

EVIDENCE2e-CODEX

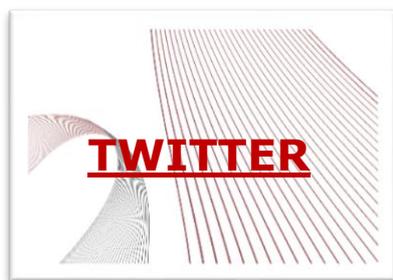
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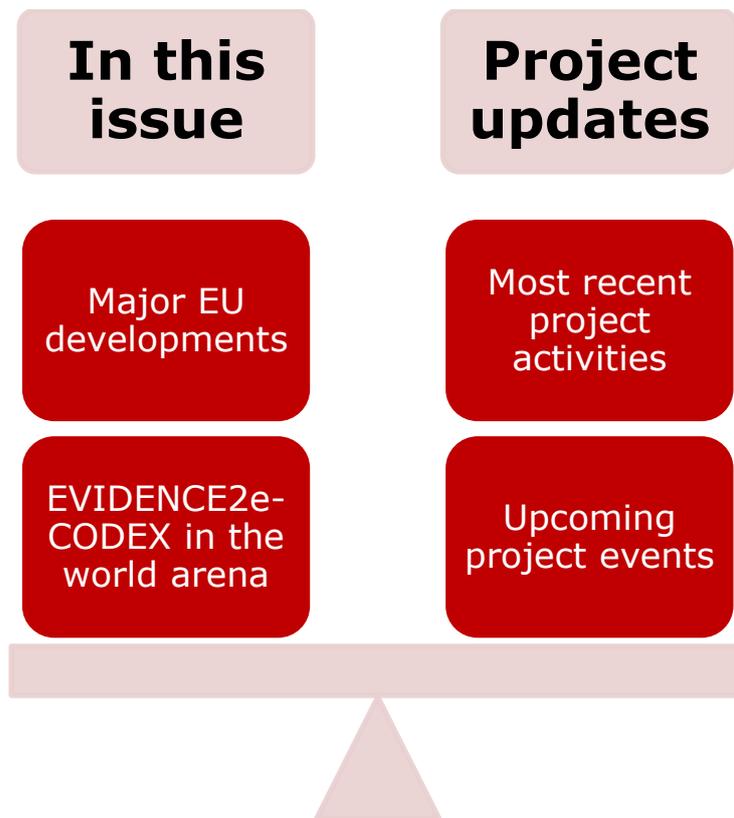
15 May 2019 – 14 August 2019

The May – August 2019 period allowed us to reflect on the achieved so far, further discuss our findings with both legal and technical communities, and to advance further with the development of the EVIDENCE2e-CODEX tools. The fourth Consortium Meeting at the beginning of July proved us how far we have gone and set up the goals towards the final project stage. Check out the sixth Newsletter edition to review our latest progress!

Dr. Maria Angela Biasiotti, CNR-ISGS, Italy

EVIDENCE2e-CODEX Project Coordinator





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Major EU Developments

CJEU Ruling Casts Doubts on the Legality of the Proposed e-Evidence Regulation

Source: [CCBE](#)

On 27 May, the Court of Justice of the European Union (CJEU) issued an important ruling concerning the European Arrest Warrant and the extent to which public prosecutors' offices can be considered 'issuing judicial authorities' for the purpose of cross-border judicial cooperation (see this [Press Release](#)). According to the CJEU, "the concept of an 'issuing judicial authority' must be interpreted as including the Prosecutor General of a Member State who, whilst institutionally independent from the judiciary, is responsible for the conduct of criminal prosecutions and whose legal position, in that Member State, affords him a guarantee of independence from the executive in connection with the issuing of a European arrest warrant."

According to the Court, "[t]hat independence requires that there are statutory rules and an institutional framework capable of guaranteeing that the issuing judicial authority is not exposed, when adopting a decision to issue such an arrest warrant, to any risk of being subject, inter alia, to an instruction in a specific case from the executive."

This ruling is also of importance in the context of the [proposal for a Regulation on European Production and Preservation Orders for e-evidence in criminal matters](#). That proposal also involves the cross-border issuing by prosecutors of European production and preservation orders for e-evidence. In line with the CJEU's ruling, such orders could not be issued by a public prosecutor's office in a Member State, such as in Germany, where the prosecutor concerned is exposed to the risk of being subject, directly or indirectly, to directions or instructions in a specific case from the executive, such as a Minister for Justice.

In these circumstances, the ruling casts further doubts on the legality of the proposal on e-evidence since it underlines that prosecutors cannot always be considered judicial authorities for the purpose of judicial cooperation as set out in Article 82(1) of the Treaty on the Functioning of the European Union (TFEU).

In its [position paper](#) on the e-evidence proposal, the CCBE – a partner in the EVIDENCE2e-CODEX Project, has already questioned the legal basis of the proposal, on the ground that the principle of mutual recognition referred to in



Article 82 TFEU is usually understood to be reserved for cooperation between judicial authorities only. The envisaged proposal, however, does not involve the police or judicial authorities of the Member State in which is situated the undertaking in receipt of the request. Instead, it enables judicial authorities in one Member State to order the production of electronic evidence to private entities in another jurisdiction.

Where the issuing authority in a Member State is a public prosecutor not possessing the independence required by the present ruling, it renders the legal basis of the proposal even more questionable.

Council Gives Mandate to Commission to Negotiate International Agreements on e-Evidence in Criminal Matters

Source: [Council of the European Union](#)

On 6 June 2019, the Council of the European Union adopted two mandates authorising the Commission to negotiate on behalf of EU an agreement with the US facilitating access to e-evidence for the purpose of judicial cooperation in criminal matters and to participate in the negotiations in the Council of Europe on a second additional protocol to the Cybercrime Convention, respectively.

Both would aim to facilitate the access to e-evidence, such as e-mails or documents located on the Cloud, to be used in criminal proceedings. If later concluded, they will complement the EU framework on access to e-evidence currently being discussed by the EU institutions and on which the Council has adopted its position in December 2018 and March 2019.

As part of the negotiating mandates, the Council emphasised the need for the agreements to be compatible with the EU legislation on access to e-evidence currently being discussed. The Council also underlined its wish to be closely involved in the preparation and conduct of these negotiations.

Background

EU-US agreement on facilitating access to e-evidence. The conclusion of an EU-US agreement would put in place a framework of cooperation with the US, including for direct cooperation with services providers. This would ensure timely access to e-evidence by shortening the time period for supplying the requested data to 10 days while it currently takes on average 10 months. It would also ensure strong safeguards for the protection of fundamental rights.



Second additional protocol to the Budapest Convention. In September 2017, the Council of Europe undertook to prepare a second additional protocol to the Budapest Convention on Cybercrime. The objective of the protocol is to lay down provisions for a more effective and simplified mutual legal assistance (MLA) regime, allowing direct cooperation with service providers in other state parties to the Convention and for searches to be extended across borders. It is to be equipped with strong safeguards and data protection requirements. The advantage of such an agreement is its potential to be of application across the globe. Currently, 63 countries are party to the Convention, including 26 member states.

Next steps

The Commission is expected to start negotiations with the US authorities shortly. With regards the protocol to the Budapest Convention, the negotiations between all the parties are already ongoing.

Joint Note of EUROJUST and the European Judicial Network on the Practical Application of the European Investigation Order

Source: [EUROJUST](#)

In June 2019, Eurojust and the European Judicial Network published a [Joint Note on the practical application of the European Investigation Order](#).

The objective of this document is to provide guidance to practitioners on the practical application of Directive 2014/41/EU of 3 April 2014 regarding the European Investigation Order (EIO) in criminal matters ('EIO DIR'). It is a compilation of information, highlighting issues/challenges, possible solutions and best practice, as gathered by Eurojust and the European Judicial Network (EJN) from meetings, documents and casework.

This Joint Note addresses identified issues related to the four main phases of the lifecycle of an EIO (the issuing phase, the transmission phase, the recognition phase and the execution phase), as well as issues related to the scope of the EIO DIR and its use vis-à-vis other co-existing legal instruments, the competent authorities, the content, form and language of the EIO and the use of some specific investigative measures.

This Joint Note is considered a living document, and Eurojust and the EJN intend to continue to update it in the future.



CASE: The International Standard for Sharing Cyber-investigation Traces

Cyber-investigation Analysis Standard Expression (CASE) is a community-developed evolving standard, which is intended to serve the needs of the broadest possible range of cyber-investigation domains, including digital forensic science, incident response, counter-terrorism, criminal justice, forensic intelligence and situational awareness. For large data files such as forensic duplicates of hard drives or collected network traffic, CASE references rather than stores the large file and describes how to extract specific information. The primary motivation for CASE is interoperability - to advance the exchange of cyber-investigation information between tools and organizations. CASE aligns with and extends the Unified Cyber Ontology (UCO).

The EVIDENCE2eCODEX Project is working on transferring information (electronic evidence) in CASE format between European countries over the secure e-CODEX infrastructure and is one of CASE's first implementation examples.

More information on CASE can be found on the newly developed [CASE Community](#) website.

EVIDENCE2e-CODEX in the World Arena

The projects achievements of both legal and technical nature found their way to the EVIDENCE2e-CODEX stakeholders via a series of public events in EU and US:

< e-Justice – Challenges and Opportunities in the Digital Era, 20-21 May 2019, Bucharest, Romania

The conference addressed IT specialists, practitioners and decision-makers within the judicial systems and proposed to provide a forum to discuss the importance of using new technologies in the field of justice (e.g. artificial intelligence, blockchain, process automation, etc.), while aiming at encouraging participants to reflect both on the opportunities and the challenges posed by the rapid pace of technological progress as well as on



the philosophical and ethical aspects generated by the implementation of such instruments in the field of justice.

At the opening of the session, Mr. Ion Popa, Secretary of State at the Ministry of Justice emphasized that *“the continuous development and improvement of the informatic tools which are at the disposal of the judges and the justice are a sine-qua-non condition of the evolution of a judicial system. Furthermore, in our situation of the Member States, we consider that we must pay particular attention to facilitating European cross-border cooperation with the technology”*.

The continuation of the commitments of the last decade, redeemed – concretely – by the projects foreseen in the Strategy and the Action Plan, proves, on one hand, that the e-Justice of Europe works both for the benefit of the citizens and for the benefit of the actors/professionals involved in the judicial procedures, improving access to justice and enhancing mutual trust between the Member States of the European Union, on the other.



The focus of the conference was to encourage participants to reflect on the opportunities and challenges posed by the rapid pace of technological progress as well as on the philosophical and ethical aspects of the implementation of such instruments in the field of justice. EVIDENCE2e-CODEX, represented by Alexandra Tsvetkova (LIBRe Foundation, Bulgaria), took part in a session dedicated to the European technological framework on exchange of electronic evidence together with representatives of the e-CODEX Platform and DG Justice and Consumers.

More information on the basic scenario for exchange of evidence that EVIDENCE2e-CODEX is working on is presented in [the last project event's brief](#).



< Forensic Expert Forum 2019, 28-29 May 2019, The Hague, the Netherlands

The event involved digital forensic experts from law enforcement and international organizations and was dedicated to discussing potential solutions available in various forensic fields.

This forum is a strong supporter of the CASE language as evident from [last year's post-meeting statement](#). Following the progress of the EVIDENCE2e-CODEX project in using CASE, EUROPOL invited the project's technical leaders to share their views on the standardization process in the forensics field and the most recent project developments.

Fabrizio Turchi (CNR-IGSG, Italy) and Nikolaos Matskanis (CETIC, Belgium) presented the Evidence Exchange Standard Package Application developed under the project, the Evidence Package based on a CASE-enabled description and the scenarios for handling large files of evidence. Since forensic tools don't support CASE yet, the process for converting the forensic tools' outputs in UCO/CASE standard used by EVIDENCE2e-CODEX was discussed in detail.

< CASE Specification Workshop, 25-27 June 2019, Rockville, MD 20850, United States

Following the launch of the [CASE Community](#) website, a special CASE Specification Workshop was held on 25-27 June 2019 in Rockville, MD 20850, United States. The three-day event was dedicated to:

- clarifying the differences between an ontology and data model, examine illustrative examples of CASE/UCO from both an ontology viewpoint and an operational perspective.
- defining conceptual deliverables and supporting documentation and tools for CASE version 1.0;
- defining operational procedures and the use of supporting (online) tools.

Another specific goal of the workshop is to collect milestones for the road map to version 1.0. By the end of the workshop, it would be decided whether CASE needs to be a formal ontology covering multiple domains or simply a common data model for cyber-investigations. Validation of the current concepts and know how to advance to version 1.0, both methodically and operationally, is also envisaged.



The EVIDENCE2eCODEX Project is working on transferring information (electronic evidence) in CASE format between European countries over the secure e-CODEX infrastructure and is one of CASE's first implementation examples. The project technical team presented the **lessons learned** from their **ontology efforts** in both EVIDENCE (2014-2016) and EVIDENCE2e-CODEX (2018-2020) projects.

Most Recent Project Activities

EVIDENCE2e-CODEX's Duration Extended to Feb 2020

On 27 June 2019 the implementation of the EVIDENCE2e-CODEX was officially extended to 14 February 2020. This change will allow us to better align our activities to the results with the „Electronic Xchange of e-Evidences with e-CODEX“ (EXEC) Project and the work done by DG Justice and Consumers with respect to the e-Evidence Digital Exchange System.

In addition, the three projects are currently planning a joint conference on judicial cooperation in the criminal field to take place in January 2020.

EVIDENCE2e-CODEX Fourth Consortium Meeting

The fourth consortium meeting of the “EVIDENCE2e-CODEX Linking EVIDENCE into e-CODEX for EIO and MLA procedures in Europe” Project was held in Florence, Italy, on 30 January 2019 and hosted by the Institute of Legal Informatics and Judicial Systems (CNR-ISGS).

During the meeting, project partners discussed the current state of project implementation and the challenges to be overcome within the last eight months under each work package. Special sessions were dedicated to project public events and liaising with other projects working in the field.





Guests to the meetings were members of the „Electronic Xchange of e-Evidences with e-CODEX“ (EXEC) Project and representatives of EC, DG Justice and Consumers.

A back-to-back EXEC Consortium Meeting held on the next day further confirmed the strong ties between the two projects.

EC Coordination Meeting under the Umbrella of the e-Evidence Digital Exchange System Initiative

In the context of the **e-Evidence Digital Exchange System Initiative** (as part of the e-Evidence Project led by the European Commission), and in relation to the projects co-funded by the European Commission and facilitating the implementation of this trans-European system, DG JUST organized an one-day meeting in the Commission premises to discuss, align and synchronise their activities to enhance the collaboration between all involved stakeholders and benefit from each-others experiences and best practices.

The meeting took place in Brussels on 23 July 2019 and covered, amongst other, the following topics: status overview of each project; best practices sharing; roadmap and planning; and cross-border collaboration.

EVIDENCE2e-CODEX provides for the Evidence Exchange Standard Package Application that integrates the formal language for representing and supporting the electronic evidence exchange process (CASE) in an electronic evidence platform. A significant part of our work is the interactions between the Evidence Exchange Standard Package Application and the Reference Implementation Portal, designed under the e-Evidence project and being the front-end portal of the e-Evidence Digital Exchange System.



EVIDENCE2e-CODEX was represented by Dr. Maria Angela Biasiotti (CNR-ISGS, Italy), EVIDENCE2e-CODEX Project Coordinator,

EVIDENCE2e-CODEX Partners with INSPECTr

EVIDENCE2e-CODEX is closely working with the [‘Intelligence Network & Secure Platform for Evidence Correlation and Transfer’](#) (INSPECTr) Project, which has received funding under H2020's Security Research Agenda.

The INSPECTr Project is to develop a shared intelligent platform and a novel process for gathering, analysing, prioritizing and presenting key data to help in the prediction, detection and management of crime in support of multiple agencies at local, national and international level. This data will originate from the outputs of free and commercial digital forensic tools complemented by online resource gathering.

Using both structured and unstructured data as input, the developed platform will facilitate the ingestion and homogenization of this data with increased levels of automation, allowing for interoperability between outputs from multiple data formats. Various knowledge discovery techniques will allow the investigator to visualize and bookmark important evidential material and export it to an investigative report. In addition to providing basic and advanced (cognitive) cross-correlation analysis with existing case data, this technique will aim to improve knowledge discovery across exhibit analysis within a case, between separate cases and ultimately, between interjurisdictional investigations.

INSPECTr's Work Package 2 is dedicated to the development of a Reference Framework for Standardization of Evidence Representation and Exchange (SERE), building upon the results of EVIDENCE and EVIDENCE2e-CODEX projects and the further development of the CASE language (to be used for SERE) and its application in the Reference Implementation Portal by the EC.

Digital Forensic Tools Catalogue

[EVIDENCE](#) (GA 608185, 2014-2016), being the predecessor of EVIDENCE2e-CODEX, has established an overview of legal frameworks on the use and exchange of electronic evidence, worked on common definitions of the concept of evidence, and identified a technical standard for the exchange of electronic evidence.



In composing the overview of existing standards for handling electronic evidence, a huge number of digital forensics tools have been gathered. Subsequently, this led to the [development of a Digital Forensics Tools Catalogue](#), concerning tools for the acquisitive and analysis phases as described at different levels of details by the ISO/IEC standards.

The [Digital Forensics Tools Catalogue](#) was launched in February 2015, comprising over 1,200 tools. It has been developed ever since and currently provides information on the **most significant digital forensics tools** related to:

- acquisition: 464 tools; and
- analysis: 1045 tools;

with a total number of over 1500 software tools collected so far.

The most recent activities under EVIDENCE2e-CODEX, working closely with EUROJUST and the CASE Community, showed that the Digital Forensics Tools Catalogue remains one of the most important results of the EVIDENCE project series.

Upcoming Project Events

The next six months of the project will bring us two major project events:

- < [Joint Merging Views Workshop](#), 25-26 September 2019, Florence, Italy
- < [EVIDENCE2e-CODEX Final Conference](#), 21-22 January 2020, Brussels, Belgium

Both events will be jointly organized between EVIDENCE2e-CODEX, "Electronic Xchange of e-Evidences with e-CODEX" (EXEC) and the e-Evidence project led by the European Commission.

EVIDENCE2e-CODEX will also present at the 7th Europol-INTERPOL Cybercrime Conference, 9-11 October 2019, the Netherlands.

Stay tuned!

