**Lesson Plan**

Lesson 1.3.4 International Cooperation

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| Lesson 1.3.3 International Cooperation | | Duration:  120 Minutes |
| **Resources Required:**   * Laptop or PC running Windows 7, 8 or 10 and with Microsoft Office 2010 or later * Projector and display screen * Whiteboard, flipchart or other technique for recording student input * These resources are only needed if the trainer is using a PowerPoint presentation | | |
| **Session Aim:**  To provide the delegates with information about international cooperation in financial and cybercrime investigations. | | |
| **Objectives:**  By the end of the lesson the students will be able to:   * Explain the relevance of international cooperation in targeting online crime proceeds * Explain the advantages of combining international cooperation avenues in the field of cybercrime and electronic evidence as well as, financial investigation and money laundering * Distinguish international cooperation on exchange of information and on mutual legal assistance * Enumerate relevant international networks and organisations for exchange of information. * Describe the nature, purpose and process of mutual legal assistance (MLA) * Present relevant international legal instruments * Identify relevant provisions of the Budapest and Warsaw conventions in order to be able to use them appropriately | | |
| **Trainer Guidance**  This session provides information about international cooperation methodologies in financial and cybercrime investigations.  All information about this session is included in the PowerPoint presentations entitled “1.3.4 – International Cooperation” in the resource pack. The trainer is responsible for ensuring that the materials are up to date. Changes may be made; however the objectives should be achieved. | | |
| **Lesson Content** | | |
| **Slide Numbers** | **Content** | |
| Slide 3 | Cybercrime and online crime is often trans-border in nature and therefore international cooperation is crucial. Networks and organisations to facilitate the exchange of information exist in the field of cybercrime (such as the 24/7 network of the Budapest Convention and Europol EC3), financial investigations (CARIN) and money laundering prevention and investigation (EGMONT Group). INTERPOL should also be mentioned.  Traditional mutual legal assistance is necessary for the execution of court orders to gather evidence, and to freeze and confiscate property abroad, even if it might take a lot of time. Alternative approaches might also be useful, such as Joint Investigation Teams (JITs) or conducting parallel investigations.  Online crime specifics  The Internet, notwithstanding its many positive aspects, provides opportunities for abuse by criminals who can act in almost invisible ways, rapidly and anonymously, to conceal their identity (for example by using Darknet services), evidence and traces of criminal profits. This characteristic of the Internet represents a challenge for law enforcement agencies.  In cases involving computers, or the Internet, being used as a tool or an object of a crime, the perpetrator does not need to be physically on the territory of a jurisdiction. Neither does any of the evidence necessarily need to be within the territory of a jurisdiction. By using the Internet, the perpetrator can operate in one country, using servers located in another country, to target a victim in a third country, while the proceeds of crime end up in a fourth country. The Internet knows no borders, but borders still exist for police and prosecutors. International cooperation for the purpose of investigation and evidence gathering is therefore essential. | |
| Slide 4 | Criminal investigations have to answer questions like: who is behind a particular IP address while that IP address was being used to communicate with a victim or another criminal? To establish the counterparts in a criminal activity, it might be important to analyse the traffic or even the content of communication that is stored by a company with headquarters abroad. Also when conducting financial investigations and analysing money flows, it is important to have access to bank account data and transactions abroad, and the possibility to postpone the transaction (FIU) or to freeze the transaction (court order), or property, for example in a bitcoin wallet.  Facing such practical challenges, it is important to understand what are the legal and practical possibilities to request and receive assistance in the form of information or evidence from a particular country. Success in concrete cases often depends on established contacts, mutual interest and trust.  Combining 3 aspects  The concept of targeting online crime proceeds brings together the approaches of cybercrime investigation, financial investigation and money laundering investigation with the purpose of increased efficiency and success of criminal investigations and criminal proceedings from the perspectives of both prosecuting a criminal and targeting and confiscating the proceeds of crime.  It is important to recognise the benefits of combining different possibilities for international cooperation by combining the three aspects. It should be noted however, that despite the possible efficient tools to prevent and combat money laundering, in several countries the prosecution of money laundering is still a challenge.  In cases of online crime investigation the speed is essential. When elements of the money laundering offence exist (criminal proceeds are being disguised or concealed) the FIU can use its power to access bank data and postpone the suspicious bank transaction and moreover, to request this measure from an FIU abroad. A subsequent court order to access bank data and/or freeze transaction abroad and MLA will be needed. | |
| Slide 5 | Law enforcement (police and prosecutors) cooperation and exchange of information is indispensible in cross-border investigations. Relevant networks play an important role in this respect.  Mutual legal assistance is still considered as the principal means to enforce court orders and to gather evidence abroad. The length of this formal procedure often represents an important obstacle. The use of joint investigations and JITs might address some of the challenges of efficiency.  International legal instruments, such as the Budapest and Warsaw conventions, provide for legal obligations to assist another party to the Convention. International cooperation in concrete cases is more efficient when mutual interest exists. It is therefore important to build professional relations with counterparts abroad. The international networks of experts offer opportunities to exchange best practice and build trust. Some international networks are created also to exchange operational information. Personal data protection rules apply in such cases. As the financial investigation should be conducted in parallel to the cybercrime (and online crime) investigation, it is useful to identify the relevant networks in the areas of cybercrime and e-evidence, as well as in the areas of targeting proceeds of crime (financial investigation) and prevention/investigation of money laundering.  In the investigation of criminal offences committed by international criminal groups, it is necessary to verify whether the offenders have any property abroad. In such cases, police or prosecutor international cooperation is very important. A contact person in a foreign police force can advise as to what data on property can be obtained from public sources, through police cooperation or by a letter rogatory. Such information can make the acquisition of data considerably easier and faster.  Note that such cooperation is operational and execution of court orders is excluded. The networks to facilitate the cooperation have been established. Even if these channels cannot be used for formal mutual legal assistance, the conditions for mutual legal assistance and other practical advice can be shared through these channels. Such cooperation can also lead to establishment of joint investigation teams, which in principle can facilitate also more effective mutual legal assistance approaches. It can also lead to arrangements of parallel investigations in cross border cases with more perpetrators and victims. | |
| Slide 6 | Who can help?  Camden Asset Recovery Interagency Network (CARIN)  <http://carin-network.org/>  CARIN is an informal network of experts/practitioners in the field of asset tracing, freezing and confiscation. Europol is a permanent secretariat of CARIN. Exchange the best practice and information on legal possibilities in the area of targeting proceeds of crime. The operational information between the two contact points can be exchanged bilaterally.  The Egmont Group  <https://egmontgroup.org/en>  Egmont Group is a body of 152 Financial Intelligence Units (FIUs). The Egmont Group is a platform for the secure exchange of expertise and financial intelligence to combat money laundering and terrorist financing (ML/TF). It is used to exchange the operational information in a concrete case between FIUs. The network of FIUs is used to exchange information on STRs, bank data and to temporarily postpone financial transactions on the basis of a request by an FIU (see Warsaw Convention, Chapter V, Articles 46 and 47).  24/7 Network of the Budapest Convention for exchange of information and assistance for the purpose of investigations or proceedings concerning criminal offences related to computer systems and data, or for the collection of evidence in electronic form of a criminal offence (See Budapest Convention, Article 35).  INTERPOL, Europol (EC3 for cybercrime) or Eurojust are channels for police and prosecutors.  For South-eastern European countries:  Also other regional and bilateral contacts of police and prosecutors are of great importance, such as the Southeast European Law Enforcement Centre (SELEC) or Police Cooperation Convention for Southeast Europe (PCCSEE).  Southeast European Law Enforcement Centre (SELEC)  <http://www.selec.org/>  The objective of SELEC, within the framework of cooperation among competent authorities, is to provide support for member states and enhance coordination in preventing and combating crime, including serious and organised crime, where such crime involves or appears to involve an element of trans-border activity.  Police Cooperation Convention for Southeast Europe (PCCSEE) provides the legal framework for police cooperation and exchange of information.  <http://www.pccseesecretariat.si/>  The Committee of Council of Europe experts – MONEVVAL and Conference of the Parties to the CETS 198 in the area of money laundering and terrorist financing, cybercrime (T-CY) or cooperation in criminal matters (PC-OC) besides their respective tasks, also provide for opportunities for experts to establish working contacts.  Trainer should explain that, whilst not being avenues for international cooperation, the following relevant bodies are carrying out relevant work in this area and it might be useful to follow their reports/plenaries:  Committee of experts on the evaluation of anti-money laundering measures and the financing of terrorism (MONEYVAL), <http://www.coe.int/t/dghl/monitoring/moneyval/>  Conference of the Parties to the CETS 198 (monitoring mechanism based on Warsaw Convention),  <http://www.coe.int/t/dghl/monitoring/cop198/about/about_en.asp>  The Cybercrime Convention Committee (T-CY), <http://www.coe.int/en/web/cybercrime/tcy>  Committee of experts on the operation of European Convention on cooperation in criminal matters (PC-OC), <http://www.coe.int/t/DGHL/STANDARDSETTING/PC-OC/>  The Financial Action Task Force (FATF), <http://www.fatf-gafi.org/>  The FATF is an inter-governmental body. The objectives of the FATF are to set standards and promote implementation of legal, regulatory and operational measures for combatting money laundering, terrorist financing and other related threats to the integrity of the international financial system.  Mutual legal assistance is formal cooperation and the result of a request can be used as evidence in court. Usual channels of communications are through the designated central authorities, often Ministries of Justice. The possible channels can also be the Ministry of Foreign Affairs or through the Interpol channel in urgent cases.  Note that within the EU mutual legal assistance is running directly between responsible authorities (prosecutor/court). Warsaw (Article 34) and Budapest (Article 27/29) conventions also provide for such approach in urgent cases, with formal requests transmitted through the central authorities as well.  The receiving state is obliged to recognize or execute the request for cooperation or court order.  National legislation regulates the forms of international cooperation, including mutual legal assistance, while it is based on relevant international legal instruments. In the area of targeting online crime proceeds the Council of Europe Convention on money laundering, search, seizure and confiscation of crime proceeds and terrorist financing (Warsaw Convention) and Budapest Convention on Cybercrime are the key ones.  Usually the content of a request (legal conditions and justification), the language and the communication channel is defined in the law. If no international agreement with certain third country exists, cooperation would be possible on the basis of the principle of reciprocity.  Identify relevant national legislation that defines conditions for international cooperation (legislation on police and prosecution office) and mutual legal assistance (legislation on criminal procedure/international cooperation). | |
| Slide 7 | International cooperation can be described from a procedural and institutional perspective (who does what). Also the relevant international networks are added to illustrate the different avenues.  In cases of cybercrime and online crime investigations cross-border cooperation is driven by the needs of the domestic investigation and the available timeframe. For example, in case of CEO fraud as explained in the section on cybercrime, the police or prosecutor’s contact person abroad might provide advice on legal conditions in the third country and on the most effective approach to MLA. Depending on the conditions provided in the national legislation, the police can propose to the prosecutor to request the court order to be executed abroad related to a request for house search, interrogation, and access to bank data, freezing order, seizure of electronic evidence, including to disclose traffic or content data related to electronic communication.  Mutual legal assistance is needed also for the execution of freezing or confiscation orders, if the property is abroad. However, management of frozen property, costs of management, disposal and sharing of confiscated assets usually require practical arrangements and agreement between the two parties.  Provisions on transfer of proceedings in criminal matters, extradition and transfer of sentenced persons are also defined by national and international legal instruments.  The judge who is issuing the court order, according to the national legislation, should also take into account the requirements related to mutual legal assistance requests, on the basis of a specific convention or practice in cooperation with the third country. The central authority for international cooperation, usually the Ministry of Justice, might be able to provide necessary advice.  There is an obligation to execute requests that meet the requirements, but the efficiency and speed depends also on direct bilateral contact and trust. In the area of e-evidence a voluntary and direct cooperation with internet service providers (ISPs) is very important, when allowed by domestic legislation. Particularly this is the case for multinational service providers (Facebook, Google, Microsoft, etc.) based in the USA that allows for timely preservation of data until a mutual legal assistance request is transmitted and to sharing information on subscribers, taking into account domestic legislation of the requesting state.  Since the mutual legal assistance process to gather evidence or to execute court requests, in practice, might take a long time, that the investigators in reality do not have, alternative forms of cooperation are being promoted, such as joint investigation teams (JITs) or parallel investigations. In a case of mutual interest and intensive involvement, the responsible authorities of two countries tend to act and react in a timely fashion. | |
| Slide 8 | The relevant conventions such as the Council of Europe Warsaw and Budapest conventions as well as European Convention on mutual assistance in criminal matters and additional protocols provide for legal obligation and avenues and options for exchange of information and execution of court orders in cross border cases.  The trainer should recall that cooperation with Parties to the preceding 1990 Strasbourg Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime is regulated in Article 49, paragraph 6 of Warsaw Convention.  Also UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (Vienna Convention) of 1988 and the UN Convention Against Transnational Organised Crime (Palermo Convention) of 2001 are relevant in this area.  Also bilateral agreements on mutual legal assistance in criminal matters and police cooperation agreements must be relevant in this respect.  International legal instruments contain aspects of criminalisation of conduct, procedural powers (investigation tools) and international cooperation, including legal basis for mutual legal assistance (MLA).  The fields of freezing and confiscation of proceeds of crime and money laundering (Warsaw Convention) and cybercrime (Budapest Convention) will be addressed from the perspective of international cooperation and mutual legal assistance. They provide for avenues that can be used and combined in order to achieve most effective results when conducting parallel financial and (cyber)crime investigation.  The Warsaw Convention sets up the central authorities for investigative, freezing and confiscation and mutual legal assistance. In emergency situations, direct cooperation between responsible judicial and prosecution authorities is foreseen (Article 34) as well as the direct cooperation between Financial Intelligence Units (FIUs), including administrative postponement of transactions.  The Budapest Convention provides for 24/7 network for cooperation (at police and/or prosecutor level) and allows also for requests for the preservation of data and the collection of evidence.  Also the traditional Convention on mutual legal assistance in criminal matters with its protocols can be used. | |
| Slide 9 | Relevant provisions for international cooperation available under the Warsaw and Budapest conventions will be presented to allow the identification of appropriate possibilities when combining cybercrime investigation, financial investigation and money laundering (prevention and) investigation. Cooperation applies subject to national provisions and with safeguards for postponement or refusal of request (Warsaw Convention, Section 5, Article 27 and Budapest Convention, Article 25/4 and 27/4 and 5). Article 24 of the Budapest Convention also regulates extradition. | |
| Slide 10-14 | General principles and measures for international co-operation  (Warsaw C., Article 15)  The Parties shall mutually co-operate for the purposes of investigations and proceedings aiming at the confiscation of instrumentalities and proceeds. Party shall comply with requests for confiscation of specific items or requirement to pay a sum of money corresponding to the value of proceeds and for investigative assistance and provisional measures with a view to either form of confiscation.  (Budapest C., Article 23 and 25)  The Parties shall afford mutual assistance for the purpose of investigations or proceedings concerning criminal offences related to computer systems and data, or for the collection of evidence in electronic form of a criminal offence.  Investigative assistance  (Warsaw C., Articles 16 – 20) Parties shall assist in the identification and tracing of instrumentalities and proceeds, which includes securing evidence as to the existence, location or movement, nature, legal status or value of the aforementioned property. Such assistance comprises also of Requests for information on bank accounts, on banking transactions and monitoring of banking transactions and spontaneous information.  (Budapest C., Articles 31-34): Mutual assistance regarding investigative powers: Accessing of stored computer data; Trans-border access to stored computer data with consent or where publicly available; Mutual assistance regarding the real-time collection of traffic data, Mutual assistance regarding the interception of content data.  Spontaneous information  (Warsaw C., Article 20) and (Budapest C., Article 26): Party may, within the limits of its domestic law and without prior request, forward to another Party information obtained within the framework of its own investigations when it considers that the disclosure of such information might assist the receiving Party in initiating or carrying out investigations or proceedings concerning criminal offences established in accordance with this Convention or might lead to a request for co-operation by that Party under this chapter. (2...)  Provisional measures  (Warsaw C., Articles 21-22):Parties shall take the provisional measures, such as freezing or seizing, to prevent any dealing in, transfer or disposal of property and provide spontaneously all information relevant for provisional measure.  (Budapest C., Articles 29-30): following measures are foreseen: Expedited preservation of stored computer data, Expedited disclosure of preserved traffic data.  Confiscation (Warsaw C.) Parties are requested either to enforce a confiscation order or to submit the request to its competent authorities for the purpose of obtaining an order of confiscation and enforce it. This includes request to pay a sum of money corresponding to the value of proceeds, or confiscation of specific item of property (Article 23). Paragraph 5 of Article 23 provides for execution of a judicial request for measures equivalent to confiscation leading to the deprivation of property, which are not criminal sanctions (non conviction based confiscation).  Article 25 determines the rules of assets sharing: property is primarily disposed of by executing Party, unless requested to give priority consideration to returning it to the requesting Party so that it can give compensation to the victims or return property to their legitimate owners.  Exemption on Direct communication  (Warsaw C., Article 34) In the event of urgency, under Article 34/2, requests may be sent directly between the judicial authorities, including prosecutors, with a copy to be sent through central authorities. Under Article 34/3 a request or communication may be made through the (Interpol). Under Article 34/5 the non coercive requests may be directly transmitted between the competent authorities. Under Article 34/6 direct exchange of draft request is possible.  (Budapest C., Article 27/9) provides for similar provision in case of urgency.  24/7 network  (Budapest C., Article 35): Each Party shall designate a point of contact available on 24/7 basis, in order to ensure the provision of immediate assistance for the purpose of investigations or proceedings concerning criminal offences related to computer systems and data, or for the collection of evidence in electronic form of a criminal offence. Such assistance shall include facilitating, or, if permitted by its domestic law and practice, directly carrying out the following measures: the provision of technical advice; the preservation of data pursuant to Articles 29 and 30; the collection of evidence, the provision of legal information, and locating of suspects.  FIU cooperation  (Warsaw C., Chapter V, Articles 46 and 47): FIUs exchange, spontaneously or on request and either in accordance with this Convention or in accordance with existing or future memoranda of understanding compatible with this Convention, any accessible information that may be relevant to the processing or analysis of information or, if appropriate, to investigation by the FIU regarding financial transactions related to money laundering and the natural or legal persons involved. Article 47: FIU postponement of suspicious transactions. | |
| Slide 15 | Trainer should discuss with the audience:   * Who is national central authority for Warsaw and Cybercrime conventions? * Who is the contact point for CARIN, EGMONT Group and 24/7 network? * Is there an ARO established? * Who is national member of the Conference of the Parties to the CETS 198, MONEYVAL and T-CY?   National legislation on:   * JITs, parallel investigation,   Mutual legal assistance. | |
| Slides 16-32 | These slides list the practical problems that may be experienced during any effort to cooperate internationally. The trainer should use these slides to demonstrate to delegates the various factors that they are required to take into consideration when exercising their powers to enable international cooperation. | |
| Slide 33 | Trainer should discuss with students:   * Which domestic authorities are involved in international cooperation: exchange of information, MLA and postponement of transaction? * Relevant networks and organisations? Who are the national contact points? * Who is the central authority for Warsaw and Budapest convention? * Which information can be requested and which procedural requests can be made on the basis of Warsaw and Budapest convention? * What is the relevant domestic legislation for international cooperation (police, prosecutors, MLA)? * What is the practice with direct ISP cooperation in the USA? * Data on MLA/STATISTICS (incoming/outgoing)? * Number of cross border financial investigation and exchange of info * Number of MLA requests bank data orders (in/out) * Number of MLA requests for freezing/confiscation orders (in/out) * Number of MLA requests in cybercrime cases, MLA for subscriber, traffic and content data, e-evidence. | |
| Slide 34 | Exercise  Discuss domestic legal provisions and jurisprudence on:   * MLA request and execution: * Access to bank data * Access to ISP subscriber, traffic and content data, including interception * Preservation request directly to ISP * Access, seizure and forensic analysis of stored computer data (e-evidence) * Freezing of transaction/property * Confiscation of property * Asset sharing   Provide/discuss templates/forms for:   * MLA request on the basis of national legislation in relation to Budapest and Warsaw conventions * Expedited preservation of stored computer data and disclosure of traffic data * Direct preservation request to ISP * Request through 24/7 network (Budapest convention) * FIU request to postpone financial transaction abroad. | |
| Slide 35 | The trainer should recap the session objectives with the delegates to give them the opportunity to ask any questions relating to the materials covered in this module. | |
| **Practical Exercises**  No practical exercises are envisaged in this lesson. | | |
| **Assessment/Knowledge Check**  No knowledge check or assessment is prepared for this session. | | |