THE EUROPEAN JUDICIAL NETWORK’S EXPERIENCE WITH ELECTRONIC EVIDENCE – FUTURE STEPS

January 2020 - Brussels
The European Judicial Network

Connecting Justice since 1998

Purpose: facilitate international cooperation

- Connects experts in judicial cooperation and trains practitioners
- More than 400 Contact Points (also linking national networks) part of the Ministries of Justice, Prosecution Offices and judiciary
- Provides legal and practical information online opened to all practitioners:

www.ejn-crimjust.europa.eu
More than 14,000 cases reported
2017-2018
Reported activities involving non-EU countries (2017-2018)
Preparing practitioners: EJN steps

Due to the increase of cases involving e-Evidence and developments in the area the EJN has been progressively taking action to prepare EU practitioners:

- 2014 – Appointment of an EJN Contact Point for the United States/At USA request presentation under the Italian Presidency to raise awareness
- 2016 – Presentation made by Ken Harris during the SK Presidency
- 2017 – Training for the EJN Contact Points covering cooperation issues (probable cause!), including electronic evidence/ nomination of CPs at the DoJ Cyber Team
- 2018 – EJN Working Group on Electronic Evidence: Provide feedback to the EU Institutions and organised training supported by EJCN member
- 2018 – Contributing with the Europol SIRIUS Project
- 2019 – Finnish Presidency dedicated to discuss e-Evidence: US DoJ support and discussed results at the UNCTED seminar
EJN Working Group on e-Evidence: the questionnaire to the EJN

- 77 responses
  - 24 Member States, Candidate and Associate countries
    - Including joint EJN-EJCN replies and EJCN participation
- Presented and discussed the results during the EUROPOL Sirius Conference and 53rd Plenary Meeting of the EJN
- Provided the judicial perspective to the Situation Report under the SIRIUS/EUROPOL project

- Percentage of cases involved
  - Great disparity in answers
  - Overall: over 50% of investigations
Type of data most frequently requested

- Traffic data: 30 (41%)
- Content data: 29 (40%)
- Subscriber info: 13 (18%)
- N/A: 1 (1%)
Type of crime that required e-evidence

*It has been identified by the EJN that electronic evidence is mostly required for the investigation of different forms of serious crime:*

- **Fraud (online and offline)** - most frequent!
- Illegal content (including sexual abuse of minors and child pornography)
- Laundering of the proceeds of crime
- **Terrorism**
- Illicit trafficking of drugs
- Attacks against the information systems
Main identified issues: Requests within the EU

Lack of timely response in urgent cases (24%)
Difficulty in identifying the set of data that could be requested (16.7%)
Application of different standards depending on the company/type of crime involved (26%)
Data retention periods are usually too short (40%)
Lack of knowledge of the data retention periods (32%)
Length of the procedure
(both MLA 40% and EIO 20%)
Direct communication with the Service provides ➔ Not always the answer:

Admissibility of evidence gathered by voluntary cooperation. Some EU countries not always admit this procedure: Bulgaria; Croatia; Hungary; Ireland; Latvia; Netherlands (EJN Associated countries: Switzerland)
Most requested Service providers

Most requested
Facebook, Google and Microsoft

Additional companies
Twitter, WhatsApp, Instagram, Snapchat, Viber, Apple, Cherry Servers, Blackberry Messenger, ProtonMail, OVH, AOL and Yahoo

Also financial entities and telecommunication companies
Hungary, Slovenia and UK
Most common issues with Service providers

- Data retention periods are usually too short;
- Lack of timely response for urgent cases;
- Companies have very different processes/standards;
- Usually provide partial answers to the requests; and
- Difficulties in identifying how and where to send the request
Identified issues: Requests to the US
(Respondents could choose up to 3 options)

<table>
<thead>
<tr>
<th>Percentage</th>
<th>Description</th>
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<tbody>
<tr>
<td>53.3%</td>
<td>Length of the procedure. The MLA takes too long.</td>
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<tr>
<td>38.7%</td>
<td>Difficulties in drafting the MLA requests including probable cause</td>
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<tr>
<td>26.7%</td>
<td>Interpretation of a violation of Freedom of speech/expression</td>
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<tr>
<td>24.0%</td>
<td>Data retention periods are usually too short</td>
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<tr>
<td>20.0%</td>
<td>Lack of mutual trust by the USA authorities</td>
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<tr>
<td>17.3%</td>
<td>Difficulty in identifying set of data could be requested</td>
</tr>
<tr>
<td>17.3%</td>
<td>Application of different standards depending on the company or type of crime.</td>
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<tr>
<td>12.0%</td>
<td>Replies are often partial</td>
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<tr>
<td>16%</td>
<td>Other</td>
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Заглавие на диаграмата
Identified needs for practitioners in the Member States

- **Support the dialogue with the US authorities** and the dissemination of the information on electronic evidence – SIRIUS Platform/UN Practical Guide
- Continue the **training of EJN Contact Points** (as consulted by their colleagues) and practitioners
- **Populate the EJN website** with the necessary information on the processes and legislation of the EU Member States
- Provide **feedback to the EU Institutions/national authorities** to improve the current procedures for gathering electronic evidence
EJN next steps

Identify areas where EJN could support domestic authorities to facilitate the requests of e-Evidence:

- Create the layout/content requirements for new e-Evidence “fiches” in the Fiches Belges. (EJN Decision/Council Conclusions)
- Support EJN Secure Connection and the development of the EU Digital Platform for Exchange of requests – (also e-MLA project by InterPol and other initiatives)
- Continue supporting the SIRIUS Project
- As per the Directive: A full list of legal representatives shall be made publicly available to ensure easy access by law enforcement authorities, mainly but not only, via the European Judicial Network on criminal matters
- Provide a statement with regards of the COM e-evidence package and the positive impact it would have for the EU investigations
- Complete the role of the EJN to support practitioners on the Regulation – together with Eurojust and EJCN
Thank you for your attention!

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