

Speech by Commissioner Jourová on Law Enforcement Challenges in the Online Context – University of Luxemburg

Dear Koen, Dear Katalin, Ladies and gentlemen,

Talking about the challenges that law enforcement authorities face in obtaining quickly e-evidence in the context of criminal investigations is crucial.

It is key to efficiently fight cybercrime, to fight also terrorism and to solve all kinds of criminal investigations.

This is the reason why it is a priority under the European Agenda for Security that the Commission adopted

Our traditional investigation tools are not always fit for the fast pace of the digital world we live in. Such tools are often considered to be outdated, slow and burdensome – especially when faced with modern day challenges associated with the cloud. And the cloud is the paradigm shift in today's data economy.

[Assessing current investigation tools]

The tools, which are currently available to the authorities, must be checked against the needs of an effective criminal justice system in the digital age.

This requires striking a careful balance between three key aspects:

- first, the need of and effective criminal investigation,
- second, the importance of the digital economy and the cloud, and
- third, the respect of fundamental rights of citizens, such as data protection rights.

This is why last July we launched an expert consultation to look into ways of addressing the major issues, namely:

- making mutual legal assistance and mutual recognition more efficient,
- improving cooperation with service providers, and
- ensuring enforcement of laws in cyberspace.

To address these issues, we have to consider both practical measures within the existing set of rules, and also legislative proposals to improve the existing legal framework.

[Mutual legal assistance and European Investigation Order]

Let me start with the first issue of making mutual legal assistance more efficient.

Cross-border access to e-evidence is granted on the basis of the principle of mutual legal assistance, both within and outside the EU.

Our current procedures ensure that appropriate safeguards are taken.

However, they are also regarded as too lengthy and as taking up too many resources.

The good news is that this is about to change: within a month from now, the European Investigation Order will be up and running.

This tool, based on mutual recognition, is expected to significantly improve cross-border cooperation between competent authorities within the EU.

This is why we have made its full and timely implementation a top priority.

Practical improvements to speed up the exchange of digital evidence are also underway.

Not only are we working with the Member States to set up a platform for online exchange of e-evidence within the EU, we are also developing an interactive online form for the practitioners.

This traditional form of cooperation is and will remain valuable to secure evidence in court.

However, we wonder whether this should be the only means of improving access to e-evidence in cross-border cases.

[Direct cooperation between law enforcement authorities and private sector service providers]

Indeed, direct cooperation between law enforcement authorities and service providers already exists, but it can and should be improved.

When Member States submit direct requests to service providers for access to data, they all do it in their own way.

And the same applies for service providers! In short, there are as many policies on granting access to e-evidence as there are service providers. This situation is undesirable, as it causes problems in practice for both law enforcement authorities and the service providers.

In order to move towards more legal certainty and greater transparency into the process, we should work with service providers to come to an alignment of their policies.

We can also explore other practical measures such as:

- setting up an online platform to exchange data,

- standardising forms used by law enforcement, as well as
- developing and promoting training courses on how to make direct requests for access to e-evidence.

This is all very well, but we all know that practical measures alone will not solve all the issues we are facing.

[Enforcing laws in cyberspace]

This is why we are looking into the conditions under which national authorities could request e-evidence from a service provider within the EU, for instance by compelling them to produce evidence using a production order.

As for providers with headquarters in non-EU countries, we could “domesticate” the problem, for instance by obliging service providers to appoint a legal representative in the EU.

In this context, we have also engaged in a dialogue with the US Department of Justice.

As the challenges the EU and the US are facing are quite similar, it is in our mutual interest to cooperate even further.

We have agreed to continue our dialogue and to work on practical aspects, such as training courses for Member States’ practitioners.

We have also agreed to discuss all possible options on both sides, with the aim to explore a common approach and avoid conflicts of law.

The next step for us at the Commission is to produce a report in June with options – both non legislative and legislative options to the Council. We hope to provide a common EU approach to simplify the lives of law enforcement authorities, who have difficulties in practice in accessing e-evidence from service providers in a timely fashion and to increase the legal security for service providers.

It is crucial for authorities to have access to e-evidence to effectively conduct criminal investigations. We see an opportunity for legislation in the context of direct cooperation of law enforcement authorities and the service providers.

Ladies and Gentlemen,

The digital revolution presents us with many challenges in different areas of law.

Not only do we have to keep our citizens safe and safeguard their rights, we also have to equip competent authorities with adequate and modern investigation tools.

I am now looking forward to hearing your views on how to improve access to e-evidence in criminal proceedings, whilst ensuring full respect of fundamental

rights.

Thank you.