



EUROJUST

Spontaneous Information Sharing between Judicial Authorities in the EU and countries with a Liaison Prosecutor

Octopus Conference - Workshop on spontaneous exchange of information

Bucharest, 13 December 2023

Background

➤ Different legal provisions

- Police cooperation
- Judicial cooperation: e.g. Art. 7 of 2000 EU MLA Convention; Art. 11 of 2nd Additional Protocol 1959 MLA Convention; Art. 26 of Budapest Convention; Art. 18(4) of UNTOC

➤ Key issue

- Possibilities and limits of transmitting and receiving information under these provisions
- Need (or not) for a subsequent LoR or EIO?
- Recurrent issue in Eurojust recent casework (encrypted telephones; cybercrime case dark web)

Legal framework

Article 7 EU MLA Convention Spontaneous exchange of information

1. Within the **limits of their national law**, the competent authorities of the Member States may **exchange information, without a request** to that effect, **relating to criminal offences and the infringements of rules of law referred to in Article 3(1)**, the punishment or handling of which falls within the competence of the receiving authority at the time the information is provided.
2. The **providing authority** may, pursuant to its **national law**, impose **conditions on the use** of such information by the receiving authority.
3. The **receiving authority** shall be bound by those conditions.

Article 26 Budapest Convention Spontaneous information

1. A 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. Prior to providing such information, the **providing Party** may request that it be kept confidential or only **used subject to conditions**. If the receiving Party cannot comply with such request, it shall notify the providing Party, which shall then determine whether the information should nevertheless be provided. If the receiving Party accepts the information subject to the conditions, it shall be bound by them.

Issues surrounding the legal framework

➤ **Meaning of ‘spontaneous exchange’**

- Spontaneous: voluntary nature, no obligation
- No prior request: also informal?

➤ **Meaning of ‘information’**

- Broad concept; diversity in type and content
- Can it cover evidence or only intelligence?

➤ **(National) limits on providing/using the information**

- What type of information can be transmitted under the law of the providing state?
- Which conditions imposed by the providing state on its use by the receiving state?
 - Can the information be used as evidence under the law of the receiving state?
 - Need for subsequent formal MLA request?
- Within EU, fully governed by national law?

Eurojust questionnaire

- **Application and interpretation of the concept of spontaneous exchange of information between judicial authorities**
 - In EU MSs and third States with a LP at Eurojust
 - From the *providing* and *receiving* perspective
 - Not cybercrime specific
 - National law
 - Aim is not to agree on one common approach for all countries, but to obtain an overview of a single reply per country
- **Finalized in November 2023**
 - Replies received from 31 States
 - Not public, to be shared only with their national judicial authorities/ EJM/ EJCEN

Outcome

- ▶ **Very rarely specific national law provisions**, many countries rely directly on international legal instruments:
- ▶ **Mostly no differences** depending:
 - Legal basis
 - EU Member State or third country
- ▶ **Notion of ‘spontaneous exchange of information’**: mostly not defined, sometimes reference to case-law
 - Information: any type of content; for some specifically also evidence, for others not
 - Spontaneous: voluntary, without a formal request; for some can be preceded by informal contacts

Outcome

- ▶ **Use of the information exchanged as evidence:** in most States in principle is possible, even without subsequent MLA, but
 - Mostly only in certain circumstances, subject to certain conditions
 - In practice very often a subsequent MLA request is sent as it is 'safer'
- ▶ **Limits imposed on the use of the information:** in most States decided on a case-by-case basis; different type of limits