

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

Croatia

*

Please indicate which organisation you are representing

Ministry of Justice

*

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?

Ministry of Interior

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?

Described in GENVAL evaluation report, chapter 7.4

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 GENVAL evaluation report, chapter 7.4,
please note we have different legislation in this field -Electronic
Communications Act)regulating telecommunications services) and Law on
Electronic Commerce (regulating providers of information society services)

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?

N/A

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.

please see Genval report on Croatia chapter 7.4 and 7.5.1.

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:

mostly neighbourhood countries: Serbia, Bosnia and Herzegovina et cetera

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:

There is no strict law prohibiting such a cooperation, but Croatian legislation prescribes exclusively obligations for service providers to cooperate with Croatian authorities. Therefore, service provider would have to be sure that the data provided to foreign authorities would be treated in accordance with domestic standard on data protection and human rights. Unfortunately, we do not have any information on this kind of cooperation.

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

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?

Please see GENVAL report, chapter 7.4

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?

there should be a formal request, usually by email and sent through INTERPOL, EUROPOL and 24/7 contact point channels

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?

no data

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?

Usually data are being obtained within a week. There are no fixed deadlines included in the request and providers do not commit to respect certain deadline

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:

normally it is followed by a MLA request but if such acting is allowed by domestic legislation in national criminal proceedings, it would be admissible

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:

Genval chapter 7.5.1.

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

Any bilateral agreement which prescribes procedures for obtaining data and/or documentation would be applicable.

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)?

USA, Australia, New Zeland, neighbourhood countries (Bosnia nad Herzegovina, Serbia, Montenegro et cetera)

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 authoriries involved are: judicial authority (prosecutors or courts who make a MLA request for the purpose of conductinf domestic criminal proceedings), then, MLA request is being sent to the MInistry of Justice and then depending on the applicable legislative framework, sometimes we use diplomatic channels (through Ministry of Foreign Affairs) or the correspondence goes through central authorities (Ministries of Justice).

Often judicial authorities inform the police, or the police during investigation recognise the need to communicate with the foreign authorities (usually via INTERPOOL or EJNI) which is being done parallel with the MLA drafting. This is much quicker and helps preserve data until the MLA request is being darfted and sent through official channels.

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?

Although we do not have the exact statistics, most of these requests refer to child pornography, computer frauds, threats and offences against the honour or dignity.

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?

there are no fixed deadlines, apart from the deadlines as prescribed by the Budapest Convention. We often do not get the answer and if we do it usually takes very long.

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)?

Mainly those refusals come from the country with different legal tradition of the Anglo-Saxon legal system. These countries refuse to execute the request in case where they do not have enough grounds for reasonable doubt. Sometimes the required data would easily constitute such a reasonable doubt, but without it, further investigation faces serious difficulties.

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

32a. If you selected "Yes", please explain how the difference is framed and how this works out in practice:

real-time collection of data is a special investigation technique which intrudes human rights in a more intrusive manner, therefore, there is a more strict procedure in a national system to order such a measure. In a framework of international cooperation, we only have a legal base for police-to-police cooperation for such a measure. In comparison to that, we have several legal instruments which enables our authorities to request stored data when it is outside our jurisdiction.

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)?

Please see Chapters 7.2, 7.3 and 7.4 of Genval evaluation report on Croatia
In some cases service providers in foreign jurisdictions share available information on voluntary bases and Croatian police can ask for information from these providers through means of international police cooperation. Information provided in these circumstances is considered intelligence, not an evidence and in further proceedings courts can ask for the same information following Mutual Legal Assistance requests procedures and information provided would be considered an evidence.

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

- ☐ Yes
☒ No
☐ It depends on circumstances

34a. If you selected "Not" or "It depends on circumstances", please explain:

we use police-to-police cooperation in order to preserve data, but such a request should be followed by a MLA request issued by judicial authorities.

Contact

home-cybercrime@ec.europa.eu
