



Eurojust

The European Union's
Judicial Cooperation Unit



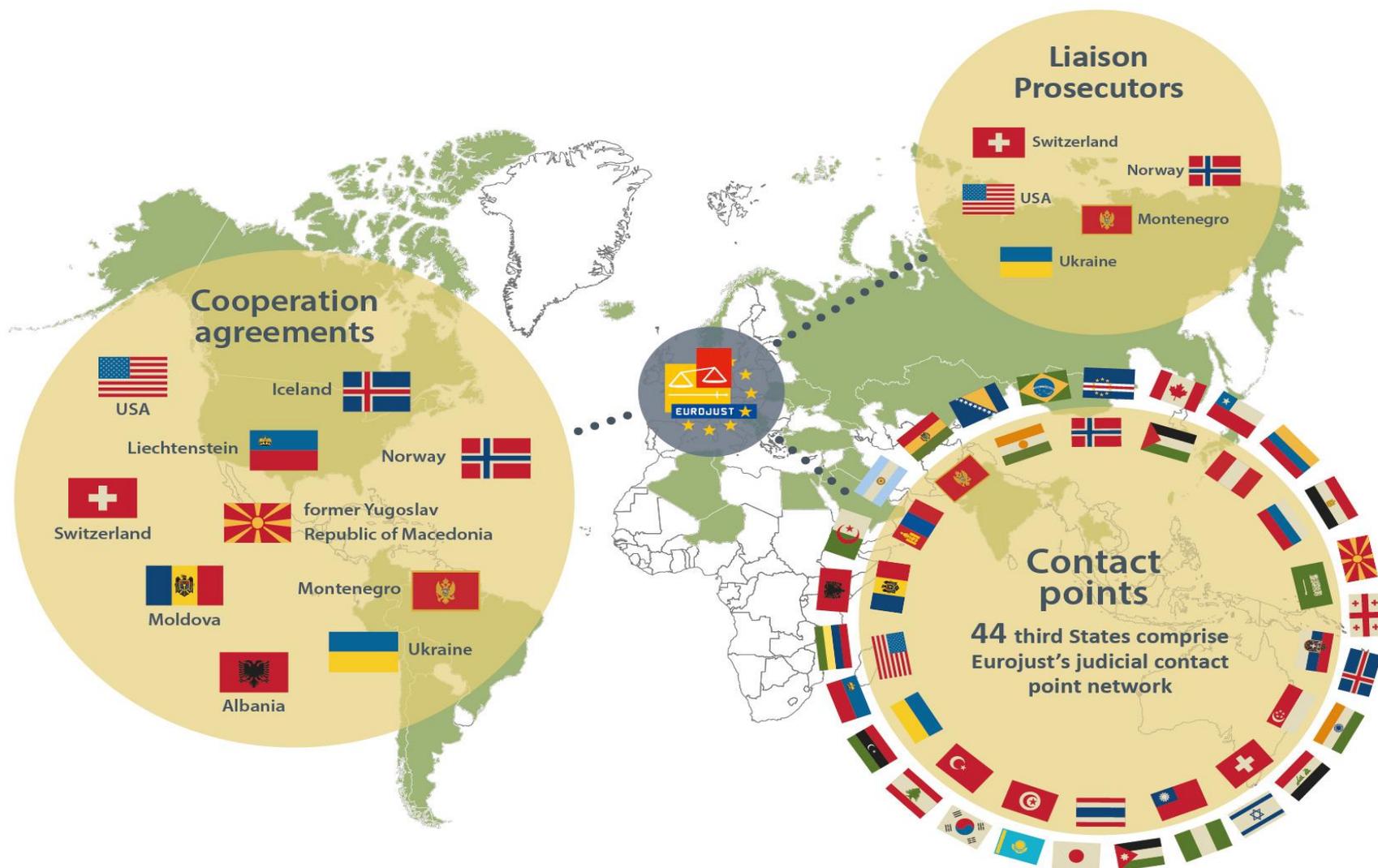
CHALLENGES FOR CRIMINAL JUSTICE IN CYBERSPACE/MUTUAL LEGAL ASSISTANCE

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Eurojust : EU's judicial cooperation unit



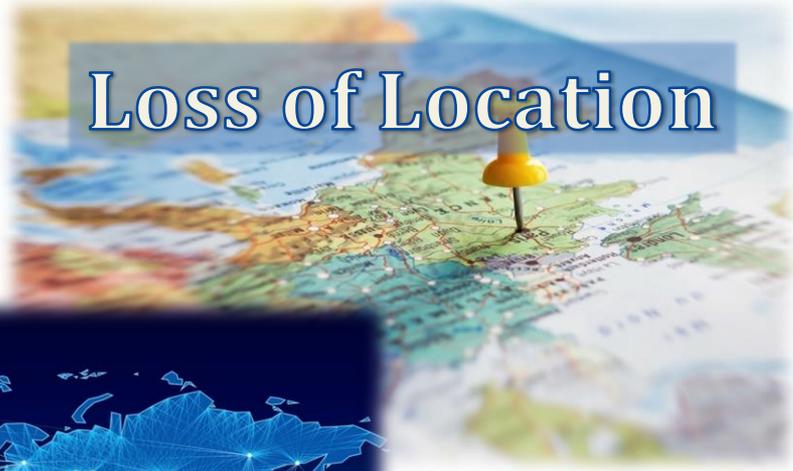
Eurojust - Cooperation with third States



Challenges in cybercrime



Loss of Data



Loss of Location



International
Cooperation



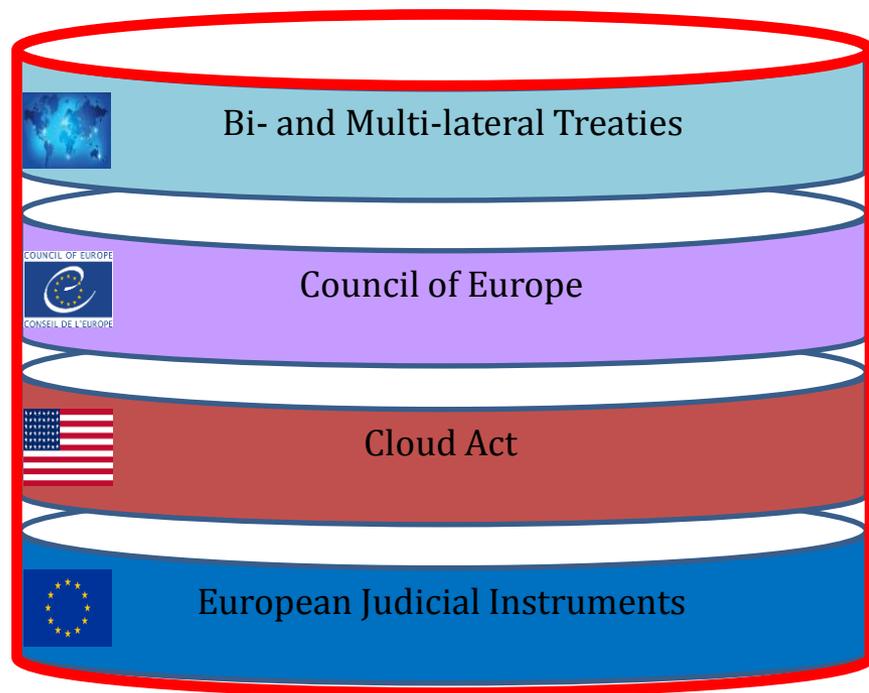
Public Private
Cooperation



Legal Framework

International cooperation framework

- Bilateral Treaties
- Multilateral Treaties
 - UN, OAS, etc
 - Council of Europe
 - 1959 Convention
 - 2nd Additional Protocol
 - Budapest Convention
- EU instruments
 - Convention 2000
 - European Investigation Order



International judicial cooperation

Currently cross-border requests are processed through:

- Mutual Legal Assistance (10 months on average),
- European Investigation Order (up to 120 days) or
- voluntary cooperation.

Not adapted to the challenges of **volatile** electronic evidence: too **slow** (data may be already deleted) and **burdensome** or lack transparency and accountability.

International judicial cooperation

- No common legal framework exists for the *expedited sharing* of evidence
- even the evidence is preserved, **it may take a long time before it is available for the criminal investigation or judicial proceedings in the requesting country.**

International judicial cooperation/MLA

- There is a **clear need to streamline the MLA processes** whenever possible
- better mechanism for cross-border communication and the exchange of information to ensure that **MLAs request conforms to all the relevant legal requirements** of the requested country
- Better knowledge to **differentiate between data requests that need to follow the MLA process** (e.g. content data) and requests that typically do not need to follow the MLA process



Legal Framework

Challenges concerning the National legal frameworks

- Differences in legislation may be an impediment for cooperation
- National legislation differs and may not specifically include cybercrime
- **Need for specific legislation in line with the growing sophistication of cybercrime**
- The growing sophistication of cybercrime requires **specific legislation that regulates law enforcement presence and action in an online environment** (including undercover activities and the takedown of digital criminal infrastructures).

TOOLS OFFERED BY EUROJUST TO OVERCOME CHALLENGES

- **Coordination of cross-border investigations and prosecutions : coordination meetings and coordination centres**
- **Early involvement of judicial authorities/Eurojust-best practice**
- **Facilitation of execution of mutual legal assistance requests**
- **Legal advice: admissibility of e-evidence, data retention, jurisdiction**
- **Support to the setting up and functioning of Joint Investigation Teams**



Advantages of a JIT

- Simplifies communication, co-ordination and co-operation between members and participants
- **Real time exchange of intelligence and evidence without MLAs/EIOs**
- **Jurisdictional and evidential issues can be addressed**
- Development of common strategy
- Strengthens mutual trust and interaction between team members from different jurisdictions
- Joint working – JIT members can be present in other jurisdictions
- JIT funding - 1) travel and accommodation 2) interpretation and translation.

Joint Investigation Teams

- **JIT is a useful tool to investigate Darknet /large scale cyber attacks** because of cross-border nature of the crime and need to coordinate investigations across countries with different legal jurisdictions
- **Some challenges** : Integrate different jurisdictions in JIT; different rules on confidentiality, decision making in case of many JIT participants, investigations in countries at different stages

Cybercrime JIT template

- Speed up the drafting process
- Standardised JIT template
 - Legal basis
 - Convention 2000; 2002 FD; 2nd Protocol CoE; EU-US MLA Convention; UNTOC Palermo 2000;
 - Participation of third countries
 - Common Definitions (References to Budapest Convention; FD attacks on information systems,...)



Sent in advance to national authorities

Ongoing initiatives/activities in the field

- **Legislative package** launched by the COM on the 17th of April 2018 (at present under negotiations in the Council –
- Development of a **secure online portal** for exchange of EIO and e-evidence
- Development of **Sirius platform** by Europol and Eurojust dedicated to enhancing the knowledge on cross-border gathering of e-evidence
- New concept for direct cross-border cooperation with US-based service providers regarding content data introduced by the **US Cloud Act**
- **Drafting of the second protocol to the Budapest Convention** on streamlining and simplification of MLAs requests

Conclusions(1)

- Current and expected future trends in cybercrime require an increasing level of cooperation, coordination and expertise from practitioners
- MLA process should be faster enough to keep pace with the cybercriminals and the technological challenges
- The knowledge of current tools , instruments and judicial facilitator actors is vital for practitioners in order to be effective in their cross border investigations/prosecutions

Conclusions(2)

- **Early coordination** between law enforcement and judicial authorities can be a way to **ensure that data is collected in compliance with applicable rules** during the investigation phase and as a result may be tendered as admissible e-evidence in subsequent judicial proceedings.
- Without proper legislation the importance of exchanging best practices and experiences and very practical approaches to practical problems by practitioners is crucial
- Eurojust is committed to continue to support effectively MSs when dealing with cross border investigations

Contact Information

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