

## 1. ISSUE FRAMING

The amount of digital data stored by Online Service Providers (often based in foreign jurisdictions) has been growing fast, leading to an **increasing demand for cross-border access to electronic evidence** (e-evidence) in criminal investigations<sup>1</sup>. International cooperation between competent authorities is of significant importance in preserving and obtaining this type of evidence, which is reflected in a consistently rising number of requests for Mutual Legal Assistance (MLA)<sup>2</sup>.

While the use of digital technologies has changed the type of evidence often needed in criminal investigations<sup>3</sup>, **digitalisation of judicial cooperation procedures** has been lagging behind the trend. The transmission process of MLA requests that is currently in place is still heavily paper-based and reliant on slow or non-secure channels of communication, such as mail, courier, fax or email. Likewise, data collected through the MLA procedures is generally copied onto storage devices (e.g. CD-ROMs or portable external hard drives) by judicial authorities and sent to the requesting authorities via traditional means of exchange. In this context, formal **MLA procedures have been widely criticised as being too slow and not adapted to the reality**, in particular the nature of e-evidence which is not only more volatile but also easier to manipulate than traditional types of evidence<sup>4</sup>.

Against this background, several stakeholders have called for **improvements of "digital justice" infrastructure for cooperation across borders**<sup>5</sup>. Accordingly, various initiatives on digital platforms for **cross-border transmission of judicial cooperation measures and electronic exchange of case-related data** in criminal investigations have been promoted in recent years at the EU level

(**e-Evidence Digital Exchange System - eEDES**) and more internationally (e-MLA Initiative). Despite their operational and institutional framework differences (e.g. eEDES is used only for EU Member States), all these initiatives emphasise the importance of advancing international cooperation and securing cross-border e-evidence in a timely but secure and admissible manner<sup>6</sup>.

## 2. OBJECTIVE

The existing eEDES and e-MLA initiatives do not in themselves introduce new instruments of judicial cooperation, nor does linking IT systems with MLA processing intend to replace the legal work of competent judicial authorities in preparing and executing the MLA requests. The digitalisation of the judicial cooperation channels does, however, aim to **facilitate** (i.e. standardize) and **strengthen** (i.e. make more secure and allow for the establishment of authenticity and integrity of transmitted documents) the existing **judicial cooperation mechanisms** in criminal matters<sup>7</sup>.



This document analyses Interpol's initiative on the secure electronic transmission of mutual legal assistance (e-MLA) exchanges.

The following documents, available on the SIRIUS platform, present other initiatives on digital exchange platforms in the context of cross-border criminal investigation:

- The E-Evidence Digital Exchange System (eEDES);
- The UNODC's Secure Communication Platform.

These documents capture the platforms as currently envisaged, which might change in the future.

<sup>1</sup> Commission Staff Working Document, [Impact assessment accompanying the e-evidence package proposals](#), 17 April 2018.

<sup>2</sup> Informal Expert Group Meeting on International Cooperation in Criminal Matters, [Summary of the Chair](#), 9-11 April 2019.

<sup>3</sup> Interpol, [Resolution No. 4 GA-2018-87-RES-04](#).

<sup>4</sup> Internet & Jurisdiction Policy Network, Cross-border Access to Electronic Evidence (2021), p. 4; and Commission, [Recommendation](#) for a Council Decision authorising the opening of negotiations between the EU and the U.S. on cross-border access to electronic evidence, COM(2019) 70 final.

<sup>5</sup> EVIDENCE2e-CODEX, [Evidence2e-codex Follows Closely the e-MLA Initiative](#); and Biasiotti, M. A. et al. (Eds.) (2018). *Handling and Exchanging Electronic Evidence Across Europe*, p. 118.

<sup>6</sup> Interpol, [Resolution No. 4 GA-2018-87-RES-04](#).

<sup>7</sup> Interpol, [INTERPOL presents e-MLA initiative at UNODC conference](#), 24 October 2018; Commission, [Proposal for a Regulation](#) on a computerised system for communication in cross-border civil and criminal proceedings (e-CODEX system), COM(2020) 712 final (e-CODEX Regulation Proposal); Biasiotti, M. A. et al. (Eds.) (2018). *Handling and Exchanging Electronic Evidence Across Europe*, p. 112; and Interpol, [INTERPOL presents e-MLA initiative at UNODC conference](#), 24 October 2018.



### 3. BACKGROUND

Interpol has experience with facilitating **international cooperation between law enforcement authorities** from its member countries under the global communication network, I-24/7. Noting that judicial authorities lack a similar secure communication network to exchange MLA requests and recognising its role as a **hub for international police cooperation**, Interpol presented a proposal for creation of a system for the transmission of judicial requests in criminal matters at a global level<sup>8</sup>.

The legal feasibility study of Interpol's e-MLA Initiative project was funded by the EU's Justice Programme<sup>9</sup>. Moreover, Austria and France became co-partners on the project<sup>10</sup>.

### 4. SCOPE OF THE PLATFORM

The Interpol's electronic platform is envisaged to serve as an alternative (not a replacement) to the traditional forms of exchange under the MLA procedures **in accordance with commitments under existing treaties, national legislation and other initiatives**<sup>11</sup>.

Therefore, the possibility for judicial authorities to make use of this platform will depend on whether the applicable legal framework allows to use it for judicial cooperation.

#### INSTRUMENTS AND DATA COVERED

As the name of the Initiative implies, the system aims to allow for electronic transmission of **formal MLA requests and responses** including evidentiary information in a digital format<sup>12</sup>.

#### USERS – ACCESS

The e-MLA Initiative intends to provide access (on a voluntary basis) to all **195 member countries of Interpol**, making the platform particularly relevant in the context of MLA proceedings involving non-EU member countries that cannot benefit from the eEDES.

### 5. STATE OF PLAY

The **first – legal – phase of the e-MLA Initiative** took place in 2017 and 2018 with the support of the European Commission. It was led by the Interpol's General Secretariat along with its two partners,

France and Austria, and entailed a legal study into the feasibility of creating a dedicated virtual global network for the electronic transmission of formal MLA requests. The study was conducted in consultation with the e-MLA Working Group, composed of legal practitioners from various countries dedicated to judicial cooperation in criminal matters. In the first phase, they assessed the existing demand of national authorities for a system dedicated to MLA which would be hosted by Interpol, identified common characteristics and constraints of MLA procedures and evaluated their impact on the feasibility of an e-MLA system under the existing international legal instruments.

This phase was completed with the **legal feasibility study** which provided a positive feedback on the future of the Initiative<sup>13</sup>.

### 6. THE WAY FORWARD

In [Resolution No. 4](#) of November 2018, Interpol's General Assembly tasked the General Secretariat, in consultation with Interpol's member countries, to report on the **technical development of the e-MLA System** and, to submit an appropriate **set of rules governing its use** to the General Assembly for approval at a future session, should adequate funding be guaranteed. The e-MLA Rules would become a part of the Interpol's legal framework and allow all its member countries to participate in the e-MLA Initiative.

At the time of publishing, the second phase of the project – technical development of the e-MLA platform – has not yet started. The delays in this phase appear to be connected to the lack of funding of the Initiative.

<sup>8</sup> What is the MLA Initiative? [E-MLA Brochure](#); Interpol, [Resolution No. 4 GA-2018-87-RES-04](#).

<sup>9</sup> Interpol, [INTERPOL and the European Union](#).

<sup>10</sup> Interpol, [INTERPOL's e-MLA initiative focus of EU expert meeting](#), 12 November 2018.

<sup>11</sup> Biasiotti, M. A. et al. (Eds.) (2018). *Handling and Exchanging Electronic Evidence Across Europe*, p. 25.

<sup>12</sup> What is the MLA Initiative? [E-MLA Brochure](#).

<sup>13</sup> Interpol, [INTERPOL presents e-MLA initiative at UNODC conference](#), 24 October 2018.