



Mutual Legal Assistance Treaty with the Russian Federation: A Sketch

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The recent [indictment](#) by Special Counsel Robert Mueller of twelve Russian intelligence officials for offenses related to interference in the 2016 U.S. presidential election raises questions concerning the Russian Federation’s obligations to cooperate with U.S. prosecutorial efforts. Russian President Vladimir Putin [indicated](#) that assistance could be provided in accordance with the 1999 [Treaty on Mutual Legal Assistance in Criminal Matters between the United States and the Russian Federation](#) (U.S.-Russia MLAT), which entered into force in 2002. This Legal Sidebar post provides an overview of mutual legal assistance treaties (MLATs) in general and a sketch of the terms of the U.S.-Russia MLAT in particular.

The United States currently has [MLATs with some 70 countries](#). In general, these agreements provide a means for acquiring evidence, witnesses, or other assistance in criminal matters from a foreign country, where domestic courts have no authority to issue subpoenas to foreign nationals, or grant search warrants, or order other legal processes. Some common types of assistance [include](#) serving judicial documents; locating or identifying persons or things; taking testimony; examining objects and sites; requesting searches and seizures; obtaining documents or electronic evidence; identifying, tracing, freezing, or confiscating the proceeds or instrumentalities of crime or other assets; and transferring persons in custody for testimonial purposes or (in some cases) to face charges. MLATs frequently work in conjunction with [extradition treaties](#), but the United States does not currently have an extradition treaty with the Russian Federation. The U.S. Central Authority for MLAT treaties is the U.S. Department of Justice, Criminal Division, [Office of International Affairs](#). The Department of State office responsible for questions concerning MLATs is the [Office of the Legal Adviser for Law Enforcement and Intelligence](#) (L/LEI).

The U.S.-Russia MLAT is summarized and analyzed in [Senate Treaty Doc. 106-22](#) (see also [Ex. Rept. 107-3](#)). In the treaty, the United States and Russia [undertake](#) to provide to each other “comprehensive legal assistance in criminal matters” in accordance with its terms. Legal assistance is to be provided “in connection with the prevention, suppression, and investigation of crimes; criminal prosecutions and other proceedings related to criminal matters.” Specifically, the following forms of assistance are [envisioned](#):

1. obtaining testimony and statements;
2. providing documents, records, and other items [including [official records](#)];
3. serving documents;

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4. locating and identifying persons and items;
5. executing requests for searches and seizures;
6. transferring persons in custody for testimony or other purposes under [the] Treaty;
7. locating and immobilizing assets for purposes of forfeiture, restitution, or collection of fines; and
8. providing any other legal assistance not prohibited by the laws of the Requested Party.

Legal assistance **must be provided** (unless an exception applies) with respect to offenses that are prohibited under the laws of both countries, but each party may agree to provide assistance even where this is not the case. For the purposes of the indictment mentioned above, the relevant crimes include:

- **Conspiracy** to commit offense or to defraud the federal government
- **Fraud and related activity in connection with computers**
- **Aggravated identity theft**
- **Money laundering**

Whether these criminal statutes find analogous prohibitions under Russian law is beyond the scope of this post.

Two main **exceptions** apply. Namely, requests for assistance may be denied where:

- the request relates to a crime under military law that is not a crime under general criminal law; [or]
- the execution of the request would prejudice the security or other essential interests of the Requested Party.

Requests are not to be denied on account of bank secrecy.

There is no explicit exception for so-called “**political offenses**,” but the parties **consider** that the “security or other essential interests” exception above provides ample coverage to deny requests for assistance related to what might be considered a political offense.

The U.S.-Russia MLAT spells out the **requirements** for applying for each type of assistance covered. The failure to meet such requirements may result in the **denial** of assistance, but before denying assistance for any reason, the Requested Party must consult with the Requesting Party to determine whether assistance can be provided under such conditions as may be deemed appropriate. If the Requested Party considers that execution of a request will interfere with a criminal investigation or proceeding, it may postpone execution or impose other conditions as necessary.

The Requested Party must inform the Requesting Party if it is unable to comply with **confidentiality** measures that are requested, giving the Requesting Party the opportunity to withdraw the request rather than expose matters it would prefer to keep confidential. The Requesting Party may also **impose conditions** so that assistance it provides is not used for purposes other than those set forth in the request without its prior consent.

There is a **provision** for requesting individuals to travel to the Requesting Party’s territory to give testimony or otherwise participate in a criminal proceeding. A person who volunteers to undertake such travel may request advance travel costs and is entitled to safe conduct, meaning that the person cannot be arrested or served process (sued) during the visit and for seven days (extendable to 15 days if necessary) beyond the time necessary to complete the purpose of the visit, unless the person departs the country and thereafter voluntarily returns. **Persons who are incarcerated** may also agree to be transferred for participation in a criminal proceeding. These persons, however, are to stay in custody while in the territory of the Requesting State unless other provisions are made, and are to be transferred back to the Requested State when his or her presence is no longer needed without initiation of the extradition process.

The Parties are **obligated**, upon request, to provide assistance locating, immobilizing, and seizing proceeds and fruits of criminal activities, as well as instrumentalities of crime, for purposes of forfeiture, restitution to victims of crime, and collection of criminal fines. Such assets are to be disposed of in accordance with the laws of the Party that has seized or frozen them, and that Party is required to transfer all or part of such forfeited assets, or the proceeds of their sale, to the other Party for the purposes mentioned, to the extent it deems it appropriate and under conditions it deems acceptable.

Author Information

Jennifer K. Elsea
Legislative Attorney

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