

Welcome to the LIVE_FOR webinar



This project was funded by the European Union's Justice Programme (2014-2020).

Today's agenda

- 1.** Opening
- 2.** Introduction and explanation of the Adobe Connect
- 3.** Introduction of the project LIVE_FOR
- 4.** Webinar presentations

LIVE_FOR

The project

Project partners:

- Jozef Stefan Institute (Slovenia) – coordinator
- Hochschule Albstadt-Sigmaringen (Germany)
- Universitat Politecnica de Catalunya (Spain)
- Vrije Universiteit Brussels (Belgium)
- Masaryk University (Czech Republic)
- Universidad Autonoma de Madrid (Spain)

Duration: November 2016 (2 years)

Co-funded by EU DG Justice

Main focus: Examination of Criminal Justice Access to Digital Evidence in the Cloud

LIVE_FOR

Project goals

- **Implementation of the EIO directive**
- **Collection of best practices**
- **Identification of educational needs**
- **Raise awareness**

Webinar presentations

- 1.** EIO in general (Vaclav Stupka)
- 2.** Best practices on applying EIO for gathering e-evidence from the cloud (Lewin Rexin, Hochschule Albstadt-Sigmaringen)
- 3.** New EU initiatives in the area of electronic evidence (Barbora Jekielek Henzl, Czech Ministry of Justice)
- 4.** Break - 12:00 – 13:00
- 5.** Digital evidence – basics and relevant properties (Marian Svetlik, Masaryk University)
- 6.** Best practices in the application of the EIO (Manel Medina, Universitat Politècnica de Catalunya)
- 7.** Discussion and conclusions

European Investigation Order

Agenda

- Background
- Types of cooperation
 - Mutual legal assistance
 - Mutual recognition
- European investigation order
 - Comparison with EEW
 - Implementation
 - Double criminality
 - Procedural rights
- Whats next?

The EIO

Background

- Wish to speed up slow MLA
- 2003-2008: MS lack of trust -> difficulties with MR and EEW
- 2010: Group of 7 MS present proposal for EIO
- Idea:
 - Replace traditional MLA almost fully
 - Based on MR principle
 - Using similar wording as EEW
 - But much wider in scope
- Adopted 2014, applicable since 2017
- Now implemented, but it took some time (<https://eur-lex.europa.eu/legal-content/EN/NIM/?uri=celex:32014L0041>) – except IE and DK

Regimes for obtaining evidence

	MLA	MR
When?	Diplomatic cooperation	Introduced in 2000
Where?	Worldwide	EU
Who?	Requesting state Requested state	Issuing state Executing state
What?	Request	Order or warrant
How?	Many possibilities	Limited possibilities
Follow up?	Dependent on grounds for refusal	In principle blind execution

Regimes for obtaining evidence

	MLA	MR
Applicable law?	Locus regit actum: requested state vs Forum regit actum: requesting state	Decision executed as domestic decision
Instruments?	<ul style="list-style-type: none">• CoE Conventions• EU Conventions• Regional conventions• BL & ML agreements• ...	<ul style="list-style-type: none">• FD on EAW• FD on Freezing Order• FD on EEW• Directive on EIO• ...

EIO vs. EEW

	EEW	EIO
When?	2008 (2011)	2014 (2017)
Where?	All EU MS	Not Denmark and Ireland
What?	Existing evidence (MLA still needed)	Existing and new evidence
How?	Transfer of existing objects, documents or data	Any investigative measure exc. JITs
Timing?	30 + 60 days (after receipt)	30 + 90 (after decision)
Applicable law?	Executing state	Executing state

The EIO

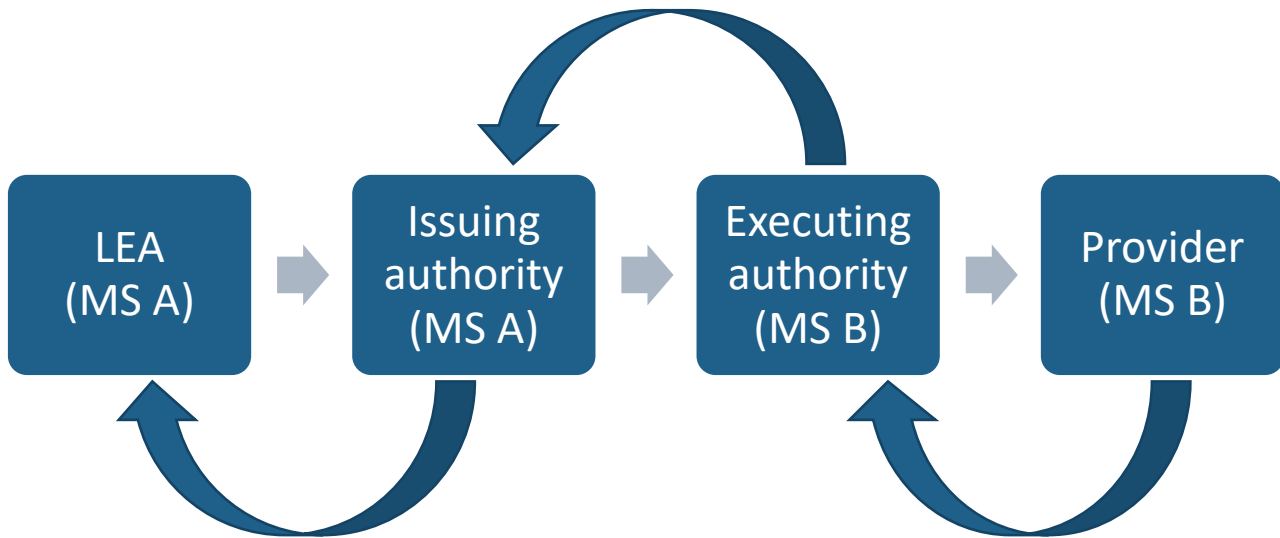
basics

- The EIO is:
 - a judicial decision issued or validated by a judicial authority of a Member State ("the issuing State") in order to have one or several specific investigative measure(s) carried out in another Member State ("the executing State") with a view to obtaining evidence in criminal matters
- Broad scope:
 - Exeptions:
 - Setting up of a JIT and the gathering of evidence within a JIT (Art.3)
 - Cross-border surveillance as referred to in the Convention implementing the Schengen Agreement (Recital 9)
 - Freezing/seizure for the purpose of confiscation (Recital 34, Art. 34(2))
 - Transfer of a person for the purposes of prosecution (Recital 25)
 - Sending and service of procedural documents / Information on previous convictions / Returning of objects to an injured party / Spontaneous exchange of information / Transfer of proceedings / Confiscation / Cooperation between customs authorities / Police to police cooperation

Issuing EIO

- **Conditions:**
 - Necessary and proportionate
 - Possible in similar domestic case
 - In case of doubt, possibility of consultation which may lead to withdrawal by the issuing authority
- May be requested by a suspected or accused person, or by a lawyer on his behalf, within the framework of applicable defence rights in conformity with national criminal procedure

EIO flowchart



Time limits of the EIO

- **New principle:**
 - same celerity and priority as for a similar domestic case
 - no undue delays – as soon as possible
- **The EIO Directive sets the following time limits:**
 - 30 days for deciding on recognition or execution of an EIO (Art. 12(3));
 - 90 days for carrying out investigative measures following the taking of the aforementioned decision (Art. 12(4));
 - 24 hours, where practicable, for decision on provisional measure following the receipt of an EIO (Art. 32(2)).
 - Possibility shorter deadlines or specific date • Grounds for postponement (Art. 15)

Grounds for refusal

- General grounds for refusal (art 11)
 - Applicable irrespective of the measure concerned
 - Immunity or privilege or rules limiting the criminal liability relating to freedom of the press
 - Harm to essential national security interests
 - Non-criminal procedures
 - Ne bis in idem
 - Extraterritoriality coupled with double criminality
 - Incompatible with fundamental rights obligations
- Additional grounds for refusal for certain measures
 - Lack of double criminality (Art. 11(1)(g)) (Except for a list of serious offences)
 - Measure is restricted to a list or category of offences or offences punishable by a certain threshold (Art. 11(1)(h))
 - Impossibility to execute (Art. 10(5))
 - Investigative measure does not exist or would not be available in a similar domestic case
 - Absence of alternative measures

What's next?

- New tools – list of competent authorities and languages, electronic forms, tools for verification, etc.
- E-evidence system using e-codex platform
- New legislation on e-evidence



LIVE_FOR

Criminal Justice Access to Digital Evidences in the Cloud –
LIVE_FORensics

Masaryk University
Czech cybercrime centre of excellence

 info@c4e.cz

