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NOTE

From: Presidency
To: Delegations

Subject: Lawful Interception – Strengthening EU cooperation

I. Introduction

In the field of electronic communications, a new generation of mobile communications technologies is about to be introduced. The 5th generation of mobile networks (5G) is currently being rolled out in Europe. Offering significantly greater bandwidths, lower latencies and, at the same time, ultra-reliable connections despite considerable terminal power savings, 5G is expected to serve a large number of new business models and thus become a key digital technology.

However, 5G does not only set new standards in the area of technical services but also in the field of data security. In view of the global importance of the technology in all areas of life, 5G must make tamper-proof communication possible to protect networks and applications (autonomous and interconnected driving, telemedicine, Internet of Things (IoT)). As a result, the development of the technical standards for 5G is even more focused on the "privacy by design" principle ("closing security gaps" even during standardisation) and on an increased use of virtualisation, encryption and anonymization, compared with previous mobile communication generations.

It is therefore obvious that the introduction of 5G will have a considerable impact on the work of law enforcement and intelligence agencies and significantly impair their capabilities to use lawful interception (LI).

Lawful interception is a central investigative and search instrument for law enforcement authorities (terrorism, organized crime, cybercrime) as well as for the reconnaissance activities of intelligence services. It is therefore of utmost importance for law enforcement authorities that this instrument be preserved despite further technical progress in mobile communications.

In the future, lawful interception will have to remain a key investigation and search tool in all fields of crime-fighting, especially when it comes to combatting international terrorism, organized crime and cybercrime. Considering that the 5G standard will apply all over the world, including Europe, these challenges require a joint response and coordinated action.

The above implications of the 5G technology for law enforcement in Europe were also presented by Europol at the LEWP meeting on 15 April 2019 (8268/19).

II. History of EU cooperation in the field of lawful interception

During the 2018 European Police Chiefs Convention (EPCC) held in The Hague participants agreed to address the topic of 5G together at EU level.

Initiated and chaired by Germany (Federal Criminal Police - BKA), a first meeting of experts on the “Fifth Generation of mobile communications (5G)” took place in February 2019, bringing together lawful interception authorities from 16 Member States. Further expert meetings followed at Europol in June and November 2019. The BKA's proposal to hold expert meetings of the heads of lawful interception authorities at Europol in the future (as of 2020) - to deal not only with 5G, but also to focus on lawful interception by law enforcement authorities - was largely approved.

At the EPCC meeting in February 2019, participants expressed their conviction that it is necessary to develop a joint response to the impending massive impacts of 5G. In view of the profound changes expected as a result of the spread of digital technology and ever-shorter innovation cycles, they considered it their duty to express law enforcement needs to ensure these are taken into consideration by the respective national laws.

In their joint declaration, European Police Chiefs also recommended intensifying the co-operation of Member States' police authorities, together with Europol, in the field of lawful interception. For the purpose of enhanced networking and developing uniform methods and technical analysis standards, Europol was requested to provide an appropriate platform to join forces and to discuss matters that pertain to all EU member states. Furthermore, EU-funded technical solutions for secure lawful interception capabilities in Europe should be sought.

As a result, it was decided that the existing "Expert group 5G" should be transformed into a permanent group of the Heads of Lawful Interception Units, gathering at Europol.

III. Focus of the group

This initiative aims at intensifying cooperation in the framework of the meetings of the European Heads of Lawful Interception Units, coordinating and standardising operational capabilities as well as developing uniform methods and technical analysis standards. It should also ensure the sustainability of lawful interception in the Member States.

In this connection, it is extremely important to protect the privacy of communications and data stored in technological devices through encryption, while upholding the investigation powers of law enforcement in the digital world to gather relevant evidence. Any actions to gain lawful access must balance these interests carefully.

There is also a need to refer to the German Presidency's initiative for a European declaration that will focus on the topic of encryption and propose to identify innovative solutions for targeted lawful access for legitimate law enforcement purposes. These aspects will be taken into account in the group's work.

The primary aim of the group is to facilitate better cooperation and mutual understanding of the needs, challenges and priorities of lawful interception (LI) units within the member states.

These objectives could be specified as follows:

- Identifying challenges;
- Discussing potential solutions (in the technical as well as legislative domain);
- Updating and sharing information and expertise on relevant developments in the members' area of expertise;
- Exploring mutual learning and training opportunities;
- Link with and contribute to foster standardization activities in the field of lawful interception,
- Proposing joint initiatives at EU level;
- Providing input for Europol to facilitate law enforcement representation at the EU level. EC3 and Europol in general may consult the group on any matters relating to the group's domain and area of expertise.

The scope of the group is restricted to operational issues and challenges with regard to lawful interception of criminal communication.

IV. Recent developments

The first meeting of the European Heads of Lawful Interception Units was scheduled to take place as an in-person meeting in Hamburg, Germany, on 20-21 October 2020 within the framework of the German EU Council Presidency.

Due to the current COVID-19 pandemic situation in the EU, the meeting had to be postponed. In agreement with Europol and on the basis of the responses given by the European Heads of Lawful Interception Units to a questionnaire about the organisation of the first meeting, it was decided to reschedule the meeting to a new date in 2021, which is yet to be specified.

V. Cooperation with third partner countries

In addition to the EU Member States Austria, Belgium, Croatia, Czech Republic, Cyprus, Denmark, Estonia, Germany, Hungary, Iceland, Italy, Luxembourg, Netherlands, Spain and Sweden, EUROPOL and the third partner countries Norway, Switzerland, Iceland and the United Kingdom will also participate in the meeting of the Heads of Lawful Interception Units.

VI. Collaboration with the LEWP

The European Group of Heads of Lawful Interception Units will be established to ensure that lawful interception will continue to be one of the central tools for information gathering and evidence by law enforcement authorities and intelligence services.

Recognition of the group by the Council - for example in the framework of the LEWP - would make it easier for both the Heads of LI Units and EUROPOL to cooperate more closely in the future to achieve progress regarding the common objectives.

The group could thus provide important advice to the LEWP on telecommunications and lawful interception matters by collaborating with other existing working groups or institutions, e.g. the innovation lab at Europol, and would be available to policymakers as a competent contact point, thereby contributing to the strengthening of internal security.

VII. Way forward

Based on the above, the LEWP is requested to support the establishment of a group of European Heads of Lawful Interception Units at Europol in order to ensure effective cooperation of European law enforcement authorities in the area of lawful interception.

The LEWP could then regularly discuss the outcomes of the group's work in order to ensure appropriate follow-up.