

Improving criminal justice in cyberspace

Fields marked with * are mandatory.

QUESTIONNAIRE for EU MEMBER STATES following the 9 June 2016 Conclusions of the JHA Council on improving criminal justice in cyberspace

This questionnaire is designed to provide further information to the European Commission Task Force on Cross-border Access to Electronic-Evidence, in order to facilitate swift progress of our work. We would be grateful for receiving your replies by Friday 16 September 2016.

Whereas some of the questions mainly refer to the legal framework, other questions are more related to current (working) practices in your Member State. The diversity in questions may require you to involve multiple organisations, including e.g. your responsible ministry, prosecutors and / or your national or regional police.

We are aware that you receive many questionnaires, including on these issues. Therefore, where you have provided information already under GENVAL or the Council of Europe, please feel free to simply refer us to answers already provided elsewhere. As the picture is not yet complete across Member States we could not altogether avoid certain questions. If you would like to share existing documents or responses to other questionnaires with us, please feel free to upload them here or to email them to us at **home-cybercrime@ec.europa.eu**.

If you prefer to respond to all or parts of the questionnaire in a separate document, you can download a PDF of this questionnaire by clicking on the link to the right and email your response to **home-cybercrime@ec.europa.eu**. You can also contact us at that email address for a Word version.

We very much appreciate your time and efforts and would like to thank you for your participation. Your contribution is a key element in our effort to address the existing problems.

The E-Evidence Task Force

Administrative questions

* Please indicate on behalf of which EU Member State you are responding to the questionnaire

Greece

* Please indicate which organisation you are representing

Permanent Representation of Greece to the EU

* Please provide your contact details (name, e-mail address, phone number)

* Did you coordinate your response to the questionnaire amongst different organisations in your Member State?

☒ Yes

☐ No

If yes, could you please indicate amongst which organisations you coordinated your response to the questionnaire?

Permanent Representation, Ministry of Justice, Hellenic Police (Cyber Crime Unit), Public Prosecutor's Office to the Appellate Court of Athens.

Optional inclusion of files

Please provide any details about the file(s) you are including

Please upload your file(s)

1. Direct cooperation with service providers for obtaining access to electronic evidence

Part 1 of the questionnaire only concerns direct cooperation between law enforcement authorities and private sector service providers (e.g. providers of telecommunications services or providers of cloud services).

It may concern both mandatory and voluntary cooperation, depending on whether there is (i.e. search warrant) or there is no legal title for compelling the service provider to disclose the electronic evidence.

It does not cover situations where requests are made between authorities from a requesting and a receiving state, e.g. in the framework of a mutual legal assistance or mutual recognition procedure (see Part 2 of the questionnaire).

1.1 Normal practice within your domestic jurisdiction

1. What is the relevant legal framework for direct cooperation requests in your Member State? Could you please copy or include reference to the relevant provision(s) in your legislation?

Secrecy of telecommunications and the lifting thereof is regulated by law 2225 /1994, art. 4,5 and 6 in particular, uniformly for all types of telecommunications and cloud services.

2. For these direct cooperation requests, is there a difference in your legal framework between providers of telecommunications services and providers of information society services (e.g. cloud service providers)?

Please see previous answer

3a. How many domestic requests for direct cooperation are made per year by your authorities? Could you please specify the number of requests per section of the applicable legal framework and type of service provider?

An average of approximately 500 requests per year.

3b. Which are the "top" service providers in terms of numbers of domestic requests for direct cooperation? Please include the names of the "top" 5 service providers.

COSMOTE, VODAFONE, WIND, FORTHNET, CYTA

1.2. Practice when the service provider is outside your domestic jurisdiction

4. How do you distinguish between domestic and foreign service providers when making a request?

- ☒ Main seat of the service provider in question
- ☐ Place where services are offered
- ☐ Place where data is stored
- ☐ Other criteria

5. Do authorities from your Member State make direct requests to service providers in another EU Member State or in third countries?

- ☒ Yes, both in EU Member States and third countries
- ☐ Yes, but only in other EU Member States
- ☐ Yes, but only in third countries
- ☐ No, none of the above

5a. If yes, please indicate which third countries (i.e. outside the EU) are most relevant for you in this context:

UNITED STATES of AMERICA

6. Does your domestic law address such direct requests from your authorities across borders specifically? Or do you apply the same framework as for domestic requests?

- ☒ The same legal framework
- ☐ Regulated specifically

7. Are direct requests sent from your country directly to a service provider in another country considered mandatory or voluntary for the provider to comply with?

- ☐ Mandatory
- ☒ Voluntary

8. Does your domestic law allow service providers established in your Member State to respond to direct requests from law enforcement authorities from another EU Member State or third countries?

- ☐ Yes, both from EU Member States and third countries
- ☐ Yes, but only from other EU Member States
- ☐ Yes, but only from third countries
- ☒ No, this is not covered / allowed

8a. Please copy or reference the relevant article(s) providing for the legal basis to allow / prohibit service providers to do so:

According to art. 4 par.2 Law 2225/1994, lifting of secrecy can be ordered solely by a decree of the competent judicial chamber. The law does not afford such capacity to foreign authorities. Directive 2014/41 has not yet been transposed.

9. Do you have a definition (legal or administrative/practical) of different types of data for law enforcement requests? Does your legal framework distinguish between different types of electronic evidence (e.g. subscriber data, traffic data, content data)?

- ☒ Yes
- ☐ No

9a. If yes, please provide us with the definition(s):

Traffic data, subscriber's data and content data, according to art. 5 of law 3917/2001, which transposed art. 5 of Directive 2006/24.

10. What kind of data can be requested directly from service providers according to your domestic law / the law applicable to the service provider?

- ☒ Subscriber data
- ☒ Traffic data
- ☐ Content data
- ☐ Other data

11. Do you limit direct requests to cases with specific (e.g. exigent) circumstances or to specific (e.g. serious) crimes?

- ☐ Yes
- ☒ No

12. What is the typical process in your Member State for making a direct request? Which authority typically initiates a request? Which other authorities are involved in processing the request?

The authority conducting an investigation may send direct requests to service providers.

13. Are these requests made in electronic form (e.g. by e-mail or sent through an online portal)? How are these requests tracked? Is there a central repository of requests that is managed by one single authority?

Requests are sent by fax, e-mail, or through on-line platforms providers may have created. There is no central repository of requests.

14. Do any specific agreements on direct requests exist (or are currently being negotiated) between your authorities and foreign service providers?

- ☐ Yes
- ☒ No

15. For these requests that go beyond your domestic jurisdiction, what is the current practice of your authorities? How many requests are made per year? Which are the "top" service providers in terms of numbers of requests? For these questions, could you please make a distinction between requests within the EU and request outside the EU?

Every year an average of 200 requests are sent. Top providers are Facebook, Twitter and Skype.

16. What is the average timeframe to obtain data through direct requests to service providers? Are there any fixed deadlines that you include in your request? Do service providers commit to respect certain deadlines?

Average time: 1 week. Deadlines may be included in some requests. Service providers usually respect such deadlines.

17. What are the means of transmission of evidence gathered in response to direct request?

- ☐ Paper (letter)
- ☐ Disks (optical or magnetic)
- ☐ Fax
- ☒ Normal email
- ☒ Web portal
- ☐ Secure channel (encrypted email, special ftp, etc.)
- ☐ Other

18. Is information gathered through direct requests admissible as evidence in court in your Member State?

- ☐ Yes
- ☒ No
- ☐ It depends on other conditions

18b. If you selected "No" or "It depends on other conditions", please explain:

For evidence to be admissible in court, if they come as a result of interception of communications, this interception of lift of secrecy must have been authorized as stipulated in law 2225/1994.

2. Mutual Legal Assistance

Part 2 of the questionnaire concerns requests for electronic evidence between authorities of a requesting and a receiving state (Mutual Legal Assistance or Mutual Recognition procedures).

19. What is the legal framework in your Member State for Mutual Legal Assistance requests for third countries?

- ☐ Budapest Cybercrime Convention
- ☒ Other multilateral conventions
- ☒ Bilateral agreements

19a. If you selected "Other multilateral conventions", please specify:

- European Convention on Mutual Assistance in Criminal Matters, 20th April 1959
(Greece recently ratified the Budapest Cybercrime Convention (law 4411/2016), but the Convention has not yet entered into force)

19b. If you selected "Bilateral agreements", please specify with which countries:

- United States of America: Bilateral Convention between the Government of the Hellenic Republic and the Government of the United States of America, signed in Washington on 26th May 1999 and ratified by our country by law 2804 /1999
- People's Republic of China: Convention on judicial assistance in civil and criminal matters between the Hellenic Republic and the People's Republic of China, signed in Athens and ratified by our country by law 2358/1995

20. How many Mutual Legal Assistance requests to third countries for electronic evidence are made by your authorities per year? Which are the "top" third countries that you send requests to (outside the EU)?

- United States of America: for the year 2015 - 73 requests
for the year 2016 - 65 requests up to date

People's Republic of China: for the year 2015 - 0 requests
for the year 2016 - 3 requests up to date

21. What is the typical process in your Member State for making a Mutual Legal Assistance request to a third country? Which authority initiates such a request? Which other authorities are involved?

The competent Public Prosecutor to the court of First Instance submits the Mutual Legal Assistance request to the competent Public Prosecutor to the court of Appeal. The Public Prosecutor to the court of Appeal examines the feasibility of the request and then forwards it to the competent foreign authority through the Hellenic Ministry of Justice, Transparency and Human Rights.

In urgent cases, channels of police cooperation may be employed, such as EUROPOL, SIRENE or INTERPOL, as well as other channels of judicial cooperation, such as EJN or Eurojust.

22. What kind of electronic evidence do you usually request on the basis of Mutual Legal Assistance?

- ☒ Subscriber data
- ☐ Traffic data
- ☒ Content data
- ☐ Other data

23. Could you explain the situation for incoming Mutual Legal Assistance requests from third countries? How many requests are received per year? Which are the "top" countries that you receive requests from? What kinds of data are usually requested? Which authorities are involved when processing such a request?

One request from the United States of America, in the year 2013

24. What is the average timeframe for obtaining electronic evidence through Mutual Legal Assistance from your main destination countries outside the EU? Are there any fixed deadlines provided for in your agreement with the countries? Are these deadlines usually respected?

The United States of America set a deadline of 90-180 days. No statistical data are kept as to the average timeframe.

25. When a Mutual Legal Assistance request is refused by a foreign authority, what are the main grounds for refusal (e.g. your main destination country)?

From a technical point of view, main grounds for refusal are as follows:
-The foreign authority considers that the submitted data is not sufficient.
-The foreign authority has destroyed the "traces".

From a legal standpoint, lack of dual criminality is the main reason for refusal of Greek MLA requests, by US authorities for example, where offenses criminalized in the Greek Criminal Code, such as slander or defamation, are considered to infringe the freedom of speech.

26. What are the means of transmission of Mutual Legal Assistance requests to other EU Member States (how you send it)?

- ☒ Regular mail (letter)
- ☒ Fax
- ☒ Normal email
- ☐ Web portal
- ☐ Secure channel (encrypted email, special ftp, etc.)
- ☐ Other means

26a. If you selected "Other means", please explain:

27. What are the means of transmission of Mutual Legal Assistance requests to third countries (how you send it)?

- ☒ Regular mail (letter)
- ☐ Fax
- ☐ Normal email
- ☐ Web portal
- ☐ Secure channel (encrypted email, special ftp, etc.)
- ☐ Other means

28. What are the means of transmission of electronic evidence gathered in response to Mutual Legal Assistance requests to other EU Member States (how you receive it)?

- ☒ Regular mail (letter)
- ☒ Fax
- ☒ Normal email
- ☒ Disks (optical or magnetic)
- ☐ Web portal
- ☒ Secure channel (encrypted email, special ftp, etc.)
- ☐ Other means

29. What are the means of transmission of electronic evidence in response to Mutual Legal Assistance requests to third countries (how you receive it)?

- ☒ Regular mail (letter)
- ☐ Fax
- ☒ Normal email
- ☒ Disks (optical or magnetic)
- ☐ Web portal
- ☒ Secure channel (encrypted email, special ftp, etc.)
- ☐ Other means

3. Jurisdiction in cyberspace / other issues

Part 3 of the questionnaire concerns other measures that law enforcement authorities could use to obtain electronic evidence in cases where

- a) it is not clear that they would stay within their own jurisdiction, e.g. because it is not possible to determine where evidence is stored, or
- b) it is clear that they would operate beyond their jurisdiction without using the measures covered under part 1 and 2 of the questionnaire.

30. Can your law enforcement authorities still access electronic evidence when it is unclear what the location of the electronic evidence is / when it is impossible to establish the location of electronic evidence (e.g. when it may be stored beyond your own jurisdiction)?

- ☐ Yes
- ☒ No
- ☐ It depends on circumstances

31. Can your law enforcement authorities still access electronic evidence when it is impossible to obtain electronic evidence that is stored in another country through direct cooperation with a service provider or a request based on Mutual Legal Assistance or Mutual Recognition (e.g. the service provider refuses to cooperate and there is no legal basis for a Mutual Legal Assistance or Mutual Recognition request)?

- ☐ Yes
- ☒ No
- ☐ It depends on circumstances

32. In the above two situations (see questions 30 and 31), does your domestic law make a distinction between the framework for obtaining access to stored data and the real-time collection of data?

- ☐ Yes
- ☒ No
- ☐ Not applicable

33. To what extent do your authorities use police-to-police cooperation for obtaining cross-border access to electronic evidence? What is the legal framework for such cooperation and what are current practices (e.g. how often, what data, for which purpose)?

Requests for data related to serious and organized crime affecting two or more countries, may be sent through International Police Cooperation Division of the Hellenic Police (Interpol, Europol, SIRENE).

34. Is information obtained through police-to-police cooperation admissible as evidence in court in your Member State?

- ☒ Yes
- ☐ No
- ☐ It depends on circumstances

Contact

home-cybercrime@ec.europa.eu
