EU Cross-Border Gathering and Use of Evidence in Criminal Matters - Current Landscape
Plan

I. What are we talking about?
II. Mutual Legal Assistance and Mutual Recognition
III. MLA Current Landscape
IV. MR Current Landscape
V. Extra Tools and Actors
What are we talking about?

EU Cross-Border Gathering and Use of Evidence in Criminal Matters

Current Landscape
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# Mutual Legal Assistance and Mutual Recognition

<table>
<thead>
<tr>
<th></th>
<th>MLA</th>
<th>MR</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>When?</strong></td>
<td>Diplomatic cooperation</td>
<td>Introduced in 2000</td>
</tr>
<tr>
<td><strong>Where?</strong></td>
<td>Worldwide</td>
<td>EU</td>
</tr>
<tr>
<td><strong>Who?</strong></td>
<td>Requesting state Requested state</td>
<td>Issuing state Executing state</td>
</tr>
<tr>
<td><strong>What?</strong></td>
<td>Request</td>
<td>Order or warrant</td>
</tr>
<tr>
<td><strong>How?</strong></td>
<td>Many possibilities</td>
<td>Limited possibilities</td>
</tr>
<tr>
<td><strong>Follow up?</strong></td>
<td>Dependent on grounds for refusal</td>
<td>In principle blind execution</td>
</tr>
</tbody>
</table>
# Mutual Legal Assistance and Mutual Recognition

## MLA
### Gathering of evidence in criminal matters
- **Locus regit actum vs Forum regit actum**
- Ex. of MLA:
  - Information exchange
  - Video/telephone conference
  - Joint Investigation Team
  - Controlled delivery

### Use of evidence
- **Admissibility of evidence**

### Tools
- CoE Convention + Protocols
- EU Convention + Protocol
- Prüm
- Schengen Implementation Convention
- …

## MR
### Tools
- Framework decision on Freezing Order
- Framework decision on EEW
- …

### Freezing Order
- Evidence Warrant (EEW)
- …

### Admissibility of evidence
- Domestic vs EU competence
Locus and Forum regit actum

- **Locus regit actum:**
  - Origin: contract law
  - Place of *execution* = *requested* state = applicable law

- **Forum regit actum:**
  - Place of *prosecution* = *requesting* state = applicable law
  - Admissibility of evidence

- Depends on legal basis that is used
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• 2000 Transnational Organised Crime Convention
  – 186 ratifications
  – Article 18 on MLA
  – Traditional content and structure
MLA Current Landscape - CoE

• **1959 MLA Convention**
  - 50 ratifications (incl. 3 non-member states)
  - Mother convention of MLA
  - Locus regit actum principle

• **1978 1st Protocol**
  - 43 ratifications
  - Following problems with MLA Convention

• **2001 2nd Protocol**
  - 35 ratifications (not for Austria, Greece, Hungary, Italy, Luxembourg, Spain – for Germany from 01.06.2015)
  - Partial copy of EU MLA Convention
MLA Current Landscape – EU

• 1990 Schengen Implementation Convention
  – Title III, Chapter 2 = MLA
  – Supplements CoE MLA Convention

• 2000 MLA Convention
  – Introduces new forms of MLA
  – Introduces forum regit actum principle
  – Not in force for Croatia, Greece, Italy and Ireland

• 2001 Protocol to MLA Convention
  – Supplements 2000 MLA Convention
  – Not in force for Croatia, Estonia, Greece, Italy and Ireland

• 1997 Naples II Convention (customs)

• 2006 Swedish Framework Decision

• 2005 Prüm Convention and 2008 Prüm Decisions
MLA Current Landscape

• **List of instruments and possibilities:**
  convention shopping

• **Shopping list:**
  – Ratifications
  – Terms and conditions:
    • Crime(s)
    • Time
    • Information or investigative measure
### Convention shopping: example 1

**Hearing by video or telephone conference**

<table>
<thead>
<tr>
<th>Legal basis</th>
<th>EU MLA Convention</th>
<th>CoE 2nd Protocol to MLA Convention</th>
<th>UN TOC</th>
</tr>
</thead>
<tbody>
<tr>
<td>Video</td>
<td>art. 10</td>
<td>art. 9</td>
<td>art. 18, § 18</td>
</tr>
<tr>
<td>Telephone</td>
<td>art. 11</td>
<td>art. 10</td>
<td></td>
</tr>
</tbody>
</table>

**Hearing of:**

<table>
<thead>
<tr>
<th>EU MLA Convention</th>
<th>CoE 2nd Protocol to MLA Convention</th>
<th>UN TOC</th>
</tr>
</thead>
<tbody>
<tr>
<td>Witness</td>
<td>Witness</td>
<td>Witness Expert</td>
</tr>
<tr>
<td>Expert</td>
<td>Expert</td>
<td>Expert</td>
</tr>
<tr>
<td></td>
<td>for accused</td>
<td></td>
</tr>
</tbody>
</table>

**Consent of person:**

<table>
<thead>
<tr>
<th>EU MLA Convention</th>
<th>CoE 2nd Protocol to MLA Convention</th>
<th>UN TOC</th>
</tr>
</thead>
<tbody>
<tr>
<td>required for accused</td>
<td>required for accused</td>
<td>not required</td>
</tr>
</tbody>
</table>
## Convention shopping: example 2

### Joint Investigation Team (JIT)

<table>
<thead>
<tr>
<th>JIT Framework Decision</th>
<th>EU MLA Convention</th>
<th>CoE 2nd Protocol to MLA Convention</th>
<th>UN TOC</th>
</tr>
</thead>
<tbody>
<tr>
<td>Legal basis</td>
<td>Art. 13</td>
<td>Art. 20</td>
<td>Art. 19</td>
</tr>
<tr>
<td>Offences</td>
<td>Difficult &amp; demanding investigations or coordination needed</td>
<td>Difficult &amp; demanding investigations or coordination needed</td>
<td>Offences covered by TOC – one or more states</td>
</tr>
<tr>
<td>Applicable law</td>
<td>Law of state where investigation takes place (exception to rule!)</td>
<td>Law of state where investigation takes place (exception to rule!)</td>
<td>Laid down in agreement or arrangement</td>
</tr>
</tbody>
</table>
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2003 Framework Decision on the Freezing Order:

• Preventing transfer / destruction of evidence
• Within 24 hrs
• No exequatur
• No double criminality check when:
  – Sentence in issuing MS +3 yrs
  – And offence of 32-list
• Freezing maintained until separate EEW request
2008 Framework Decision on European Evidence Warrant:

- Post-freezing step
- For seizure, transfer, house search
- Of existing evidence
- Within strict time limits
- No exequatur
- No double criminality check when:
  - No house search
  - Offence in 32-list
  - Special case: Germany
Plan

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Extra Tools and Actors

- Supports law enforcement operations
- Analyses intelligence
- Participates in JITs

- Coordinates judicial cooperation
- Special position wrt JITs:
  - JIT Funding
  - JIT Network
  - JIT Model Agreement (in document library section of website)
  - JIT Manual (in document library section of website)
- http://www.eurojust.europa.eu/Practitioners/JITs/Pages/historical-background.aspx
Extra Tools and Actors

- Contact Points for each Member State
- Atlas = local authorities
- Compendium = MLA wizard
- Fiches Belges = investigative measures
- EAW Atlas and Compendium
- Library
When contact Eurojust and EJN?

- **Eurojust:**
  - Facilitate judicial cooperation (incl. with third states)
  - Prevent/solve conflicts of jurisdiction
  - Coordinate investigations/prosecutions
  - Facilitate/support JITs

- **EJN:**
  - Identify competent authorities
  - Facilitate judicial cooperation
  - Facilitate exchange of information
  - Obtain information on investigative measures

**When in doubt:** request will be forwarded to most suitable actor
Final Remarks

- Awareness of possibilities
- Awareness of tools and actors
- Changing environment
Thank you for your attention!

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