

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 cyberspace¹

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

¹ The electronic version of the questionnaire is available at: <https://ec.europa.eu/eusurvey/runner/eevidence>

Administrative questions

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

- ☐ Austria
- ☐ Belgium
- ☐ Bulgaria
- ☐ Croatia
- ☐ Cyprus
- ☒ Czech Republic
- ☐ Denmark
- ☐ Estonia
- ☐ Finland
- ☐ France
- ☐ Germany
- ☐ Greece
- ☐ Hungary
- ☐ Ireland
- ☐ Italy
- ☐ Latvia
- ☐ Lithuania
- ☐ Luxembourg
- ☐ Malta
- ☐ Netherlands
- ☐ Poland
- ☐ Portugal
- ☐ Romania
- ☐ Slovak Republic
- ☐ Slovenia
- ☐ Spain
- ☐ Sweden
- ☐ United Kingdom

II. Please indicate which organisation you are representing *

Ministry of Justice of the Czech Republic, International Department for Criminal Matters

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

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

- ☒ Yes
- ☐ No

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

Supreme Public Prosecutor's Office of the Czech Republic, Police of the Czech Republic, Ministry of Interior of the Czech Republic, Department of Legislature of the Ministry of Justice of the Czech Republic

Optional inclusion of files

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

Va. Please upload your file(s)

[please use the EU Survey website (<https://ec.europa.eu/eusurvey/runner/eevidence>)]

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?

The legal framework differs depending on the character of the data which the investigative, prosecuting and adjudicating authorities request. The basic division is following:

- by the type of data (subscriber, transfer, location and content data);
- according to whether currently stored data are concerned or data that are being obtained in real time.

Transfer and location data as well as the content are always retained if interception and recording of telecommunications are engaged (Section 88 of the Act No. 141/1961 Coll., the Code of Criminal Procedure, as amended). It applies to the messages that are being transmitted (content data), or to their interception and recording in real time. Interception and recording of telecommunications are possible when the conditions set by law are met in cases of exhaustively listed criminal offences and criminal offences for which the law stipulates a prison sentence with a maximum sentence of at least eight years and in principle only by a court order; in the pre-trial proceeding upon motion of a public prosecutor. See an exception in Section 88 (5) of the Code of Criminal Procedure – if the user of the intercepted unit agrees to such measure.

Obtaining of transfer and location data is then provided by Section 88a of the Code of Criminal Procedure. This provision does not apply to the content of communication. On the basis of this provision, the information is provided by the subjects which operate in electronic communications (are entrepreneurs in this field) and therefore act in accordance with the Act No. 127/2005 Coll., on Electronic Communications, as amended. Providing of the above-mentioned data orders a court when the conditions set by law are met in cases of exhaustively listed criminal offences and intentional criminal offences for which the law stipulates a prison sentence with a maximum sentence of at least three years; in the pre-trial proceeding upon motion of a public prosecutor. The court order is not needed in case pursuant to Section 88a (4) of the Code of Criminal Procedure - if the user of the intercepted unit agrees to such measure. Section 88a of the Code of Criminal Procedure follows the obligation of the entrepreneurs according to the Act on Electronic Communications to retain certain exhaustively listed data and the obligation to provide such data without delay to the investigating, prosecuting and adjudicating authorities upon their request for the purposes

and upon fulfilling the conditions provided by the special legislation (the Code of Criminal Procedure) – see Section 97 (3) of the Act on Electronic Communications.

Subscriber data, if these are not data listed in a regulation to the Act on Electronic Communications (a regulation No. 357/2012 Coll., on retention, transfer and disposal of traffic and location data), or if the service providers are concerned who do not fall within the scope of the Act on Electronic Communications (in this case it applies also to other transfer and location data) are requested on the basis of Section 8 (1) of the Code of Criminal Procedure, otherwise they are requested on the basis of Section 88a of the Code of Criminal Procedure.

Depending on where the data are stored, Section 158d of the Code of Criminal Procedure (see mainly par. 3) can also be applied to get content data (e.g. content of a disconnected cloud or disconnected email). This provision regulates surveillance of persons and things. The Section 158d (3) of the Code of Criminal Procedure applies to cases of finished communication, Section 88 of the Code of Criminal Procedure applies to the cases of “live” communication (real time communication).

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)?

Yes, there is a difference with regard to requesting subscriber, transfer and location data. An important difference is that the telecommunication companies have an obligation to retain certain data which they are then obliged to disclose under conditions stipulated by law. Providers of information society services do not have such an obligation.

The Act on Electronic Communications contains transposition of a so called data retention directive. Even though the directive was abolished by the ruling of the Court of Justice of the European Union, the national legislation was maintained. The entities subject to the Act on Electronic Communications provide information as a matter of principle pursuant to Section 88a of the Code of Criminal Procedure, other entities pursuant to Section 8 (1) of the Code of Criminal Procedure, or pursuant to Section 78 of the Code of Criminal Procedure (obligation to render a thing). It can be assumed that some of these other subjects could on the basis of direct requests (and in accordance with data protection regulations – e.g. under a contractual arrangement with a client) provide data also voluntarily, which in practice also sometimes happens.

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?

As regards the course of proceedings pursuant to Section 8 (1) of the Code of Criminal Procedure, the information is registered only in particular case files. The statistics are not kept for these cases.

With regard to the course of proceedings pursuant to Section 88, Section 88a and Section 158d of the Code of Criminal Procedure, we state some of the information below. It is not distinguished in the statistics whether communication via telephones or cell phones or

information technology (mostly Internet network and e-evidence related thereto) were concerned.

In 2015 there were measures of interception and recording of telecommunications (Section 88 of the Code of Criminal Procedure) used in 1 127 case files and measures of surveillance of persons and items (Section 158d of the Code of Criminal Procedure) in 1 111 case files.

In 2015 in the above-mentioned number of case files the measures of interception and recording of calls made via cell phones or fixed telephone stations, the communications with use of telefax and also other telecommunication equipment, including communication via Internet were engaged 6 978 times. Further in 2015 in the above-mentioned number of case files the measures of surveillance of persons and items pursuant to Section 158d (2) (3) (6) of the Code of Criminal Procedure were engaged 4 476 times.

In 2015 64 277 records of realized telecommunications traffic, which represents statements of communication via cell phones and fixed telephone lines and the Internet, were carried out by the Police of the Czech Republic in accordance with Section 88a of the Code of Criminal Procedure throughout the Czech Republic.

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.

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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

4a. If you selected "Other criteria", please specify:

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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:

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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

6a. If regulated specifically, please copy or reference the relevant article(s):

The investigating, prosecuting and adjudicating authorities (a police authority, a public prosecutor, a court) can send requests to the foreign state within their (national) competencies in the criminal proceedings which are conducted in the Czech Republic).

The evidence for the criminal proceedings conducted in the Czech Republic can be obtained from the foreign state in the following ways:

1) upon the MLA request (Section 40 (1) of the Act No. 104/2013 Coll., on International Judicial Cooperation in Criminal Matters, as amended);

2) a foreign authority (an authority competent for international judicial cooperation) sends itself without previous MLA request an evidence to the Czech Republic. Such an evidence can be used in the criminal proceedings in the Czech Republic if it was obtained in accordance with the legal order of the foreign state in question or with the legal order of the Czech Republic (Section 42 (3) of the Act on International Judicial Cooperation in Criminal Matters);

3) Information obtained by a police authority within the framework of police cooperation from another Member State of the European Union or a state associated through an international treaty to implement the Schengen regulations may be used as evidence in criminal proceedings only on the basis of consent of the competent authority of this state (Section 20 (1) of the Act on International Judicial Cooperation in Criminal Matters);

4) a natural or a legal person as an injured person and/or a person who reported a crime themselves and voluntarily send a document to the Czech Republic to be used for the purpose of the criminal proceedings. In practice it is typically a statement of the amount of damage. However, it cannot be theoretically excluded that a foreign service provider as a legal person sends itself from its own initiative to the Czech Republic information for the purpose of evidence in criminal proceedings, if the legislation of the foreign state in whose territory that service provider operates does not prevent it from doing so.

Operational information for criminal proceedings which does not serve as evidence (with exception of Section 20 (1) of the Act on International Judicial Cooperation in Criminal Matters) is requested from a foreign state by a police authority of the Czech Republic either from a police authority of a foreign state or with a consent of competent authorities of a foreign state directly from the subjects situated in the territory of that foreign state. These requests of the Police of the Czech Republic cannot contain any threat of compulsion and the foreign service providers respond to these requests on a voluntary basis if the legislation of the foreign state in whose territory they operate does not prevent them from doing so.

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

7a. In case they are mandatory, can and do you enforce them, legally and in practice? Could you please explain how?

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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:

If the information requested by a foreign authority can be requested by the Police of the Czech Republic according to the Act No. 273/2008 Coll., on Police of the Czech Republic, as amended, a foreign authority can refer to the Police of the Czech Republic. If the information requested by a foreign authority can be requested only according to the Code of Criminal Procedure, eventually information for the purpose of evidence, a foreign authority has to refer to a competent judicial authority of the Czech Republic with a MLA request.

We can also refer to the provisions of Section 88, 88a and 158d of the Code of Criminal Procedure and Section 88 and further of the Act on Electronic Communications and the Act No. 101/2000 Coll., on Private Data Protection, as amended.

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):

The legal order of the Czech Republic differentiates between the data in a certain way. However, the Code of Criminal Procedure does not contain special provisions on electronic evidence so far (a prospective amendment is being discussed with the expert work group). The Czech legislation might overlap in terms "subscriber data" and "traffic data". In this respect, we can refer to the provisions of Section 90 and 91 of the Act on Electronic Communications which provide for definitions of transfer and location data.

Section 88 of the Code of Criminal Procedure talks about the telecommunications traffic. Section 136 (20) (a) of the Act on Electronic Communications provides that if a special legislation contains a provision on telecommunications traffic, it should be understood to mean a message that is being transferred as provided for by this law.

Section 88a of the Code of Criminal Procedure talks about the data on the telecommunications traffic. Section 136 (20) (b) of the Act on Electronic Communications provides that if a special legislation contains a provision on the data on telecommunications traffic, it should be understood to mean the transfer and location data related to a message that is being transferred as provided for by this law.

According to Section 90 (1) of the Act on Electronic Communications, the transfer data shall mean any data processed for the purposes of transmitting messages via electronic communications network or for the charging thereof.

According to Section 91 (1) of the Act on Electronic Communications, the location data shall mean any data processed in an electronic communications network or by electronic communications service, which indicate the geographic position of the telecommunications terminal equipment of a user of a publicly available electronic communications services.

Section 97 (3) of the Act on Electronic Communications provides for the obligation of some private and legal entities to retain certain traffic and location data (for period of 6 months) and the obligation to provide such data without delay e.g. to the investigating, prosecuting and adjudicating authorities upon their request for the purposes and upon fulfilling the conditions provided by the Code of Criminal Procedure. Section 97 (4) of the Act on Electronic Communications provides that the traffic and location data pursuant to paragraph 3 are particularly data leading to tracing and identification of the source and recipient of the communication and further data leading to identification of a date, time, manner and duration of a communication. The extent of traffic and location data retained in accordance with paragraph 3, form and manner of their handover to authorities competent for their use under special legislation and the manner of their disposal are provided in the implementing regulation (a regulation No. 357/2012 Coll., on retention, transfer and disposal of traffic and location data).

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

10a. If you selected "Other data", please explain which type or category of data:

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

11a. If yes, please explain:

Here it is important to emphasize that the data can be requested from a foreign state primarily and as a matter of principle via international police cooperation (obtaining of operational information) and after the initiation of the criminal proceedings, or for obtaining evidence via international judicial cooperation. In practice it is also asked for the data to be retained for the purposes of further drawing up and submitting the MLA request (see Articles 29 and 35 of the Budapest Cybercrime Convention).

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 investigating, prosecuting and adjudicating authorities of the Czech Republic cannot execute the jurisdiction of the Czech Republic in the territory of a foreign state, unless it is allowed by an international agreement (eventually a legal act of the EU) or law of the foreign state concerned.

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?

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

- ☒ Yes
☐ No

14a. If yes, could you disclose which service providers your authorities have such an agreement with? How are these agreements established? What is included in these agreements? Could you please explain?

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 keep statistics in this respect.

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?

It is individual. It depends on the specific case.

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

17a. If you selected "Other", please specify:

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)?

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

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:

- Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems (28.1.2003, Strasbourg),
- European Convention on Mutual Assistance in Criminal Matters (20.4.1959, Strasbourg),
- Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters (17.3.1978, Strasbourg),
- Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters (8.11.2001, Strasbourg)

and other multilateral conventions on mutual legal assistance in criminal matters, e.g. Convention of UN concerning organised crime, corruption and drugs.

When there is no multilateral or bilateral agreement, legal assistance can be provided or requested also on a basis of a principle of reciprocity.

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

The Czech Republic concluded bilateral agreements with the following third countries: Afghanistan, Albania, Algeria, Belarus, Bosnia and Herzegovina, Montenegro, Georgia, Hong Kong, Yemen, Canada, Kazakhstan, North Korea, Kosovo, Cuba, Kyrgyzstan, Macedonia, Moldova, Monaco, Mongolia, Russia, United States of America, Serbia, Syria, Tunisia, Turkey, Uzbekistan and Vietnam.

The bilateral agreements were partly replaced by the European Convention on Mutual Assistance in Criminal Matters (20.4.1959, Strasbourg) and its Additional Protocols, if the states which are party to them are concerned. The bilateral agreements concluded after the ratification of the mentioned multilateral agreements are concluded only to supplement the mentioned multilateral agreements.

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

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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?

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Legal assistance in a foreign state may be requested after initiating actions in criminal proceedings and for the purpose of these proceedings.

Legal assistance in a foreign state may be requested in the pre-trial proceedings solely on the basis of a request of the public prosecutor and after lodging an indictment on the basis of a request of the court. This does not preclude the public prosecutor from requesting legal assistance from his own initiative also after lodging an indictment, if it concerns obtaining evidence necessary for representing prosecution in court proceedings.

The public prosecutor will submit the MLA request to the Supreme Public Prosecutor's Office, the court to the Ministry of Justice (the central authorities for the judicial cooperation in criminal matters). The central authority will review the MLA request, especially with regard to the conditions and essentials implied by the Act on International Judicial Cooperation in Criminal Matters, as amended, or by an international treaty, and to the requirements arising from previous mutual relations, and will send it to the foreign state, unless it returns it along with stating reasons, for which it was impossible to send it to the foreign state. In relation to reviewing the MLA request the central authority may request the judicial authority to make necessary corrections and amendments.

The judicial authority may send the MLA request directly to the foreign authority only if an international treaty provides for a direct contact between judicial authorities.

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

22a. If you selected "Other data", please explain the type or category of 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?

Legal assistance may be provided to a foreign authority only if there are criminal proceedings being conducted in the foreign state and only for the purpose of these proceedings.

In case there is a pre-trial proceedings being conducted in a foreign state, the Supreme Public Prosecutor's Office is the competent authority to accept the MLA request of the foreign authority; otherwise it is the Ministry of Justice. The central authority will review the MLA request of the foreign authority with regard to the conditions and essentials implied by the Act on International Judicial Cooperation in Criminal Matters, as amended, or by an international treaty, and to the requirements arising from previous mutual relations, and will forward it to a judicial authority competent for its execution (court, public prosecutor's office) or return it along with stating reasons, for which it could not be forwarded for execution, or will request the required supplementations within a set time limit.

If an international treaty allows for a direct contact between judicial authorities, the foreign authority can send the MLA request directly to the competent public prosecutor's office or court.

The Supreme Public Prosecutor's Office of the Czech Republic stated that it does not keep statistics about number of these MLA requests from foreign authorities. The MLA requests are sent to the competent public prosecutor's office for its execution; public prosecutor's office executes the request in cooperation with the Police of the Czech Republic.

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 MLA requests are executed within months. More complicated cases (e.g. the cases of group criminal activity when content of communication is requested) are being executed longer. The urgent MLA requests are executed with priority.

It is very important how well the MLA request is written up, whether it contains enough information necessary for execution by the requested authority or there is need to ask for the request to be completed. The international treaties do not set any time limits for execution of the MLA requests.

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)?

The execution of the MLA request is refused in case the requirement of double criminality is not fulfilled in the requested state. The MLA request is also refused when there is not enough information necessary for obtaining a court order in a requested state and such insufficiency is not successfully corrected even by sending the additional information.

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

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)?

27a. If you selected "Other means", please explain:

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)?

28a. If you selected "Other means", please explain:

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

29a. If you selected "Other means", please explain:

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

30a. If you selected "Yes", or if "It depends on circumstances", please explain how and make reference to the relevant article(s) in your domestic legislation:

It is important whether the Czech Republic has jurisdiction to conduct criminal proceeding. Criminal jurisdiction of the Czech Republic is defined broadly: by a principle of territoriality (it is enough that either part of the act or the consequences of the act are in the territory of the Czech Republic – Section 4 of the Criminal Code), a principle of personality – either active personality (Section 6 of the Criminal Code) when a suspect is a citizen of the Czech Republic, or passive personality (Section 7 par. 2 of the Criminal Code) when an injured person is a citizen of the Czech Republic, a principle of registration (Section 5 of the Criminal Code), a principle of protection and a principle of universality (Section 7 of the Criminal Code), a subsidiary principle of universality (Section 8 of the Criminal Code) and when the international agreement provides so (Section 9 of the Criminal Code).

If the Czech Republic has jurisdiction to conduct criminal proceeding, a public prosecutor in the pre-trial proceeding or a court after an indictment was filled can send an MLA request to any state in whose territory they suppose the data might be situated (e.g. in the state where the service provider has its registered office).

In practice the Article 32 of the Budapest Cybercrime Convention is also applied.

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

31a. If you selected "Yes" or "It depends on circumstances", please explain how and make reference to the relevant article(s) in your domestic legislation:

From the legal point of view, it is necessary to proceed via international legal assistance. Legal assistance can be provided or requested also on a basis of a principle of reciprocity, i.e. on a non-contractual basis.

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:

The legal order of the Czech Republic distinguishes between access to already existing data and access to data arising "online" or data that are to arise in the future. However, conditions for obtaining such data are analogical and they differ solely in minor nuances when interference with privacy is taken into account and conditions under which it is done.

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)?

This cooperation is relatively frequent but it mostly has supporting character. That means that the data obtained this way are then used solely for operational purposes ("operational information"), or as an incentive for further procedure. If the possibilities to use data obtained via police cooperation as evidence in criminal proceedings are concerned, please see further answers to questions 6a and 34.

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:

Information obtained within the framework of police cooperation from another Member State of the European Union or a state associated through an international treaty to implement the Schengen regulations may be used as evidence in criminal proceedings only on the basis of consent of the competent authority of this state. Requesting such consent lies within the competence of the public prosecutor and after lodging an indictment the court. Requesting consent is not necessary, if the competent authority of the foreign state has already granted consent in the course of providing the information or if such consent is not necessary according to the national law of the foreign state.

(This is transposition of the Article 39 (2) of the Convention Implementing the Schengen Agreement and the Article 1 (4) of the Council Framework Decision 2006/960/JHA of 18 December 2006 on simplifying the exchange of information and intelligence between law enforcement authorities of the Member States of the European Union.)

Otherwise it is in principle necessary to obtain the information via MLA request because the information obtained via police cooperation serve mostly solely for operational purposes. Please see in detail the answer to the question 6a.

[end of the questionnaire]