with a criminal investigation, if such an order or warrant is required by law?

Yes No

Does the MLAR confirm the date range for the real-time collection?

Yes No

Does the MLAR confirm if live transmission and/or recordings are requested?

Yes No

General

Is there a catchall paragraph re any other enquiries arising from the MLAR?

Yes No

Form in which e-evidence is requested:

Does the MLAR have a request for the e-evidence to be produced according to the procedure of the requesting State?

Yes No

Is a model format attached to the MLAR?

Yes No

Reciprocal procedural laws

Is a reciprocal procedural law a requirement for MLA with the requested State?

Yes No

If **Yes** is the following standard paragraph included:

I confirm that the assistance requested above may be obtained under current law of [\[insert name of requesting State\]](#) if in a like case a request for such assistance were made to the authorities in [\[insert name of requesting State\]](#).

Yes No

Transmission of evidence

Is the following standard paragraph included?:

It is requested that any documents or other correspondence are sent to me at the above address and that you notify me as to any need to return any documents at the conclusion of the proceedings in [\[insert name of requesting State\]](#).

Yes No

Translation

Confirm that MLAR will be translated into Requested State's language by a qualified translator.

Yes No

Discussing draft MLA with Requested State

Confirm that draft MLAR discussed with Requested State.

Yes No



Confirmation of approval

Can this MLAR be approved?

Yes No

If not, detail further action required (use a separate sheet if necessary):

1.

2.

3.

Additional sheet required?

Yes No

Date to re-submit:

Signature:

Date

Print name:

Grade:

1
Preservation

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Pre-mutual legal assistance

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Mutual legal assistance

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Emergency disclosure requests

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