

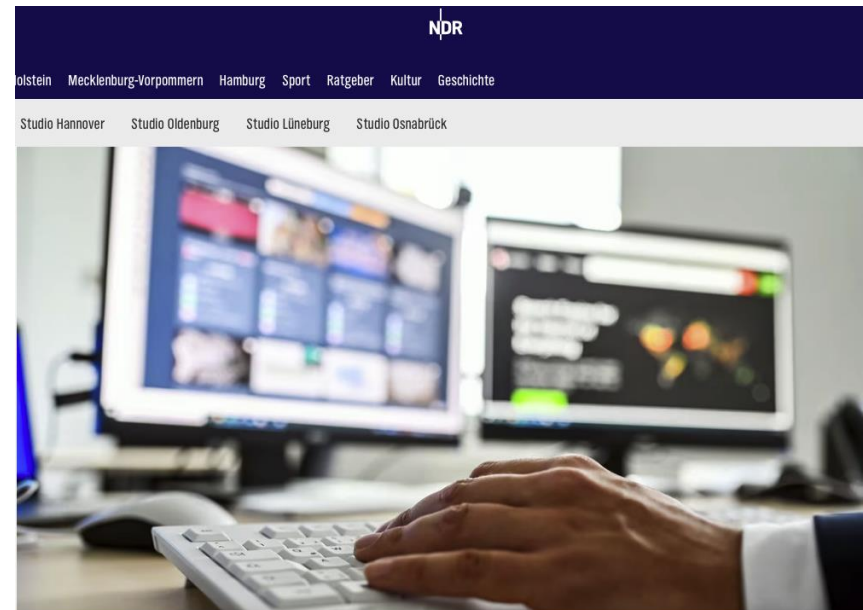
Evidence Part 2

22. Gathering of Digital Evidence – Future Perspectives

- Lower Saxony's Justice Ministry and Lower Saxony's State Office for Criminal Investigation plan to introduce a Cloud Space for evidence documents

(„Beweismittelcloud“, „BMC“)

- Bundling of digital evidence in one place
- Facilitating the retrieval of evidence
- Initially for the police and criminal proceedings
- Implemented as a result of increased data volume: 2019: 5,6 Mio GB; 2023: 8,5 Mio GB of data analysed



Polizei und Justiz in Niedersachsen planen Cloud für Beweismittel

Stand: 07.02.2025 16:30 Uhr

Digitale Beweismittel sollen in Niedersachsen künftig in einer gemeinsamen Cloud von Polizei und Justiz gespeichert werden. Das haben Innenministerium, Justizministerium und Landeskriminalamt angekündigt.

23. Gathering of Digital Evidence in cross-border settings (1)

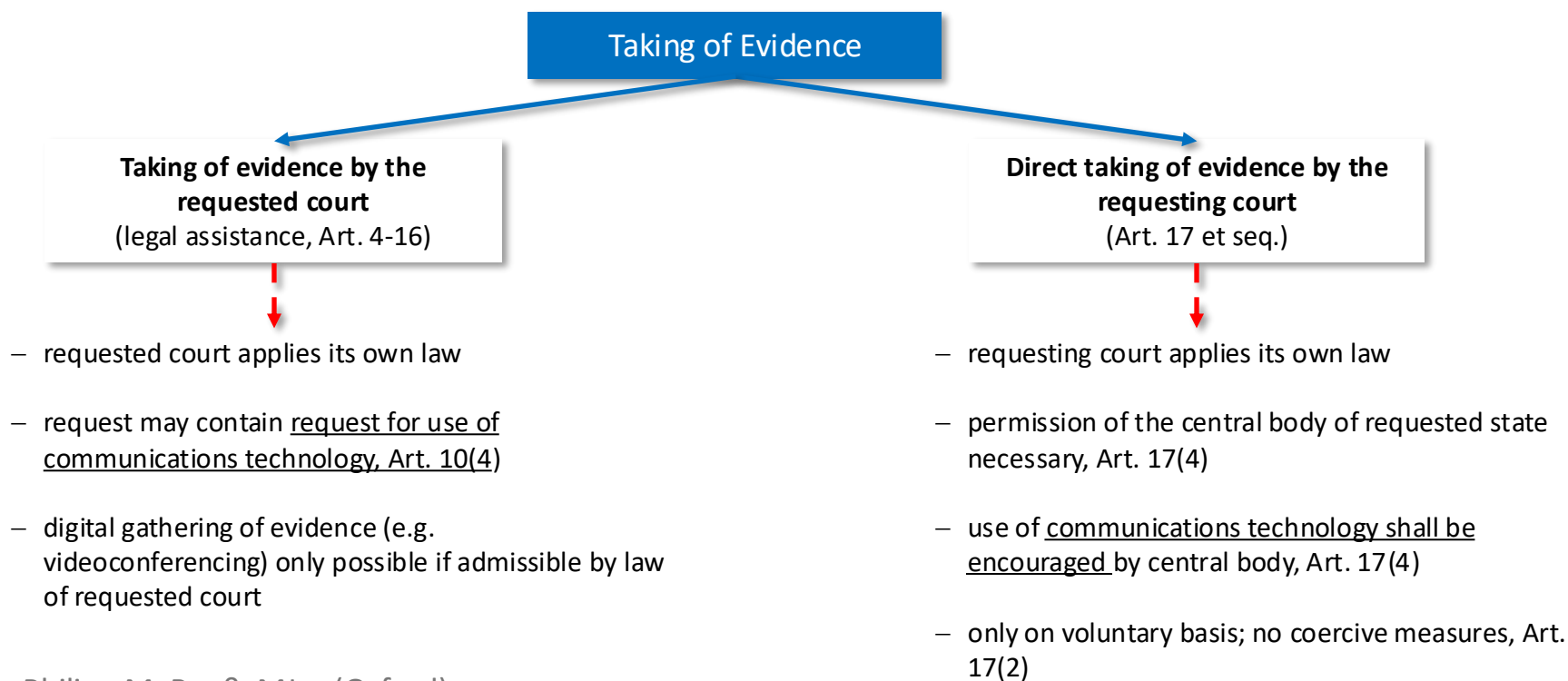
- Territoriality Principle of Sovereign States
 - Cross-boarder gathering of evidence is an act of state that generally touches the sovereignty of other states
 - International Law demands legal basis for cross-boarder hearing
 - International Treaty that the states are a party to
 - Any other explicit/implicit permission of the affected state
- Consequences for the gathering of evidence cross-border
 - Rules of Civil Procedure differ considerably in different states:
 - Role of the courts
 - Instruments of evidence taking
 - Obligation of the opposing party to provide information
 - Rights to refuse to testify etc.
 - Sovereignty of the states: Principle of Territoriality limits judicial powers in foreign states
- Tension between sovereignty principle and fair trial guarantees
 - E.g. Art. 47 EU-Charter of Fundamental Rights, Art. 6 European Charter of Human Rights

23. Gathering of Digital Evidence in cross-border settings (2)

■ Gathering of evidence in cross-border settings

– EU Evidence Regulation (Reg. No 1206/2001)

- Applicable for the taking of evidence in civil and commercial matters between EU Member States, Art. 1(1) **until June 30th 2022**
- Regulation did not apply to Denmark
- Two-tier system:



23. Gathering of Digital Evidence in cross-border settings (3)

- Communication of requests by „swifted possible means which the requested Member State has indicated [to accept]“, Art. 6
- EU Evidence Regulation Recast (Reg. No 1783/2020)
 - Applicable from **July 1st 2022**
 - Two-tier system of taking of evidence remains
 - Taking of evidence by communications technology made default way of direct taking of evidence, Art. 19, 20
 - Digital communication of requests via reliable decentralised IT systems (e.g. e-CODEX) made standards way of transmission of requests, Art. 7(1)
- The Hague Evidence Convention 1970
 - Germany is party to the convention
 - Applies esp. in relation to USA, China and Switzerland
 - No specific provisions concerning modern technology
 - System of taking of evidence:
 - **taking of evidence by requested court**, Art. 8 et seq. (application of law of requested court but request for special procedure/method possible)
 - **taking of evidence by diplomatic officers, consular agents and commissioners**, Art. 15-17 (application of law of requesting court)
 - Guide to Good Practice on the Use of Video-Link under the Evidence Convention 2020

23. Gathering of Digital Evidence in cross-border settings (4)

- Sec. 363 et seq. Civil Procedure Code, Sec. 58 et seq ZRHO (regulation on legal assistance in cross-border cases)
 - Legal assistance that is based on bilateral treaties or on international courtesy
 - Taking of evidence by requested court, by requesting court (if permitted by requested state) or by consular agent
 - No specific provisions on modern technology
 - Lengthy procedure (6-18 months), see [Auswärtiges Amt](#)

Empfangsstaat	völkerrechtliche Verträge i.S.v. §§183 Abs.1 S.1, 363 Abs. 1 u. 3 ZPO	Übermittlungsweg	Haltung Empfangsstaat zu postalischen Zustellungen aus dem Ausland	Befugnisse Auslandsvertretung im begründeten Ausnahmefall i.S.v. §14 Abs.1 ZRHO	Anmerkungen
Dominikanische Republik	vertraglos	diplomatisch	Ablehnung	formlose Zustellung und zwangsfreie Vernehmung unabhängig von StA	Bearbeitungszeit bei Zustellungen: 1-5 Monate, sonstige RH: lange Bearbeitungsdauer, häufig Nichterledigung
Dschibuti	vertraglos	diplomatisch	Ablehnung	keine Befugnisse	keine Erfahrungswerte; Ersuchen über Botschaft Addis Abeba
Ecuador	vertraglos	diplomatisch	Ablehnung	formlose Zustellung und zwangsfreie Vernehmung unabhängig von der StA	RH wird geleistet; Bearbeitungszeit 3-18 Monate
El Salvador	vertraglos	diplomatisch	Ablehnung	formlose Zustellung und zwangsfreie Vernehmung unabhängig von StA, wenn keine Rechtswirkung in El Salvador	Rechtshilfe wird geleistet Bearbeitungszeit 9-12 Monate
Eritrea	vertraglos	diplomatisch	Ablehnung	keine Befugnisse	RH durch eritreische Behörden wird nicht geleistet

Summary

- Gathering of Digital Evidence – Future Perspectives
- Gathering of Digital Evidence in cross-border settings