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Theme III

Contemporary Legal Challenges and Solutions for Joint and Expedited Cybercrime Responses

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www.coe.int/cybercrime

Common types of electronic evidence in MLA

➤ Existing electronic evidence challenges reflecting on MLA proceedings:

- *Identification and location of the evidence*
- *Securing the hardware*
- *Capturing and analysis of the data*
- *Maintaining integrity and chain of custody*
- *Complying with rules of court and admissibility*
- *Linking the suspect to use of the device at the relevant time ('Attribution')*





Competent Authorities Setup – Central and Executing

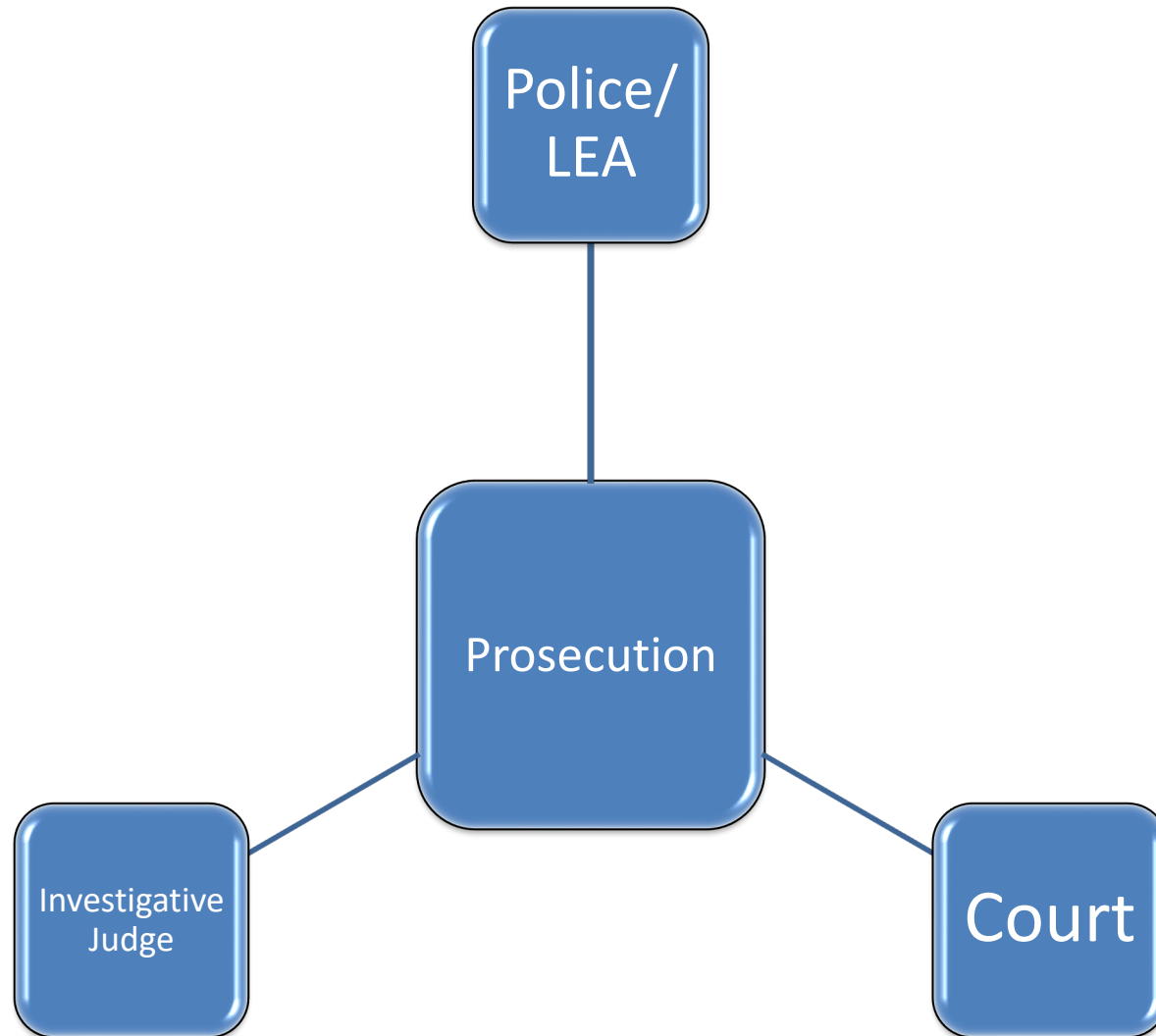
➤ **Available solutions in different countries:**

- *Ministry (Department) of Justice as central authority and one national unit to process all requests*
- *Single points of contact (SPOC) in different authorities (MoJ, LEA, Prosecution, Court etc.)*

➤ *One task force/unit with liaison officers from competent services like:*

- Police
- Investigators (where different)
- Prosecutors/Investigating Judges
- National Security
- Forensic service

Competent Authorities Setup – Central and Executing





Competent Authorities Setup – Central and Executing

- **Whichever system is in place, following should be strongly recommended as a minimum:**
 - ✓ **trained and equipped personnel** should be available 24/7 to facilitate the operative work and conduct or support mutual legal assistance (MLA) activities
 - ✓ **advanced experience** of the personnel in criminal investigations to keep awareness of the context
 - ✓ **strong information technology/digital** forensics background to execute requests where necessary
 - ✓ **strong knowledge of the MLA** legal framework and procedures
 - ✓ **competence and possibility to:**
 - **immediately assist** in investigations or trial proceedings concerning criminal offences related to computer systems and data
 - **collect evidence** in electronic form about criminal offence
 - **exchange electronic evidence** without further due with requesting country competent authority

International Organizations and Networks Specialized for Cybercrime Cooperation

➤ EUROJUST:

- ✓ *Eurojust may ask the competent authorities of the Member States concerned:*
 - **to investigate or prosecute** specific acts
 - **to coordinate** with one another
 - **to accept** that one country is better placed to prosecute than another
 - **to set up** a Joint Investigation Team
 - **to provide Eurojust** with information necessary to carry out its tasks.



International Organizations and Networks Specialized for Cybercrime Cooperation

➤ Eurojust Judicial Cybercrime Network (EJCN):

- ✓ facilitates and enhances cooperation between competent judicial authorities by enabling the exchange of expertise, best practice and other relevant knowledge regarding the investigation and prosecution of cybercrime
- ✓ fosters dialogue among different actors and stakeholders that play a role in ensuring the rule of law in cyberspace



International Organizations and Networks Specialized for Cybercrime Cooperation

➤ **European Union 24/7 Contact Point Network:**

✓ Directive [2013/40/EU](#) of the European Parliament and of the Council of 12 August 2013 on attacks against information systems and replacing Council Framework Decision 2005/222/JHA:

- *have an operational national point of contact*
- *use the existing network of 24/7 contact points*

- *respond to urgent requests for help within 8 hours to indicate whether and when a response may be provided*
- *collect statistical data on cybercrime.*



Budapest Convention International Cooperation 24/7 Network

- **Budapest Convention Article 35:**
 - to urgently collect evidence
 - To identify and discover suspects
- ✓ **Obligation to create a permanently available contact point** called *24/7 network* of contact points
- ✓ **General objectives of these contact points:**
 - to facilitate international co-operation
 - to provide technical advisory to other contact points
 - to activate the proper mechanism to expedited preservation of data



Budapest Convention International Cooperation 24/7 Network

➤ 24/7 Contact Points:

- **Operational network** of experts on high-tech criminality
- Provide **help and cooperation very quickly** even if a formal cooperation request must follow this informal way
- One single point of contact for each country, **available 24 hours a day, 7 days a week**
- **Direct communications between the points**
- Mainly planned to provide the possibility to immediately preserve traffic data and other stored data worldwide



Budapest Convention International Cooperation 24/7 Network

➤ 24/7 Contact Points:

- **most of the contact points are police based contact points**
- **some of them are Prosecution Services contact points**
- **Budapest Convention provided a legal basis to the 24/7 network of contact points, that are recognised as one of the most useful tools regarding International cooperation**



Budapest Convention

Second A.P. – Emergency MLA (24/7)

➤ Article 10 – Emergency Mutual Assistance

- ✓ Each Party may seek mutual assistance on a rapidly expedited basis where it is of the view that an emergency exists.
- ✓ A request under this article shall include, in addition to the other contents required, a description of the facts that demonstrate that there is an emergency and how the assistance sought relates to it.
- ✓ Each Party shall ensure that a person from its central authority or other authorities responsible for responding to mutual assistance requests **is available on a twenty-four hour, seven-day-a-week basis** for the purpose of responding to a request under this article.



Second A.P. – Joint Investigations and Teams

- **Article 12 – Joint investigation teams and joint investigations**
- ✓ **By mutual agreement**, the competent authorities of two or more Parties may establish and operate a joint investigation team in their territories to facilitate criminal investigations or proceedings
- ✓ The procedures and conditions governing the operation of joint investigation teams, such as their *specific purposes; composition; functions; duration and any extension periods; location; organisation; terms of gathering, transmitting and using information or evidence; terms of confidentiality;*

- and terms for the involvement of the participating authorities of a Party in investigative activities taking place in another Party's territory, shall be as agreed between those competent authorities.



Second A.P. – Joint Investigations and Teams

➤ **Article 12 – Joint investigation teams and joint investigations**

- ✓ Competent and participating authorities **shall communicate directly**, except if communication where exceptional circumstances require more central coordination
- ✓ **Where investigative measures need to be taken in the territory of one of the Parties concerned**, participating authorities from that Party may request their own authorities to take those measures without the other Parties having to submit a request for mutual assistance
- ✓ **Use of information or evidence provided by the participating authorities of one Party to**

participating authorities of other Parties concerned *may be refused or restricted in the manner set forth in the agreement*

- ✓ **Conditions if not foreseen by the agreement**
- ✓ **In the absence of an agreement, joint investigations may be undertaken under mutually agreed terms on a case-by-case basis.**
- ✓ **This paragraph applies whether or not there is a mutual assistance treaty or arrangement on the basis of uniform or reciprocal legislation in force between the Parties concerned.**

- ✓ Existing electronic evidence challenges reflecting on MLA proceedings
- ✓ Available solutions in different countries and recommendations
- ✓ EUROJUST, EJCN, EU 24/7 CPN
- ✓ Council of Europe Mechanisms with broader application:
- ✓ Budapest Convention Art. 35 (24/7)
- ✓ Second Additional Protocol instruments: Emergency MLA (24/7) and Joint Investigation Teams



Utilizing Electronic Evidence Acquisition Through International Cooperation Mechanisms



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