EUROPEAN JUDICIAL CYBERCRIME NETWORK
9TH PLENARY MEETING

VIRTUAL MEETING, 10 - 11 DECEMBER 2020

OUTCOME REPORT

1. Summary

The European Judicial Cybercrime Network (EJCN) held its 9th Plenary Meeting on 10th and 11th of December 2020. It was held virtually due to the restrictions of the COVID-19 pandemic.

The meeting of the EJCN Contact Points from the European Member States, Norway, Serbia and Switzerland, counted with the participation of representatives from Eurojust, European Judicial Network (EJN), Europol-EC3, the Council of Europe, the Council of the European Union and the European Commission (DG-Home and DG-Near), in a total of 115 attendees.

The first day of the Plenary was dedicated to topical discussions on the 2nd Additional Protocol to the Budapest Convention, on the latest developments in the Sirius Project, with the presentation of the Digital Evidence Report and on lawful access to encrypted digital evidence, with a reference to the Encrochat case.

On the second day of the Plenary, the topic of virtual currencies was discussed followed by the presentation of the Virtual Currencies Guide for Judicial Authorities. Also on the second day of the Plenary, the Subgroups of the EJCN presented their activities and future plans for the Work Program of 2021/2022.

Following the presentation of the E-Evidence Subgroup it was put to the discussion of the Plenary, the issuing of a declaration by the EJCN on digital evidence in the possession of service providers, highlighting the need to conclude the process of negotiations of the E-Evidence package.

The meeting was concluded with the input from Stakeholders, Eurojust, EJN, the European Commission and the Council of the European Union. Ms. Daniela Buruiana, Chair of the Cybercrime Team, greeted the Network for the relevant discussions presented to practitioners during the Plenary and reinstated the support of Eurojust to EJCN.

This report reflects :

1. the key outcome points of the four topical discussions conducted during the meeting (below Nr. 2);
2. The input on subgroup activities given by the Chairs of the subgroups on virtual currencies, case building, data retention, e-evidence and training as discussed within previous separate subgroup meetings (below Nr. 3), as well proposed activities for the future work program of 2021/2022;

2. Topical Discussions

2.1. 2nd Additional Protocol to the Budapest Convention

- This topic was introduced by Branislav Bohacik, EJCN Contact Point for Slovakia and Member of Cybercrime Convention Committee T-CY, followed by a presentation by Alexander Seger, Head of Cybercrime Division from Council of Europe, on the current state of play regarding the approval of the 2nd Additional Protocol and on how this new development of the Budapest Convention can impact cybercrime investigations;
- This topic discussion also had the participation of Jaroslaw Lotarski, representative of the European Commission and of Pedro Verdelho, EJCN Contact Point for Portugal and Vice--chair of the T-CY;
- Participants were presented with the new tools and investigative measures under discussion and the benefits of the 2nd Additional Protocol. The emphasis of the discussion was on the possibility to obtain data from service providers, the issue of extended searches and the necessary safeguards to allow data sharing;
- It was concluded that there is still quite a road ahead to be followed until the approval of the final text and its ratification by Member States and that the end result should be to promote efficiency in criminal investigations, avoiding that new rules become a point of more complexity.

2.2. Sirius Platform - New Developments and Achievements 2020/2021

- The topic of the developments in the SIRIUS Project was introduced by Daniela Buruiana, Chair of the CY Team and the subject was presented by Robert Laid, member of EJCN Support Team/Eurojust Sirius Project Manager along with Tomas Penna from Europol Sirius Team;
- This topical discussion served to present the Digital Evidence Situation Report, a joint product of Eurojust and Europol, which had data contribution by the EJCN Contact Points;
- It was given to the participants the scope of the report in a nutshell, presenting the of electronic evidence by EU law enforcement and judicial authorities in criminal cases in 2019, bringing together the perspectives of authorities and Online Service Providers;
- In short, the Report provides a picture of challenges encountered by judicial authorities in obtaining digital evidence by voluntary cooperation of OSPs, namely length of the procedures, lack of data retention regimes, difficulties in identifying the correct jurisdiction/legal entity, issues to which the Sirius Project aims to help judicial authorities with;
- The Sirius Platform was recognized as an excellent resource for practitioners, especially for the disclosure and preservation of documents; however, it was also recognized by

practitioners that it is not sufficiently known among judicial authorities and it would be useful to provide training in Member States to further disseminate its use.

2.3. " Goodware " and Lawful Access to Digital Evidence

- This topical discussion was introduced by Anita Veternik, EJCN Contact Point for Slovenia/Eurojust Assistant to National Member for Slovenia and the subject was presented by Jacques Martinon, EJCN Contact Point for France and Martijn Egberts EJCN Contact Point for The Netherlands;
- The focus of the discussion was the use of encryption technology by international criminal organizations and technical solutions needed by competent authorities to obtain the encrypted data concerning those criminal activities, as seen in the Encrochat case;
- Speakers described the background and factors that allowed for success in the Encrochat case, being a key factor early sharing of information and joint efforts of judicial authorities in the investigating jurisdictions;
- It was highlighted that the abuse of encryption by criminal organizations will continue to be seen and will require a common knowledge of best practices and efficient international judicial cooperation;
- In conclusion, the topic of encryption should continue to be followed by EJCN, namely the jurisprudence coming from Encrochat related cases.

2.4. Update on Virtual Currencies and Cybercrime - Cooperation with Exchangers and Other Entities

- The topical discussion was introduced by Gabor Ivanics from Eurojust CY Team and the subject was presented by Jarek Jakubcek from Europol EC3 and Jan Kerkhofs, EJCN Contact Point for Belgium;
- The discussion followed the use of virtual currencies, either as an object of criminal activities or as a tool to launder the proceeds of criminal activity, concluding that this use creates additional problems for judicial and law enforcement authorities in investigating these crimes and bring to light new challenges on how to deprive criminals of the illicit product of their activities;
- Participants were shown the anatomy of cryptocurrency tracing and its challenges to consider during an investigation, with a focus on the need for law enforcement or other experts to present reports in an easy to interpret format and on the need to analyze the data related to the virtual currency flows in different moments in time to obtain more accurate results;
- The topical discussion also allowed for an introductory presentation of the Virtual Currency Guide for Judicial Authorities, created in the Virtual Currency subgroup, as a low threshold tool for the understanding of the subject. It was recognized that this is still a new and difficult topic for judicial authorities and the Guide aims to support a capacity building need in this field, to be further developed by the EJCN.

3. Subgroups activities and updates

3.1. Subgroup on Virtual Currencies

- Detailed presentation of the Virtual Currency Guide for Judicial Authorities, considered to be a tool that should be available to Judicial Authorities, as soon as possible, as a working document until a final version can be approved by the Network in the next Plenary;
- It was agreed that it should be disseminated for comments by the Contact Points until the 31st of January. However, the Virtual Currency Guide is to be seen as a live document to be updated and improved;
- Within the subgroup and further in the Network, will be discussed how the dissemination of the working document and final version should occur;
- It was concluded that there is a need for further training on Virtual Currencies to be combined with the dissemination of the Guide.

3.2. Subgroup on Case-Building

- Presentation of the Lessons Learned from Cepheus document, a case that highlights the importance of international judicial cooperation on cybercrime and cyber enabled crime;
- The work of the subgroup for the future will continue with the analysis of other cases which require for several jurisdictions to cooperate from an early stage, that should address the needs of victims of cybercrime across several countries with the aim to determine on how the evidence gathered in one jurisdiction can ignite the start of cases in other jurisdictions, with the support of Eurojust;
- The subgroup invites Contact Points to identify and share cases in their jurisdictions as a way to expand the investigation of cybercrime cases beyond the national jurisdiction and to take advantage of the possibility provided in the new Eurojust regulation to start new cases.

3.3. Subgroup on Data Retention

- It was presented to the Plenary the work done during 2019 by the subgroup - questionnaire on the state of play of data retention in Member States, assisting DG Home data retention study and the discussion of the case Dwyer v. the Commissioner of An Garda Slotchána was presented;
- The subgroup considers the goals set in the 2019/2020 Work Program to have been achieved, however the analyses of recent Court of Justice case law on data retention remains relevant and will continue for 2021/2022.

3.4. Subgroup on E-Evidence

- The subgroup presented the questionnaire results on direct access to E-Evidence, proposed additional work on some of the elements and disclosure of the summary on the public website and the questionnaire on the restricted EJCN website;
- Previously to the Plenary, the subgroup shared a proposed **draft statement** of the EJCN on the E-Evidence Package (in Annex);
- This **statement** by the EJCN highlights the importance of the digital evidence in the possession of service providers for criminal investigations and invites all European bodies and agencies to conclude the process of negotiations of a legislative package on E--Evidence as soon as possible;

- The **draft statement** was welcomed by the Plenary. The deadline for comments on it was set for the 23rd of December and issue of the Statement should occur in early January;
- Possible synergies with Eurojust and EJN were discussed in future analysis of the European Parliament position regarding the E-evidence legislative package;
- The subgroup informed about the progress achieved in collecting and sharing the information on relevant European providers. Further co-operation with the SIRIUS project is expected.
- The subgroup declared its interest to consider hosting providers and e-evidence as one of its topics for discussion for 2021.

3.5. Subgroup on training

- The subgroup present its latest interactions regarding training with CyberNet, EJTN and ERA either for training to be provided to Contact Points or for Contact Points to participate as speakers in activities to be developed;
- Since no subgroup related to the development of the EJCN website exists, the latest developments in the implementation of the website were presented.
- It was suggested that the Website Subgroup should be reactivated for the Work Program 2021/2022, a solution further to be discussed, since a dedicated website is recognized by EJCN as a very relevant tool for its mandate.

ANNEX

EJCN Statement regarding the E-evidence legislative package

"In December 2018, a general approach was agreed by the Council of the European Union concerning draft regulation on European production and preservation orders for electronic evidence in criminal matters. Subsequently in March 2019 the Council agreed on a draft directive laying down harmonised rules on the appointment of legal representatives for the purposes of gathering of evidence in criminal matters

The European Judicial Cybercrime Network is a network of practitioners active in the field of fight against cybercrime. Investigators, prosecutors and judges in Europe need to obtain e-evidence on a daily basis. In most cases, such evidence is in the possession of private companies abroad, in particular in the United States. In order to lead effective investigations and prosecutions of cyber enabled and cyber dependant crimes, the law enforcement and judicial authorities must have sufficient legal basis for fulfilling their important roles in democratic societies. The current situation in obtaining e-evidence in cross-border cases does not provide appropriate and timely responses to the needs of practitioners. Moreover, justice is frequently denied or postponed due to missing e-evidence.

The continuing emphasis on privacy in cyberspace can adversely affect investigations of cybercrime and the exchange of evidence that exists in the online realm. It seems that comparable investigative measures available to competent authorities in the real world would not be available for such authorities for investigations of similar crimes in the virtual world. This may lead to an imbalance between the privacy rights and the rights of victims of crime, which would adversely affect those same rights that exist for all citizens.

The expectations of the European citizens are very high. The importance of e-evidence is even more significant in the period of COVID-19 as cybercrime is on the rise as was recently underlined by Europol. The EJCN invites all European bodies and agencies to conclude the process of negotiations of a legislative package on e-evidence as soon as possible."