

JUSTICE PROGRAMME (2014-2020)

JUST-JCOO-CRIM-AG-2016

**Action Grants to Support Transnational Projects to
Promote Judicial Cooperation in Criminal Matters**

Grant Agreement No. 766468

EVIDENCE2E-CODEX

**Linking EVIDENCE into e-CODEX for EIO
and MLA procedures in Europe**

Report on EIO and MLA

Deliverable D2.2

The contents of this deliverable are the sole responsibility of the authors and can in no way be taken to reflect the views of the European Commission.



Executive Summary

The EVIDENCE2e-CODEX project aims at pre-piloting the EVIDENCE¹ proposal and achievements together with e-CODEX for the specific purposes of allowing the secure and trusted exchange of digital evidence among EU Member States in the European Investigation Order and Mutual Legal Assistance context. One of the building blocks of the project is understanding the status of implementation of Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters.

Work Package 2 (WP2) of the EVIDENCE2e-CODEX project is dedicated to understanding the legal context on the implementation of European Investigation Order (in Deliverable D2.1 'Report on the implementation of EIO'), of Mutual Legal Assistance procedures (in Deliverable D2.2 'Report on EIO and MLA') and on data protection issues (in Deliverable D2.3 'Report on data protection and other fundamental rights issues'). WP2 on discusses the 'legal issues' presented by European Investigation Orders and their transposition in Member States (hereinafter 'MS') analyses the legal and operational measures required to "establish successful execution of EIO between Member States".² It also analyses how European Investigation Order and Mutual Legal Assistance procedures with regard to electronic evidence, particularly from third countries interact, as well as the measures which need to be put in place to improve these processes.

This Deliverable, D2.2 'Report on the EIO and MLA' (hereinafter 'Deliverable D2.2') compares the implementation of the European Investigation Order (hereinafter 'EIO') against that of Mutual Legal Assistance (hereinafter 'MLA'). The report examines "how EIO and mutual legal assistance (MLA) procedures (especially in the context of requests for evidence from third countries) interact".³ The aim of the report is to examine the degree to which MLA instruments have been substituted by the EIO; the operational differences in implementing each instrument (the sending and receiving authorities, means and platform of submission and the simultaneous use of forms); and finally to analyse the degree

¹ EVIDENCE – European Informatics Data Exchange Framework for Court and Evidence Project (2014-2016), Grant Agreement No. 608185.

² EVIDENCE2e-CODEX Linking EVIDENCE into e-CODEX for EIO and MLA procedures in Europe (2018-2020), Grant Agreement No. 766468, WP2 Description.

³ Ibid.



and pattern of harmonization of both instruments, particularly whether EIO processes and practices assisted in streamlining and facilitating MLA procedures.

The findings of Deliverable D2.2 are based primarily on the questionnaire submissions of EVIDENCE2e-CODEX joint questionnaire on the implementation of the Directive 2014/21/EU (hereinafter 'the questionnaire') and secondarily on academic and grey literature. The questionnaire was launched in June 2018 and the last input was obtained in January 2019. It was accessed by a total number of 96 persons., while the final number of submissions was 31 responses from a total of 16 implementing MSs (Austria, Belgium, Bulgaria, Croatia, Czech Republic, Estonia, France, Germany, Greece, Luxembourg, Lithuania, Italy, Netherlands, Portugal, Spain, Sweden) and 1 non-implementing MS (Denmark). The 31 responses come from public prosecutors (7), judges (9), technical experts (3), administrative staff (8) and others (namely researchers) (4).

The main findings of this report reveal that the EIO regime is not always seen as improvement from its MLA counterpart due to criticisms relating to its inflexibility, time consuming bureaucratic procedures and rigid form. It also reveals that there are non-formal harmonisation efforts of both instruments in a few MS, but not the majority. The secure transmission of requests also remains to be an issue.

The deliverable is structured as follows:

- Brief introduction to the status quo of the EIO and MLA relationship;
- The methodology used throughout the report;
- Grouped analyses and conclusions of the EIO and MLA interaction;
- Country reports on EIO and MLA interaction;
- Conclusions and recommendations.

