



Conference of the States Parties to the United Nations Convention against Corruption

Distr.: General
30 May 2013
English
Original: Spanish

Implementation Review Group

Resumed fourth session

Panama City, 26-27 November 2013

Agenda item 2

Review of implementation of the United Nations Convention against Corruption

Executive summary

Note by the Secretariat

Addendum

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* Reissued for technical reasons 17 October 2013.



II. Executive summary

Peru

1. Introduction: Overview of the legal and institutional framework of Peru in the context of implementation of the United Nations Convention against Corruption

The legal system of Peru is in the Roman or continental European legal tradition. The Convention forms an integral part of domestic law.

Two texts amending the Criminal Code in relation to offences against the public administration were adopted in 2011. First, Act No. 29703 was adopted on 9 June 2011. Articles 384 and 401 of the Act were challenged by the Attorney General of the Nation on the grounds, among others, that it contravened articles 3 and 18 of the United Nations Convention against Corruption. His challenge was partially upheld by the Constitutional Court, which issued a ruling on 3 May 2012.

Secondly, Act No. 29758 was published on 21 July 2011. This Act replaced some amendments introduced by Act No. 29703. Following these two consecutive reforms, the applicable law is articles 376 and 393-A of the Criminal Code, as amended by Act No. 29703, and articles 384, 387, 388, 400, 401 and 426 of the Code, as amended by Act No. 29758.

A bill to bring the Criminal Code into line with the Convention has been drafted but has not yet come before a plenary session of the Congress. The bill proposes amendments to the law on the offences of, among others, abuse of authority, collusion, embezzlement, active or passive bribery, trading in influence, and illicit enrichment.

The Code of Criminal Procedure of 1940 was replaced in 2004 by the new Code of Criminal Procedure, which marked a transition from the inquisitorial to the adversarial system. The system is being gradually implemented across the country. With regard to offences committed by public officials, however, Act No. 29648 of 1 January 2011 provides for the immediate application of the new Code of Criminal Procedure at the national level.

Various authorities in Peru collect statistical data on corruption offences. These include the Crime Observatory of the Public Prosecution Service and the Prosecutor's Office specializing in corruption offences attached to the Ministry of Justice and Human Rights. Peru does not, however, have a unified system of statistics.

2. Chapter III: Criminalization and law enforcement

2.1. Observations on the implementation of the articles under review

Bribery and trading in influence (arts. 15, 16, 18 and 21)

The Peruvian Criminal Code criminalizes various bribery offences under articles 393-398. The concepts "directly or indirectly" and undue advantage for another person or entity are not specifically applied in all categories of crime. According to the statement by the Peruvian authorities, the law may be interpreted in such a way as to recognize these concepts, but no relevant cases were cited.

Article 397-A of the Criminal Code addresses the concept of active transnational bribery. The article covers advantages to third parties, but does not explicitly cover actions that benefit “another entity”. Peru has adopted the criminal category of “passive international bribery” under Act No. 29703, but article 393-A does not cover advantages for third parties. Moreover, it penalizes such conduct only in cases where it is committed “in order to obtain or retain a business deal or other undue advantage when engaging in international economic activities”, whereas there is no such restriction in the Convention.

The Peruvian Criminal Code does not cover active trading in influence. Passive trading in influence is regulated under article 400 of the Code, although the term “directly or indirectly” is not explicitly used. Moreover, the provision applies only where a public official has been trying, is trying or is about to try a specific “legal or administrative case”, whereas the Convention does not contain such a restriction.

As regards bribery in the private sector, the Peruvian Criminal Code contains a provision entitled “Fraud in the administration of legal persons” under article 198, but it does not cover all the elements addressed in the Convention.

Money-laundering, concealment (arts. 23 and 24)

Money-laundering offences are governed by Legislative Decree No. 1106, published on 19 April 2012, which provides for effective action against money-laundering and other offences relating to illegal mining and organized crime. The Decree addresses every aspect of the conversion and transfer of property (art. 1), concealment or disguise (art. 2) and participation in such conduct (arts. 1 and 2, in combination with the Criminal Code). Association and conspiracy are not criminalized. With regard to the acquisition, possession or use of property, article 2 of the Decree requires that the person concerned acted “with a view to avoiding the identification of its origin, its seizure or its confiscation”, whereas there is no such restriction in the Convention.

Peru regards all offences against the public administration as predicate offences in the laundering of the proceeds of crime. Predicate offences may be committed within or outside the jurisdiction of Peru, although no case law in that regard exists to date. Peru penalizes so-called “self-laundering”.

Article 405 of the Criminal Code of Peru deals with concealment. Close relationships are not grounds for exemption from punishment under the Convention.

Embezzlement, abuse of functions and illicit enrichment (arts. 17, 19, 20 and 22)

Embezzlement is criminalized under articles 387-389 of the Criminal Code. The law covers most of the elements of the Convention, including advantages to third parties. The term “person” may be applied to both physical and legal persons, although there is no express indication to that effect.

Abuse of functions is governed by articles 376 and 376-A. Other relevant offences are covered by articles 382-384.

Article 401 of the Peruvian Criminal Code penalizes illicit enrichment.

As regards embezzlement in the private sector, article 190 of the Criminal Code penalizes the offence of joint misappropriation.

Obstruction of justice (art. 25)

Articles 409-A, 365 and 366 of the Criminal Code deal with the obstruction of justice.

Liability of legal persons (art. 26)

Under Peruvian law, primary criminal liability devolves on a physical person, although there are secondary criminal consequences for legal persons. The legal system relating to administrative law contains provisions on the exclusion of physical or legal persons that have received administrative sanctions from entitlement to bid for or receive contracts, whether temporarily or permanently. Civil liability is governed by article 104 of the Criminal Code.

Participation and attempt (art. 27)

The legal system provides for every form of participation and attempt. Peru has not criminalized preparation for an attempt.

Prosecution, adjudication and sanctions; cooperation with law enforcement authorities (arts. 30 and 37)

The sanctions provided for under Peruvian legislation in respect of offences criminalized under the Convention take account of the gravity of such offences.

Peruvian legislation provides for immunities and judicial prerogatives. It is also possible to lift immunity.

The Public Prosecution Service may refrain from instituting criminal proceedings where the offences concerned do not seriously affect the public interest. However, the principle of discretion to prosecute does not apply to offences committed by a public official in the exercise of his or her duties.

Measures relating to bail while awaiting trial take into account the need to enforce the appearance of the accused in court. Early release requires that the person concerned has completed half his or her sentence and that no trial is pending that carries a mandatory sentence of detention.

Article 298 of the Code of Criminal Procedure provides for the temporary suspension of an accused person from holding a post, employment or commission of a public nature.

A sentence of disqualification may be imposed as the principal or secondary penalty for any offence against the public administration and includes disqualification from any post in the public administration, including enterprises in total or partial State ownership.

Peru has established disciplinary powers, independent of criminal proceedings, that may be used by competent bodies against public employees.

Where a person involved in committing a crime engages in effective cooperation, he or she may be granted exemption from the penalty, a reduction in the penalty by up to a half below the legal minimum, a suspended sentence, conditional release or remission of the sentence that he or she is serving. A person who is cooperating effectively is given the same protection measures as a witness.

Protection of witnesses and reporting persons (arts. 32 and 33)

The protection of witnesses is regulated by articles 247-252 of the Code of Criminal Procedure and Supreme Decree No. 003-2010-JUS. Measures adopted include the provision of a change of address, the withholding of identity and economic measures to enable a witness to change his or her residence or place of work. The Supreme Decree established an integrated programme for the protection of witnesses, experts, victims and collaborators involved in criminal proceedings. The programme is operated by the Attorney General's Office and protection units are established in every judicial district.

No agreements or arrangements have been entered into with other States for the relocation of witnesses. However, contacts exist at the technical level.

Victims enjoy the same protection as witnesses, but they also have the opportunity to appear as a civil party and to be given a hearing before any decision involving the termination or suspension of criminal proceedings.

The Protection for Reporting Persons Act No. 29542, adopted in June 2010, applies, at the administrative level, to public servants or any person who reports arbitrary or illegal acts in any public entity. Possible measures include the withholding of identity and a prohibition of the discharge, dismissal or removal of a reporting person because of his or her report. Employment protection is not provided where a reporting person does not work in the public sector.

Freezing, seizure and confiscation; bank secrecy (arts. 31 and 40)

The confiscation of any proceeds or instrumentalities of crime is provided for as a secondary consequence of an offence. Peruvian law also provides for loss of ownership in cases where confiscation does not occur. There is no provision for the confiscation or seizure of instrumentalities "destined for use" in offences.

There are no rules governing seizure and confiscation where the proceeds of crime have been transformed or converted, in part or in full, into other property or confiscation of the value of the proceeds of crime where they have been intermingled with property acquired from legitimate sources. Property into which the proceeds of crime have been transformed or converted or with which the proceeds of crime have been partially intermingled is covered by the law on money-laundering.

The term "effects" refers by implication to advantages, including profits or any other advantage deriving from crime.

Seizure (arts. 316-320 of the Code of Criminal Procedure) ensures the availability of property that may be confiscated under an enforceable judgement. Freezing (arts. 302-309) ensures that the financial liabilities arising from an offence or the payment of costs can be met.

In addition to the general rules contained in articles 401 (b) and 318 of the Code of Criminal Procedure on the administration of property, article 220, paragraph 5, provides for the chain of custody, which is the responsibility of the Public Prosecution Service. Reforms to the system for the administration of seized and confiscated property were introduced with the adoption of Legislative Decree No. 1104 on loss of ownership, which established the National Commission on

Confiscated Property, attached to the Office of the Chairperson of the Council of Ministers.

Bank secrecy and taxation confidentiality may be lifted at the request of a judge, the Attorney General or an investigative committee of the Congress.

The Peruvian system does not provide for the possibility of requiring an offender to demonstrate the lawful origin of the alleged proceeds of crime or other property liable to confiscation.

The Peruvian system protects the rights of bona fide third parties by conducting a review of seizures, among other procedures.

Statute of limitations; criminal record (arts. 29 and 41)

Criminal proceedings must be instituted within a period equal to the maximum period of punishment for the offence in question. For offences committed by public officials and public servants against State property, the period is doubled where State property is affected; this is determined on a case-by-case basis. The statute of limitations is interrupted by proceedings conducted by the Public Prosecution Service or the judicial authorities, or by the commission of another offence.

No provisions have yet been adopted in Peru to take into account any previous conviction in another State.

Jurisdiction (art. 42)

In general, the jurisdiction of Peruvian courts is established in accordance with the provisions of the Convention. The principle of active or passive personality is not explicitly regulated, except in the case of offences committed by public officials or public servants in the course of their duties. There is no jurisdiction regulating acts preparatory to money-laundering or offences committed against the State.

Consequences of acts of corruption; compensation for damage (arts. 34 and 35)

The legal system of Peru provides for measures to address the consequences of offences, such as the invalidation of a legal act under the Civil Code.

With regard to compensation for damage, articles 92-101 of the Criminal Code provide for civil damages.

Specialized authorities and inter-agency coordination (arts. 36, 38 and 39)

Peru has specialized prosecutor's offices around the country (235 offices, including 20 senior prosecutor's offices), public anti-corruption offices and special criminal courts for offences against the public administration. The National Police has set up a specialized body, the Anti-Corruption Directorate, which is staffed by criminal experts with special skills who are assigned to complex criminal trials.

The Public Prosecution Service has entered into cooperation agreements with various institutions, including the Ministry of Education, the Constitutional Court, the Ministry of Justice and Human Rights and the Office of the Comptroller-General of the Republic.

Various measures are taken to encourage the public to report acts of corruption.

Peru has no proactive mechanisms for collaboration between law enforcement bodies and private sector entities.

2.2. Successes and good practices

Overall, the following successes and good practices in implementing chapter III of the Convention are highlighted:

- An integrated programme for the protection of witnesses, experts, victims and collaborators has been established, together with decentralized protection units.
- The judiciary, the Attorney General's Office, the National Police and the Ministry of Justice and Human Rights have set up specialized bodies to deal with corruption.
- A unit of special criminal experts has been established to provide expertise in complex cases, including corruption offences.
- Agreements have been entered into by the Public Prosecution Service with other institutions at the national level to expedite cooperation.
- Legal provisions contained in the Effective Cooperation Act No. 27378 and the Code of Criminal Procedure encourage persons who are participating or have participated in the commission of offences to provide useful information to the authorities.

2.3. Challenges in implementation

The following steps could further strengthen existing anti-corruption measures:

- It is recommended that Peru should consider a unified system for the collection of consolidated and disaggregated statistics.
- It is recommended that Peru should adopt the concepts "directly or indirectly" and undue advantage for another person for all forms of the offence of active or passive bribery.
- With regard to active transnational bribery, it is recommended that Peru should amend the criminal definition with a view to expressly including advantages for legal persons. With regard to passive transnational bribery, it is recommended that consideration should be given to amending Peruvian legislation to cover advantages for third parties and eliminating the restriction contained in the phrase "in carrying out international economic activities".
- With regard to embezzlement, it is recommended that Peru should amend the criminal definition with a view to expressly including embezzlement to the advantage of legal persons.
- It is recommended that Peru should consider criminalizing active trading in influence. With regard to passive trading in influence, it is recommended that Peru should consider amending its legislation to include the concept "directly or indirectly" and eliminate the restrictions applying to influence on a decision in a judicial or administrative case.

- It is recommended that consideration should be given to adopting legislation on bribery in the private sector.
- It is recommended that Peru should amend its legislation with regard to the acquisition, possession or use of property in such a way that it does not contain the additional requirement that the person concerned should act “with the intention of avoiding the identification of its origin, seizure or confiscation”.
- It is recommended that consideration should be given to regulating association or conspiracy to commit the offence of laundering the proceeds of crime.
- It is recommended that Peru should ensure that cases of money-laundering in which the predicate offence has been committed outside the country are covered by legislation; should the judiciary not interpret the law accordingly in future cases, legislative clarification may be considered.
- Peru is urged to provide the Secretary-General of the United Nations with a copy of its legislation on money-laundering.
- The criminal category of “concealment” provides that close relationships constitute grounds for exemption from punishment; it is recommended that consideration should be given to abolishing this for offences against the public administration.
- It is recommended that consideration should be given to criminalizing the preparation of an offence.
- It is recommended that the lifting of immunities and legal prerogatives should be monitored and that the relevant statistics should be collected in the case of corruption offences.
- It is recommended that provision should be made for the confiscation and seizure of instrumentalities “destined for use”.
- It is recommended that provision should be made for confiscation and seizure in cases where the proceeds of crime have been transformed or converted, in part or in full, into other property.
- It is recommended that provision should be made for confiscation up to the estimated value of the proceeds of crime, where such proceeds have been intermingled with property acquired from legitimate sources.
- It is recognized that there are provisions governing some of the situations set out in article 31, paragraph 6, of the Convention, but it is recommended that the law should be amended to take account of all the possible situations in that paragraph.
- Peru is encouraged to consider the possibility of entering into agreements on the relocation of witnesses and victims to another State.
- It is recommended that consideration should be given to extending employment protection to reporting persons who work outside the public administration.
- Peru is encouraged to enter into agreements or arrangements with other States on granting advantages to persons cooperating with the justice system, when

they are located in one State party and can provide cooperation in another State party.

- Peru is encouraged to establish proactive mechanisms for collaboration between law enforcement bodies and private sector entities, in particular the financial sector.
- Peru is encouraged to consider adopting provisions to take account of any previous conviction in another State.
- It is recommended that consideration should be given to establishing jurisdiction over the principle of active and passive personality and over acts preparatory to money-laundering and offences committed against the State party (art. 42, para. 2).
- Peru is encouraged to consult other States and/or establish mechanisms for consultation with a view to coordinating measures in cases where a State party exercising its jurisdiction has been made aware that other States parties are conducting an investigation, prosecution or judicial proceedings (art. 42, para. 5).

2.4. Technical assistance needs identified to improve implementation of the Convention

Peru requires technical assistance in the following areas:

- Creation of a unified system for the collection of consolidated and disaggregated statistics.
- Article 16, paragraph 2: summary of good practices and lessons learned; cases and investigative techniques in other countries.
- Article 21: summary of good practices and lessons learned; model legislation; development of draft legislation; legal support.
- Article 22: summary of good practices and lessons learned; model legislation; development of draft legislation; legal support.
- Article 26: summary of good practices and lessons learned; model legislation; development of draft legislation; legal support.
- Article 32, paragraph 3: summary of good practices and lessons learned; model legislation; development of draft legislation; legal support; capacity-building programmes for the authorities responsible for setting up and managing protection programmes for witnesses and experts.
- Article 37, paragraph 3: summary of good practices and lessons learned; legal support; development of legislation.
- Article 37, paragraph 5: summary of good practices and lessons learned; model agreements or arrangements; legal support.
- Article 38: summary of good practices and lessons learned; legal support.

3. Chapter IV: International cooperation

3.1. Observations on the implementation of the articles under review

*Extradition; transfer of sentenced persons; transfer of criminal proceedings
(arts. 44, 45 and 47)*

Peru may use the Convention, as well as the 16 bilateral treaties and two regional treaties to which it is a party, as a legal basis for extradition. Peru also cooperates on extradition, in the absence of a treaty, on the basis of the principle of reciprocity. Within domestic legislation, extradition is provided for in the Code of Criminal Procedure (arts. 513-527).

Notwithstanding other requirements in bilateral treaties, Peru permits extradition only where there is dual criminality and a minimum sentence of one year's deprivation of freedom; all the offences set out in the Convention carry such a minimum penalty. If extradition is requested for a number of different offences, only one of them need be extraditable in order to allow extradition for all of them to proceed.

The Peruvian State permits the extradition of its nationals on the basis of the principle of reciprocity. In cases where Peru does not extradite its national owing to a failure of reciprocation, it institutes proceedings in its own courts, upon application by the requesting State.

Detention prior to extradition is permitted. The normal time for processing a passive extradition request is approximately six months. There is a simplified procedure, which is subject to the free and expressed consent of a person to be extradited, and this takes about three months. There is, however, no emergency procedure.

The Attorney General's Office has played an extremely proactive role and communicates directly, on an informal basis, with the relevant institutions. It also provides documents by the fastest means possible (facsimile or electronic mail). The Red Notice system of the International Criminal Police Organization (INTERPOL) is also operational in Peru, so, on that basis, a person wanted by another State may be detained and brought before the competent criminal court.

The Peruvian extradition system involves a combination of procedures. First, the Criminal Division of the Supreme Court issues an advisory decision. No appeal is permitted, but application may be lodged for a remedy. The final decision on an extradition order is then made by the executive. The requesting State is permitted to participate in hearings.

Extradition is prohibited where there is a risk of discrimination on the grounds of race, religion, ethnicity or political opinion.

Peru has concluded a number of treaties on the transfer of sentenced persons. The transfer of such persons is also possible on the basis of the principle of reciprocity. However, no requests for the transfer of persons sentenced for offences contained in the Convention have yet been submitted.

Peruvian legislation does not provide for the transfer of criminal proceedings. The Convention may, however, be applied directly.

Mutual legal assistance (art. 46)

Peru considers that the Convention, along with 19 bilateral treaties and two regional treaties, constitutes a legal basis for assistance, assistance is also provided on the basis of the principle of reciprocity. Within domestic legislation, mutual legal assistance is provided for under the Code of Criminal Procedure (arts. 511, 512 and 528-537).

Peru requests or provides assistance with investigations and legal proceedings only in respect of offences that carry a penalty exceeding one year (art. 528, para. 2). These include all the offences established in accordance with the Convention.

Although there is no specific legislation in this regard, Peru may provide information voluntarily on the basis of the direct application of the Convention.

Dual criminality is not required for mutual legal assistance, except in respect of requests for assistance relating to measures that restrict rights, such as the seizure of property.

The central authority is the Attorney General's Office. Requests are conveyed direct, through the diplomatic channel or, in urgent cases, through INTERPOL; in the latter case, a formal request must subsequently be made. Requests should be submitted in Spanish and in writing. The Office has adopted an extremely proactive role to expedite matters. A requesting State may amend or add to its request. Meanwhile, Peru may extend one-off assistance based on investigations or provisional measures. Peru has not notified the Secretary-General of the designation of its central authority or the acceptable language.

The grounds for refusing assistance are in conformity with the Convention. A request referring exclusively to a taxation offence constitutes grounds for refusal, with the exception of cases involving an intentionally false statement or intentional omission. It is therefore virtually impossible for a corruption offence that also involves taxation questions to come under these grounds for refusal. It is not permissible to refuse assistance on the grounds of bank secrecy.

Peruvian legislation permits the transfer of a person sentenced to deprivation of liberty to the territory of another State party for the purposes of identification, testimony or any other form of assistance. It also permits the use of videoconferencing for the same purpose.

Peruvian legislation does not contain provisions relating to the costs arising from compliance with a request for mutual legal assistance.

Law enforcement cooperation; joint investigations; special investigative techniques (arts. 48, 49 and 50)

Peru engages in cooperation through the Hemispheric Information Exchange Network for Mutual Assistance in Criminal Matters and Extradition of the Organization of American States, supported by the Groove computerized system; the Ibero-American Network for International Legal Cooperation (IberRed); and the Asset Recovery Network of the Financial Action Task Force of South America against Money-Laundering. The National Police of Peru also coordinates through INTERPOL, while the Financial Intelligence Unit is a member of the Egmont Group of Financial Intelligence Units.

The Peruvian authorities have entered into agreements on law enforcement cooperation and may provide or accept such cooperation on the basis of the Convention.

Peru has not entered into agreements on joint investigations and there is no legislation on the subject.

The Peruvian legal system has established special investigative techniques, such as controlled deliveries and video surveillance (in some corruption cases, subject to certain conditions) and covert operations (in cases of organized crime). A bilateral protocol of inter-agency cooperation has been signed in that regard.

3.2. Successes and good practices

Overall, the following points are regarded as successes and good practices in the framework of implementing chapter IV of the Convention:

- The Attorney General's Office has played an extremely proactive role as regards both extradition and mutual legal assistance and communicates directly on an informal basis with the relevant institutions for coordination at both national and international level.
- The INTERPOL Red Notice system is operational in Peru and, on that basis, a person wanted by another State may be detained and brought before the competent criminal court.
- A State requesting extradition is permitted to participate in the proceedings.
- A requesting State may amend or add to a request for mutual legal assistance. While additional information is awaited, Peru may provide one-off acts of assistance in investigations or provisional measures.

3.3. Challenges in implementation

The following points could serve as a framework to strengthen and consolidate the actions taken by Peru to combat corruption:

- Although it is recognized that all corruption offences fall into the category of having a minimum penalty of one year's imprisonment, as required under domestic legislation, it is suggested that bilateral extradition treaties should be reviewed in order to ensure that all corruption offences are extraditable.
- Peru is encouraged to use the Convention as a legal basis where bilateral treaties set stricter requirements than the Convention for extradition.
- It is recommended that Peru should consider the possibility of establishing a simplified procedure for extradition in urgent cases.
- It is recommended that Peru should continue to assess options for expediting the extradition procedure and building the capacities of the relevant institutions.
- It is recommended that Peru should consider introducing a right of appeal in extradition cases.
- Although extradition is prohibited where there is a risk of discrimination on the grounds of race, religion, ethnicity or political opinion, the law does not

provide for the criterion of sex and Peru is recommended to consider rectifying this.

- Although there is a practice of holding consultations before an extradition request is refused, Peru is recommended to monitor the implementation of this practice and, where necessary, amend its legislation accordingly.
- Peru is encouraged to introduce into its legislation specific regulations permitting the voluntary provision of information.
- Peru is encouraged to consider adopting such measures as may be necessary to enable it to provide a wider scope of assistance in the absence of dual criminality.
- Peru is urged to notify the Secretary-General of the designation of its central authority and the acceptable language for requests for mutual legal assistance.
- Peru is recommended to continue its efforts to observe time limits for mutual assistance and, where necessary, amend its legislation accordingly.
- Peru is encouraged to consider adopting regulations relating to liability for the costs involved in mutual legal assistance.
- It is suggested that Peru should consider transferring criminal proceedings for an offence established in accordance with the Convention.
- Peru is encouraged to continue negotiating agreements on law enforcement cooperation and engaging in cooperation on the basis of the Convention and to ensure that its legislation allows it to engage in all forms of cooperation.
- Peru is encouraged to enter into agreements on joint investigations.
- Peru is encouraged to amend its legislation in order that special investigative techniques may be applied also to corruption offences.

3.4. Technical assistance needs identified to improve implementation of the Convention

Peru requests technical assistance in the following areas:

- Article 46, paragraphs 7, 24, 26 and 28: summary of good practices/lessons learned; legal support; capacity-building programmes for authorities responsible for international cooperation in criminal matters.
- Article 47: summary of good practices/lessons learned; legal support; capacity-building programmes for authorities responsible for international cooperation in criminal matters.
- Article 48, paragraph 1: summary of good practices/lessons learned; technical assistance, for example with the establishment and management of databases or information exchange systems.
- Article 48, paragraphs 2 and 3: summary of good practices/lessons learned; model agreements or arrangements; capacity-building programmes for authorities responsible for cross-border cooperation on law enforcement.
- Article 49: summary of good practices/lessons learned; model agreements or arrangements.