**Lesson 2.3 Utilizing Electronic Evidence Acquisition Though International Cooperation Mechanisms**

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| Lesson 2.3 Utilizing Electronic Evidence Acquisition Thru International Cooperation Mechanisms | | Duration: 150 minutes |
| **Resources Required:**   * PC/Laptop loaded with software versions compatible with the prepared materials * Internet access (if available) * PowerPoint or other presentation software | | |
| **Session Aim:**  The aim in this session is to present the complete step by step process of how digital evidence is acquired through international cooperation mechanisms. This will be presented through introduction about actual MLA steps undertaken on requesting and requested side and using the case study. The case study will discuss the types of data, how it is gathered/obtained through the various international cooperation mechanism including informal methods. How police, prosecutors and others deal with the data. This session will enable prosecutors, judges, and magistrates to be able to accurately assess data obtained which will be presented in the next session to the court as evidence. | | |
| **Objectives:**   * to refresh and expand knowledge about types of electronic evidence typical for Mutual Legal Assistance requests and exchange * to expand knowledge about types of the authorities competent to participate in Mutual Legal Assistance * to understand difference between MLA Central Authority and Executing Authority and hybrid systems * to understand what MLA procedural competencies for different authorities are * to learn about possible steps and variations of steps undertaken during MLA proceeding by different competent authorities * to actively participate in case study analysis by applying previously adopted knowledge and skills * to have improvement on overall knowledge of Mutual Legal Assistance regarding electronic evidence acquisition proceedings | | |
| **Trainer Guidance**  During the session following topics should be considered:   * common types of electronic evidence in MLA, including types of the computer data, available Budapest Convention definitions, proceedings, actions and other forms of mutual assistance * competent authorities’ setup – central and executing, including possibilities and impediments for the effective cooperation and reaction by MoJ, police, prosecution, and court * practical overview of mutual legal assistance proceedings, including step by step description of the proceedings * a case study | | |
| **Lesson Content** | | |
| **Slide Numbers** | **Content** | |
| 1 to 3 | The opening slides are the introduction to the session and include the Agenda and the session objectives together with some refresher subtopics from Introductory training. | |
| 4 to 7 | This slide presents quick recapitulation of definitions, information and explanations about most typical types of computer data in use today. This is already presented to the delegates within sessions about Budapest Convention articles (1 and 18), electronic evidence and similar. | |
| 8 to 9 | These slides are presenting more detailed information about BSI (Basic Subscriber Information).  Basic subscriber information is firstly defined by the telephone communication companies and means: (A) Name, (B) address, (C) local and long distance telephone connection records or records of session times and durations, (D) length of service, including start date, and types of services utilized, (E) telephone or instrument number or other subscriber number or identity, including any assigned Internet protocol address, and (F) means and source of payment for such service, including any credit card or bank account number.  Today it’s implemented for the subscribers of the Internet Service Providers for the purpose of accessing the Internet. | |
| 10 | Slide about traffic data. This data is generated by computers in the chain of communication to route a communication from its origin to its destination. It is therefore auxiliary to the communication itself.  In case of an investigation of a criminal offence committed in relation to a computer system, traffic data is needed to trace the source of a communication as a starting point for collecting further evidence or as part of the evidence of the offence. Traffic data might last only ephemerally, which makes it necessary to order its expeditious preservation. Consequently, its rapid disclosure may be necessary to discern the communication's route to collect further evidence before it is deleted or to identify a suspect. The ordinary procedure for the collection and disclosure of computer data might therefore be insufficient.  Moreover, the collection of this data is regarded in principle to be less intrusive since as such it does not reveal the content of the communication which is regarded to be more sensitive. | |
| 11 | Content data slide. Budapest Convention does not provide definition of the content data. However, there are number of different legal sources which are providing similar descriptions of the term “content data”.  All descriptions and definitions are agreeing that content data represent what is “inside” of the file which is sent over the network. | |
| 12 | Cloud data slide. Cloud computing is the on-demand availability of computer system resources, especially data storage (cloud storage) and computing power, without direct active management by the user. The term is generally used to describe data centres available to many users over the Internet.  Large clouds, predominant today, often have functions distributed over multiple locations from central servers. If the connection to the user is relatively close, it may be designated an edge server.  Clouds may be limited to a single organization (enterprise clouds), or be available to many organizations (public cloud). | |
| 13 to 17 | These slides are presenting electronic evidence MLA challenges, actions and other forms of the mutual assistance pertaining to it.  Some of the most important challenges regarding acquisition of the electronic evidence thru the mutual legal assistance in the criminal matters. Aspects of the challenges have been presented to the delegates during the Introductory Training.  Other forms of the mutual legal assistance which are at the disposal to the prosecutors and judges. Some of them are within competencies of the Ministry or Department of Justice and outside of the jurisdiction of prosecution or court. Even though, these authorities will have some part in it. | |
| 18 to 28 | These slides are presenting the possible setups of the MLA competent authorities.  There are different approaches for the setup of the central and executing authorities for the Mutual Legal Assistance. Depending on the domestic legal framework, including the adopted International treaties, setup may vary.  Ministry of Department of Justice is usually the central authority for the mutual legal assistance. However, due to the different aspects of the legal and logistical setup of the authority, there are challenges with which this scheme is faced, and which need to be noted.  Law Enforcement, mostly police, has certain authority regarding MLA process. However, it strongly varies from country to country. Common Law countries mostly empowered their law enforcement to actively participate in the requesting or providing information or evidence regarding cybercrime cases. That is not the case with the Civil Law countries where this authority almost completely belongs to the prosecution or court.  Prosecution and Court have rising responsibilities in the field of the MLA. Countries more and more realize that fast and substantive execution of the mutual legal assistance, being that an administrative or full assistance, can be provided by judiciary authorities since they are bridging competencies and jurisdictions amongst many participants in this process on one side, and on another, they are guarantors of the safeguards which should be implemented.  Civil law countries mostly adopted the system in which Public Prosecution or Investigative Department of the Court have investigation authority, while police in this system is performing their duties under the guidance or orders by these authorities.  In Common Law countries systems are mixed and classical one where police have all investigation authority is lesser present then the hybrid systems in which police cooperates with prosecution and files submissions to the court.  However, prosecution and courts are increasingly involved in the MLA proceedings.  A number have formally or effectively established contact points in prosecution offices (Albania, Belgium, France, Italy, Malta, Mauritius, Netherlands, Romania, Serbia, Switzerland, United States).  States take a wide variety of steps to improve the connections between the offices that process MLA requests involving electronic data. Those steps are detailed extensively in the compilation of the Parties’ answers, which is available to all Parties. The T-CY recommends continued focus on improvement of the process. The Council of Europe – including through projects and in coordination with the T-CY – should support the sharing of experience among 24/7 contact points. Close coordination with justice authorities should be ensured. | |
| 29 to 39 | These slides are presenting the practical overview of the MLA proceedings.  Steps are self-explanatory and should be well known to criminal law practitioners since they are corresponding to the domestic case proceeding with an addition of the international element.  Step 1: precondition for labeling the case as an MLA is establishing of the international element in the case in accordance with the law.  Step 2: conducting authority should thoroughly analyze the case and determine which facts need to be obtained.  Step 3: level of the information can be different due to the different stages of the proceedings.  Step 4: informal and formal assistance vary in speed, what is previously explained.  There are different variations in the approach to the Step 4, depending on the local law setup. Variations are depending on how much of the MLA authority is assigned to the participating force, office or court. Also, it depends on the legal possibilities for them to engage in MLA proceeding in and outside of the country.  Step 5: MLA proceeding can be and is extensively time consuming. Still, awaiting authorities should not depend only on the respond to it. They should act proactively and undertake all necessary measures which can be proceeded while waiting for an answer. Delegates should be inquired what that can be.  Step 6: requested state receives the LoR and starts local proceeding which can be also different as previously described on the requesting side.  Step 7: respond in sent back in accordance with the local factual and legal possibilities.  Step 8 and 9: respond is received, and it is analyzed. Additional LoR either as the clarification, addendum or a completely new one on the basis on the established facts from the first LoR, is at hands.  Delegates should be invited to share their experience. | |
| 40 to 45 | Case study of the real case from 2020. Additional material about it is provided in the training pack. | |
| 46 to 47 | The final slides allow the trainer to review the learning objectives with the audience so that they may be sure that they have been achieved. It is also an opportunity for the delegates to raise any issues that may be outstanding or where they have not fully understood the subjects presented.  In addition, the trainer may use the session to check the knowledge learned by asking questions of the participants. This is important as there is no formal assessment for the course. | |
| **Practical Exercises**  Case study is envisaged in this lesson. | | |
| **Assessment/Knowledge Check**  No knowledge check or assessment has been requested for this session. | | |