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NOTE

From:	General Secretariat of the Council
To:	Delegations
Subject:	Conclusions of the Czech Regional Meeting of Contact Points of the European Judicial Network (EJN), Prague, 15-16 September 2025: cross-border interception, cross-border surveillance and application of the judgment in case C-548/21

Delegations will find attached the above-mentioned conclusions.

Regional Meeting of the European Judicial Network Contact Points 15-16 September 2025, Prague, the Czech Republic: Findings and Conclusions

Topic 1

a) Cross border interception of mobile technical devices

New technical possibilities allow for the increasing use of wiretapping without technical assistance from another state. Within the EU, this evidence-gathering practice is addressed in Article 31 of the EIO Directive.

In relation to Council of Europe member states that are not EU Member States, ratification of the Third Additional Protocol to 1959 European Convention on Mutual Assistance in Criminal Matters could be a solution. However, the nature of the mutual agreement referred to in Article 4(8) of this Protocol is unclear. Should this Third Additional Protocol be ratified, it would be advisable to seek solutions for "more permanent arrangements" (Point 45 of the Explanatory Report). Currently, no state participating in the EJNI Regional Meeting has national legislation allowing for the conclusion of urgent ad hoc agreements on the use of the notification procedure according to Art 4(8) of this Protocol.

Participants would welcome if the EJNI secretariat (or Eurojust) could organise a meeting or at least discussion with representatives of non-EU countries that are members of the Council of Europe so that their interest in ratifying this Third Additional Protocol and their position on the nature of mutual agreements under Article 4(8) of this Protocol can be discussed at expert level.

b) Video or audio recording of face-to-face conversation carried out by technical recording devices of law enforcement authorities of Member States (i.e. during surveillance of a vehicle)

All countries represented in the EJM Regional Meeting distinguish between the interception of telecommunications on the one hand and the recording of (face-to-face) verbal conversations of individuals using information-technical means by the law enforcement authorities involved in criminal proceedings on the other hand.

The EncroChat decision of the CJEU of 30 April 2024 (C-670/22) in point 111) stipulates that the term ‘telecommunications’ in Article 31(1) of the EIO Directive refers, in its ordinary meaning, to all processes for the remote transmission of information. However, this decision did not deal with the recording of a private face-to-face conversation, but with the infiltration of terminal equipment aimed at obtaining communication (as well as operational and location data) of an internet communication service, which it described as "interception of telecommunications traffic" within the meaning of Article 31(1) of Directive 2014/41.

Participants at the EJM Regional Meeting do not consider Article 31 of the EIO Directive to be applicable in cases of recording of a face-to-face private conversation.

New EU legislation is needed – possibly an amendment to the EIO Directive. Article 3 of the Third Additional Protocol to 1959 European Convention on Mutual Assistance in Criminal Matters could be one of the suitable sources of inspiration.

Topic 2

Participants discussed the consequences of the CJEU Judgement No. C-548/21 of 4 October 2024 (“the Landeck case”) and their national legislation concerning seizure of e-data. Court order is required to seize content data. Participants also shared information about their national legislation concerning the need for a court order not only to seize data, but also to conduct a house search or intercept data communications.

Regarding the requirements arising from the Landeck judgement, Austria has already changed its legislation to bring it into line with that judgement on the basis of an unrelated Constitutional Court's ruling. Czechia has adopted new legislation in direct response to the Landeck case, which will come into effect on 1 January 2026. Slovakia is currently in a phase of amending the existing legislation (namely the Criminal Code of Procedure) in connection with the implementation of EU package on e-Evidence. Poland is currently reflecting on a change of legislation. Germany law was already in line with requirements of the Landeck case before this judgment was issued, so there was no need for amending it.

As a follow up to Landeck case, most of the countries expect that it still will be necessary to distinguish between a judicial warrant to search and seize electronic devices and a judicial warrant to intercept communications regarding the telecommunication data which are delivered to the device after the seizure.

A scenario of seizing electronic devices during a house search was discussed. Most of the countries wouldn't require a separate judicial warrant for accessing the stored data if the search warrant listed electronic devices as the item of interest, with the exception of Austria, which would require a specification to this effect. However, if access to stored data is not requested, but mere handover of electronic devices, no additional specification is needed.

As far as pre-trial proceedings, Slovakia attaches the court decision to the EIO; Austria and Germany sometimes attach it, but it is not strictly required. Poland attaches only appealable decision/s and ask the executing authority to serve it/them to entitled person/s). In such cases, the Czech court validates the EIO in Section L, while the EIO is issued by the public prosecutor.

Data in e-devices may also be seized in the framework of EAW proceedings. There was a consensus that if the seizure of electronic device was requested according to Art. 29 of the EAW Framework Decision, no additional judicial warrant for handing it over would be necessary. None of the participants has any experience with the seizure of items during the execution of EAW on the executing judicial authority's own initiative. There thus hasn't been any insights as to how would the Landeck case influence such a situation.