



Improving criminal justice in cyberspace

**European Commission follow-up to the 9 June
2016 Council conclusions**

European Agenda on Security

"Reviewing obstacles to criminal investigations on cybercrime, notably on (...) rules on access to evidence and information"

Communication on delivering on the European Agenda on Security – "By summer 2017, propose solutions, including legislation if required (...)"

9 June 2016 Council conclusions

Three lines of action:

- 1) Cooperation with service providers*
- 2) Mutual legal assistance*
- 3) Enforcement jurisdiction in cyberspace*

1) Practical improvements

- *EU-US Mutual Legal Assistance Agreement*
- *Directive on European Investigation Order (mutual recognition)*
- *Direct (voluntary) cooperation*

A) Standardisation of forms

B) Development of a platform

C) Training



2) Looking beyond



**Involvement of
Authorities of receiving
State**

**Voluntary nature
of cooperation**

Enforceability

Admissibility

Speed

2) Looking beyond

Type of data requested

- Subscriber information
- Location data
- Traffic data
- Content

Type of investigative measure

- Unilateral/bilateral
- Direct/indirect

Level of safeguards provided

- Due process/admissibility
- Data protection
- Transparency/accountability
- Authentication

National procedure

- Judicial authorisation
- Ex ante/ex post control

Political context

- *Current discussion in Member States*
- *Council of Europe (Budapest Convention on Cybercrime) – draft guidance note*
- *U.S./UK agreement and draft legislative proposal*
- *Case law: Microsoft case, Yahoo! case*
- *Evolution of telecoms framework*

Expert process



Expert process: three phases

Phased approach: gradual involvement of larger groups of stakeholders, and a gradual development of the problem definition and possible options

- *Summer 2016 (July – September)*
- *2nd half of 2016 (September – December)*
- *1st half of 2017 (December – May)*

Deliverables

December 2016 – midterm report to Council

*June 2017 – conclusions of the expert process,
where possible including a proposal for solutions*

December 2017 – online portal prototype