

RESIDENTIAL ACTIVITIES	WEBINARS	ONLINE COURSES	CEPOL's EXCHANGE PROGRAMME	ONLINE LEARNING MODULES
Courses 'in-house' with physical presence of participants 3-5 days 25-40 participants	Online seminars 1.5 hours specific topic 1000 participants	4 weeks up to 50 participants	Physical exchange of officers peer to peer under certain priorities	Flexibility for participants in sections, time, number of officers

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### CEPOL TRAININGS

WHO and HOW?

- CEPOL AGREEMENT (EU MS APART UK and DK)
- INTERN. TRANSPORT, ACCOMMODATION, MEALS
- CNUs and NCPs
- SELF PAYERS
- CANDIDATE COUNTRIES
- AGREEMENTS WITH 3TH COUNTRIES

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## CEPOL PROJECTS


### COUNTER TERRORISM II

- LEBANON
- JORDAN
- TURKEY
- TUNISIA
- MOROCCO

### WESTERN BALKANS FINANCIAL INVESTIGATIONS

- SERBIA
- BOSNIA AND HERCEGOVINA
- MONTENEGRO
- NORTH MACEDONIA
- ALBANIA
- KOSOVO<sup>1</sup>

[1] This designation is without prejudice to positions on status, and is in line with UNSCR 1244/1999 and the ICJ Opinion on the Kosovo declaration of Independence




## CEPOL WB FI PROJECT


### OVERVIEW

24 MONTHS LENGTH. KICK-OFF DECEMBER 2017

TNA CONDUCTED 1<sup>ST</sup> HALF 2018

IMPLEMENTATION PHASE STARTED JULY 2018







This project is funded by the European Union

**CEPOL WB FI PROJECT**

**OBJECTIVES**

- PROMOTING CLOSER COOPERATION AND MUTUAL LEARNING AND NETWORKING BETWEEN THE EU AND NON EU LAW ENFORCEMENT OFFICIALS, PROSECUTORS AND JUDICIARY MEMBERS, DEALING WITH FINANCIAL INVESTIGATION
- ESTABLISHMENT OF A COMMON AND SHARED PRACTICAL KNOWLEDGE IN THE FIELD OF FINANCIAL INVESTIGATION



   
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**CEPOL WB FI PROJECT**

**WORK PLAN**

- 6 NATIONAL TRAININGS, 1 PER PARTNER
- 4 + 8 REGIONAL TRAININGS
- 120 EXCHANGES, PEER TO PEER
- SELF PAYERS
- 23 WB PARTICIPANTS IN RESIDENTIAL ACTIVITIES



   
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**CEPOL WB FI PROJECT**

**NEXT TRAININGS**

- HEADS/REPRESENTATIVES OF POLICE ACADEMIES
- MOCK TRIAL (1 + 1)
- IRREGULAR MIGRATION/THB
- INVESTIGATING CRYPTOCURRENCIES
- INVESTIGATING CORRUPTION
- ANALITICAL TOOLS IN REGARD FI
- SIMULATION MONEY LAUNDERING LINKED TO FII





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**CEPOL WB FI PROJECT**

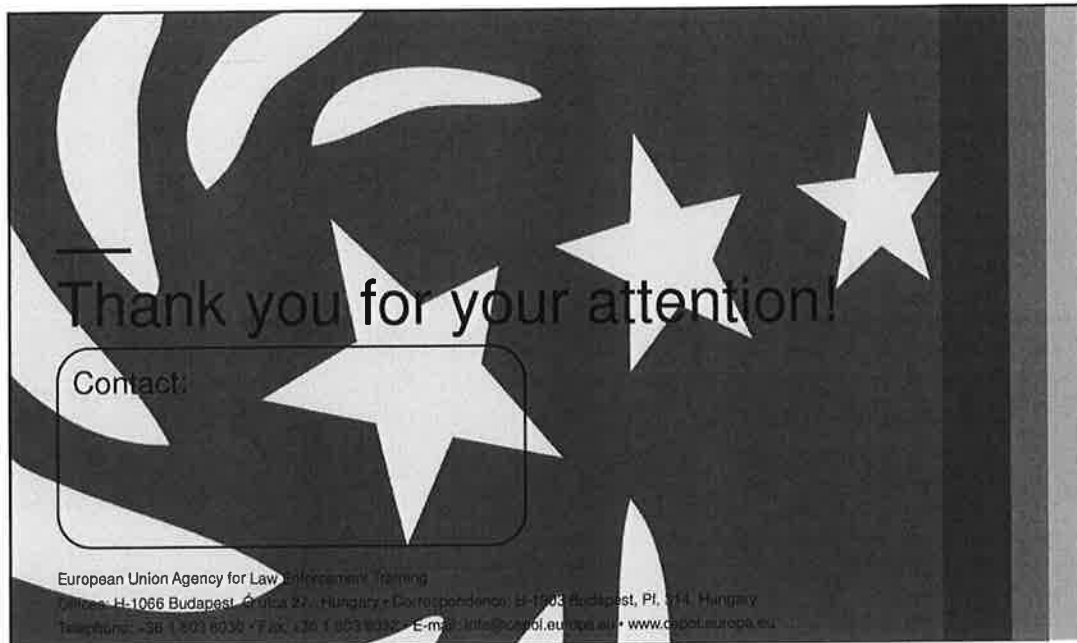
**METHODOLOGY**

- WORKSHOPS
- CASE STUDIES
- MIX GROUPS
- OPEN DISCUSSIONS
- COMMON SOLUTIONS TO CASE STUDIES



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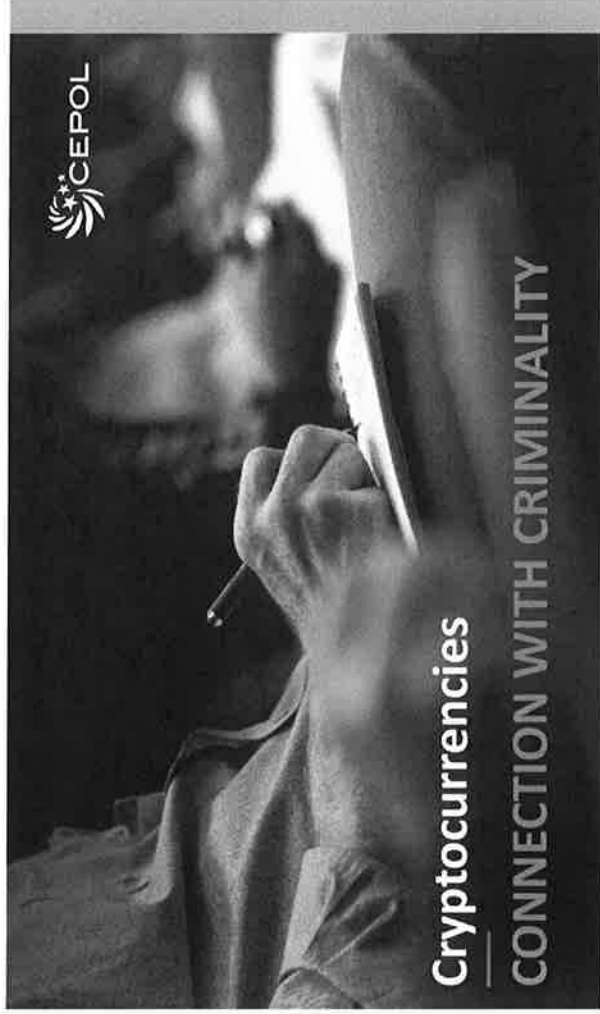


Thank you for your attention!

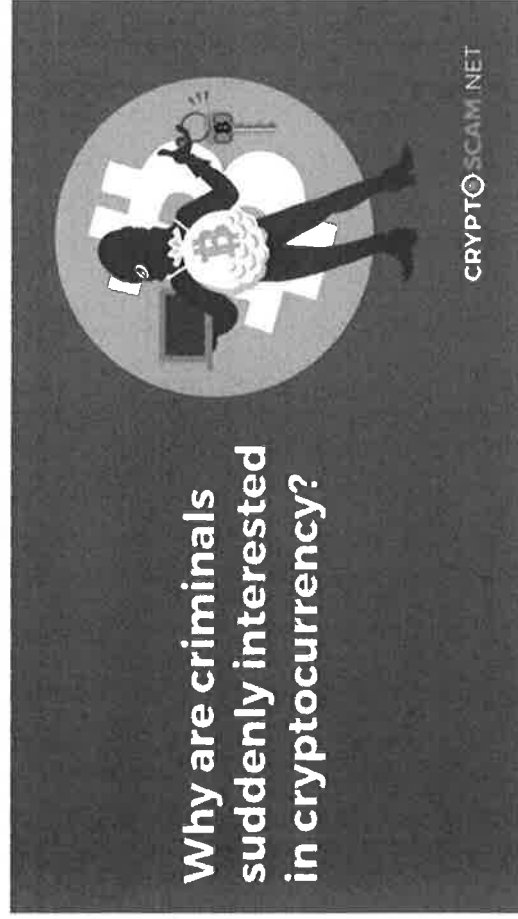
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EUROPEAN UNION AGENCY FOR LAW ENFORCEMENT TRAINING  
06/05/2019 – 10/05/2019 BUDVA, MONTENEGRO



## Topics Today



## WHY do criminals use cryptocurrencies?

- Global: Jurisdiction difficulties
- Decentralized: Nowhere to send a request
- Pseudonymous: Maintains anonymity
- Irreversible: No way to recover the damage
- Permanent: The stolen funds are safe

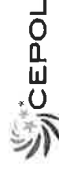
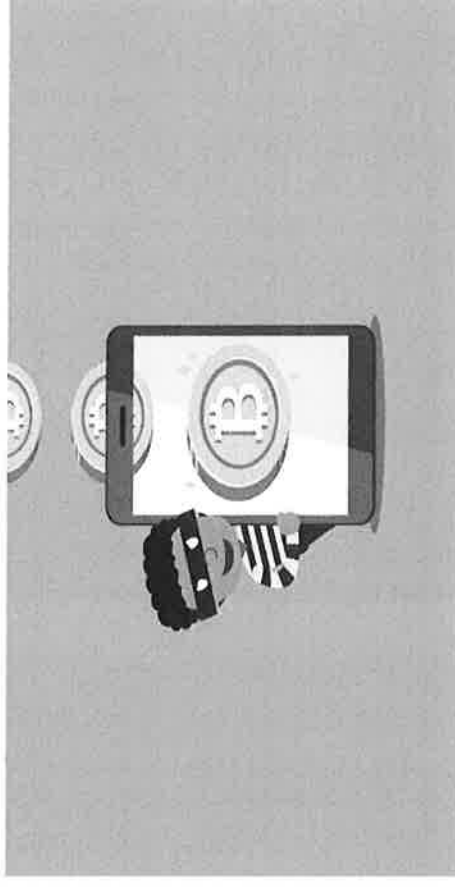


## WHY do criminals use cryptocurrencies?

- Easy to access: Can be used anywhere
- Easy to use: No special knowledge needed
  - Easy to possess: Difficult to seize
  - Fast: Difficult to follow
  - Cheap: Why not?



## HOW do criminals use cryptocurrencies?

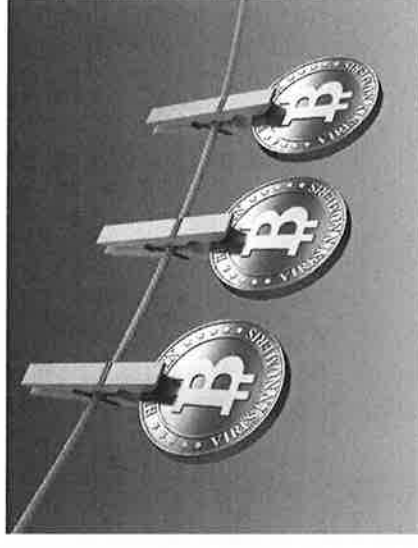


## HOW do criminals use cryptocurrencies?

1. They use it as a **tool**
2. They see it as a **goal**
3. They use it **for payments**
4. They use it **for storing value**



## **Cryptocurrencies as a tool** Money Laundering





# Cryptocurrencies as a tool Terrorism financing

MARKETS BUSINESS INVESTING TECH POLITICS CNBC TV

POLITICS

## New York woman pleads guilty to using bitcoin to launder money for terror group ISIS

PUBLISHED MON, NOV 24 2016 • 3:58 AM EST • UPDATED THE MON 27 2016 • 3:15 AM EST

Don Marquis  
F. J. GONZALEZ

SHARE f t in



**KEY POINTS**

- A young New York woman pleaded guilty Monday to supporting the Islamic terror group ISIS with a scam involving bank fraud, bitcoin and other cryptocurrencies.

- Zoezia Shehata, 27, of Brentwood, Long Island, admitted to wiring more than \$100,000 to individuals and small entities that were fronts for ISIS in Pakistan, China and Turkey in 2017.



# Cryptocurrencies as a tool Tax Evasion

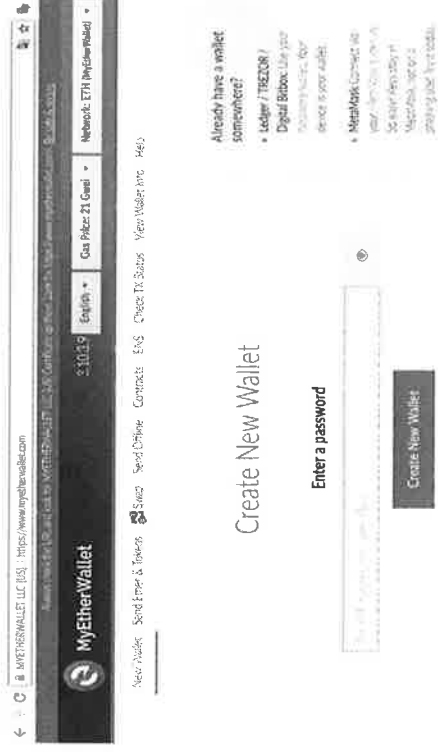


# Cryptocurrencies as a goal

- Phishing
- Ransomware
- Classic extortion
- Exchange hacks
- Bitcoin theft with malware
- Cryptojacking
- „Simple“ frauds and thefts
- ICO frauds
- Pyramid schemes



# Cryptocurrencies as a goal Phishing



# Cryptocurrencies as a goal Phishing



# Cryptocurrencies as a goal Ransomware

South Korean Company Agrees to Pay Hackers \$1 Million Bitcoin Ransom to Unlock Its Files



# Cryptocurrencies as a goal Ransomware

WannaCry: hackers withdraw £108,000 of bitcoin ransom

Digital wallets linked to ransomware attack that crippled NHS hospitals are cleared out, as law enforcement tries to track owners



# Cryptocurrencies as a goal Classic extortion

Hackers Demand Millions in Bitcoin for Stolen HBO Files

By THE ASSOCIATED PRESS



# Cryptocurrencies as a goal

## Classic extortion

*Cryptocurrency Ransom Demanded for Wife of Norwegian Tycoon*



The disappearance of Anne Elisabeth Falckell Hagen from her home in Lørenskog, Norway, has fueled the rumor and demand for bitcoins. <http://www.fox42.com/2013/02/28/missing-woman-asked-for-bitcoins/>



# Cryptocurrencies as a goal

## Bitcoin theft with malware

### Razy Malware Attacks Browser Extensions to Steal Cryptocurrency



# Cryptocurrencies as a goal

## Exchange hacks



# Cryptocurrencies as a goal

## Cryptojacking

Billions of video site visitors unwittingly mine cryptocurrency as they watch

Popular sites YouTube, Streamango, RapidShare and OnlineVideoCenter allegedly force users to mine Monero cryptocurrency, report says



# Cryptocurrencies as a goal Cryptojacking



## Cryptojacking Test

Check if your browser is affected by cryptojacking!



Seems like your Opera browser is up-to-date, but your built-in ad blocker with cryptocurrency mining protection is off. Just turn it on.

Turn on ad blocker



# Cryptocurrencies as a goal ICO (Initial Coin Offering) frauds

Another First: SEC Filed Emergency Order to Freeze Assets of Fraudulent ICO

23059 Total views 248 Total shares

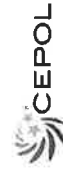


# Cryptocurrencies as a goal "Simple" frauds and thefts



Dutch thieves steal a bitcoin ATM thinking it would be full of bitcoins

chabee · 14 · cryptocurrency



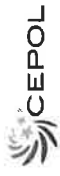
# Cryptocurrencies as a goal Pyramid schemes



OneCoin



bitconnect



## Cryptocurrencies for payments

- Bitcoin and some other altcoins are the „official“ currencies of Dark Web Marketplaces
- Traditional payment methods are not excepted
- We can buy almost anything for cryptocurrencies

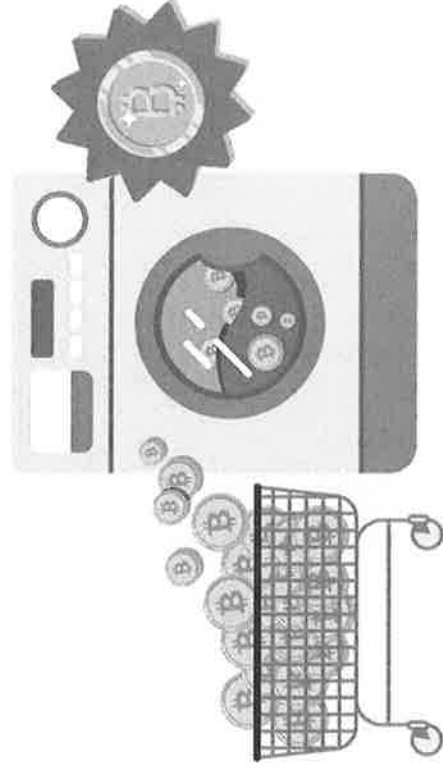


## Cryptocurrencies for storing

- Easy to hide
- Safe to keep
- Easy to transfer
- Easy to check



## Cryptocurrencies and money laundering



## Tumbling or mixing

- Cryptocurrency **tumbler or mixing service** is a service offered to mix cryptocurrency funds with others, so as to obscure the trail back to the original source.
- The **goal** of mixing is to improve the anonymity of cryptocurrencies since the currencies provide a public ledger of all transactions.
- **Transaction** fee typically 1-3%





## The Future: Lightning Networks

- BTC only 7 transactions per second
- BTC CASH 62 transactions per second
- VISA 24 000 transactions per second
- Faster and cheaper networks are under development for BTC, LTC, Zcash



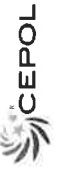

## Anonymous Bitcoin Mixer

Most important purpose of BitMix.Bat is saving privacy of all our customers and safety of their coins

Select the cryptocurrency to mix



Watch a video on how to use Bitcoin Mixer



## The Future: Lightning Networks

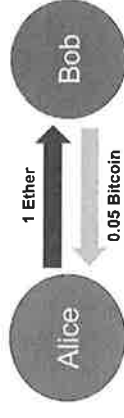
- Enables users to create payment channels between any two parties on an extra layer
- Uses a multisignature wallet with common access
- Only after the channel is closed, the final balance is broadcasted to the Bitcoin blockchain.
- So it enables users to conduct numerous transactions outside of the main blockchain and then record them as a single one



## The Future: Atomic Swap

- A peer-to-peer exchange of cryptocurrencies from one party to another, without going through a third party service.
- During this entire process, the users have full control and ownership of their private keys.
- Uses Hashed Timelocked Contracts

### ATOMIC SWAPS



## Other online money laundering issues - Online Money Mules -

- Criminals search for mules online (spams, online ads, Social Media, etc.)
- Mules receive money to their account and transfer it for some percentage via bank transfer or even Western Union
- Sometimes it is a job offer („Finance Manager“)

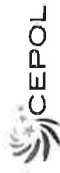


## Other online money laundering issues - Online Games -

- Criminals open online game accounts (Second Life, World of Warcraft, etc.)
- Turn dirty money to game currency (resellers, forums, markets)
- Finally they sell the game currency for real money



## Seizing Cryptocurrencies



## Seizing Cryptocurrencies

- Only a few countries has the proper legal background
- Only a few countries has a seizing manual for LE officers
- In practice it is a forced transaction from the target's address to the LE agencies' address
- The main goal is asset recovery







What's the  
**CONCLUSION?**

Click  
Here



Thank you for your attention!

Budapest, HUNGARY

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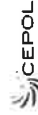
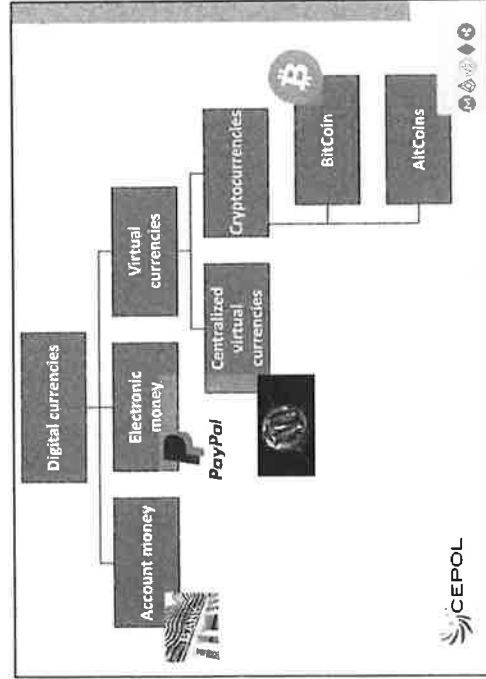
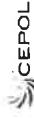
### What is CRYPTOCURRENCY?

- **Wikipedia:** A digital asset designed to work as a medium of exchange that uses strong cryptography to secure financial transactions, control the creation of additional units, and verify the transfer of assets.
- **Cambridge Dictionary:** A digital currency in which encryption techniques are used to regulate the generation of units of currency and verify the transfer of funds, operating independently of a central bank.



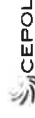
### Why we have to talk about cryptocurrencies?

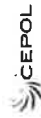
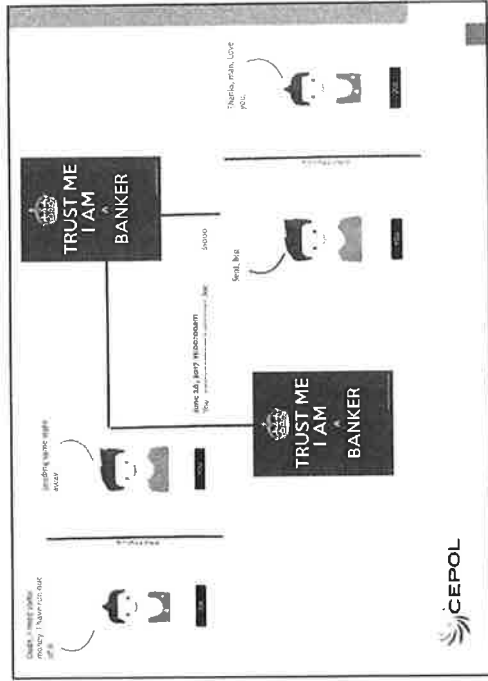
- More and more people are using cryptocurrencies – the criminals as well
- It is only a matter of time until we stumble into cryptos during an investigation
- The technology gives the upper hand to the criminals
- If we don't understand cryptocurrencies at all, we won't even have a chance against them



### The Birth of Cryptocurrencies

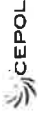
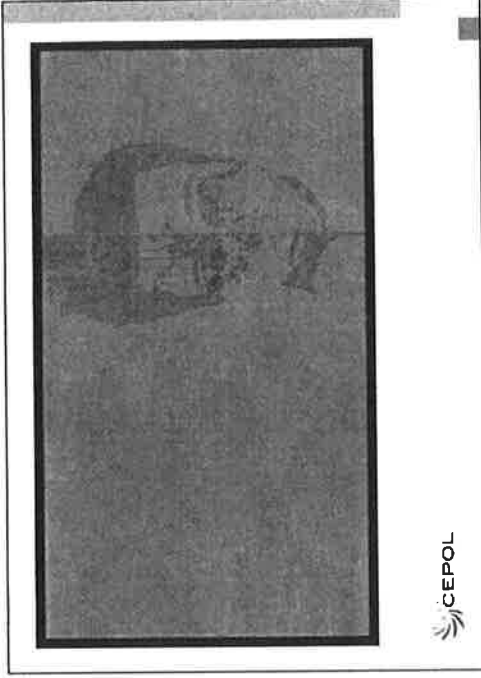
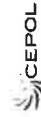
- The 21st century is the era of digitalization
- One of the last unsolved problem: How to transfer money in cyberspace?
- What has been the solution for centuries? - We use middlemen in whom we need to trust
- We trust a bank to manage our money, there is NO REAL MOVEMENT of physical bills, all is needed is an entry in the REGISTER, that NEITHER OF US controls





### The Birth of Cryptocurrencies

- Besides trusting in the banks, we trust in our currencies for now because we trust in our governments' credibility
- There is too much power in only a few hands...
- In the last few decades many tried to find a solution for this problem and get rid of the middleman (like Tyler Durden)...



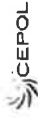
### The Birth of Cryptocurrencies

- In 2008 Satoshi Nakamoto introduced the first cryptocurrency: Bitcoin, which is based on the blockchain technology

Bitcoin: A Peer-to-Peer Electronic Cash System

Satoshi Nakamoto  
satoshi@bitcointalk.org

Abstract. A purely peer-to-peer system of electronic cash would allow online payments to be sent directly from one party to another without going through a financial institution. The system is designed to work without a central authority or trusted third party. It is based on a peer-to-peer network of nodes that are distributed across the globe. Nodes are rewarded with bitcoins for their work in the network. The system is designed to be resistant to censorship and to be able to handle a large number of transactions. It is also designed to be able to handle a large number of transactions. It is also designed to be able to handle a large number of transactions.



## What is the blockchain?

**Blockchain**  
*Simply explained*

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## How does the blockchain look like?

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## How Does a Blockchain Work: A Step-by-Step View

- 1 A user requests for a transaction
- 2 A block representing the transaction is created
- 3 The block is broadcasted to all the nodes of the network
- 4 All the nodes validate the block and the transaction
- 5 The block is added to the chain
- 6 The transaction gets verified and executed

101 Blockchains

## How does the transactions look like?

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### What was the first purchase?

03/01/2009 – The first block  
22/05/2010 – The first "purchase" with bitcoin

3/3/7  
4ev:19



Bitcoin  
May 18, 2010, 12:52:02 AM

I'll pay 10,000 bitcoins for a couple of pizzas... like maybe 2 large ones so I have some left over for the next day. If you're not into pizza, I can get you some other food, but I'm not sure what to order. I'll be on hand for bikers, where I don't have to order or prepare it myself. Kind of like ordering a breakfast platter at a hotel or something, they just bring you something to eat and you're happy!

Like things like onions, peppers, sausage, mushrooms, tomatoes, pepperoni, etc... just standard stuff no weird things like anything like that. I also like regular cheese pizzas which may be cheaper to procure or otherwise acquire.



If you're interested please let me know and we can work out a deal.

Thanks  
BC: 15709eapcygchrtab30vms8d8u1et

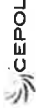



### How does a Bitcoin „look like“?

**Public Address:**  
12yNbFAYbtbReLbS1hn4z6mEnSZ7x8XDeh

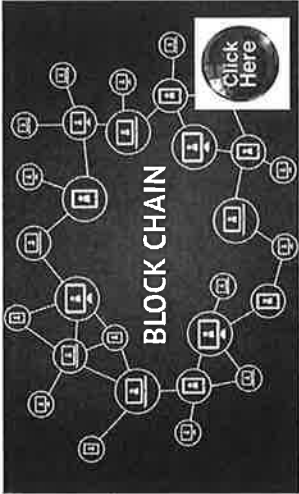
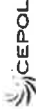



**Private Key (Wallet Import Format):**  
5HyLMy3kVDAcmZNgayZtHApC7AmWJjM5TyE8ddUkhezKRp3i8eCR



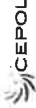
### How many transactions out there?

**BLOCK CHAIN**


### How does a Bitcoin „look like“?

- Public addresses:**
  - 26-35 alphanumeric characters:
    - ❖ 1Bv8M5EStWetqTFn5AU4m4GFg7xJaNVN2
    - ❖ 3798t1WpEZ73CNmQviecrnyWmqRHWNLY (multisig)
    - ❖ bc1qar0srr7xfky51643jydnw9re59gzwm5mdq (segwit)
- Private keys:**
  - 51-52 alphanumeric characters:
    - ❖ 5HwG13u458GLafK8gxtsshSPqJnYoGrsZgQsPwLFhLNyskDPyYA
    - ❖ L1aW4aubDFB7yfras2S1mN3bqg9nwySY8nkoLmJebSLD5BwW3E NZ
    - ❖ KzqQ8eqG1NLUPbkKqACDjesovgEzxBhpUvmGrUCf1jdvbrfrfQUk6




### How does other cryptos „look like“?

- Zcash:  
t1LgrxEJKSRKUsHqFVTLbEFDXfj75UYSnnM
- Monero:  
48yKp6kcqSE6zB2fS6tpC7ByR8WnBTdHINAYgwH8mE  
uRfu4LHgMY8HXxKFSdsa5JDaJ7qadA7egdKqfAhoBW  
5T6fHGy7b
- Ethereum:  
0xdd4eccd742d17887f50c27aebb14d99bfd7571b6





### Where can we buy Bitcoin?

- Mining
- Exchanges  
(from the operating company itself or from other users)
- Localbitcoins  
(small markets with sellers and buyers)
- ATMs
- Off the counter  
(on social media trading groups, personal connections)




### Bitcoin Vanity Address



### What is bitcoin mining?

- Bitcoin mining is the process of adding transaction records to Bitcoin's public ledger of past transactions or the blockchain.



**Bitcoin mining**



[Click Here](#)

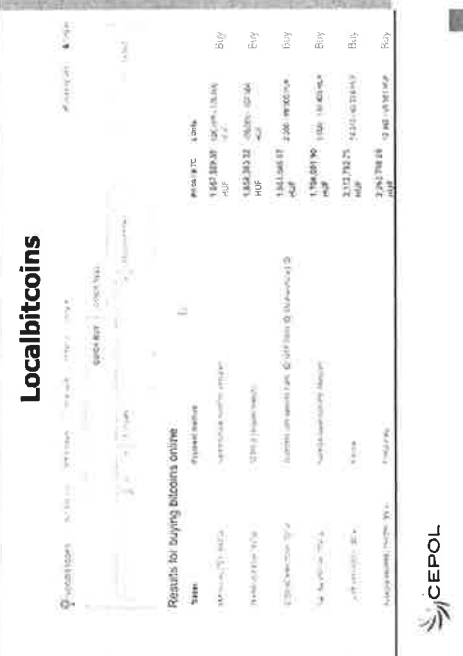
## Cryptocurrency Exchanges

A cryptocurrency exchange allows customers to trade cryptocurrencies for other assets, such as conventional fiat money or other digital currencies.

- Centralized exchanges** are online platforms used to buy and sell cryptocurrencies, but refers to the use of a middleman or third party to help conduct the transactions (e.g.: Coinbase, Kraken)
- Decentralized exchange** operates in a decentralized way, i.e., without a central authority and allows peer-to-peer trading of cryptocurrencies. (e.g.: Idex, Paradex)

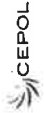



## Localbitcoins




**Results for buying bitcoins online**

Item	Price per BTC	Location
1	1.662.828,97	12004, 12046
2	1.632.343,32	12004, 12046
3	1.632.343,32	12004, 12046
4	1.641.566,57	12004, 12046
5	1.739.071,92	12004, 12046
6	2.132.732,25	12004, 12046
7	2.294.738,83	12004, 12046



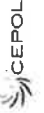
## Top 100 Cryptocurrency Exchanges by Trade Volume

Rank	Exchange	24h Volume (€)	Volume (24h)	Volume (24h)	Change (24h)	24h Growth (%)
1	Binance	1.601.022.226	1.601.022.226	1.601.022.226	0%	0%
2	Coinbase	453.196.436	453.196.436	453.196.436	0%	0%
3	Bitstamp	129.320.246	129.320.246	129.320.246	0%	0%
4	CEPOL	105.533.555	105.533.555	105.533.555	0%	0%
5	Bitfury	82.022.842	82.022.842	82.022.842	0%	0%
6	BitFlyer	74.433.936	74.433.936	74.433.936	0%	0%
7	Bitflect	67.022.842	67.022.842	67.022.842	0%	0%
8	Bitfury	67.022.842	67.022.842	67.022.842	0%	0%
9	Bitfury	67.022.842	67.022.842	67.022.842	0%	0%
10	Bitfury	67.022.842	67.022.842	67.022.842	0%	0%


 Source: <https://coinmarketcap.com>

## Bitcoin ATMs







### Bitcoin ATMs in Budapest, Hungary

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### Off the Counter

15 May at 17:06

i need small amount of Ethereum to buy

Like 3 Share

Please contact me. Have multiple eth I can send if you need.

Like 2d

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### Bitcoin ATMs near Montenegro

Address	Location	Source	Type	Level	Details
...	...	...	...	...	...
...	...	...	...	...	...
...	...	...	...	...	...
...	...	...	...	...	...
...	...	...	...	...	...
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### How can we store and use Bitcoin? - Bitcoin wallets -


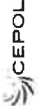
Click Here

YouTube

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## Brain wallet

## Hardware wallets



- Generates and stores the private keys on the device
- All the operations and transactions are executed on the device
- Has a screen to display some information
- Displays transaction information
- Requires a manual confirmation of an operation using a hardware button
- Allows to create a backup of private keys if the device is broken, lost or stolen
- Requires to install manufacturer-provided software
- Doesn't allow to install any software on the device
- Require to set up a PIN code
- Support only few top cryptocurrencies





## Hardware wallets




## Hot Vs. Cold Wallets *In cryptocurrency management*

 <p><b>HOT WALLET</b></p> <ul style="list-style-type: none"> <li>• Greater ease of use but more vulnerable to hacking.</li> <li>• Allow for instantaneous transfer of funds.</li> <li>• Connected to internet.</li> </ul>	 <p><b>COLD WALLET</b></p> <ul style="list-style-type: none"> <li>• More secure but less user friendly.</li> <li>• Recovery process may be more cumbersome.</li> <li>• Offline wallet is that they run on a small hardware device on a paper.</li> </ul>
---	---



### But why cryptocurrencies have any value?!

- Types of money:
  - **Commodity money** – has value because it consists of something that have value in themselves (gold coins, silver coins)
  - **Representative money** - has value because it is backed by some kind of commodity (gold, silver)
  - **Fiat money** – has value only because a government maintains its value, or because parties agree on its value (USD, EUR, JPY...174)



### But why cryptocurrencies have any value?!

- But one of the most important reason for value is that **PEOPLE WANT TO USE IT** to pay for goods and services, store their money, or simply speculate.
- The more the network of users and merchants grows and the more secure and advanced the system becomes, the **BIGGER IT'S VALUE** it can get.

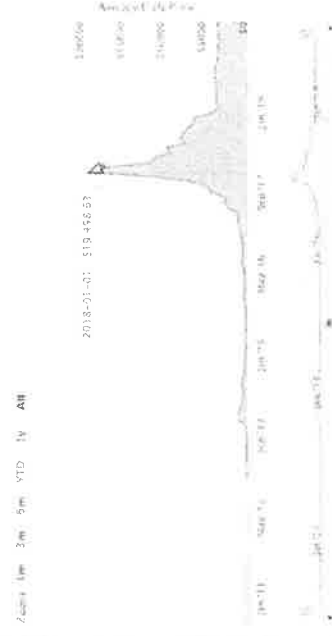


### But why cryptocurrencies have any value?!

- Usually are **limited** in quantity (e.g., there are at maximum 21 million bitcoins). Similar to gold standard system, it prevents hyper-inflation due to limited issue of currencies.
- Cryptocurrency **cannot be forged** because it is secured by cryptography
- The transactions **costs are lower** because no middlemen
- **Independent** from political situation, governments and banks



### Bitcoin Historical Price & Events



### Top 100 Cryptocurrencies by Market Capitalization

Source: <https://coinmarketcap.com>

#	Name	Market Cap	Price	Volume (24h)	Market Supply	Circulating Supply	Max Supply	Rank
1	Bitcoin	\$120,123,456,789	\$12,345.67	\$1,234,567,890	9,765,432,100	18,765,432,100	21,000,000	1
2	Ethereum	\$45,678,901,234	\$234.56	\$456,789,012	198,765,432,100	120,987,654,321	120,987,654,321	2
3	XRP	\$23,456,789,012	\$0.3456	\$234,567,890	67,890,123,456	45,678,901,234	100,000,000,000	3
4	Binance Coin	\$12,345,678,901	\$123.45	\$123,456,789	100,000,000,000	80,000,000,000	100,000,000,000	4
5	Cardano	\$8,901,234,567	\$0.1234	\$89,012,345	72,345,678,901	45,678,901,234	45,000,000,000	5

Thank you for your contribution!

Budapest

European Union  
Office: Pósföldi Buda  
Telefon: +36 1 802 8030  
www.cepola.eu

CEPOL

CRYPTOCURRENCY

DIGITAL COIN

MONEY

TRADE

EXCHANGE

BITCOIN

CASH COIN

UNIT & MONEY

MARKET

BUSINESS

PROFIT

SECURITY

BUY

SERVICES

ONLINE

MARKET

PEER

COIN

TRADE

LITE COINS

EXCHANGE

TRANSACTIONS

WWW

TRADE

MONEY

NET COIN

CASH COIN

CEPOL

### What is the INTERNET?

- **My family:** an electronic mail, the world wide web, a messenger, a communication tool
- **My colleagues:** the network of the networks, the ultimate source of music and movies, cute pictures and videos of cats
- **My friends:** a virtual network, the best solution for connections and information flow, a free contact and messenger, "...the murderer of my favorite porn video rental shop..."



### What is the INTERNET?

- **Wikipedia:** The global system of interconnected computer networks that use the Internet protocol suite (TCP/IP) to link devices worldwide.
- **Google:** A global computer network providing a variety of information and communication facilities, consisting of interconnected networks using standardized communication protocols.
- **Cambridge Dictionary:** The large system of connected computers around the world that allows people to share information and communicate with each other.



WIKIPEDIA  
The Free Encyclopedia



### The Internet how we know...

- **Crawling:** When Google visits a website for tracking purposes. This process is done by Google's Spider crawlers.
- **Indexing:** After crawling has been done, the results get put onto Google's index (i.e. the web search).
- If something can not find with Google, it does not exist
- Is it true or false?



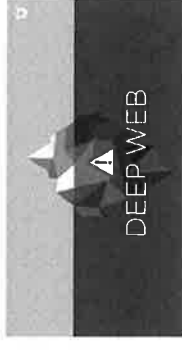
## Surface Web

## Exploring The Hidden Internet



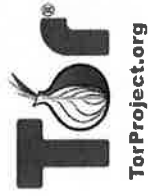
## The Deep Web

- **The Deep Web** (invisible web or hidden web) is part of the World Wide Web but the contents are not indexed by standard web search engines for any reason.
- For example:
  - Password protected
  - Contains file types which are not indexed by crawlers
  - Or can be reached only with specific DARKNET softwares



## The Darknet

- **The Darknet:** An encrypted network built on top of the existing Internet, and specific software (e.g.: browser) or tools are required to access it.
- Darknet provides anonymity for the users.
- Darknet is for example TOR, Freenet or I2P.



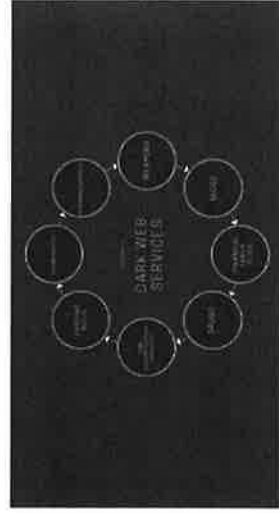
I2P





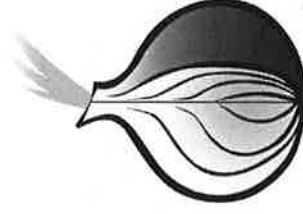
## The Dark Web

- **The Dark Web** is the content itself, that exists on Darknets and requires specific software, configurations, or authorization to access and check it.



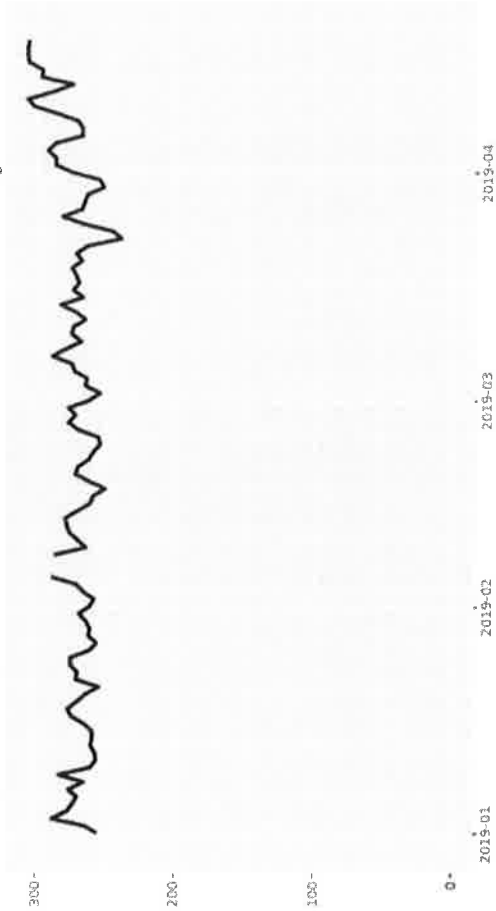
## The TOR Network

- was developed in the mid-1990s by US Naval Research Laboratory
- special proxy network (client-node-tor-exit)
- daily users average 2 000 000 Worldwide (app. 300 in Montenegro, 4000 in Hungary, 150 000 in Germany, 400 000 in USA)
- Requires a special browser (TOR Browser)
- Free to download it, legal to use it
- Special domains .onion, but „normal“ websites can be open with it





## Directly connecting users from Montenegro



The Tor Project - <https://metrics.torproject.org/>

## Mean daily users

- United States
  - Russia
  - United Arab Emirates
  - Germany
  - Indonesia
  - France
  - Ukraine
  - United Kingdom
  - India
  - Netherlands
- 369875 (18.54 %)
  - 247779 (12.42 %)
  - 163635 (8.20 %)
  - 154110 (7.73 %)
  - 104756 (5.25 %)
  - 85557 (4.29 %)
  - 77216 (3.87 %)
  - 62535 (3.13 %)
  - 46463 (2.33 %)
  - 43821 (2.20 %)



**Anonymity Online**  
Protect your privacy. Defend yourself against network surveillance and traffic analysis.

**Download Tor**

**Why Anonymity Matters**  
Tor is free and open source for Windows, Mac, Linux, iOS, and Android.

**Recent Blog Posts**

- [We're hiring!](#)
- [Family & Friends](#)
- [Who Uses Tor?](#)

## The TOR Project

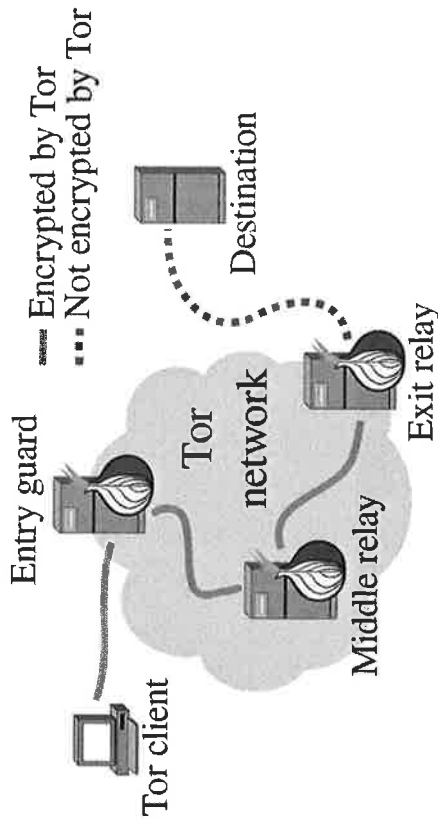
### Our Projects

- Tor Browser**  
Tor Browser contains everything you need to safely browse the Internet.
- Tails**  
Live CD/USB operating system preconfigured to use Tor safely.
- Relay Search**  
Site providing an overview of the Tor network.
- Stem**  
Library for writing scripts and applications that interact with Tor.
- Orbot**  
Tor for Google Android devices.
- Nyx**  
Terminal (command line) application for monitoring and configuring Tor.
- Pluggable Transports**  
Pluggable transports help you circumvent censorship.
- OONI**  
Global observatory monitoring for network censorship.

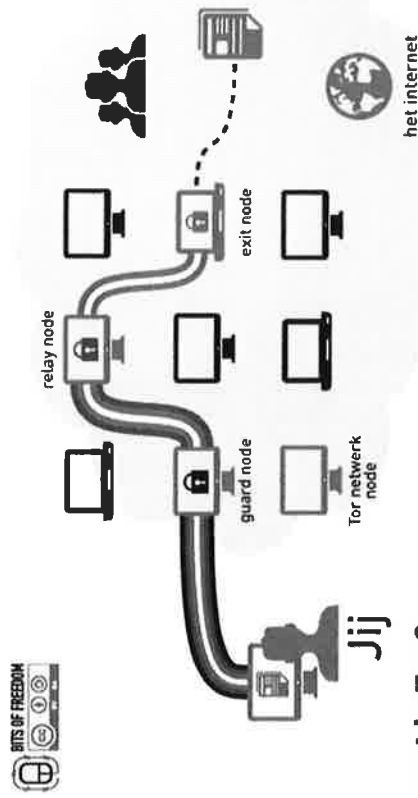
Learn more about our projects »



# The TOR Circuit



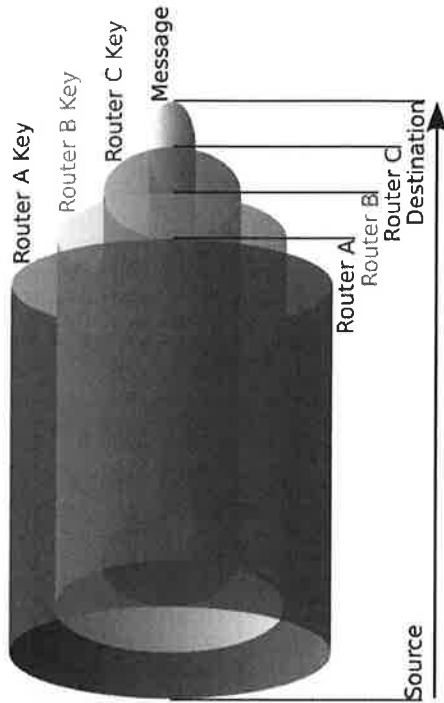
# The TOR Encryption



wat is Tor?



# The TOR Encryption



## What are the disadvantages?

- It is for anonymity and not for encryption
- Slow connection speed
- Sometimes the network is unstable
- Some websites denying TOR exit nodes (as disallowed IPs)





how do i get to the<sup>0000</sup>

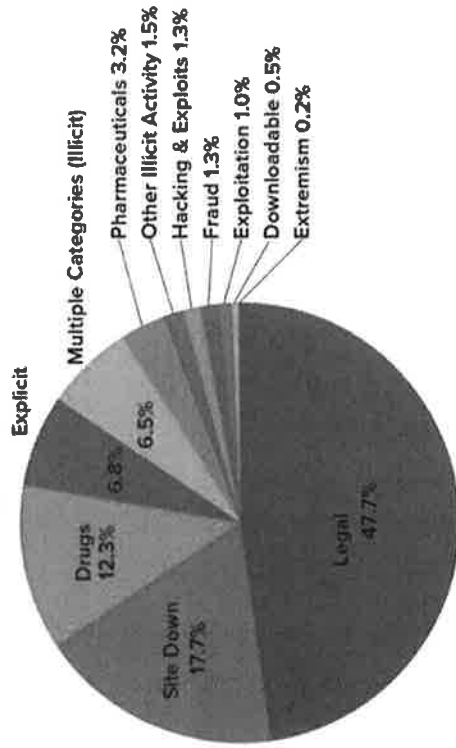


## Let's find some Dark Web URLs... but on the Surface Web...

- <http://www.deepdotweb.com/>
- <http://darkwebnews.com/dark-web-market-list/>
- <https://dnstats.net/#>
- <http://darknetmarkets.org/>
- <http://www.gvibes4u.com/list-of-darknet-marketplaces-pages/>
- <http://thehiddenwiki.org/>



## What can we find on the Dark Web?



## Search engines



DuckDuckGo

Search for...

q

q

q

q Advanced settings

searX

TORCH

TORCH: Tor Search Engine

**! NEW 2018 TEAM !**  
BUY REAL MONEY  
STAY WANT

ONION LINK





## Marketplaces

- New generation of vendors and buyers, everybody keeps anonymity
- The first marketplace was opened in 2011 (Silk Road)
- General currency is Bitcoin or other cryptocurrencies
- There are general marketplaces and special ones only for one or two type of goods
- Despite law enforcement counter measures (Silk Road, AlphaBay, Hansa, etc.) it is a rapidly growing business, vendors are moving to other markets
- The biggest now days are Dream Market, The Wall Street Market, Point/Tochka Free Market



## Marketplaces – How they operate?

- Only username and password needed (no e-mail, no phone number, no credit card number, no real personal data)
- Sometimes Vendor status requires a bond of app. B0.1 (\$534)
- There is escrow protection
- Categories, Forums, Chat rooms, Bug hunting for money

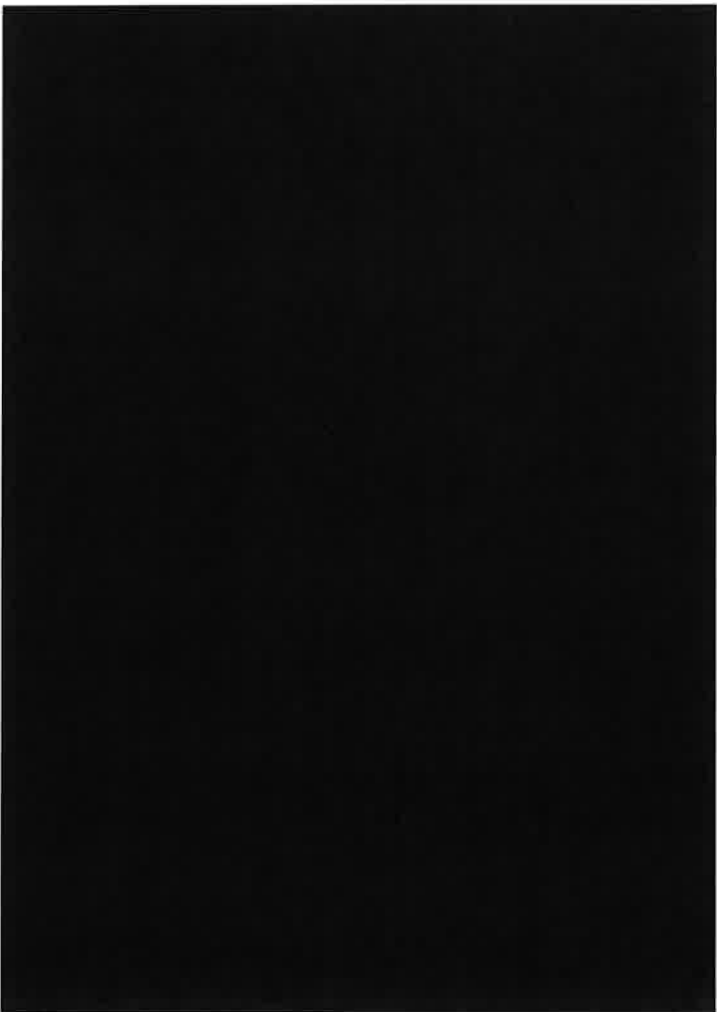
How the Marketplace works



## Marketplaces – What can we buy?

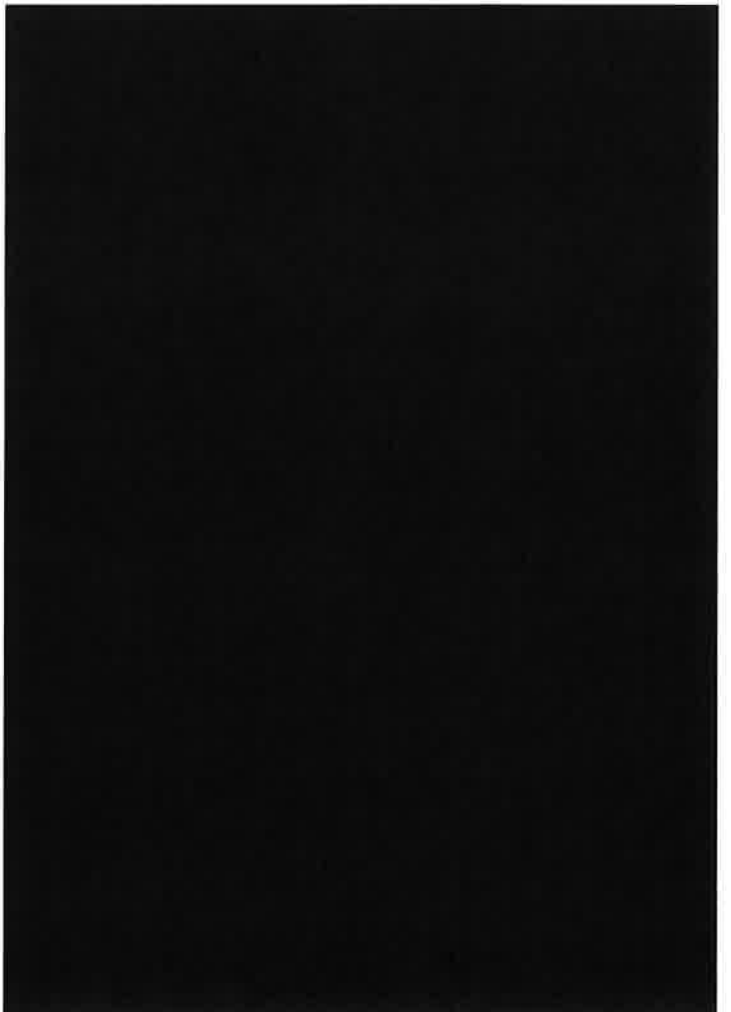
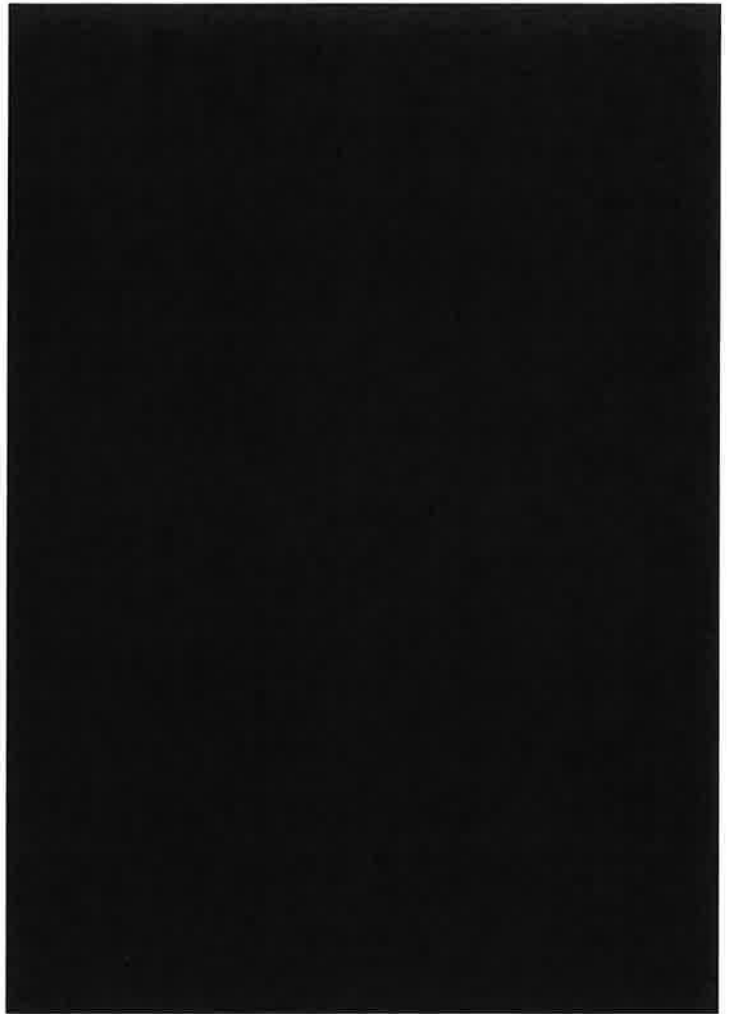
- All type of drugs
- Medicine
- Steroids
- Counterfeited money
- Forged documents
- Fake bank statement
- Payment card data
- Bank account data
- Child abuse material
- Terrorist propaganda
- Hitman
- Hacking activity
- Stolen goods
- Weapons, ammo
- Guidelines

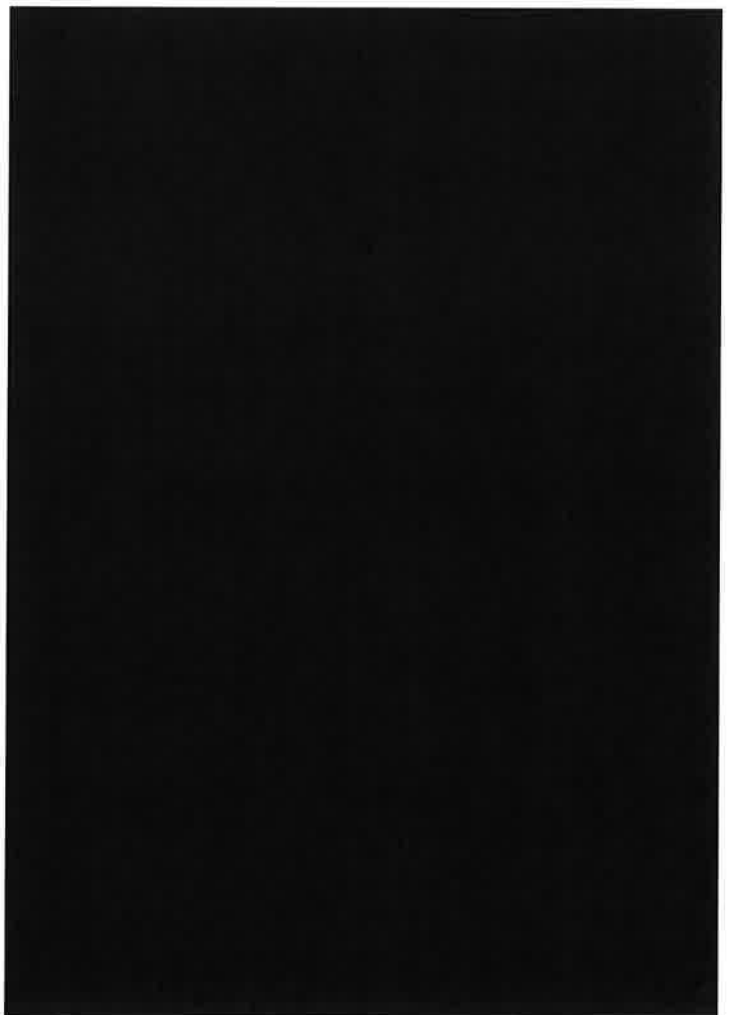


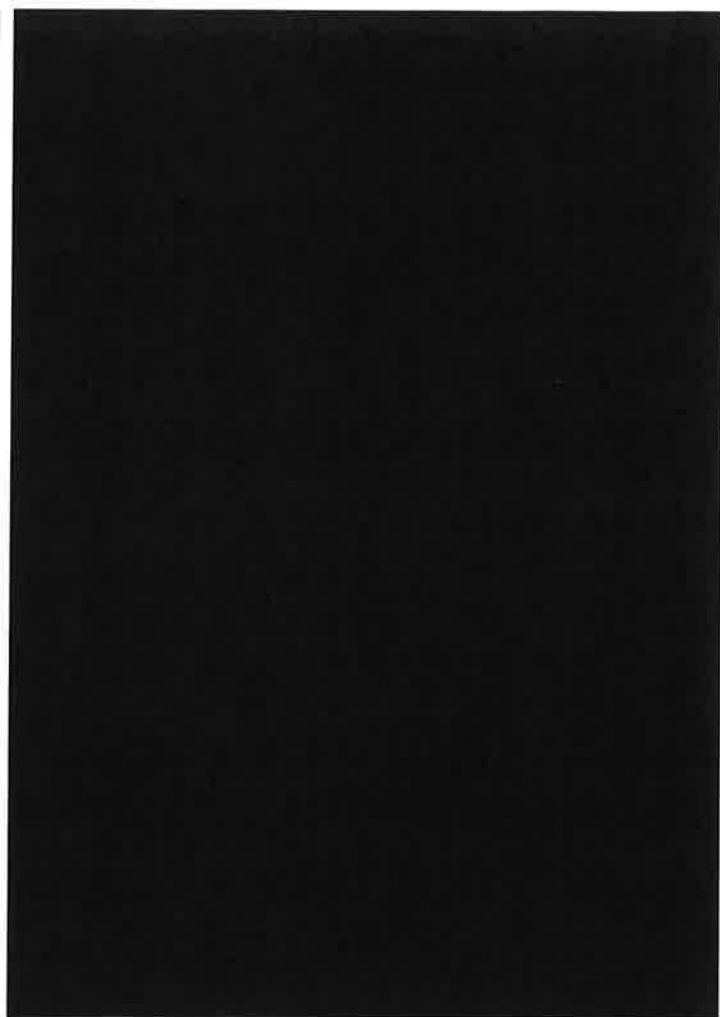


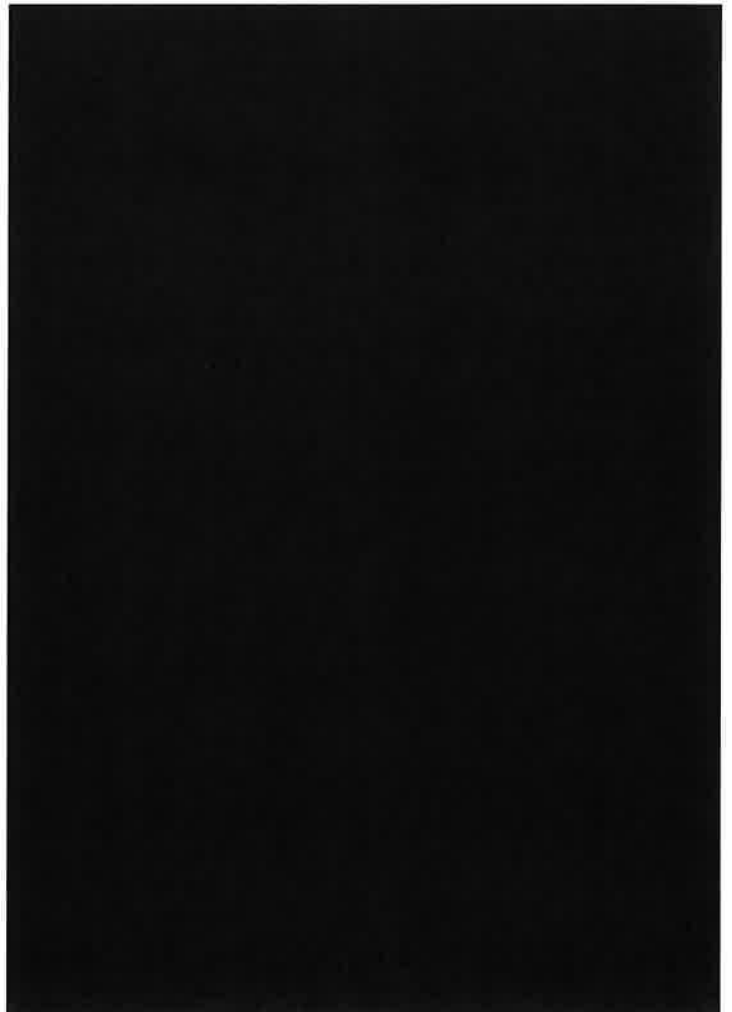
















## Some law enforcement success

### Operation „Root“

What do you do if you have an extremely dangerous child offender who is a real geek and operates only on the TOR network?

## You arrest him.



## Future of Dark Web

- LE actions against Dark Web will increase the wariness among users
- LE actions against TOR might push markets and vendors to other Darknets like Freenet or I2P
- LE actions against large markets will increase the number of small vendor shops and local, nation specific markets
- Other cryptocurrencies will compete with Bitcoin
- Private delivery services will emerge for anonymous delivery (e.g.: drones)



So let's continue taking down the bad guys...



Thank you for your attention!



Budapest, HUNGARY

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[www.ceppl.europa.eu](http://www.ceppl.europa.eu)





EFFECTIVE FINANCIAL INVESTIGATIONS AGAINST  
ORGANIZED CRIMINAL GROUPS  
GATHERING EVIDENCE AND ITS CHALLENGE

May 6-10 2019

Budva – Montenegro



**TRADITIONAL MECHANISMS:  
Council of Europe system**

– MUTUAL LEGAL ASSISTANCE:  
EUROPEAN CONVENTION ON MUTUAL ASSISTANCE IN CRIMINAL  
MATTERS, 1959.  
FIRST ADDITIONAL PROTOCOL, 1978.  
SECOND ADDITIONAL PROTOCOL, 2001.

– EXTRADITION:  
EUROPEAN CONVENTION ON EXTRADITION, 1957.  
FIRST AND SECOND ADDITIONAL PROTOCOLS.

– ENFORCEMENT OF CRIMINAL JUDGEMENTS:  
EUROPEAN CONVENTION ON THE TRANSFER OF SENTENCED  
PERSONS, 1983.  
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European instruments adopted in the frame of the principle  
of  
**MUTUAL RECOGNITION** within the European Union  
« cornerstone » of judicial co-operation (Tampere, 1998)

Instruments adopted and implemented :

1. **Convention** on Mutual Assistance in Criminal Matters between  
the Member States of the European Union, 29<sup>th</sup> May 2000 (+  
PROTOCOLS)
2. **FWD** on the **EUROPEAN ARREST WARRANT** 13.06.2002
3. **FWD** on the **FREEZING ORDERS** 22.07.2003
4. **FWD** on the **EUROPEAN EVIDENCE WARRANT** 18.12.08
5. **FWD** on the **CONFISCATION ORDERS** 6.10.2006



## EXTRADITION

### PROCEDURE

TWO PHASES: ADMINISTRATIVE – JUDICIAL;

### POLITICAL DECISION

TO CONTINUE WITH THE JUDICIAL PHASE  
+ TO SURRENDER THE PERSON;

### DISCRETIONARY GROUNDS FOR REFUSAL;

NO FIRM DEADLINES FOR GRANTING EXTRADITION  
OR EFFECTING SURRENDER

### PRINCIPLE OF DUAL CRIMINALITY



## THE FWD ON THE EUROPEAN ARREST WARRANT

### PRELIMINARIES

1. The mechanism of the EAW is based on a high level of confidence between Member and intended to increase the speed and ease of extradition throughout EU countries by removing the political and administrative phases of decision-making
2. Main role of the judicial authorities : the role of central authorities in the execution of a EAW is limited to practical and administrative assistance
3. The EAW should replace all the previous instruments concerning extradition in relations between EU MS
4. All the rules relating the respect of the fundamental rights are still applicable : refusal to surrender a person if
  - serious risk for death penalty or inhuman treatment
  - EAW based on discrimination



## THE FWD ON THE EUROPEAN ARREST WARRANT

### DEFINITION (art. 1 FWD)

The EAW is :

- a judicial decision
- issued by a Member State
- with a view to the arrest and the surrender by another Member State
- For the purpose of :
  - conducting a criminal prosecution
  - executing a custodial sentence / detention order



## THE FWD ON THE EUROPEAN ARREST WARRANT

### SCOPE (art. 2 FWD)

The EAW may be issued :

- for sentences of at least 4 months
  - for acts punishable by the law of the issuing MS for a maximum period of at least 12 months
- in the above cases THERE IS the control of double criminality

There is no control of double criminality :

For 32 offences limitatively listed if they are punishable in the issuing MS for a maximum period of at least 3 years



## THE FWD ON THE EUROPEAN ARREST WARRANT

### 32 categories

1. Participation in a criminal organisation, 2. Terrorism, 3. Trafficking in human beings, 4. Sexual exploitation of children and child pornography, 5. Illicit trafficking in narcotic drugs and psychotropic substances, 6. Illicit trafficking in weapons, munitions and explosives, 7. Corruption, 8. Fraud, including that affecting the financial interests of the EC, 9. Laundering of the proceeds of crime, 10. Counterfeiting currency, including euro, 11. Computer-related crime, 12. Environmental crime, including illicit trafficking in endangered animal species and in endangered plant species and varieties, 13. Facilitation of unauthorised entry and residence, 14. Murder, grievous bodily injury, 15. Illicit trade in human organs and tissue, 16. Kidnapping, illegal restraint and hostage-taking, 17. Racism and xenophobia, 18. Organised or armed robbery, 19. Illicit trafficking in cultural goods, including antiques and works of art, 20. Swindling, 21. Racketeering and extortion, 22. Counterfeiting and piracy of products, 23. Forgery of administrative documents and trafficking, 24. Forgery of means of payment, 25. Illicit trafficking in hormonal substances and other growth promoters, 26. Illicit trafficking in nuclear or radioactive materials, 27. Trafficking in stolen vehicles, 28. Rape, 29. Arson, 30. ICC crimes, 31. Unlawful seizure of aircraft/ships, 32. Sabotage.



## THE FWD ON THE EUROPEAN ARREST WARRANT

### GROUNDS FOR MANDATORY NON-EXECUTION (art. 3)

- ▶ OFFENCE COVERED BY AMNESTY IN THE EXECUTING MS
- ▶ FINAL JUDGMENT OF DEFINITIVE DECISION BY A EUROPEAN MEMBER STATE IN RESPECT OF THE SAME FACTS – *re bis in idem*
- ▶ LEGAL MINORITY (under the law of the executing MS) AT THE MOMENT OF THE FACTS
- ▶ HUMAN RIGHTS VIOLATION (not explicitly listed) but can be inferred from Recital 12 ((12) This Framework decision respects fundamental rights and observes the principles recognised by Article 6 of the TEU and reflected in the Charter of Fundamental Rights of the European Union, in particular Chapter VI thereof. Nothing in this Framework Decision may be interpreted as prohibiting refusal to surrender a person for whom a EAW has been issued when there are reasons to believe, on the basis of objective elements, that the said arrest warrant has been issued for the purpose of prosecuting or punishing a person on the grounds of his or her sex, race, religion, ethnic origin, nationality, language, political opinions or sexual orientation...) and Article 1(3) (3. This Framework Decision shall not have the effect of modifying the obligation to respect fundamental rights and fundamental legal principles as enshrined in Article 6 TEU)



## THE FWD ON THE EUROPEAN ARREST WARRANT

### GROUNDS FOR OPTIONAL NON-EXECUTION (art. 4)

- ▶ Lack of double criminality (except the 32 listed offences)
- ▶ Judicial proceedings for the same facts in the executing MS
- ▶ Prosecution or punishment is statute-barred according the law of the executing MS
- ▶ Judgement for the same facts in a non MS
- ▶ The requested person is **national or resident** in the executing MS which undertakes to execute the sentence
- ▶ Acts committed in the executing MS
- ▶ Acts committed outside the issuing State and proceedings not allowed by the law of the executing State



## THE FWD ON THE EUROPEAN ARREST WARRANT

### GUARANTEES FROM THE ISSUING STATE (art. 5)

- ▶ EAW ISSUED FOR THE PURPOSES OF EXECUTING A SENTENCE OR MEASURE IMPOSED BY A DECISION RENDERED IN ABSENTIA AGAINST A PERSON WHO WAS NOT INFORMED ABOUT THE TRIAL
  - MANDATORY GUARANTEE :
    - ASSURANCE DEEMED ADEQUATE TO GUARANTEE THE PERSON THAT HE OR SHE WILL HAVE AN OPPORTUNITY TO APPLY FOR A RETRIAL OF THE CASE AND TO BE PRESENT AT THE JUDGMENT (DELETED; new Article 4a – optional ground)
    - Offence punishable by a custodial life sentence – legal system provides for review at least after 20 years, or measures of clemency
- ▶ EAW ISSUED FOR THE PURPOSES OF PROSECUTION AGAINST A NATIONAL OR RESIDENT IN THE EXECUTING MS
  - > OPTIONAL GUARANTEE :
    - RETURN OF THE PERSON CONCERNED TO THE EXECUTING MS IN ORDER TO SERVE THE CUSTODIAL SENTENCE OR DETENTION ORDER



## THE FWD ON THE EUROPEAN ARREST WARRANT

### **JUDICIAL AUTHORITIES AND CENTRAL AUTHORITIES**

The issuing judicial authority is the judicial authority of the issuing MS, competent to issue an EAW

The executing judicial authority is the judicial authority of the executing MS, competent to execute a EAW

Each MS may designate a central authority :

- to assist the competent judicial authority
- for the administrative transmission and reception



## THE FWD ON THE EUROPEAN ARREST WARRANT

### FORM AND CONTENT

MULTILINGUAL STANDARD FORM

**INFORMATION:** name of the person, issuing judicial authority, nature of the offence, penalty, description of the facts, translation in the language of executing state.

**TRANSMISSION:** directly to the executing judicial authority, or by an alert in the Schengen Information System (SIS - S.I.R.E.N.E.), or by any secure means of transmission.



## THE FWD ON THE EUROPEAN ARREST WARRANT

### **RIGHTS OF REQUESTED PERSON (Articles 11 and 14)**

Information about the EAW and its contents;

Possibility of surrender;

Right to be assisted by a legal counsel and by an interpreter (See Directive on translation and interpretation in criminal proceedings;

Right to be heard by the executing judicial authority if the person does not consent to surrender (Article 14);



## THE FWD ON THE EUROPEAN ARREST WARRANT

### SURRENDER PROCEDURE

#### TIME LIMITS:

1. for the decision to execute the EAW :

- with consent : 10 days
- without consent : 60 days after arrest
- if not : inform immediately the issuing MS + 30 days

2. for the surrender of the person:

- ASAP or maximum 10 days after final decision
- if not : immediate contact with the issuing MS
  - maximum 10 days after new date



## THE FWD ON THE EUROPEAN ARREST WARRANT

### SURRENDER PROCEDURE POSSIBILITY TO POSTPONE THE SURRENDER

1. For serious humanitarian reasons  
(endanger the life of health of the person)
2. For prosecution of the person in the executing MS  
or, if already sentenced, for serve a sentence in  
the executing MS



## SPECIALITY RULE

**GENERAL RULE:** Article 27(2) – A person surrendered may not be prosecuted, sentenced or otherwise deprived of his or her liberty for an offence committed prior to his or her surrender, other than that for which he or she was surrendered.

### **EXEMPTIONS:**

**RECIPROcity CAN BE AGREED** – Article 27(1): Each Member State may notify the General Secretariat of the Council that, in its relations with other MS that have given the same notification, consent is presumed to have been given for the prosecution, sentencing or detention with a view to the carrying out of a custodial sentence or detention order for an offence committed prior to his or her surrender, other than that for which he or she was surrendered, unless in a particular case the executing judicial authority states otherwise in its decision on surrender.

The same applies regarding further surrenders to other MS than the executing MS (Article 28(1)).

### **SPECIFIC CASES:**

- (a) The person does not leave the territory of the state in 45 days from the final discharge or he returns; the same applies for the surrender to a third State (Article 28(2)(a)).
- (b) The offence is not punishable by a custodial sentence or detention order.
- (c) The criminal proceedings do not give rise to the application of a measure restricting personal liberty.
- (d) Financial penalty, even if it may give rise to a restriction of his or her personal liberty.
- (e) The person consented to be surrendered.
- (f) The person has after surrender expressly renounced entitlement to the speciality rule with regard to the specific offences preceding his/her surrender. The same applies for the surrender to another MS (Article 28(2)(b)).
- (g) Executing judicial authority gives its consent.



Case C-388/08 PPU **Leymann and Pustovarov**, EAW by Finland to Poland and Spain, request for narcotic offences about amphetamine, later sentenced for narcotic offences for hashish, in the case of Pustarov after the sentence consent by Spain is received.

### **Definition of "offence other" for which a person has been surrendered**

<sup>53</sup> ... the surrender request is based on information which reflects the state of investigations at the time of issue of the EAW. It is therefore possible that, in the course of the proceedings, the description of the offence no longer corresponds in all respects to the original description. The evidence gathered can lead to a clarification or even a modification of the constituent elements of the offence which initially justified the issue of the EAW.

<sup>56</sup> To require consent of the executing MS for every modification of the description of the offence would go beyond what is implied by the speciality rule and interfere with the objective of speeding up and simplifying judicial cooperation of the kind referred in the FD between the MS.

<sup>57</sup> ... it is necessary to ascertain whether the constituent elements of the offence, according to the legal description given by the issuing State, are those for which the person was surrendered and whether there is a sufficient correspondence between the information given in the arrest warrant and that contained in the later procedural document. Modifications concerning the time or place of the offence are allowed, in so far as they derive from evidence gathered in the course of the proceedings conducted in the issuing State concerning the conduct described in the arrest warrant, do not alter the nature of the offence and do not lead to grounds for non-execution under Articles 3 and 4 of the FD.

<sup>63</sup> ... a modification of the description of the offence concerning the kind of narcotics concerned is not such, of itself, as to define an "offence other" than that for which the person was surrendered within the meaning of Article 27(2) of the FD



## REPLACEMENT OF LEGAL INSTRUMENTS

### **GENERAL RULE:**

Replacement from 1 January 2004 of the following conventions (for extradition requests received after 1 January 2004):

European Convention on Extradition of 13 December 1957 and its additional protocols, and the European Convention on the suppression of terrorism of 27 January 1977;

Agreement between 12 MS of the EC on the simplification and modernisation of methods of transmitting extradition requests of 25 May 1989;

Convention of 10 March 1995 on simplified extradition procedure between MS of the EU;

Convention of 27 September 1996 relating to extradition between the MS of the EU; Title III, Chapter 4 of the 1990 CISA.

Extradition requests received before 1 January 2004 or after based on a special statement by the MS for acts committed at least before 7 August 2002.



## THE FWD ON THE EUROPEAN ARREST WARRANT

### EVALUATION

## EU COMMISSION REPORT 2011

**EAWs ISSUED:**

**FROM 3.000 (2004) TO 13.500 (2008) PER YEAR**

**AVERAGE TIME TO EXECUTE A EAW:**

**43 DAYS**

**AVERAGE TIME FOR VOLUNTARY SURRENDER:**

**13 DAYS**



## THE FWD ON THE EUROPEAN ARREST WARRANT

### CRITICISM

Art. 2 (2) FwD dispense of verification of the principle of double criminality for 32 offences mentioned would be contrary to the principle of equality and non-discrimination and also to the principle of legality in criminal matters.

The European Court of Justice rejected this submission in a preliminary ruling in 2007 (Advocaten voor de Wereld VZW v Leden van de Ministerraad (2007) para. 48) because the Council's choice of the 32 categories of offences listed in Art. 2 (2), among which are serious crimes that may adversely affect public order and public safety, was justified on the basis of the principle of mutual recognition and in the light of the high degree of trust and solidarity between the EU Member States.



## THE FWD ON THE EUROPEAN ARREST WARRANT

### NGOs CRITICISM

- violation of principle of proportionality
- EAWs issued years after an alleged offence was committed;
- once EAWs have been issued there is no effective way of removing them, even after extradition has been refused;
- EAWs used to send people to another EU member state to serve a prison sentence resulting from an unfair trial;
- EAWs used to force a person to face trial when the charges are based on evidence obtained by police brutality;
- sometimes people surrendered under an EAW have to spend months or even years in detention before they can appear in court to establish their innocence.



## EUROPEAN ARREST WARRANT: HELP!!!!

- ADDENDUM TO Council of EU NOTE 23 March 2010  
from: Presidency to: Co-operation in Criminal Matters (EAW experts) Working party No. prev. doc.: 6891/10 COPEN 50  
Subject: Follow-up to the recommendations in the final report on the fourth round of mutual evaluations, concerning the European arrest warrant

- Council of EU NOTE 17 December 2010  
from : General Secretariat of the Council  
to : Delegations no. Prev.doc: 8216/2/08 REV 2 COPEN 70 EJN 26 EUROJUST 31  
Subject : Revised version of the European handbook on how to issue an European Arrest Warrant



EUROPEAN ARREST WARRANT: PRACTICAL CASE

[redacted] case

At the end of the investigations according to the Prosecutor request the Preliminary investigation judge issued an arrest warrant for 6 people (see selected parts of the warrant)

Three of them [redacted] remained at large and the related EAWs must be issued for inserting them in the SIS

Exercise

Fill the standard form of the EAW providing all the relevant information for the alleged execution of the EAWs





# EUROPEAN EVIDENCE WARRANT

Council Framework Decision 2008/978/JHA of 18 December 2008 on the EEW for the purpose of obtaining objects, documents and data for use in proceedings in criminal matters

## NATIONAL TRANSPOSITION by 19 January 2011

- Introducing the principle of mutual recognition into evidence gathering and transfer of evidence: *Article 11(1)*: "The executing authority shall recognise an EEW, transmitted in accordance with Article 8, without any further formality being required and shall forthwith take the necessary measures for its execution in the same way as an authority of the executing state would obtain the objects, documents or data, unless that authority decides to invoke one of the grounds for non-recognition or non-execution... or for postponement..."
- Legal basis. Articles 31 and 34 TEU

## EFFECTIVE FINANCIAL INVESTIGATIONS AGAINST ORGANIZED CRIMINAL GROUPS GATHERING EVIDENCE AND ITS CHALLENGE

May 6-10 2019  
Budva – Montenegro



## DEFINITIONS

Article 1(1) - a judicial decision issued by the competent authority of a MS with a view obtaining objects, documents and data (including evidence discovered by the executing authority during the execution of the EEW) from another MS for the following procedures, including proceedings against a legal person (Article 5)

- (a) Criminal proceedings, brought by, or to be brought before, before a judicial authority;
- (b) Proceedings by administrative authorities where the acts are punishable and may give rise to proceedings before a court having jurisdiction in particular in criminal matters;
- (c) Proceedings brought by judicial authorities where the acts are punishable and may give rise to proceedings before a court having jurisdiction in particular in criminal matters.

Certain evidence excluded (Article 4 – Scope); does NOT apply when the data is already in the possession of the executing authority before the EEW is issued (including DNA – *Marpers, Ulf*):

- (a) Interviews and statements or hearings with suspects, witnesses, experts or any other party, does not apply to persons present during the execution of the EEW and directly related to the subject of the EEW (Article 4(6));
- (b) Bodily examinations or bodily material or biometric data directly from the body of any person, including DNA and fingerprints;
- (c) Information in real time (direct interception of communications, covert surveillance or monitoring of bank accounts)
- (d) Analysis of existing objects, documents or data;
- (e) Communications data retained by providers of a publicly available electronic communications service;
- (f) Information on criminal convictions.

## Issuing authority (Article 2):

- (a) A judge, a court, an investigating magistrate, a public prosecutor
- (b) Any other judicial authority as defined by the issuing State and, in the specific case, acting in its capacity as an investigating authority in criminal proceedings with competence to order the obtaining of evidence in cross-border cases in accordance with national law

Each MS shall inform the General Secretariat of the Council which authority or authorities, under its national law, are competent when the MS is the issuing or the executing State (Article 3)

Recital 9: "(9) ...Although authorities other than judges, court, investigating magistrates and public prosecutors may have a role in the collection of such evidence in accordance with Article 2c (1), this FD does not cover police, customs, border and administrative cooperation which are regulated by other provisions of the Treaties."

## Executing authority:

An authority having competence under national law to recognise or execute an EEW.

## Search or seizure:

shall include any measures under criminal procedure as a result of which a legal or natural person is required, under legal compulsion, to provide or participate in providing objects, documents or data and which, if not complied, may be enforceable without the consent of such a person or it may result in a sanction



## PROCEDURES AND SAFEGUARDS FOR THE ISSUING STATE OF THE EEW

### NECESSITY AND PROPORTIONALITY TEST BY ISSUING AUTHORITY

- (a) Is necessary and proportionate for the purpose of the proceedings;
- (b) The evidence can be obtained under the law of the issuing state in a comparable case.

The non-application of the test should not be assessed by the executing state (Recital 11).

### TRANSMISSION

As **general principle direct cooperation** between judicial authorities: Article 8(1): "1. The EEW may be transmitted to the competent authority of a MS in which the competent authority of the issuing state has reasonable grounds to believe the relevant objects, documents or data are located or, in the case of electronic data, directly accessible under the law of the executing state. It shall be transmitted without delay from the issuing authority to the executing authority, by any means capable of producing a written record under conditions allowing the executing state to establish authenticity. All further official communications shall be made directly between the issuing and the executing authority."

Role for EIJN.

Possibility to nominate a **central authority** as exemption to the general rule.

## PROCEDURES AND SAFEGUARDS FOR THE EXECUTING STATE OF EEW

### MUTUAL RECOGNITION AS A PRINCIPLE

The executing state responsible for choosing the measures which under its national law will ensure the provision of the evidence sought by an EEW (Article 11(2)), **the executing state shall comply with the formalities and procedures expressly indicated by the issuing authority, otherwise provided in the FD, and provided that such formalities and procedures are not contrary to the fundamental principles of law of the executing state (Article 12).**

Each MS has to ensure (a) that any measure available in a similar domestic case is available in the executing state for the EEW; (b) search and seizure is available for the execution of a EEW regarding 32 offences for which no double criminality check is required (Article 11(3)).

Possibility to limit searches or seizures to cases where the issuing authority was a judge, court, investigating magistrate or public prosecutor or such an authority has validated the EEW; (a) in each specific case (after consultation with the issuing authority) or (b) a declaration at the time of the adoption of the FD or with a subsequent notification (in domestic cases a judge, court, investigating magistrate or prosecutor has to order) – Article 11(4) and (5)

"5. A MS may, at the time of adoption of this FD, make a declaration or subsequent notification to the General Secretariat of the Council requiring such validation in all cases where the issuing authority is not a judge, a court, an investigating magistrate or public prosecutor AND where the measure necessary to execute the EEW would have to be ordered or supervised by a judge, a court, an investigating magistrate or a public prosecutor under the law of the executing state in a similar domestic case."

in possession; transfer without undue delay to the issuing authority (Article 15).

## USE OF PERSONAL DATA OBTAINED FROM THE EXECUTING STATE

Use in the issuing State for:

- (a) proceedings for which the EEW may be issued;
- (b) other judicial or administrative proceedings directly related to the EEW proceedings;
- (c) Prevention of immediate and serious threat to public security;
- (d) In other cases after obtaining consent of executing state or the data subject

## GROUNDS FOR REFUSAL (NON-RECOGNITION OR NON-EXECUTION) – ARTICLE 13 (OPTIONAL GROUNDS)

1. Ne bis in idem principle; prior consultation before refusal by issuing authority obligatory. ( Article 13(5))
2. **No double criminality check regarding search or seizure** (for offences other than the 32 offences for which no check is necessary)
3. No measure for execution available
4. Immunity or privilege (Recital 17)
5. No validation by a judge, court, investigating magistrate or prosecutor is provided (Article 11(4) and (5))
6. Territoriality, rules (i) been committed wholly or for a major part in the executing state – deliberation criteria envisaged; exceptional circumstances and on a case by case basis; whether a major or essential part took place in the issuing state, whether the EEW relates to an act that is not criminal in the executing state, whether a search or seizure is necessary; consultation with Eurojust; (ii) committed outside the issuing state and the executing state does not allow proceedings in such a case
7. Harm of essential national security interest, jeopardise the source of information or involve the use of classified information relating to specific intelligence activities; prior consultation before refusal by issuing authority obligatory ( Article 13(5)); Recital 18
8. Incomplete form or incorrect and has not been rectified; prior consultation before refusal by issuing authority obligatory ( Article 13(5))
9. Human rights (non-optional) : - Recital 8 "The principle of mutual recognition is based on a high level of confidence between MS. In order to promote this confidence the FD should contain important safeguards to protect fundamental rights. The EEW should therefore be issued only by judges, courts, investigating magistrates, public prosecutors and certain other judicial authorities as defined by MS in accordance with this FD."

Recital 11: "(11) An EEW should be issued only where obtaining the objects, documents or data sought is necessary and proportionate for the purpose of the criminal or other proceedings concerned. In addition, an EEW should be issued only where the object, documents or data concerned could be obtained under the national law of the issuing State in a comparable case. The responsibility for ensuring compliance with these conditions should lie with the issuing authority. The grounds for non-recognition or non-execution should therefore not cover these matters."

Recitals 27 and 28: "(27) This FD respects fundamental rights and observes the principles recognised by Article 6 of the TEU and reflected by the Charter of Fundamental Rights of the EU, notably Charter VI thereof. Nothing in this FD may be interpreted as prohibiting refusal to execute an EEW when there are reasons to believe, on the basis of objective elements, that the EEW has been issued for the purpose of prosecuting or punishing a person on account of his or her sex, racial or ethnic origin, religion, sexual orientation, nationality, language or political opinions, or that the person's position may be prejudiced for any of these reasons. (28) This FD does not prevent any MS from applying its constitutional rules relating to due process, freedom of association, freedom of the press and freedom of expression in other media."

Article 1(3): "3. This FD shall not have effect of modifying the obligation to respect fundamental rights and fundamental legal principles as enshrined in Article 6 of the Treaty, and any obligation on judicial authorities in this respect shall remain unaffected."

## POSTPONEMENT OF RECOGNITION OR EXECUTION OF EEW (Article 16)

### POSTPONEMENT OF RECOGNITION:

- (a) The form is incomplete or incorrect till correction,
- (b) In the time before validation when such validation is required

### POSTPONEMENT OF EXECUTION

- (a) The execution might prejudice an ongoing criminal investigation or prosecutor;
- (b) Evidence being used in other proceedings

**NON-RECOGNITION, NON-EXECUTION or POSTPONEMENT** should be decided by a judge, court, investigating magistrate or public prosecutor, except if the original decision in the issuing State was taken by another judicial authority and not validated (Articles 13(2) and 16(3))

### INFORMATION BY EXECUTING STATE

- Immediately by any means:** (a) additional measures necessary, (b) was not executed in accordance with the law of the executing state, (c) it can not comply with formalities required by the issuing authority.
- Without delay by any means capable of producing a written record:** (a) when sent to the wrong authority, (b) about refusal of recognition or execution, (c) about postponement, (d) of the impossibility to execute EEW (evidence disappeared, was destroyed or cannot be found)

## DOUBLE CRIMINALITY

- No double criminality check unless a search or seizure is necessary (OPTIONAL TO INTRODUCE – Article 14(3): "3. *If the EEW is not related to any of the offences set out in paragraph 2 and its execution would require a search or seizure, recognition or execution of the EEW MAY be subject to the condition of double criminality. In relation to offences in connection with taxes or duties, customs and exchange, recognition or execution may not be opposed on the ground that the law of the executing State does not impose the same kind of tax or duty or does not contain a tax, duty, customs and exchange regulation of the same kind as the law of the issuing state.*" );

- Even if a search a seizure is necessary no double criminality check is being provided; - for a list of 32 offences AND – if they are punishable in the issuing state by a custodial sentence or a detention order for a max. period of at least three years;

## LEGAL REMEDIES (Article 18)

- Any interested party, including bona fide third parties against the recognition and execution in the executing state (possibility to limit it to cases where coercive measures were used); transfer may be suspended meanwhile;
- Substantive reasons and proportionality only challenged in the issuing state

## RELATION WITH OTHER LEGAL INSTRUMENTS (Article 21)

- **Coexistence** with existing legal MLA instruments regarding relations between MS;
- EEW shall be used when all the evidence falls within the scope of this FD: "2. *Without prejudice to paragraphs 3 and 4, issuing authorities shall rely on the EEW when all of the objects, documents or data required from the executing State fall within the scope of this FD.*"
- In **mixed cases** MLA may be used – Article 21(3): "3. *Issuing authorities may use MLA to obtain objects, documents or data failing within the scope of this FD if they form part of a wider request for assistance OR if the issuing authority considers in the specific case that this would facilitate cooperation with the executing State.*" ; MLApplicable for requests done before 19 January 2011

- **New bilateral or multilateral agreements:** in so far as such agreements allow the objectives of the FD to be extended or enlarged and help to simplify or facilitate further procedures;

# EUROPEAN INVESTIGATION ORDER

The European Parliament recently adopted DIRECTIVE 2014/41/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 3 April 2014 regarding the European Investigation Order (EIO) in criminal matters.

Based on an initiative by a group of MS (Austria, Belgium, Bulgaria, Estonia, Spain, Slovenia and Sweden) in accordance with Article 76 TFEU

Legal basis: Article 82(1)(a)

1. Judicial cooperation in criminal matters in the Union shall be based on the principle of mutual recognition of judgments and judicial decisions and shall include the approximation of the laws and regulations of the Member States in the areas referred to in paragraph 2 and in Article 83.

The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall adopt measures to:

- (a) lay down rules and procedures for ensuring recognition throughout the Union of all forms of judgments and judicial decisions;
- (b) prevent and settle conflicts of jurisdiction between Member States;
- (c) support the training of the judiciary and judicial staff;
- (d) facilitate cooperation between judicial or equivalent authorities of the Member States in relation to proceedings in criminal matters and the enforcement of decisions.

2. To the extent necessary to facilitate mutual recognition of judgments and judicial decisions and police and judicial cooperation in criminal matters having a cross-border dimension, the European Parliament and the Council may, by means of directives adopted in accordance with the ordinary legislative procedure, establish minimum rules. Such rules shall take into account the differences between the legal traditions and systems of the Member States.

# EUROPEAN INVESTIGATION ORDER

## Scope

The EIO will have a horizontal scope and therefore should apply to all investigative measures aimed at gathering evidence. However, the setting up of a joint investigation team and the gathering of evidence within such a team require specific rules which are better dealt with separately. Without prejudice to the application of the Directive, existing instruments should therefore continue to apply to this type of investigative measure.

Basically it includes all investigative measures except the setting up of joint investigation teams.

# EUROPEAN INVESTIGATION ORDER

## TIME LINE OF THE ADOPTION OF THE PROPOSAL

- May 2010 - Initiative by MS
- November 2011 – Council general approach
- May 2012 – European Parliament LIBE report
- June 2012-December 2013 – negotiations between European Parliament and Council
- December 2013 – Agreement reached
- February 2014 – vote in EP
- March 2014 – vote in the Council
- 2017 – end of transposition period

# EUROPEAN INVESTIGATION ORDER

## DEFINITION – Article 1

1. A European Investigation Order (EIO) is a judicial decision which has been issued or validated by a judicial authority of a Member State ("the issuing State") to have one or several specific investigative measure(s) carried out in another Member State ("the executing State") to obtain evidence in accordance with this Directive. The EIO may also be issued for obtaining evidence that is already in the possession of the competent authorities of the executing State.

2. MS shall execute an EIO on the basis of the principle of mutual recognition and in accordance with the Directive.

3. The issuing of an EIO 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. (I.E. FOR BOTH PARTIES TO THE PROCEDURE – PROSECUTION AND DEFENCE (PRINCIPLE OF EQUALITY OF PARTIES))

This Directive shall not have the effect of modifying the obligation to respect the fundamental rights and legal principles as enshrined in Article 6 of the TEU, including the rights of defence of persons subject to criminal proceedings, and any obligations incumbent on judicial authorities in this respect shall remain unaffected. (SPECIFIC REFERENCE TO FUNDAMENTAL RIGHTS OBLIGATIONS HAS TO BE READ TOGETHER WITH RECTAL.39 ON DEFINITION OF HUMAN RIGHTS AND A HUMAN RIGHTS NON-RECOGNITION GROUND)

Recital 39. (39) This Directive respects the fundamental rights and observes the principles recognised by Article 6 of the TEU and in the Charter, notably Title VI thereof, by international law and international agreements to which the Union or all the Member States are party, including the European Convention for the Protection of Human Rights and Fundamental Freedoms, and in Member States' constitutions in their respective fields of application. Nothing in this Directive may be interpreted as prohibiting refusal to execute an EIO when there are reasons to believe, on the basis of objective elements, that the EIO has been issued for the purpose of prosecuting or punishing a person on account of his or her sex, racial or ethnic origin, religion, sexual orientation, nationality, language or political opinions, or that the person's position may be prejudiced for any of these reasons.

# EUROPEAN INVESTIGATION ORDER

## DEFINITION OF ISSUING AND EXECUTING AUTHORITIES – art. 2

Resolving the dilemma of the different notion of „judicial authority“ (in some MS even the police is considered as a judicial authority, for example in Finland)

An EIO has to be issued or validated (if the initial authority is the police) by a „classical“, judicial authority: a court, judge, investigating judge or prosecutor

Article 2(c): „*issuing authority*“ means:

- (f) a judge, a court, an investigating judge or a public prosecutor competent in the case concerned; or
- (g) any other competent authority, as defined by the issuing State which, in the specific case, is acting in its capacity as an investigating authority in criminal proceedings with competence to order the gathering of evidence in accordance with national law. In addition, before it is transmitted to the executing authority the EIO shall be validated, after examination of its conformity with the conditions for issuing an EIO under this Directive, in particular the conditions set out in Article 6.1., by a judge, court, investigating judge or a public prosecutor in the issuing State. Where the EIO has been validated by a judicial authority, that authority may also be regarded as an issuing authority for the purposes of transmission of the EIO;

- Resolving the problem of executing authority as regards the specific role of a judge, in authorising certain intrusive measures (in German „*erheblicher Vorbehalt*“): if only a court can order certain measures in the executing state then the EIO can to such an authority beforehand (for example, a house search requested in Germany on an EIO of an Italian prosecutor has to go to a German court before executing it).

Article 2(d):

„*executing authority*“ means an authority having competence to recognise an EIO and ensure its execution in accordance with this Directive and the procedures applicable in a similar domestic case. Such procedures may require a court authorisation in the executing State where provided by its national law.

# EUROPEAN INVESTIGATION ORDER

## CONTENT – Article 5

1. The EIO in the form set out in Annex A shall be completed, signed, and its content certified as accurate and correct by the issuing authority.

The EIO shall, in particular, contain the following information:

- (a) data about the issuing authority and, where applicable, the validating authority;
- (b) the object of and reasons for the EIO;
- (c) the necessary information available on the person(s) concerned;
- (d) a description of the criminal act, which is the subject of the investigation or proceedings, and the applicable provisions of the criminal law of the issuing State;
- (e) a description of the investigative measures(s) requested and the evidence to be obtained.

2. Each Member State shall indicate the language(s) which, among the official languages of the institutions of the Union and in addition to the official language(s) of the Member State concerned, may be used for completing or translating the EIO when the Member State concerned is the executing State.

# EUROPEAN INVESTIGATION ORDER

## PROCEDURES TO WHICH AN EIO IS APPLICABLE

No only criminal proceedings *virtu in rem* but broader covering also administrative-criminal proceedings and legal persons (solution taken over from the 2000 EU MLA Convention):

Article 4:

An EIO may be issued:

- (a) with respect to criminal proceedings that are brought by, or that may be brought before, a judicial authority in respect of a criminal offence under the national law of the issuing State;
- (b) in proceedings brought by administrative authorities in respect of acts which are punishable under the national law of the issuing State by virtue of being infringements of the rules of law and where the decision may give rise to proceedings before a court having jurisdiction, in particular, in criminal matters;
- (c) in proceedings brought by judicial authorities in respect of acts which are punishable under the national law of the issuing State by virtue of being infringements of the rules of law, and where the decision may give rise to proceedings before a court having jurisdiction, in particular, in criminal matters; and
- (d) in connection with proceedings referred to in points (a), (b), and (c) which relate to offences or infringements for which a legal person may be held liable or punished in the issuing State.

# EUROPEAN INVESTIGATION ORDER

## TRANSMISSION AND DEADLINES

- Direct transmission between issuing and executing authority
- Possibility to include a central authority for the administrative work
- Strict deadlines: Decision of recognition taken within 30 days (possibility to extend additional 30 days) after the receipt of the EIO, measure carried out not later than 90 days following the decision
- However, the executing authority shall take as full account as possible of the requirement that the investigative measure must be carried out on a specific date

## POSTPONEMENT:

The recognition or execution of the EIO may be postponed in the executing State where:

- (a) its execution might prejudice an on-going criminal investigation or prosecution, until such time as the executing State deems reasonable;
- (b) the objects, documents, or data concerned are already being used in other proceedings, until such time as they are no longer required for that purpose;

As soon as the ground for postponement has ceased to exist, the executing authority shall forthwith take the necessary measures for the execution of the EIO and inform the issuing authority by any means capable of producing a written record

# EUROPEAN INVESTIGATION ORDER

## PROPORTIONALITY TEST IN THE ISSUING STATE AND RECOURSE TO A DIFFERENT TYPE OF INVESTIGATIVE MEASURE IN THE EXECUTING STATE (1)

Due to problems with proportionality and the EAW, the EIO includes specifically a proportionality test.

### Article 6

*Conditions for issuing and transmitting an EIO*

1. The issuing authority may only issue an EIO where the following conditions have been met:

(a) the issuing of the EIO is necessary and proportionate for the purpose of the proceedings referred to in Article 4 taking into account the rights of the suspected or accused person, and

(b) the investigative measure(s) indicated in the EIO could have been ordered under the same conditions in a similar domestic case.

2. The conditions referred to in paragraph 1 shall be assessed by the issuing authority in each case.

3. Where the executing authority has reason to believe that the conditions referred to in paragraph 1 have not been met, it may consult the issuing authority on the importance of executing the EIO. After that consultation the issuing authority may decide to withdraw the EIO.

# EUROPEAN INVESTIGATION ORDER

## Execution

the authorities of the issuing State present in the executing State shall be bound by the law of the executing State during the execution of the EIO. They shall not have any law enforcement powers in the territory of the executing State, unless the execution of such powers in the territory of the executing State is in accordance with the law of the executing State and to the extent agreed between the issuing authority and the executing authority.

## Recourse to a different type of investigative measure

the executing authority may also have recourse to an investigative measure other than that indicated in the EIO where the investigative measure selected by the executing authority would achieve the same result by less intrusive means than the investigative measure indicated in the EIO.

# EUROPEAN INVESTIGATION ORDER

## PROPORTIONALITY TEST IN THE ISSUING STATE AND RECOURSE TO A DIFFERENT TYPE OF INVESTIGATIVE MEASURE IN THE EXECUTING STATE (2)

### Article 10

*Recourse to a different type of investigative measure*

1. The executing authority shall have, where possible, recourse to an investigative measure other than that provided for in the EIO where the investigative measure indicated in the EIO does not exist under the law of the executing State, or

(a) the investigative measure indicated in the EIO would not be available in a similar domestic case

2. Without prejudice to Article 11, paragraph 11 does not apply to the following investigative measures, which always have to be available under the law of the executing State:

(a) the obtaining of information or evidence which is already in the possession of the executing authority and the information or evidence would have been obtained, in accordance with the law of the executing State, in the framework of criminal proceedings or for the purposes of the EIO

(b) the obtaining of information contained in databases held by police or judicial authorities and directly accessible by the executing authority in the framework of criminal proceedings;

(c) the hearing of a witness, expert, victim, suspected or accused person or third party in the territory of the executing State;

(d) any non-invasive investigative measure as defined under the law of the executing State; (BROAD DEFINITION OF WHAT IS EXCLUDED) – see Recital 16. Non-invasive measures could be, for example, such measures that do not infringe the right to privacy, or the right to property, depending on national law. Actually means non-invasive)

(e) the identification of persons holding a subscription of a specified phone number or IP address

3. The executing authority may also have recourse to an investigative measure other than that indicated in the EIO where the investigative measure selected by the executing authority would achieve the same result by less intrusive means than the investigative measure indicated in the EIO

4. When the executing authority decides to avail itself of the possibility referred to in paragraphs 1 and 3, it shall first inform the issuing authority, which may decide to withdraw or supplement the EIO.

5. Where, in accordance with paragraph 1a, the investigative measure indicated in the EIO does not exist under the law of the executing State or it would not be available in a similar domestic case and where there is no other investigative measure which would have the same result as the investigative measure requested, the executing authority shall notify the issuing authority that it has not been possible to provide the assistance requested.

# EUROPEAN INVESTIGATION ORDER

## TRANSFER OF EVIDENCE

IMMEDIATE TRANSFER OF EVIDENCE AS A GENERAL PRINCIPLE WITH THE OBLIGATION OF SUSPENSION IF IT WOULD CAUSE SERIOUS AND IRREVERSIBLE DAMAGE TO THE PERSON CONCERNED

### Article 13

*Transfer of evidence*

1. The executing authority shall, without undue delay, transfer the evidence obtained or already in the possession of the competent authorities of the executing State as a result of the execution of the EIO to the issuing State.

Where requested in the EIO and if possible under the law of the executing State, the evidence shall be immediately transferred to the competent authorities of the issuing State assisting in the execution of the EIO in accordance with Article 9(4).

2. The transfer of the evidence may be suspended, pending a decision regarding a legal remedy, unless sufficient reasons are indicated in the EIO that an immediate transfer is essential for the proper conduct of its investigations or for the preservation of individual rights. However, the transfer of evidence shall be suspended if it would cause serious and irreversible damage to the person concerned.

3. When transferring the evidence obtained, the executing authority shall indicate whether it requires the evidence to be returned to the executing State as soon as it is no longer required in the issuing State.

4. Where the objects, documents, or data concerned are already relevant for other proceedings, the executing authority may, at the explicit request of and after consultations with the issuing authority, temporarily transfer the evidence on the condition that it be returned to the executing State as soon as it is no longer required in the issuing State or at any other time or occasion agreed between the competent authorities.



# EUROPEAN INVESTIGATION ORDER

## GROUND FOR NON-RECOGNITION OR NON-EXECUTION (1)

recognition or execution of an EIO may be refused in the executing State where, *inter alia*:

- there are rules on determination and limitation of criminal liability relating to freedom of the press and freedom of expression in other media, which make it impossible to execute the EIO;
- the execution of the EIO would be contrary to the principle of *ne bis in idem* (for instance when the issuing authority has provided assurances that the evidence transferred as a result of the execution of the EIO will not be used to prosecute or sanction a person whose case has been disposed in another MS for the same facts);
- the EIO relates to a criminal offence which is alleged to have been committed outside the territory of the issuing State and wholly or partially on the territory of the executing State, and the conduct in connection with which the EIO is issued is not an offence in the executing State;

# EUROPEAN INVESTIGATION ORDER

## GROUND FOR NON-RECOGNITION OR NON-EXECUTION (2)

- the conduct for which the EIO has been issued does not constitute an offence under the law of the executing State, unless it concerns an offence listed within the categories of offences set out in Annex D (such as terrorism or trafficking in human beings), as indicated by the issuing authority in the EIO, if it is punishable in the issuing State by a custodial sentence or a detention order for a maximum period of at least three years.

In addition, where the EIO concerns an offence in connection with taxes or duties, customs and exchange, the executing authority shall not refuse recognition or execution on the ground that the law of the executing State does not impose the same kind of tax or duty or does not contain a tax, duty, customs and exchange regulation of the same kind as the law of the issuing State.

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# EUROPEAN INVESTIGATION ORDER

## LEGAL REMEDIES

**SCOPE OF CHALLENGE** Formal aspects of the particular investigative measure carried out can be challenged also in the executing state. The content of the order should be, in principle, challenged in the issuing state, without prejudice to the guarantees of fundamental rights in the executing State.

## **CONSEQUENCE OF CHALLENGE**

- In principle no suspensive effect, unless it is provided in similar domestic cases.
- As regards evidence already transmitted right of the defence and fairness of the proceedings have to be taken into account

## *Article 14 J legal remedies*

1. Member States shall ensure that legal remedies, equivalent to those available in a similar domestic case, are applicable to the investigative measures indicated in the EIO
2. The substantive reasons for issuing the EIO may be challenged only in an action brought in the issuing State, without prejudice to the guarantees of fundamental rights in the executing State.
3. Where it would not undermine the need to ensure confidentiality of an investigation under Article 19(1), the issuing authority and the executing authority shall take the appropriate measures to ensure that information is provided about the possibilities under national law for seeking the legal remedies when these become applicable, and in due time to ensure that they can be exercised effectively.
4. Member States shall ensure that the time-limits for seeking a legal remedy shall be the same as those that are provided for in similar domestic cases and are applied in a way that guarantees the possibility of the effective exercise of these legal remedies for the parties concerned.
5. The issuing authority and the executing authority shall inform each other about the legal remedies sought against the issuing, the recognition or the execution of an EIO.
6. A legal challenge shall not suspend the execution of the investigative measure, unless it is provided in similar domestic cases.
7. The issuing State shall take into account a successful challenge against the recognition or execution of an EIO in accordance with its own national law. Without prejudice to national procedural rules, Member States shall ensure that in criminal proceedings in the issuing State the rights of the defence and the fairness of the proceedings are respected when assessing evidence obtained through the EIO.

# EUROPEAN INVESTIGATION ORDER

## Expenses incurred for the execution of an EIO

the expenses incurred in the territory of the executing MS for the execution of an EIO should be borne exclusively by that MS. However, the execution of an EIO may incur exceptionally high costs on the executing State. Such exceptionally high costs may, for example, be complex experts' opinions or large police operation or surveillance activities over a large period of time. This should not impede the execution of the EIO and the issuing and executing authorities should seek to establish which expenses are to be considered as exceptionally high. The issue of costs might become subject to consultations between the Member States concerned and they are recommended to resolve this issue during the consultations stage.

As the last resort, the issuing authority may decide to withdraw the EIO or to maintain it and the part of the costs which are estimated exceptionally high by the executing State and absolutely necessary in the course of the proceedings, should be covered by the issuing State.

## European Arrest Warrant

an EIO may be issued for the temporary transfer of the person to the issuing State or for carrying out of a hearing by videoconference. However, where the person is to be transferred to another Member State for the purposes of prosecution, including bringing that person before a court for the purpose of the standing trial, a EAW should be issued in accordance with the Council Framework Decision 2002/584/JHA.

# EUROPEAN INVESTIGATION ORDER

## SPECIFIC MEASURES (2)

### INFORMATION ON BANKING AND OTHER FINANCIAL OPERATIONS (ART. 26-27)

an EIO may be issued in order to obtain the particulars of specified bank accounts and of banking operations which have been carried out during a specified period through one or more accounts specified within, including the particulars of any sending or recipient account. Measures have been laid down to determine which types of information should be recovered from the bank accounts.

No limitation to certain criminal acts (different than MLA)

For any natural or legal person subject to the criminal proceedings concerned holds or controls one or more accounts, of whatever nature, in any bank or non-banking financial institution located in the territory of the executing State, and if so, to obtain all the details of the identified accounts.

### INVESTIGATIVE MEASURES IMPLYING THE GATHERING OF EVIDENCE IN REAL TIME, CONTINUOUSLY AND OVER A CERTAIN PERIOD OF TIME (ARTICLE 28)

1. When the EIO is issued for the purpose of executing an investigative measure requiring the gathering of evidence in real time, continuously and over a certain period of time, such as:

(a) the monitoring of banking or other financial operations that are being carried out through one or more specified accounts;

the controlled deliveries on the territory of the executing State.

its execution may be refused, in addition to the grounds for non-recognition and non-execution referred to in Article 11, if the execution of the investigative measure concerned would not be authorised in a similar domestic case.

The practical arrangements regarding the investigative measure referred to in paragraph 1 (b) and wherever else necessary shall be agreed between the issuing State and the executing State.

# EUROPEAN INVESTIGATION ORDER

## SPECIFIC MEASURES (1)

### TEMPORARY TRANSFER TO THE ISSUING STATE OF PERSONS HELD IN CUSTODY FOR THE PURPOSE OF CARRYING OUT AN INVESTIGATIVE MEASURE (ARTICLE 22)

In addition to the grounds for non-recognition or non-execution referred to in Article 11 the execution of the EIO may also be refused if:

- (a) the person in custody does not consent; or
- (b) the transfer is liable to prolong the detention of the person in custody.

### TEMPORARY TRANSFER TO THE EXECUTING STATE OF PERSONS HELD IN CUSTODY FOR THE PURPOSE OF CARRYING OUT AN INVESTIGATIVE MEASURE (ARTICLE 23)

In addition to the grounds for non-recognition or non-execution referred to in Article 11 the execution of the EIO may also be refused if:

- the person in custody does not consent.

### HEARING BY VIDEOCONFERENCE OR OTHER AUDIO – VISUAL TRANSMISSION (ARTICLE 24)

MLA provisions (witnesses, experts and accused – consent of accused necessary)

### HEARING BY TELEPHONE CONFERENCE (ARTICLE 25)

For witness or expert where it is not appropriate or possible for the person to be heard to appear in its territory in person, and after having examined other suitable means.

# EUROPEAN INVESTIGATION ORDER

## SPECIFIC MEASURES (3)

### COVERT INVESTIGATIONS (ART. 29)

an EIO may be issued for the purpose of requesting the executing State to assist issuing State in the conduct of investigations into crime by officers acting under covert or false identity (covert investigations). Covert investigations shall take place in accordance with the national law and procedures of the Member State on the territory of which the covert investigation takes place.

1. An EIO may be issued for the purpose of requesting the executing State to assist the issuing State in the conduct of investigations into crime by officers acting under covert or false identity (covert investigations).

2. The issuing authority shall indicate in the EIO why it considers that the covert investigation is likely to be relevant for the purpose of the criminal proceedings. The decision on the recognition and execution of an EIO issued under this Article shall be taken in each individual case by the competent authorities of the executing State with due regard to its national law and procedures.

3. In addition to the grounds for non-recognition and non-execution referred to in Article 11, the executing authority may refuse to execute an EIO referred to in paragraph 1, where:

the execution of the covert investigation would not be authorised in a similar domestic case; or

it was not possible to reach an agreement on the arrangements for the covert investigations under paragraph 4.

4. Covert investigations shall take place in accordance with the national law and procedures of the Member State on the territory of which the covert investigation takes place. The right to act, to direct and to control the operation related to the covert investigation shall be solely with the competent authorities of the executing State. The duration of the covert investigation, the detailed conditions, and the legal status of the officers concerned during covert investigations shall be agreed between the issuing State and the executing State with due regard to their national laws and procedures.

# EUROPEAN INVESTIGATION ORDER

## SPECIFIC MEASURES (5)

### INTERCEPTION OF TELECOMMUNICATIONS WITH TECHNICAL ASSISTANCE OF ANOTHER MEMBER STATE (ARTICLE 30)

possibilities to cooperate under the provisions on interception of telecommunications should not be limited to the content of the telecommunication, but could also cover collection of traffic and location data associated with such telecommunications, allowing competent authorities to issue an EIO for purposes of obtaining less intrusive data on telecommunications. (MLA SOLUTION IN THE FRAMEWORK OF MIR)

### TECHNICAL ASSISTANCE

technical provisions have been introduced as regards the scope of the assistance to be offered. In an EIO containing the request for interception of telecommunications the issuing authority should provide the executing authority with sufficient information such as details of the criminal conduct under investigation, in order to allow the executing authority to assess whether the measure would be authorised in a similar national case.

### DATA PROTECTION

MS should provide in the application of this Directive for transparent policies with regard to the processing of personal data and for the exercise of the data subject's rights to legal remedies for the protection of his or her personal data. Personal data obtained under this Directive should be processed when necessary and proportionate for purposes compatible with the prevention, investigation, detection and prosecution of crime or enforcement of criminal sanctions and the exercise of the right of defence. Only authorised persons should have access to information containing personal data which may be achieved through authentication processes.

# EUROPEAN INVESTIGATION ORDER

## SPECIFIC MEASURES (5)

### NOTIFICATION OF THE MS WHERE THE SUBJECT OF THE INTERCEPTION IS LOCATED FROM WHICH NO TECHNICAL ASSISTANCE IS NEEDED (ART. 31)

1. If here, for the purpose of carrying out an investigative measure, the interception of telecommunications is authorized by the competent authority of one Member State (the 'intercepting Member State') and the communication address of the subject of the interception specified in the interception order is being used on the territory of another Member State (the 'notified Member State') from which no technical assistance is needed to carry out the interception, the intercepting Member State shall notify the competent authority of the notified Member State of the interception:
  - (a) prior to the interception in cases where the competent authority of the intercepting Member State knows at the time of ordering the interception that the subject of the interception is or will be on the territory of the notified Member State;
  - (b) during the interception or after the interception has been carried out, immediately after it becomes aware that the subject of the interception is or has been during the interception, on the territory of the notified Member State.
2. The notification referred to in paragraph 1 shall be made by using the form set out in Annex C.
3. The competent authority of the notified Member States may, in cases where the interception would not be authorised in a similar domestic case, notify, without delay and at the latest within 96 hours after the receipt of the notification referred to in paragraph 1, the competent authority of the intercepting Member State:
  - (a) that the interception may not be carried out or shall be terminated; and,
  - (b) (where necessary, that any material already intercepted while the subject of the interception was on its territory may not be used, or may only be used under conditions which it shall specify. The competent authority of the notified Member State shall inform the competent authority of the intercepting Member State of reasons justifying those conditions.
4. Article 3(2) shall be applicable mutatis mutandis for the notification referred to in paragraph 2.

# EUROPEAN INVESTIGATION ORDER

## SPECIFIC MEASURES (4)

### INTERCEPTION OF TELECOMMUNICATIONS WITH TECHNICAL ASSISTANCE OF ANOTHER MEMBER STATE (ARTICLE 30)

1. An EIO may be issued for the interception of telecommunications in the MS from which technical assistance is needed. Where more than one Member State is in a position to provide the complete necessary technical assistance for the same interception of telecommunications, the EIO shall be sent only to one of them. Priority shall always be given to the Member State where the subject of the interception is or will be located.
2. An EIO referred to in paragraph 1 shall also contain the following information:
  - (a) information for the purpose of identifying the subject of the interception;
  - (b) the desired duration of the interception; and
  - (c) sufficient technical data, in particular the target identifier, to ensure that the EIO can be executed.
3. The issuing authority shall indicate in the EIO the reasons why it considers the indicated investigative measure relevant for the purpose of the criminal proceedings concerned.
4. In addition to the grounds for non-recognition or non-execution referred to in Article 11, the execution of an EIO referred to in paragraph 1 may also be refused where the investigative measure would not have been authorised in a similar domestic case. The executing State may make its consent subject to any conditions which would be observed in a similar domestic case.
5. An EIO referred to in paragraph 1 may be executed by:
  - (a) transmitting telecommunications immediately to the issuing State; or
  - (b) intercepting, recording and subsequently transmitting the outcome of interception of telecommunications to the issuing State.The issuing authority and the executing authority shall consult each other with a view to agreeing on whether the interception is carried out in accordance with point (a) or (b).
6. When issuing an EIO referred to in paragraph 1 or during the interception, the issuing authority may, where it has a particular reason to do so, also request a transcription, decoding or decrypting of the recording subject to the agreement of the executing authority.
7. Costs resulting from the application of this Article shall be borne in accordance with Article 21, except for the costs arising from the transcription, decoding and decrypting of the intercepted communications, which shall be borne by the issuing State.

# EUROPEAN INVESTIGATION ORDER

## PROVISIONAL MEASURES (ART. 32)

### REPLACING THE FREEZING OF EVIDENCE FD

it is stated that an EIO may be issued in order to take any measure with a view to provisionally preventing the destruction, transformation, moving, transfer or disposal of item that may be used as evidence. The executing authority shall decide and communicate the decision on the provisional measure as soon as possible and, whenever practicable, within 24 hours of receipt of the EIO.

1. The issuing authority may issue an EIO in order to take any measure with a view to provisionally preventing the destruction, transformation, moving, transfer or disposal of an item that may be used as evidence.
2. The executing authority shall decide and communicate the decision on the provisional measure as soon as possible and, whenever practicable, within 24 hours of receipt of the EIO.
3. Where a provisional measure referred to in paragraph 1 is requested the issuing authority shall indicate in the EIO whether the evidence is to be transferred to the issuing State or is to remain in the executing State. The executing authority shall receive and execute the EIO and transfer the evidence in accordance with the procedures laid down in this Directive.
4. Where, in accordance with paragraph 3, an EIO is accompanied by an instruction that the evidence shall remain in the executing State, the issuing authority shall indicate the date of lifting the provisional measure referred to in paragraph 1, or the estimated date for the submission of the request for the evidence to be transferred to the issuing State.
5. After consulting the issuing authority, the executing authority may, in accordance with its national law and practice, lay down appropriate conditions in light of the circumstances of the case to limit the period for which the provisional measure referred to in paragraph 1 is to be maintained. If, in accordance with those conditions, it envisages lifting the provisional measure, the executing authority shall inform the issuing authority, which shall be given the opportunity to submit its comments. The issuing authority shall forthwith notify the executing authority that the provisional measure referred to in paragraph 1 has been lifted.

## ANNEXES

the annexes of the Directive have been revised in order to clarify the content of the investigation order and list the offences that are likely to be the source of a EIO.



EFFECTIVE FINANCIAL INVESTIGATIONS AGAINST  
ORGANIZED CRIMINAL GROUPS  
GATHERING EVIDENCE AND ITS CHALLENGE

May 6-10 2019

Budva – Montenegro



◆ THE CONCEPT OF MUTUAL LEGAL ASSISTANCE

- Mutual Legal Assistance is the provision of assistance on a formal legal basis, usually in the gathering and transmission of evidence, by an authority of one country, to an authority in another, in response to a request for assistance.
- "Mutual" simply denotes the fact that assistance is usually given in the expectation that it would be reciprocated in like circumstances, although reciprocity is not always a precondition to the provision of assistance.

◆ GENERAL LIMITS/OBSTACLES

- principle of dual criminality
- principle of speciality (whereby the information obtained can only be used for the requested purpose)
- some offshore jurisdictions limit the scope of their co-operation where the offences involved are fiscal in nature;
- States sometimes limit their co-operation to certain types of criminal offences;
- some countries do not recognize freezing or confiscation orders made in another country;

FEATURES OF THE TRADITIONAL  
SYSTEM OF COOPERATION

- ◆ Based on the recognition of judicial borders and the principle of territoriality.
- ◆ The intervention of Central Authorities implies political control over the granting of the assistance; public order as ground for refusal.
- ◆ Application of the Law of the Requested Party can lead to the non validity of the material in the proceedings in the Requesting Party.
- ◆ New forms of assistance based on new investigating measures cannot take place: videoconferences, joint investigation teams, undercover agents...

◆ TRADITIONAL MECHANISMS in the framework of  
Council of Europe

- MUTUAL LEGAL ASSISTANCE:
  - EUROPEAN CONVENTION ON MUTUAL ASSISTANCE IN CRIMINAL MATTERS, 1959
  - FIRST ADDITIONAL PROTOCOL, 1978
  - SECOND ADDITIONAL PROTOCOL, 2001
- + EVEN IF NOT STRICTLY MLA
- EXTRADITION:
  - EUROPEAN CONVENTION ON EXTRADITION, 1957
  - FIRST AND SECOND ADDITIONAL PROTOCOLS
- ENFORCEMENT OF CRIMINAL JUDGEMENTS:
  - EUROPEAN CONVENTION ON THE TRANSFER OF SENTENCED PERSONS, 1983
  - EUROPEAN CONVENTION ON THE VALIDITY OF CRIMINAL JUDGEMENTS, 1990

#### ♦ MUTUAL LEGAL ASSISTANCE CONVENTION 1959

- framework for traditional legal assistance system
- system of central authorities
- no direct transmission/exchange between judicial authorities, except in case of urgency (cc central authority)
- grounds for refusal based on public order and essential national interest
- execution ruled by the law of the requesting country (*locus regit actum*)
- the convention sets out rules for the enforcement of letters rogatory by the authorities of a 'requested party' which aim to procure evidence (hearing of witnesses, experts and prosecuted persons, service of writs and records of judicial verdicts) or to communicate the evidence (records or documents) in criminal proceedings undertaken by the judicial authorities of a 'requesting party'.
- the convention specifies the requirements that requests for MLA and letters rogatory have to meet (transmitting authorities, languages, grounds for refusal).

#### ♦ PROTOCOLS TO MLA CONVENTION 1959

- The first additional Protocol 1978 to the Convention completes the convention by withdrawing the possibility to refuse assistance solely on the grounds that the request concerns an offence which the requested party considers a fiscal offence
- extends international cooperation to the service of documents concerning the enforcement of a sentence and similar measures
- adds provisions relating to the exchange of information on judicial records;
- The second additional Protocol 2001
  - modernises the provisions of the Convention by extending the range of circumstances under which MLA may be requested
  - facilitates assistance and making it quicker and more flexible
  - parallels completely the EU Convention of 29 May 2000 in MLA and in other provisions follows the Schengen Convention on 14 June 1990.

#### ♦ SECOND ADDITIONAL PROTOCOL TO MLA CONVENTION

##### MOST IMPORTANT INNOVATIONS

- procedural requirements of the requesting States to be taken into account when executing a request for mutual assistance (article 8)
- Video-conference (and tele-conference) (article 9 and article 10)
- controlled deliveries (article 18)
- cross-border observations (article 17)
- joint investigations teams (article 20)
- spontaneous information (article 11)
- under cover operations (article 19)
- direct transmission of requests (article 4)
- temporary transfer of detained persons to the requested Party (art 13)

#### ◆ TENDENCY TOWARDS A CHANGE IN JUDICIAL COOPERATION – REASONS

- Crime has become transnational, also the struggle against it also had to be shaped likewise (joint cross-border investigations, undercover operations, controlled deliveries, asset sharing).
- Chances offered by new technology (videoconferences; interceptions of communications via satellite (ground station)).
- Peculiarity of certain types of crime: high-tech crimes and trace/freeze problems (cybercrime convention).
- Technology has an influence also on ways of transmission of requests and other documentation (fax, emails, share-filing).
- Awareness that JC, and MLA in particular, needs to be more effective, and that requires the evidence gathered abroad to be admissible in the requesting State, i.e. where the trial is taking place.

#### JUDICIAL COOPERATION VS. POLICE COOPERATION

- Boundary not determined nor accepted world-wide and depending on specific legal system and the different role played by Police and Prosecutors (common law / civil law)
- As a consequence it is hard to distinguish police/judicial cooperation only on the basis of the specific act or activity performed or sought, the sole discriminating aspects being a combination of the following: whether
  - a. the requested act or the activity relates to a criminal proceeding;
  - b. the request comes from a judicial authority (according to the definition given by the requesting State).
- On the other hand, because of the progress made in the field of technology, some of the activity once performed directly by the police, in that they impinge on individual fundamental rights (i.e. electronic surveillance), are now usually carried out either in pursuance of a court decision or under the supervision of a court or a judicial authority.
- Police co-operation more effective than judicial.

#### *Rome Treaty 1958: Silence on Justice*

- Economic objectives
- Free movement of goods, services, persons and capital (CoJ in Cassis de Dijon 120/78: principle of mutual recognition for marketing of goods)
- Silence on cooperation in criminal matters
- In 1977, Valéry Giscard d'Estaing proposed creation of a European judicial area, but no follow-up

#### *Schengen Convention (1)*

- 1985: DE + FR + BENELUX, other Member States joined later
- 1990: Implementation Agreement
- Objective: abolition of internal border controls, reinforcement of outside border controls
- Amsterdam (1999) absorbed Schengen acquis
- UK and IE do not participate, but can opt-in for specific elements
- Some third countries participate (Norway, Island, Switzerland, Lichtenstein)

*Schengen Convention (1)*

Accompanying measures:

- Schengen information system (SIS)
- Transborder surveillance of persons and "hot-pursuits" (under conditions)
- Exchange police information
- Direct contact between judicial authorities
- 'Ne bis in idem'

*Something more was necessary*

- Growing fear of organised crime in an ever more integrated Europe (Single European Act 1987, 'objective 1992' to complete internal market)
- Calls for new measures on cooperation in criminal matters

*Treaty of Maastricht (1)*

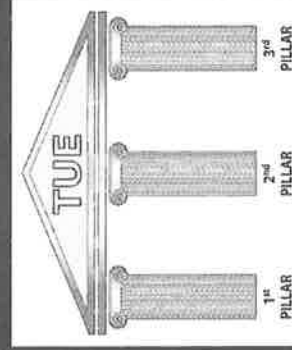
Entry into force on 1 November 1993

Creation of pillar system

1st pillar: EC policies

2nd pillar: CFSP

3rd pillar: justice and home affairs, including cooperation in criminal matters



*Treaty of Maastricht (1)*

(K.1) Member States shall regard the following areas as matters of common interest:

....

(7) judicial cooperation in criminal matters

....

(9) police cooperation for the purposes of preventing and combating terrorism, unlawful drug trafficking and other serious forms of international crime'

- Creation of area of freedom, security and justice
- Integration of Schengen acquis: partly in first pillar (asylum, immigration, visa ...) and partly in third pillar (police and judicial cooperation in criminal matters)
- Enhanced cooperation both in criminal matters

- 30: Common action in the field of police cooperation:
  - operational cooperation between the competent authorities
  - collection, storage, analysis of information
  - training
  - Cooperation through Europol is promoted

- 31: Common action on judicial cooperation in criminal matters includes:
  - facilitating and accelerating cooperation between competent judicial or equivalent authorities of the Member States in relation to proceedings and enforcement of judgments
  - facilitating extradition
  - preventing conflicts of jurisdiction
  - establishing minimum rules relating to constituent elements of criminal acts and penalties

- Following Tampere European Council (1999), various Framework Decisions have been adopted on the basis of the principle of 'mutual recognition'
- The Hague Council (2004): judicial cooperation could be further enhanced by strengthening mutual trust and by the development of a European judicial culture

## MRs adopted FDs

- Both pre-trial and post-trial:
  - European arrest warrant
  - Taking account of earlier convictions
- Pre-trial:
  - Freezing order
  - European evidence warrant
  - Supervision measures
- Post-trial:
  - Financial penalties
  - Confiscation orders
  - Transfer of sentenced persons
  - Probation
  - In absentia

## New trends in JC

- Growing fear of organised crime in an ever more integrated Europe (Single European Act 1987, 'objective 1992' to complete internal market)
- Calls for new measures on cooperation in criminal matters
- **new forms of mutual legal assistance:**
  - a. resulting from new technologies (fax, video-conferences, satellite interception etc.);
  - b. resulting from the need to cope with new forms of crime (types – cybercrimes – and/or nature or structure of transnational crime – JIT, under cover operations);
  - c. alternative forms of MLA (Eurojust, E.J.N, liaison magistrates etc.).

## EU SYSTEME

### Convention on MLA in criminal matters, 29<sup>th</sup> May 2000

- Entry into force: 8 ratifications of the "old" MS.
- Primary aim: developing and modernising the existing provision of mutual assistance by extending the range of circumstances in which assistance may be requested, by facilitating assistance to make it quicker and more effective, and by introducing new measures to facilitate and further cross-border investigations.
- Extends the application of MLA to proceedings before administrative authorities and proceedings involving legal persons.
- Provides for the application of the law of the Requesting State (if it is not contrary to the principles of the Requested State).
- To the extent possible, deadlines must be met, and reasons to non compliance must be given.
- Introduces new techniques applicable for mutual assistance (video and telephone conferences).
- Adopts rules on data protection.

## EU SYSTEME

### Convention on MLA in criminal matters, 29<sup>th</sup> May 2000

- ◆ **SERVICE OF DOCUMENTS:**
  - GENERAL RULE: BY POST
  - ONLY IN CERTAIN CIRCUMSTANCES IT IS POSSIBLE TO SERVE THE DOCUMENT THROUGH THE COMPETENT AUTHORITIES OF THE REQUESTED STATE.
  - TRANSLATION: ONLY IF THE ADDRESSEE DOES NOT UNDERSTAND THE LANGUAGE OF THE REQUESTING STATE, AND ONLY THE IMPORTANT PASSAGES THEREOF
  - ACCOMPANIED BY A REPORT STATING HIS/HER RIGHTS (ALSO TRANSLATED TO A LANGUAGE OF HIS/HER KNOWLEDGE).



- ◆ REQUEST FOR MUTUAL LEGAL ASSISTANCE AND SPONTANEOUS EXCHANGE OF INFORMATION:
  - GENERAL RULE: DIRECT TRANSMISSION BETWEEN JUDICIAL AUTHORITIES.
  - INFORMATION LAID WITH A VIEW TO PROCEEDINGS IN THE REQUESTED STATE: they may be transmitted directly.
  - TRANSMISSION THROUGH CENTRAL AUTHORITIES IS ALSO POSSIBLE BUT IT MUST BE AVOIDED IF NOT INDISPENSABLE.
  - TRANSMISSION THROUGH CENTRAL AUTHORITIES IS NECESSARY FOR:
    - TEMPORARY TRANSFER OR TRANSIT OF PERSONS IN CUSTODY
    - EXCHANGE OF INFORMATION ON CRIMINAL RECORDS.
- GENERAL RULE is the application of the law of the Requesting State (if it is not contrary to the principles of the Requested State)

- ◆ NEW FORMS OF ASSISTANCE IN EU CONVENTION:
  - HEARING BY VIDEO AND TELE CONFERENCE
  - CONTROLLED DELIVERIES
  - COVERT INVESTIGATIONS
  - INTERCEPTIONS OF TELECOMMUNICATIONS
- NEW FORMS OF ASSISTANCE IN EU:
  - JOINT INVESTIGATION TEAMS (2002)
  - EUROJUST (2002)
  - EJM (1998)

## SPECIFIC FORMS OF ASSISTANCE

- TEMPORARY TRANSFER OF PERSONS HELD IN CUSTODY FOR INVESTIGATION
  - PURPOSES: agreement concluded and date of return specified
- HEARING BY VIDEOCONFERENCE
  - witness or expert (agreement between MS that it also includes accused persons with its consent - Article 10(9)). - not desirable or possible for the person to be heard to appear. - the use is not contrary to the fundamental principles of national law of requested state and it has the technical means (may be offered by requesting state). - a judicial authority of the requested state shall be present. - hearing conducted by judicial authority of requesting state. - assistance of interpreter if necessary. - right not to testify in accordance with the law of the requested or requesting state. - minutes ("... the judicial authority of the requested MS shall on the conclusion of the hearing draw up minutes indicating the date and place of the hearing, the identity of the person heard, the identities and functions of all the persons... participating, any oaths taken and the technical conditions... The documents shall be forwarded by the competent authority of the requested MS to the competent authority of the requesting MS." Article 10(6); costs covered in principle by requesting MS. - unjustified refusal of testifying can be punished by law of requested state (Article 10(8) "Each MS shall take the necessary measures to ensure that, where witnesses or experts are being heard within its territory... and refuse to testify when under an obligation to testify or do not testify according to the truth, its national law applies in the same way as if the hearing took place in a national procedure."

## HEARING OF WITNESSES AND EXPERTS BY TELEPHONE CONFERENCE (Article 11)

Provision in law of requesting state. - witness and expert must agree. - is not contrary to fundamental principles of the law of the requested state. - requested state may demand conditions as envisages for hearing by videoconference (costs, non-testifying)

## CONTROLLED DELIVERIES (Article 12)

- In accordance with the procedures of the requested state

## JOINT INVESTIGATION TEAMS (Article 13)

Agreement to set up, particularly, if (i) demanding and difficult investigations having links with other MS, (ii) a number of MS conducting investigations and coordinated and concerted action is necessary. - certain conditions (leader from the MS where the team operates. in accordance with national law of the state it operates). - seconded experts from other MS (may be in general present, responsible for certain measures. - lawfully obtained information not available to the MS where the information became available for investigating and prosecuting other offences, preventing an immediate and serious threat to public security, other purposes agreed)

COVERT INVESTIGATIONS (Article 14): duration, detailed conditions and legal status of the officers shall be agreed between MS with due regard to their national law and procedures; the covert investigation as such is conducted in accordance with the law of the state of operation; - optional possibility to exclude this article

## INTERCEPTION OF TELECOMMUNICATIONS (articles 17-22)

- Competent authority in the requesting MS – a judicial authority or an equivalent competent authority specified before (Article 17)
- 2 KINDS OF REQUEST:
  - (a) Interception and immediate transmission (subject is present in the requesting state but it needs technical help, in the requested MS – the requested measure would be taken in a similar national case, in a third MS and the requesting state needs the help of the requested state)
  - (b) Interception, recording and subsequent transmission – Article 18(6): “6. When immediate transmission is not possible, the requested MS shall undertake to comply with requests under paragraph (b) on being provided with the information in paragraphs 3 and 4 and where the requested measure would be taken by it in a similar national case. The requested MA may make its consent subject to any condition which would have to be observed in a similar national case.” 7. When giving the notification provided for in Article 27(2), any MA may declare that it is bound by paragraph 6 only when it is unable to provide immediate transmission. In this case the other MS may apply the principle of reciprocity.”

Conditions: - requesting authority: confirmation that an order or warrant has been issued, identifying the subject, criminal conduct, desired duration, summary of facts if it should be done in the requested state

## Interceptions of telecommunications on national territory by the use of service providers (Article 19)

1. Member States shall ensure that systems of telecommunications services operated via a gateway on their territory, which for the lawful interception of the communications of a subject present in another Member State are not directly accessible on the territory of the latter, may be made directly accessible for the lawful interception by that Member State through the intermediary of a designated service provider present on its territory.
2. In the case referred to in paragraph 1, the competent authorities of a Member State shall be entitled, for the purposes of a criminal investigation and in accordance with applicable national law and provided that the subject of the interception is present in that Member State, to carry out the interception through the intermediary of a designated service provider present on its territory without involving the Member State on whose territory the gateway is located.
3. Paragraph 2 shall also apply where the interception is carried out upon a request made pursuant to Article 18(2)(c).
4. Nothing in this Article shall prevent a Member State from making a request to the Member State on whose territory the gateway is located for the lawful interception of telecommunications in accordance with Article 18, in particular where there is no intermediary in the requesting Member State.

## Interception of telecommunications without the technical assistance of another Member State (Article 20)

- Duty of notification:
  - (a) prior to the interception in cases where it knows when ordering the interception that the subject is on the territory of the notified Member State;
  - (b) in other cases, immediately after it becomes aware that the subject of the interception is on the territory of the notified Member State
- Procedure in notified Member State:
  - (a) Upon receipt of the information provided under paragraph 3, the competent authority of the notified Member State shall, without delay, and at the latest within 96 hours, reply to the intercepting Member State, with a view to: (i) allowing the interception to be carried out or to be continued. The notified Member State may make its consent subject to any conditions which would have to be observed in a similar national case; (ii) requiring the interception not to be carried out or to be terminated where the interception would not be permissible pursuant to the national law of the notified Member State; (iii) in cases referred to in point (ii), requiring that any material already intercepted while the subject was on its territory may not be used, or may only be used under conditions which it shall specify; (iv) requiring a short extension, of up to a maximum period of eight days, to the original 96-hour deadline, to be agreed with the intercepting Member State, in order to carry out internal procedures under its national law. The notified Member State shall communicate, in writing, to the intercepting Member State, the reasons for its decision; (b) Until a decision has been taken by the notified Member State pursuant to points (i) or (ii) of subparagraph (a), the intercepting Member State (i) may continue the interception, and (ii) may not use the material already intercepted, except if otherwise agreed between the Member States concerned; or – for taking urgent measures to prevent an immediate and serious threat to public security;
- Member State may declare that it will not be necessary to provide it with information on interceptions as envisaged in this Article

## Additional Protocol to the 2000 EU MLA Convention (2001)

Ratified by all EU MS except Greece, Estonia, Croatia, Italy and Ireland

### Relates to banking information:

#### (A) Request for information on bank accounts

whether a natural or legal person that is the subject of a criminal investigation holds or controls one or more accounts, of whatever nature, in any bank located in its territory and, if so, provide all the details of the identified accounts.

The information shall also, if requested and to the extent that it can be provided within a reasonable time, include accounts for which the person that is the subject of the proceedings has powers of attorney.

### Limitation to certain offences

- an offence punishable by a penalty involving deprivation of liberty or a detention order of a maximum period of at least four years in the requesting State and at least two years in the requested State, or
- an offence referred to in Article 2 of the 1995 Convention on the Establishment of a European Police Office (Europol Convention) or in the Annex to that Convention, as amended, or
- to the extent that it may not be covered by the Europol Convention, an offence referred to in the 1995 Convention on the Protection of the European Communities' Financial Interests, the 1976 Protocol thereto, or the 1997 Second Protocol thereto.

Member States may make the execution of a request according to this Article dependent on the same conditions as they apply in respect of requests for search and seizure.



#### (B) Requests for information on banking transactions

Particulars of specified bank accounts and of banking operations which have been carried out during a specified period through one or more accounts specified in the request, including the particulars of any sending or recipient account

Member States may make the execution of a request according to this Article dependent on the same conditions as they apply in respect of requests for search and seizure.

#### (C) Requests for the monitoring of banking transactions

Request of another Member State, if it is able to monitor, during a specified period, the banking operations that are being carried out through one or more accounts specified in the request and communicate the results filtered to the requesting Member State.

The decision to monitor shall be taken in each individual case by the competent authorities of the requested Member State, with due regard for the national law of that Member State.

#### (D) Banking secrecy

A Member State shall not invoke banking secrecy as a reason for refusing any cooperation regarding a request for mutual assistance from another Member State.

#### CLARIFICATIONS ON FISCAL AND POLITICAL OFFENCES

Mutual assistance may not be refused solely on the ground that the request concerns an offence which the requested Member State considers a fiscal offence. That request may not be refused on the ground that the law of the requested Member State does not impose the same kind of tax or duty or does not contain a tax, duty, customs and exchanges regulation of the same kind as the law of the requesting Member State.

For the purposes of mutual legal assistance between Member States, no offence may be regarded by the requested Member State as a political offence, an offence connected with a political offence or an offence inspired by political motives.

Each Member State may, when giving the notification referred to in Article 13(2), declare that it will apply paragraph 1 only in relation to

(a) the offences referred to in Articles 1 and 2 of the European Convention on the Suppression of Terrorism of 27 January 1977; and

(b) offences of conspiracy or association, which correspond to the description of behaviour referred to in Article 3(4) of the Convention of 27 September 1996 relating to extradition between the Member States of the European Union, to commit one or more of the offences referred to in Articles 1 and 2 of the European Convention on the Suppression of Terrorism.

## EJN

Set up in 1998

Located in each Member State (but secretariat in The Hague)

+/- 250 contact points (prosecutors, judges, representatives of Ministries of Justice); meet 3 times per year

Objective: to facilitate judicial cooperation, e.g. through personal contacts and 'Atlas'

Horizontal approach

## EJN Website background

Objective: making information available that is practical, useful and essential for the day to day operation of the national judicial authorities

One of the most important attributes of the Network, set out in Article 3, Line c) of the Joint Action and reinforced by the Council Decision on the European Judicial Network in Articles 3c), 7 and 8.

The construction of the so-called Network tools started before the EJN itself. The EJN website began, was based in and until 2004 it was administered from Portugal.

Since June 2005 the EJN website is administrated by the EJN Secretariat placed at Eurojust headquarters, in The Hague.

The EJN website can be accessed thanks to the following link: [www.ejn-crimjust.europa.eu](http://www.ejn-crimjust.europa.eu)

These tools are used not only by the Contact Points but also by the judicial authorities from all the MS

The EJN IT tools are composed of the List of Contact Points, the Legal Instruments, the Fiches Belges, the European Judicial Atlas (commonly known as the Atlas), the EAW Atlas, the Solon, the Compendium and the Forms section.

## EJN Website instruments

### Execution Tools:

Cover Note and the Compendium, which also include complete models of Rogatory Letters.

### Information tools:

**LIST OF CONTACT POINTS:** database which provides details for the contact points in each MS (name, address, telephone, fax, e-mail, etc.)

**FICHES BELGES** tool contains legal, procedural and practical information relating to the most frequently requested investigative measures with regard to judicial cooperation.

The European Judicial ATLAS is a dynamic IT tool which provides details of the competent authorities for implementing requests for JC and which simultaneously takes into account various types of data: geographic area, judicial organisation, type of crime, type of measure required and the applicable international instruments.

**LEGAL INSTRUMENTS** - compilation of legal texts (conventions, common positions or legal actions, funding programmes, decisions, framework decisions, resolutions, recommendations, agreements, as well as extracts from treaties) prepared within the context of the European Union and other institutions (Council of Europe, UN, etc.) with regard to mutual assistance in criminal matters.

**SOLOL** - Glossary of legal linguistic equivalences in the area of international judicial cooperation, which was set up with the objective of helping with translation of rogatory letters.

## Eurojust

Set up in 2002 (modifications in 2003 and 2008/2009)

Located in The Hague

28 EU prosecutors / judges

One nominated by each Member State

Aim

*– to deal more effectively with serious cross-border crime, particularly when it is organised, and involves two or more Member States'*

*– JHA Council Decision of 14 December 2000*

## Eurojust

### Objectives

## Eurojust

### Objectives:

- Improve co-operation between Competent Authorities in Member States
- Bring better co-ordination of cross-border investigations and prosecutions
- Exchange of information
- To make recommendations to change laws to improve MLA & Extradition arrangements

## Eurojust

### How does it work?

- Case Referrals
- Working Methods
- Adding Value
- Strategic Meetings
- Co-ordination Meetings

## Eurojust

### Areas of Added Value

- 1 Permanent Mutual Legal Assistance Network
- 2 Empowered MLA Network
- 3 Facilities - Casework Meetings & Conferences
- 4 Contact Points
- 5 Integrated Approach: Tackling Organised Crime
- 6 Voice Influencing Law-Makers & Others
- 7 Casework Examples

## Eurojust

### Powers

- Power to request competent authorities :
  - to investigate or prosecute specific acts
  - to accept that one country is better placed to prosecute than another
  - to co-ordinate with one another
  - to set up a Joint Investigation Team
  - to provide Eurojust with any information necessary to carry out its tasks

