

EncroChat: a defense perspective

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For the worst case
the best scenario

Principle of trust

- The principle of trust in cross border matters:
 - The prejudicial questions to the Supreme Court and answers are based on facts presented by a Court. This does not mean that theq facts cannot be questioned anymore:
 - Who was (truly) in charge of the investigation?
 - Why was the content of the messages relevant for the investigation 26Lemont?
 - Solution: more transparency in a early stage



Principle of Trust

- The principle of trust in cross border matters:
 - Is this principle in line with article 13 ECHR?

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

- Should an accused go to France to protect his/her right to privacy?



Equality of arms?

- Investigative team vs a defence lawyer;
- No insight/understanding in the algorithms used by an input provided to Hansken;
- How is the dataset selected?
- Which reporting obligations should apply when investigating bulk data?
 - Used search terms and results
 - Content data set
 - Which narrative has been used to search for incriminating and exculpatory evidence





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