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Judicial cooperation - within the European Union and with other countries

-technical examination of the acquis Chapter 24 Justice, freedom and Security

Brussels- 12 November 2018

Disclaimer: These slides accompany the explanation of the acquis to Albania and North Macedonia and can only be used for that purpose. Their content is subject to further development of the acquis and interpretation by the Court of Justice of the European Union

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Directive 2014/41 – European Investigation Order

The EIO is judicial decision of (an Issuing) Member State requesting the gathering of evidence, which already exists or is to be obtained through investigative measures in another (the Executing) Member State

26 EU MS (IE and DK don’t take part)

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The EIO:

- **wide scope**
- **may be issued in criminal proceedings or administrative proceedings**

(where the decision may give rise to proceedings before a criminal court)

- **has to be necessary and proportionate, possible in similar domestic case**
- **limited grounds for refusal**
- **operates with a standardised form**

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Time limits for recognition or execution of the EIO

- **New principle**: same celerity and priority as for a similar domestic case
- **30 days for the decision of recognition**: with the possibility to extend until 60 days
- **90 days for the execution of the investigative measure**
- **Possibility shorter deadlines or specific date**
- **24 hours to communicate the decision on a request of provisional measure:** to prevent the destruction, transformation, removal, transfer or disposal of evidence

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The 2000 Convention on Mutual Assistance in Criminal Matters (MLA 2000 EU Convention)

-Supplements the 1959 Council of Europe Convention on MLA in criminal matters

-Applicable between any EU Member State and Ireland and Denmark (non-EIO MS)

-Principle of proportionality

-Beyond traditional Mutual Legal Assistance

-Safeguard for the application of more favorable provisions

MLA 2000 EU Convention – scope in relation to EIO

Joint Investigation teams (art. 13)

Sending and service of procedural documents (Art. 5)

Returning of objects to an injured party (Art. 8)

Spontaneous exchange of information (Art. 7)

Information on previous convictions

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The 2001 Protocol to the Convention

-***Need for additional measures*** *in the field for the purpose of the fight against crime, in particular organised crime, money laundering and financial crime*

-*Rules for* ***requests for banking related information*** *: on bank accounts, information on banking transactions, monitoring of banking transactions*

-***Exclusion*** *as ground for refusal of banking secrecy, fiscal offences, political offences*

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And why not a Joint investigation team (JITs)?

- specific form of cross border legal assistance
- if **circumstances of the case** (investigations into criminal offences) call for **coordinated, concerted action** in other Member State(s)
- regulated by an **Agreement** between judicial/police authorities of at least two Member States
- no need of traditional Mutual Legal Assistance requests between the states participating in JIT
- enables **direct exchange of information** between the authorities
- can solve issues of **admissibility of evidence** in advance

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Joint investigation teams (JITs) – Art. 13 MLA 2000 EU Convention and FD 2002/465/JHA on JITs

! Need to have **legal framework for JITs in place**:

- National law : clear definition of the case – purpose – duration – composition, as indicated in Art 13 of the 2000 MLA Convention + national legislation)

JITs setting up by mutual agreements between two or more Member States:

- set up for a specific purpose and for a limited period of time (possible to extend)
- any Member State concerned with **the investigation of offences with a cross-border dimension** may request the setting up of a JIT
- Ready to use *Model agreement* for setting up a Joint Investigation Team

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Joint investigation teams (JITs)

The Team :

- composed by law enforcement officers, prosecutors and judges and other relevant personnel, led by a person from the State in which the JIT operates,
- acts in accordance with the national law of the territory where the investigation is taking place
- (seconded member of the Team) can request **investigative measures** without the need for using MLA regime. Such requests are regarded as if they were "national" in the State in which the JIT operates

JITs – Role of Eurojust and Europol

Eurojust can request to the competent authorities in EU Member States to set up a JIT (Articles 6 and 7 of the Eurojust Decision)

Europol can participate in a support capacity in JITs (Art.3a of the Europol Convention – now art. 6 of the 2009 Europol Decision)

Europol officials –

- may assist in all activities and exchange information with all members of the JIT, without taking part in coercive measures

- may liaise directly with JIT members and provide any information available to Europol

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Continuous assessment and funding

-**Annual meetings of the network** of national experts on JITs hosted alternatively by Europol and Eurojust

-Network of National Experts on Joint Investigation Teams - Secretariat established within Eurojust

-JITs Funding programme managed by Eurojust - may cover reimbursement of costs (travel, accommodation, translation, interpretation) and loan of equipment (mobile phones, laptops, mobile scanners and printers).

To learn more:

- Model agreement for setting up a Joint Investigation Team
- JITs Practical Guide

http://www.eurojust.europa.eu/doclibrary/JITs/joint-investigation-teams/Pages/jits-framework.aspx

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Mutual legal assistance and extradition Agreements of the Union with non EU countries

Legal basis : *Articles 82(1) and 218(6) of the TFEU:*

Commission leads negotiations, Council adopts decisions by qualified majority, European Parliament is fully involved

Basic principle: to balance between promoting concrete interest of the Union and its citizens and maintaining human rights and fundamental freedoms in international judicial cooperation agreements, in the light of the EU Charter of Fundamental Rights

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EU - Norway and Iceland - key features

MLA : MLA Agreement EU-Iceland and Norway = since 2013, parts of the MLA 2000 EU Convention and 2001 MLA protocol **apply to Norway and Iceland**

Extradition: Surrender Agreement EU-Iceland and Norway **would extend provisions of the European Arrest Warrant** to such countries –

but not yet in force

EU–US Agreements - background

After the events of 9/11, EU and US started to cooperate quickly on modernization of law enforcement and judicial cooperation

First international agreement in the field of justice and home affairs **signed by the EU**

Very fast and constructive negotiations

Agreement sets **common framework for cooperation**, but co-exists together with and complete **other bilateral agreements** between EUMS and US

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EU-US judicial cooperation

EU-US Mutual Legal Assistance Agreement – in force since 2010

EU-US Extradition Agreement – in force since 2010

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EU – US judicial cooperation - Key features of the Agreements

Extradition agreement - modern practices that were absent from older extradition treaties between the U.S. and EU MS : e.g. dual criminality approach; simplifies authentication and transmission of documents

Mutual legal assistance (MLA) agreement –novelties in comparison to exiting mutual legal assistance treaties e.g., **tools to identify bank accounts and transactions**, and to facilitate the **establishment of JITs**

-EU Member States - not formally Contracting Parties - bound to the provisions of each EU-US Agreement **as a matter of EU law**, and they also have separate but parallel international obligations to the U.S.

Periodic Review of Agreements/Institutional Role of European Union - Both EU-US Agreements stipulate that the Contracting Parties will review their application, (made on 2015-2016)

Consultations – Both EU-US Agreements provide for consultations between the EU and the U.S., rather than between the U.S. and a Member State

EU - Japan MLA Agreement

-At origin - political will of both parties, negotiated in record time

-Modern means of cooperation, such as the possibility to request bank information or to organise a hearing of a witness or an expert via videoconference

-Entered into force on 2 January 2011 and since the volume of requests has risen

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Using EU agencies:

The EU has set up specific structures to **facilitate mutual assistance** and **support cooperation between judicial authorities**:

Eurojust: an EU body comprising experienced judges or prosecutors who support and strengthen coordination and cooperation between national authorities in relation to serious crime;

European judicial network in criminal matters (EJN) : a network of magistrates and prosecutors who act as contact points in EU countries to facilitate judicial cooperation.

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Thank you!

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