

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 data protection and other fundamental
rights issues**

Deliverable D2.3

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

Deliverable D2.3 'Report on data protection and other fundamental rights issues' (Deliverable D2.3) examines how data protection implications in European Investigation Orders (EIOs) and Mutual Legal Assistance (MLA) procedures are being handled. The report highlights recent legislative developments in the EU, in particular the 2018 proposal for a Regulation on European Production and Preservation Orders for electronic evidence in criminal matters, and the potential implications of the Regulation on current electronic evidence exchange procedures. The report goes on to identify the legal and operational measures which need to be put in place to ensure adequate respect to data protection rights, with particular reference to instances of electronic evidence transfer. Moreover, the report also examines the other fundamental rights, which are both directly and implicitly referred to in the Directive 2014/41/EU¹ ('the EIO Directive'), and how they are being handled in other EU (European Union) Member States.

This report first introduces both data protection and evidence exchange legislation and explains its necessity in the international law enforcement setting. To further provide context to the current data protection and law enforcement environment, this report examines recent legal developments in the area. In accordance with the objective of Deliverable D2.3, both EIO and MLA procedures are analysed in detail in conjunction with data protection law and the operational practices of the competent authorities. Directive 2016/680 provides the data protection legal and operational measures which need to be taken concerning the international electronic evidence exchange of personal data for crime investigation purposes and for legal and operational measures in general. This report subsequently highlights the necessary measures which need to be taken by the various relevant entities partaking in the evidence exchange process. Emphasis on data protection compliance is reinforced by the observation of the core and fundamental principles of data protection conjoined with the respecting the roles and responsibilities of the different actors, as well as the particular respect to security measures which need to be taken with electronic exchanges. Additionally, acknowledgement is made between both the distinctions and commonalities of EIO and MLA procedures

¹ Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters, OJ L 130, 1.5.2014, p. 1–36.



and the following measures which need to be put in place to ensure data protection compliance.

The overall aim of Deliverable D2.3 is to provide a report on data protection and fundamental rights in relation to EIO and MLA procedures. In achieving its aim, this report provides background as to the data protection and law enforcement legislation on evidence exchange, and significantly, this report provides the necessary guidelines as to the data protection measures which need to be taken by the various parties in the exchange of electronic evidence. In providing this guidance, this report assists in delivering 'ready to use' information on data protection and digital evidence exchange as set out in the description of action.

Furthermore, Deliverable D2.3 supplements and builds upon both Deliverables D2.1 'Report on implementation of EIO' and D2.2 'Report on EIO and MLA', as Deliverable D2.1 describes how Directive 2014/41/EU has been transposed by EU Member States, and Deliverable D2.2 provides information on the operational measures required for the successful execution of EIOs between Member States. Deliverable D2.3 consequently provides specific details on and takes a broader, yet crucial role in adding to the corresponding deliverables in providing for the legal and operational parameters in both data protection law and other fundamental rights.

The final part of the report examines where fundamental rights, other than the right to the protection of personal data, are directly or implicitly referred to in the EIO Directive, and how they are being handled in a selection of different Member States.

