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PROSECUTORIAL MANAGEMENT AND
THE INTERNATIONAL COOPERATION OF THE
PROSECUTORS WITH THE IMPACT
OF THE E-CODEX IN LAW ENFORCEMENT

This article celebrates the long-standing cooperation with the Hungarian Attorney General Péter Polt on the occasion of his 70th birthday this year. In the past period between 2017–2023 when I represented Slovenia as Prosecutor General, I met with Péter who was always devoted to open topics and interesting discussions in the framework of the annual plenary forums of the Prosecutors General at Eurojust in The Hague and NADAL, the of Association of EU Prosecutors General, and in each case he also contributed to the broadening of the issues and expert discussions that helped to come to conclusions at the above-mentioned meetings.



International cooperation in the Republic of Slovenia¹ has become an important milestone in the fight against not only traditional forms of crime but also organised crime, especially in the period of accession to the European Union and the Council of Europe. The work of the public prosecutor requires a great deal of activity, especially in terms of speed, efficiency, and the use of systems that allow for faster and secured transmission of information. The Public Prosecutor in the Republic of Slovenia has statutory powers under Article 135 of the Constitution of the Republic of Slovenia based on Article 161 of the Criminal Procedure Act (ZKP-P)² and Article 16 of the Public Prosecutor's Office Act (ZDT-1), which provides that the public prosecutor may request certain information and may send requests for legal assistance to foreign or international

¹ See: <https://www.gov.si teme/mednarodno-sodelovanje-v-pravosodju/>.

² Official Journal of the Republic of Slovenia, No 63/94 of 13 October 1994... last amended by the ZKP-P Official Journal of the Republic of Slovenia, No 53/24 of 28 June 2024).

prosecutors and other bodies with which they cooperate in the exercise of their competences, and indirectly through the Ministry, unless otherwise provided for in an international treaty or other law, and may exchange information directly through contact points or competent persons.

Recently, the topic of 'smart technologies' has been gaining more and more attention. Many scientists and specialised journals are paying attention to the development of smart tools and their 'smartness' characteristics. Despite the fact that scientists talk about smart technology in many areas from e-government to healthcare, there is very little focus on technologies developed for the digitisation of judicial processes (e-justice).³

International judicial cooperation in criminal matters is also provided for in the Treaty on European Union⁴ and the Law on Cooperation in Criminal Matters with the Member States of the European Union (LCCCMJ-1).⁵

The system finally selected for the exchange of information is the e-CODEX infrastructure (e-Justice Communication via On-line Data Exchange), a tool specifically designed to facilitate cross-border electronic data exchange in the field of judicial cooperation in civil and criminal matters, with the aim of improving the efficiency of cross-border communication between competent authorities and facilitating access to justice for citizens and businesses. Based on Regulation (EU) 2022/850, e-CODEX will provide a technical solution for the justice sector to connect the ICT systems of competent national authorities, such as the judiciary or other organisations. Through its decentralised infrastructure, e-CODEX enables the electronic exchange of any content transmitted in electronic form, 'such as text or sound, visual or audiovisual recordings, in the form of either structured or unstructured data, files or metadata'. The e-CODEX system used by each Member State consists of two main software components: (a) a gateway for the secure exchange of messages with other gateways; and (b) a connector which provides a number of functions including the linking of the national gateway to the national application, the verification of electronic signatures through a security library which ensures that messages and attachments cannot be manipulated between the sending connector and the receiving connector, semantic interoperability of the messages exchanged and proof of delivery.⁶

³ LUPO-VELICOGNA 2018.

⁴ See: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=oj:JOC_2012_326_R_TOC.

⁵ Official Journal of the Republic of Slovenia, No 48/2013, 37/2015, 22/2018, 94/2021.

⁶ AMATO-VELICOGNA 2022.

HIGHLIGHTING FORMS OF PROSECUTORIAL COOPERATION THROUGH ELECTRONIC EXCHANGE

In cases of international cooperation between prosecutors, it can be argued that they are subject to complex work that needs to be carried out particularly quickly and efficiently. As law enforcement authorities, they are subject to the examination of various types of evidence and to the obtaining of such evidence on legal grounds, the admissibility and legality of which are subject to legal tests.

In the course of their work, they are confronted with a wide range of forms and phenomena of crime that need to be dealt with effectively.

Efficiency is reflected in the functional operation of the service and the successful prosecution of offenders. Often, the international element is an obstacle and a circumstance that slows down the process. In order to avoid such problems, it is also necessary to organise oneself technically with support solutions that are efficient and simple. Modern society is based on and evolving in line with the progress of digitalisation, and this can also be said of judicial cooperation, particularly international cooperation.

European Investigation Order (EIO)

It is based on Directive 2014/41/EU of the European Parliament and of the Council, which has been implemented in Chapters 8, 9, and 9a of the Act on Cooperation in Criminal Matters with the Member States of the European Union (CCCMECCU-1) from Articles 58–77k of the said Act.⁷

The EIO was introduced by Directive 2014/41/EU to strengthen judicial cooperation in the EU in criminal matters. The EVIDENCE₂e-CODEX and EXEC projects, as well as the eEDS platform developed and managed by the European Commission (DG Justice and Consumers), are currently working together to establish a secure and trusted infrastructure to enable the exchange of EIO forms and evidence between Member States' judicial authorities. The e-Evidence Digital Exchange System (hereafter: the System), developed under the e-Evidence project, is a system that manages the procedures/instruments of the EPI/MLA: e-forms, business logic, statistics, logbook, etc. The reference implementation is the front-end portal of the System, which is also provided by

⁷ Official Journal of the Republic of Slovenia, No 48/2013, 37/2015, 22/2018, 94/2021.

the European Commission. Both instruments use e-CODEX (the EU e-Documents infrastructure supporting cross-border e-Justice services), which is a secure platform/infrastructure for the exchange of evidence. The EXEC project extends and enhances some of the e-CODEX components to handle the use cases of evidence exchange, while EVIDENCE2e-CODEX provides an application for evidence packaging. Although these operational tools enable the exchange of EIO forms and evidence beginning January 2020. The research carried out between June 2018 and March 2019 in 16 Member States in the framework of these three projects has shown that there is a particular need to create the necessary awareness among the actors involved by adequately disseminating information and knowledge about the procedures and the legal framework in which these procedures will be needed, to set up specific cross-border training to understand the judges and court staff, to adopt and, finally, to promote the exchange of EIO forms together with the exchange of electronic evidence.⁸

The forms for the purposes of cooperation in criminal matters, which are annexed to the abovementioned Act, have been in use in the Republic of Slovenia since May 2018, and refer to the issuing or certifying authority and the receiving authority. Just as a point of interest, in civil and commercial matters, the use for sending and receiving requests, forms and other communications is foreseen as of 1 May 2025 as Regulation 2020/1783 provides for 14 forms.⁹

It applies to both criminal and misdemeanour proceedings relating to the carrying out of investigative measures or actions in the Republic of Slovenia and in another EU Member State. The powers to conduct criminal proceedings are conferred on the district court or the public prosecutor, both to recognise or execute them and to have them confirmed by the investigating judge or prosecutor. The conditions for issuing the warrant are, however, necessity, proportionality, and of such a nature that they may be ordered under the same conditions in the issuing Member State.

The following measures are not covered by the EIO Directive by common agreement:¹⁰

- ♦ setting up a joint investigation team and collecting evidence within it
- ♦ the service and transmission of procedural documents, unless the production of the document is not essential for the investigative measure

⁸ BIASIOTTI-TURCHI 2023.

⁹ See: https://online-forms.e-justice.europa.eu/online-forms/taking-of-evidence-forms_sl.

¹⁰ See: https://www.eurojust.europa.eu/sites/default/files/Publications/Reports/2019-06-Joint_Note_EJ-EJN_practical_application_EIO_SL.pdf.

which is the subject of the EIP, in which case a flexible approach should be taken to its inclusion in the EIP, in accordance with Article 9(2) of the EPC DIR

- ♦ exchange of information without a request (Article 7 of the 2000 Convention on Mutual Legal Assistance)
- ♦ assignment of proceedings (Article 21 of the 1959 Council of Europe Convention and the 1972 Council of Europe Convention)
- ♦ seizure of property for the purposes of subsequent recovery (Framework Decision 2003/577/JHA on the execution of orders freezing property or evidence in the European Union, and, as of 19 December 2020, Regulation 2018/1805 on mutual recognition of provisional freezing orders and orders for recovery)
- ♦ return of the object to the injured party (Article 8 of the 2000 Mutual Legal Assistance Convention)
- ♦ collection of extracts from the criminal records register/ECRIS
- ♦ inter-police cooperation or inter-trade cooperation

Exchanges of EIO requests as well as requests for International Legal Assistance (ILA) in prosecutorial cases can also take place via the eEDES portal in a way that they can be recorded in the system.

International legal assistance

The exchange of requests for international legal assistance MPP (MLA – Mutual Legal Assistance) can also take place via the eEDES portal, but it refers to a plethora of matters within the competence of the public prosecutors, and according to Article 1 of the Act on Cooperation in Criminal Matters with the Member States of the European Union (ZSKZDČEU-1)¹¹ these are:

- ♦ resign and take over the prosecution
- ♦ legal assistance in criminal matters, including setting up joint investigation teams, and jointly carrying out investigative measures
- ♦ other forms of cooperation, in accordance with the legal framework of the European Union and its Member States

¹¹ Act on Cooperation in Criminal Matters with the Member States of the European Union (ZSKZDČEU-1). Official Journal of the Republic of Slovenia, No 48/13, 37/15, 22/18 and 94/21.

Article 49, paragraph 5, of the (ZSKZDČEU)¹² legal assistance is carried out in particular by serving documents and carrying out investigative actions and other measures for the successful completion of pre-trial or criminal proceedings, or if the request for legal assistance relates to the ordering of measures or the carrying out of actions for which different authorities are competent under the law of the Republic of Slovenia, it is sent to the locally competent public prosecutor's office, which orders the measure or carries out the action for which it is competent under the law of the Republic of Slovenia and proposes to the competent court the ordering of the measure or the carrying out of the action.

a) The withdrawal (Article 519 of the CPA) and the taking over (Article 520 of the CPA) of the prosecution are the main tasks of the public prosecutor within his competence when deciding on proceedings concerning other States and his discretion whether to take over the prosecution by another State or to withdraw the proposal to take over the case. These matters are technically carried out by translation of documents and verification of double criminality¹³ (identity norms).

b) Joint Investigations Teams (JITs Network). A Joint Investigation Team is a team made up of judges, prosecutors, and law enforcement authorities from several countries, set up by written agreement for a limited period of time and for the specific purpose of carrying out criminal investigations in one or more of the participating countries. The EU legal framework allows for the establishment of joint investigation teams between Member States in Article 13 of the Convention on Mutual Legal Assistance in Criminal Matters between the Member States of the European Union and in Council Framework Decision 2002/465/JHA on joint investigation teams.¹⁴

They form the basis for international cooperation on more complex crimes, with positive effects in terms of speed, the resolution of outstanding issues, the sharing and exchange of evidence, a unified approach, and the prosecution of crimes.

¹² Act on Cooperation in Criminal Matters with the Member States of the European Union (ZSKZDČEU-1). Official Journal of the Republic of Slovenia, No 48/13, 37/15, 22/18 and 94/21.

¹³ VSRS Judgment I Ips 61339/2013 of 8.3.2018.

¹⁴ See: https://e-justice.europa.eu/topics/court-procedures/criminal-cases/judicial-cooperation/european-investigation-order-mutual-legal-assistance-and-joint-investigation-teams_en.

In the context of EU Member States and third countries, this use is encouraged as it represents a simplified form of cooperation in the prosecution of offenders. In order to make these procedures even faster, the simplification of the electronic exchange of information and cooperation is being encouraged.

For years, JIT experts, supported by the JIT Secretariat and Eurojust, have been advocating for an online collaboration environment that would allow JIT members and participants to securely exchange digital information and evidence, and enable secure electronic communication.

On 1 December 2021, the European Commission presented a proposal for a Regulation establishing a cooperation platform to support the operation of joint investigation teams as part of a package of legislative initiatives on security and justice in the digital world. Regulation 2023/969 establishing a cooperation platform to support the operation of joint investigation teams entered into force on 6 June 2023.¹⁵

The Commission, eu-LISA and the JIT Network Secretariat are working on the design of the platform, which is scheduled to be operational by 7 December 2025 at the latest.

In the Republic of Slovenia, in accordance with Article 160b of the Criminal Procedure Act¹⁶ and Article 30 of the Regulation on cooperation between the public prosecutor's office, the police and other competent state bodies and institutions in the detection and prosecution of offenders and the operation of specialised and joint investigation teams,¹⁷ they form the basis for concluding agreements in force in the Republic of Slovenia with other EU Member States:

Article 30. Regulation on cooperation between the public prosecutor's office, the police and other competent state bodies and institutions in the detection and prosecution of offenders and the operation of specialised and joint investigation teams

(1) Where, in a case which is the subject of pre-trial, investigation or judicial proceedings in one or more States, the police cooperate with police officers of

¹⁵ Regulation (EU) 2023/969 of the European Parliament and of the Council of 10 May 2023 establishing a collaboration platform to support the functioning of joint investigation teams and amending Regulation (EU) 2018/1726.

¹⁶ Official Journal of the RS 63/94 of 13.10.1994, 70/94, 72/98, 6/99, 66/00, 111/01, 447/03, 56/03, 116/03, 43/04, 68/04, 96/04, 101/05, 8/06, 14/07, 32/07, 40/07, 102/07, 23/08, 68/08, 77/0991/11, 32/12, 47/13, 87/14, 22/19, 200/20, 176/21 and 53/24 of 28.6.2024.

¹⁷ Official Journal of the RS 83/10, 28/21 and 87/22 of 22.10.2010.

another State and representatives of the competent authorities of the European Union in the performance of tasks and measures in the pre-trial and investigation proceedings, the police shall be guided in the performance of their tasks and measures by the public prosecutor.

(2) The public prosecutor shall exercise direction within the framework of a joint investigation team in accordance with an agreement on the establishment and operation of a joint investigation team on the territory of the Republic of Slovenia or another State concluded on the basis of the Council Framework Decision of 13 June 2002 on joint investigation teams (Official Journal of the EU, No L 162/1 of 20 June 2002), a law governing cooperation in criminal matters with Member States of the European Union or an existing international treaty with a State which is not a Member State of the European Union.

(3) The agreement shall be concluded by the Attorney General, or by his deputy under his authority, with the public prosecutor's office, court, police or other competent authority of the other State on a case-by-case basis and after obtaining the opinion of the Director General of Police.

(4) In addition to the authorities which conclude the agreement, the agreement shall specify the case in which the joint investigation team is to work, the public prosecutor from the Republic of Slovenia as the head of the team, the other members of the team, the purpose and method of work of the team and the duration of the team's work.

The Regulation coordinates and facilitates the joint work of EU prosecutors and investigators between third countries.

c) Other forms of cooperation. Such as controlled consignments, stolen items, interception of telecommunications can be based on written requests and can also be sent and executed electronically (videoconferencing, e-mail), for which it is foreseen to use the eEDES (e-CODEX) system in the future.

CONCLUSIONS

Essentially, the aim is to achieve and enable participating EU Member States to exchange European Investigation Orders (EIOs) and related e-evidence fully electronically via eCODEX – eEDES, either through the reference e-evidence

implementation provided by the European Commission or existing directly connected national back-end solutions, which means that all EU Member States will also have to set up their own RI applications to be accessed by the user, as it will host all the forms. In this way, a vision of future e-commerce between judicial stakeholders in the EU is also given, which will be necessary and mandatory to do business through the above-mentioned portals and will represent the efficiency of secure exchange channels.

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Legal source

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