

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

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

Hungary

*

Please indicate which organisation you are representing

Office of the Prosecutor General

*

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

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?

For this question Hungary has given a detailed answer in point 2.B of the Questionnaire of the Working Party on General Matters including Evaluations (GENVAL), seventh round of mutual evaluations.

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)?

In Hungary there is no difference between the two categories. Relevant provisions of the Criminal Procedure Code are valid for all providers similarly.

Detailed legal background was written by Hungary in point 9.1. of the above mentioned Questionnaire.

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?

For this question concrete figure cannot be given. Similar requests may be sent by law enforcement authorities, prosecution services and courts as well. There is no integrated collection of these data.

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.

We do not have relevant statistics.

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

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:

Similar requests should be carried out upon the relevant provisions of the Criminal Procedure Code (mainly upon Article 178/A, already indicated in the GENVAL questionnaire). Foreign law enforcement authorities are not entitled to make similar requests upon the Hungarian Criminal Procedure Code.

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?

In the criminal procedure direct requests may be sent by law enforcement authorities, prosecution services and courts. Usually the requesting authority sends directly the request to the service provider by fax, post or electronically.

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?

In some cases these requests could be sent to the service providers in electronic form. E.g in Hungary one telecommunication company developed a special electronic system to be able to answer in a standardised manner the requests of the law enforcement authority and the prosecution service. In this system the requests can be tracked.
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?

We do not have relevant statistics in this field.

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?

According to Article 71 of Criminal Procedure Code, the court, the prosecutor and the investigating authority may contact national and local government agencies, authorities, public bodies, business organisations, foundations, public endowments and public organisations to request the supply or transmission of information, data or documents, and may prescribe a time limit for fulfilling such request ranging between a minimum of eight and maximum of 30 days.

If the organization contacted fails to fulfil the request within the prescribed deadline, or unlawfully refuses to fulfil the request, a disciplinary penalty may be imposed. In the event of unlawful refusal to comply with the request, the coercive measures stipulated herein may also be ordered in addition to imposing the disciplinary penalty, provided that the conditions set forth by law are met.

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

18a. If you selected "Yes", could you please provide any article(s) that (either implicitly or explicitly) provide for that? In addition, if addressed by case law, could you please include references to relevant decision(s)?

Section 78 (1) In the course of criminal proceedings, all means of evidence specified by law and all evidentiary procedures may be used without restriction. However, the use of certain means of evidence may also be statutory.

(2) Neither the means of evidence nor proofs have a legally prescribed probative force.

(3) The court and the prosecutor shall freely weigh each piece of evidence separately and collectively and establish the conclusion of evidence based on their belief thus formed.

(4) Facts derived from means of evidence obtained by the court, the prosecutor or the investigating authority by way of committing a criminal action, by other illicit methods or by the substantial restriction of the procedural rights of the participants may not be admitted as evidence.

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:

- Council Act of 29 May 2000 on Mutual Assistance in Criminal Matters between the Member States of the European Union,
- European Convention on mutual assistance in criminal matters (Strasbourg, 20.IV.1959)

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)?

We cannot provide statistical data for the following reason. The Prosecution Service has statistical data concerning the incoming and outgoing MLA requests, however the electronic system doesn't categorize on the basis of the content of the MLA request.

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?

MLA requests to third countries are made by the central authorities (Office of the Prosecutor General, Ministry of Justice)

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?

MLA requests are received by the central authorities.
MLA request is examined if it can be executed or not (obstacles, legal basis, reciprocity...etc.).
The Office of the Prosecutor General sends the request to the competent County Prosecution Office to execute it.

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?

Deadline of the execution depends on the case. We do not have relevant statistical data in this field.
Bilateral treaties usually do not content fixed deadlines. If the requesting authority needs urgent answer we try to take it into consideration.

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)?

- lack of reciprocity, lack of double criminality

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 can be carried by different means of secret data gathering.

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)?

These kind of data are usually requested by MLA requests.

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:

If it can be checked that the foreign law enforcement authority gathered the data lawfully (had competence and authorization to proceed, data gathering was necessary for the fulfilment of its tasks) the data can be used as evidence. If the data play an important role in the criminal procedure we send a supplementary MLA request to receive it through the judicial channel as well.

Contact

home-cybercrime@ec.europa.eu
