

Instruments for International Co- operation

Cyber@IPA

Dubrovnik, May 16-17, 2011

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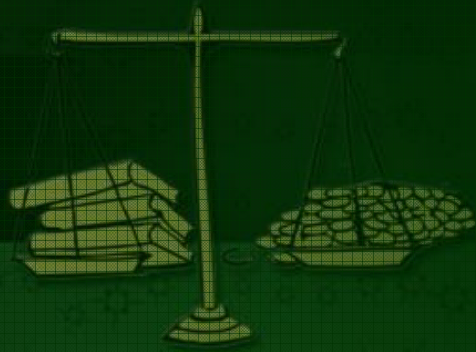
Program

- International co-operation
- Bilateral instruments
- Multilateral instruments
 - Instruments negotiated by the Council of Europe
 - The role of the Cybercrime Convention for international co-operation
 - Instruments of the European Union
- Closing remarks



International co-operation

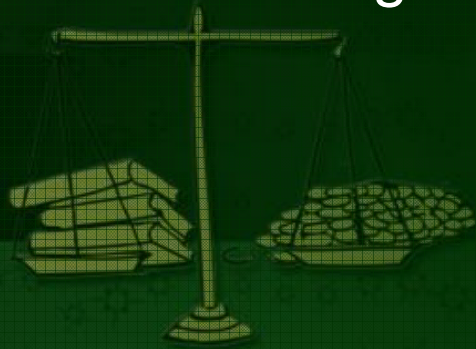
- To what purpose?
 - Police co-operation
 - Arrest of suspects
 - Extradition
 - Mutual Assistance: evidence
 - Other



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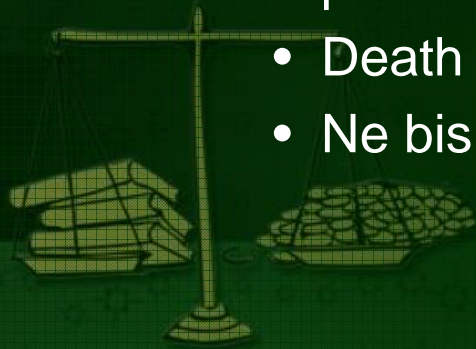
Extradition

- CETS 024, Dec 31, 1957
 - 49 ratifications, incl. Israel and South Africa
- CETS 086, Oct 15, 1975: 1 Add. Prot.
 - 1 sign. 38 ratifications, incl. Israel
- CETS 098, March 17, 1978: 2. Add. Prot
 - 1 sign, 41 ratifications, incl. South Africa
- CETS 209, Nov 10, 2010: 3 Add. Prot
 - 12 sign.



Convention on Extradition

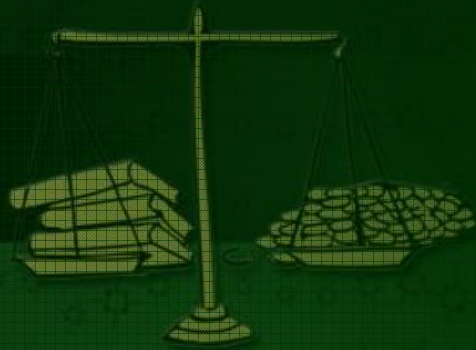
- Aim: Criminal proceedings/sentence+ detention
- Extraditable offences: all, imprisonment, maximum period at least one year (see also CCC-art. 24-1)
 - Priority for domestic law/reciprocity
 - Refusal in case of:
 - Political/Military/Fiscal Offence
 - Nationals, dep. Sec.general
 - Jurisdiction of requested State or pending or completed procedure State
 - Death penalty,
 - Ne bis in idem



Convention on Extradition- cont'd

- Speciality principle
- Provisional arrest
- Hand over of relating evidence

- Courts will establish legality of extradition request
- Governement will decide on political merits.



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2nd Add. Protocol

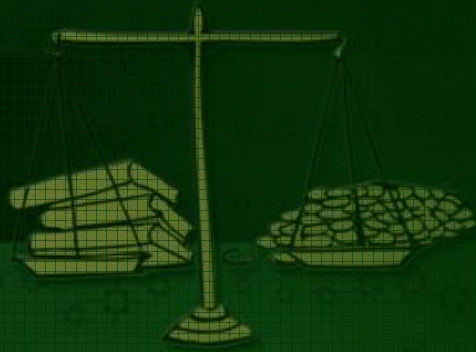
- Fiscal offence debate
- Sentence *in absentio*
- Refusal if Amnesty



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3rd Add. Prot

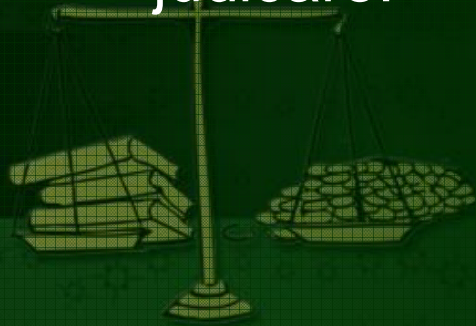
- Speeding-up and simplify procedure
 - Inform arrested suspect about choice
 - Consent
 - No specificity required



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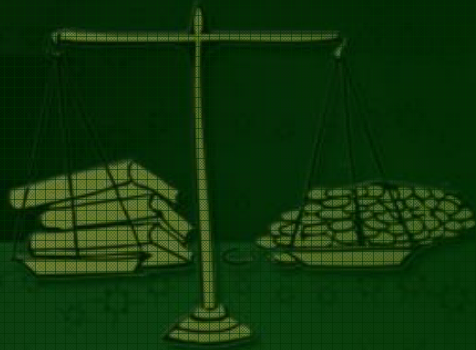
Article 24 Cybercrime

- Para 1: all offences, 1 year or minimum
- Para 2: article 2-11 extraditable offences; obligation to include in other instruments than Cybercrime Convention
- Para 3: in absence of Treaty, Convention legal basis between parties
- Para 5: no new refusal grounds, reference to domestic law
- Para 6: refusal on the basis of nationality, or jurisdiction: *judicare!*



Mutual Legal Assistance

- Convention CETS 030, April 24, 1959
 - 48 ratifications, incl. Israel
- 1st Add. Prot, CETS 099, March 17, 1978
 - 2 sign. 40 ratifications, no non-member states
- 2nd Add. Prot, CETS 182, Nov 8, 2001
 - 14 sign. 22 ratifications, incl. Israel



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Convention on Mutual Assistance

- Letters rogatory
 - Witnesses
 - Other evidence
- Dual criminality, if chosen



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1st Add. Protocol

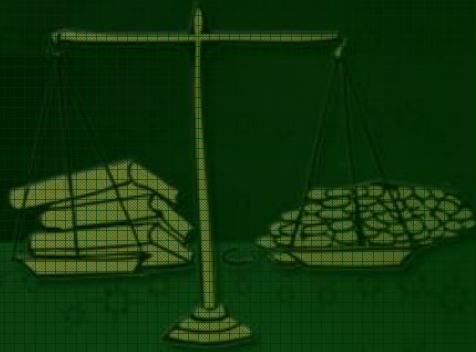
- No refusal for fiscal offence
- MLA extended for cases concerning the execution of sentences
- Detailed regulation for the exchange of judicial records



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2nd Add. Protocol

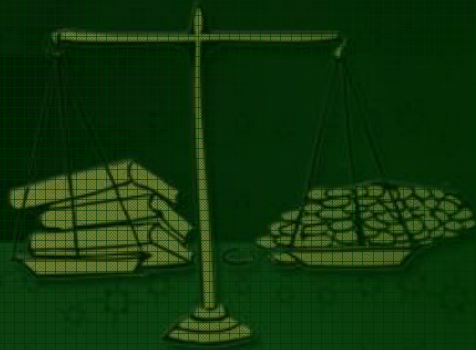
- MLA for more situations than criminal proceedings
- Assistance easier, quicker, more flexible
- Personal data protection clause



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MLA and the Cybercrime Convention

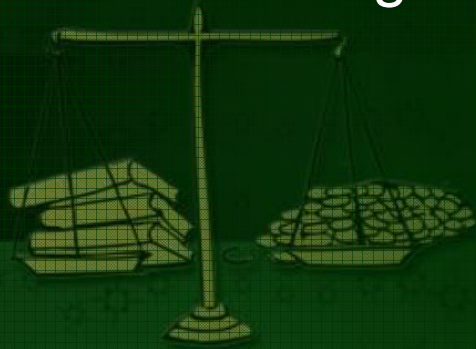
- Article 29 ff: specific measures
- Article 23, see also 2nd Add. Protocol
- Article 25: focussed on electronic evidence
- Article 28: Personal data clause



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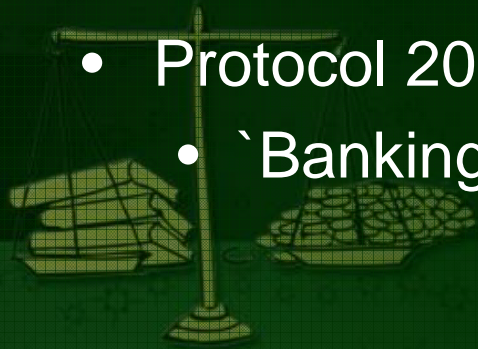
Other

- Transfer of sentenced persons,
 - CETS 112, March 21, 1983
 - 64 ratifications, 18 non-member states incl. USA
- 1st Add. Prot.
 - CETS 167, December 18, 1997
- Transfer of Proceedings
 - CETS 073, May 15, 1972
 - 10 sign. 25 ratifications no outsiderstates



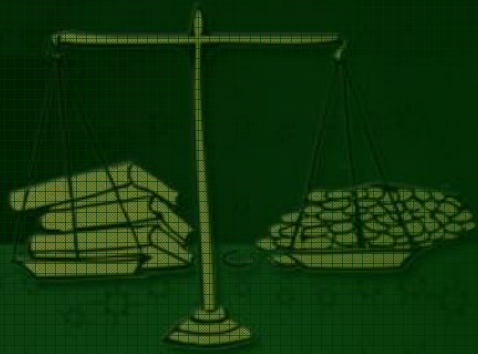
EU

- Convention on Mutual Legal Assistance, May 5, 2000
 - Modernise
 - Direct contact between competent authorities
 - Spontaneous Information
 - Videoconferencing witnesses
 - Joint investigation teams
 - Interception
 - Restrictions Use Personal Data
- Protocol 2001
 - `Banking transactions



EAW- FD 2002

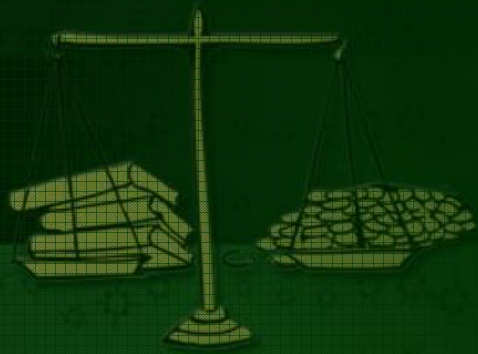
- Arrest warrant
 - Minimum penalty 1 year
 - Categories of crime
 - Limitation of Refusal



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EEW-FD 2008

- Objects/documents/data
- Direct contact competent authorities
- Limited grounds for refusal



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UN Convention against Transnational Organised Crime

- Certain crimes;
 - Participation in a criminal organisation
 - Laundering of proceeds of crime
 - Money laundering
 - Corruption
- Seizure and transfer of property
- Extradition
- Transfer of sentenced persons
- MLA



Concluding remarks

- International co-operation complex matter
 - What do we want from which country?
 - How can this (best) be achieved?
 - Which agreements are in place and which agreement is to be applied in case?
- Preference for multilateral agreements

