2020 JOINT CONFERENCE
DIGITAL CROSS BORDER COOPERATION IN CRIMINAL JUSTICE
ACCESS TO E-EVIDENCE
Case life-cycle

INVESTIGATION

ACTION

INDICTMENT & ASSESSMENT OF CHARGES

PROSECUTION & TRIAL

POLICE

INVESTIGATIVE JUDGES

PROSECUTORS

COURTS

SENTENCING

ACQUITTAL

CONFISCATION OF ILLICIT ASSETS

COMPENSATION OF VICTIMS

Criminal justice across borders
Admissibility of evidence

- National legal frameworks set the standards
  - Also for voluntary direct cooperation with ISPs
  - Based on respect to international cooperation mechanisms

- Traditional rules need to be adapted to digital environment
  - Preservation of evidence
  - Role of forensic labs
  - Secure transmission
  - Authenticity and integrity of the evidence

- **ALWAYS** under judicial control
Selecting the right tool

- Bilateral Treaties
- Multilateral Treaties
  - UN, OAS, etc
  - Council of Europe
    - 1959 Convention
      - 2nd Additional Protocol
    - Budapest Convention
      - (2nd Additional protocol)
- EU instruments (Treaties or legislation)
  - Convention 2000
  - Mutual Recognition Instruments: European Investigation Order
  - Future: European Preservation and Production Orders???
EIO Compatibility option (art 34.3)

Even in cases where an EIO would be applicable, existing or future bilateral or multilateral agreements or arrangements could be used instead of the EIO, if the alternative instrument:

– Is not one of the Conventions and Protocols replaced under article 34.1, AND

– Complies with all three of the following conditions:
  • further strengthens the aims of the EIO Directive,
  • simplifies or further facilitates the procedures for gathering evidence, and
  • respects the level of safeguards set out in the Directive.
Bi- and Multi-lateral Treaties

Council of Europe

European Judicial Instruments

E-MLA (Interpol)
E-CODEX (Commission)
SIRIUS (Europol and Eurojust)
Criminal justice across borders

Judicial Cross-border gathering of e-evidence

1. Mutual Legal Assistance / European Investigation Order
2. Cooperation in parallel proceedings + Spontaneous exchange of information
3. Joint Investigation Teams (JITs)
4. Direct cross-border powers

Cooperation
Rules for any evidence gathering tool

- IS BASED ON APPLICABLE LEGAL FRAMEWORK
  - Multiplicity of instruments
  - Direct communication between judicial authorities

- INCLUDES ALL RELEVANT ACTORS
  - Issuing and executing authorities
  - Relevant EU Agencies (Eurojust)
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