
security is not an island
HILTONMALTA
24th Annual
FIRST
Conference
MALTA
17 - 22 June 2012
FIRST
Improving Security Together

Legal challenges to information sharing of national/governmental CERTs in Europe

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Agenda

- Importance of information sharing
- Policy background
- Information exchange: tensions with respect to the law
- 2011 ENISA study on information sharing of CERTs in Europe
- 2012 Good practice guide on legal aspects of CERTs and law enforcement cooperation
- Conclusions

Importance of information sharing

- Why does it help to share information?
  - Cyber-attacks may cross organisational, national and public/private boundaries
  - Mitigation requires concerted action and co-ordination which can be cross-border in nature
  - Data provided by CERTs also helps to understand threats and trends

Information sharing improves application of preventative measures and contributes to good cyber-security

Policy background: an overview

- 2009 Digital Agenda for Europe (DAE)
  - Identifies that cyberspace now crucial for economic and social growth
- 2009 Communication on CIIP (COM 2009(149)
  - Indicates that Cybercrime or major forms of cyberattack might put economic and social benefits at risk
- 2011 Progress Report on CIIP (COM 2011(163))
  - Emphasises importance of national/governmental CERTs

Poor cybersecurity could threaten economic growth of Digital Europe – CERTs' important role to prevent and handle incidents

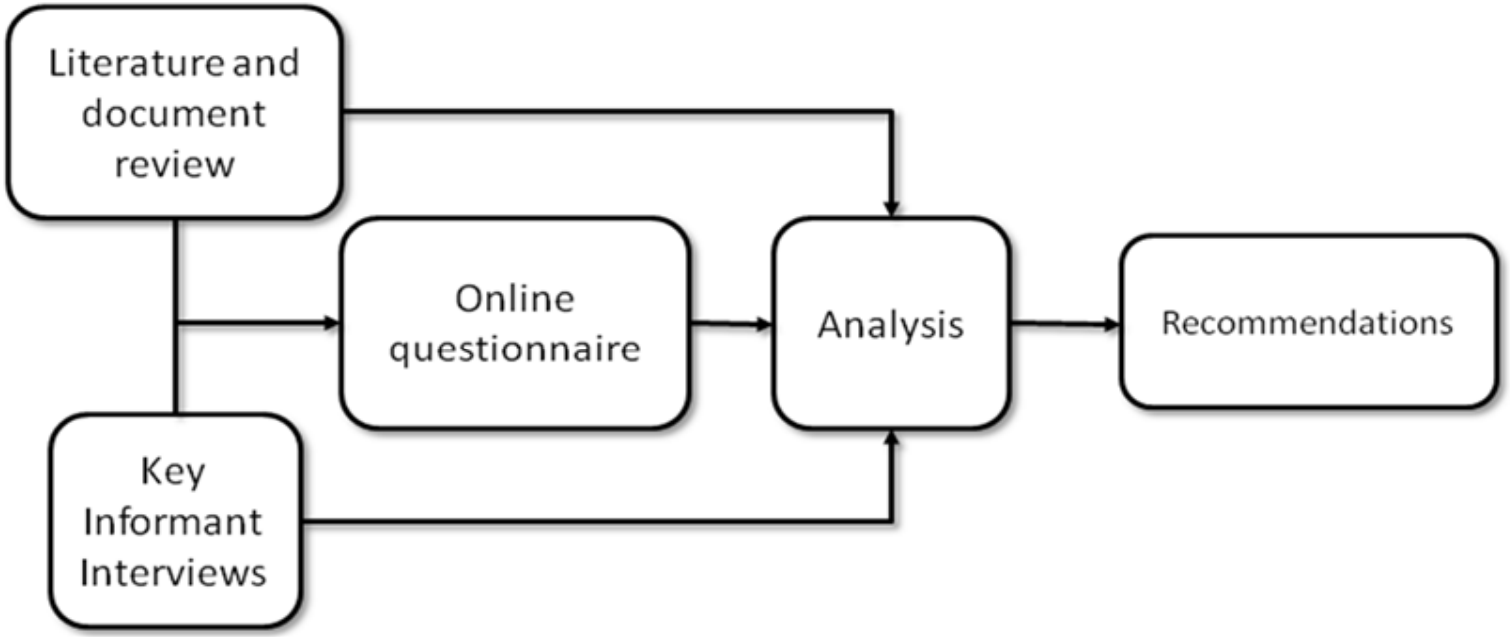
Information exchange: tensions with respect to the law

- CERTs are acting to maintain or improve security
  - Unique role of national/governmental CERTs
- But in doing so they may have an impact on fundamental rights (e.g. right to protection of personal data)
- The uneven implementation of some EU law is also a challenge
- Uncertainty about what can and cannot be done might hinder CERTs in the performance of their role

2011 ENISA study on information sharing of CERTs in Europe

- Aim:
  - To support the operation and cooperation of (national/governmental) CERTs at a European level
- Some key questions:
  - Which are the relevant legal frameworks?
  - What legal and regulatory frameworks could pose a challenge?
  - What can we do to enhance the information exchange?

Our approach built logically from one stage to the next

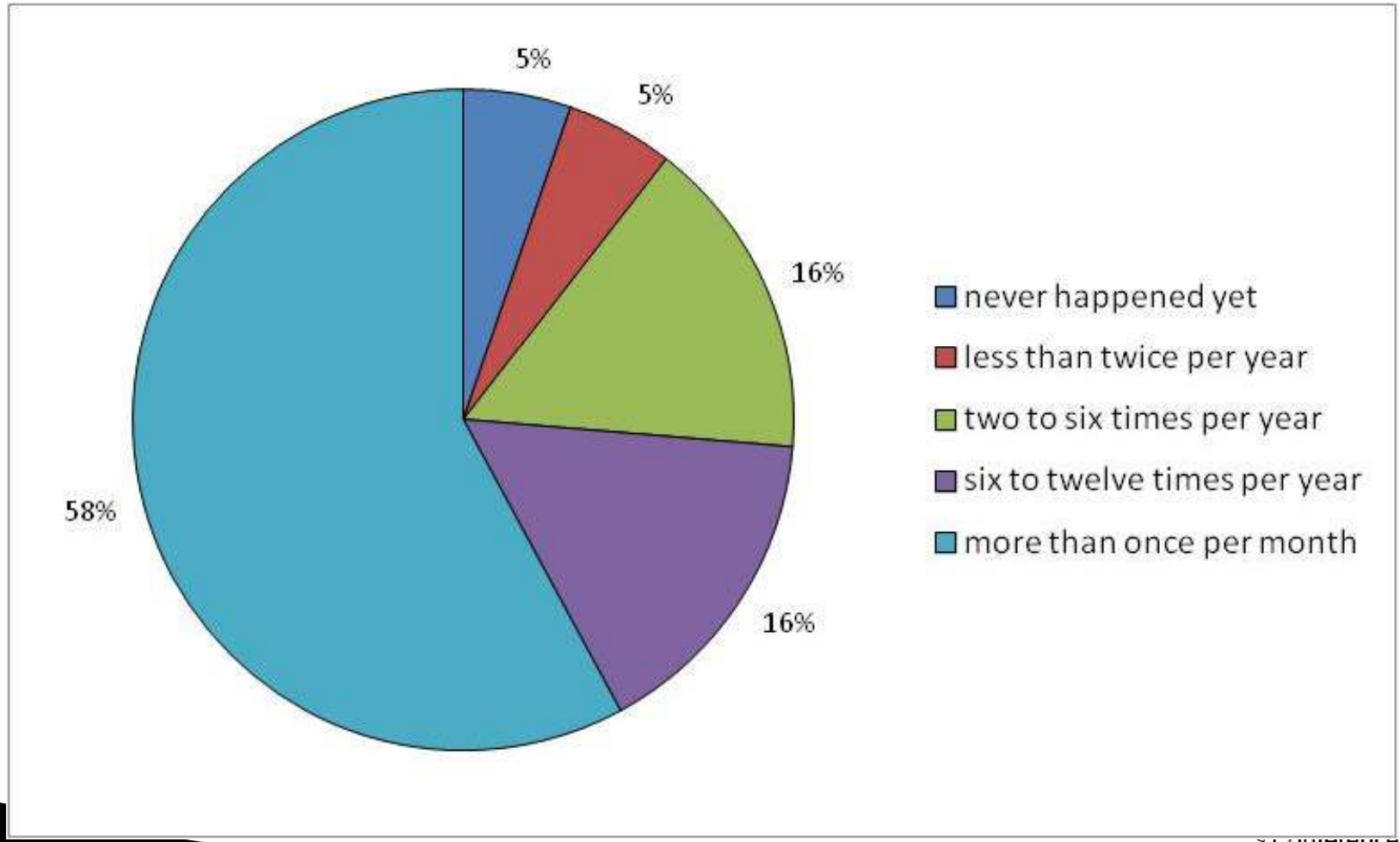


- ENISA expertise
- External contractor (RAND Europe and time.lex)
- Input from the informal expert group

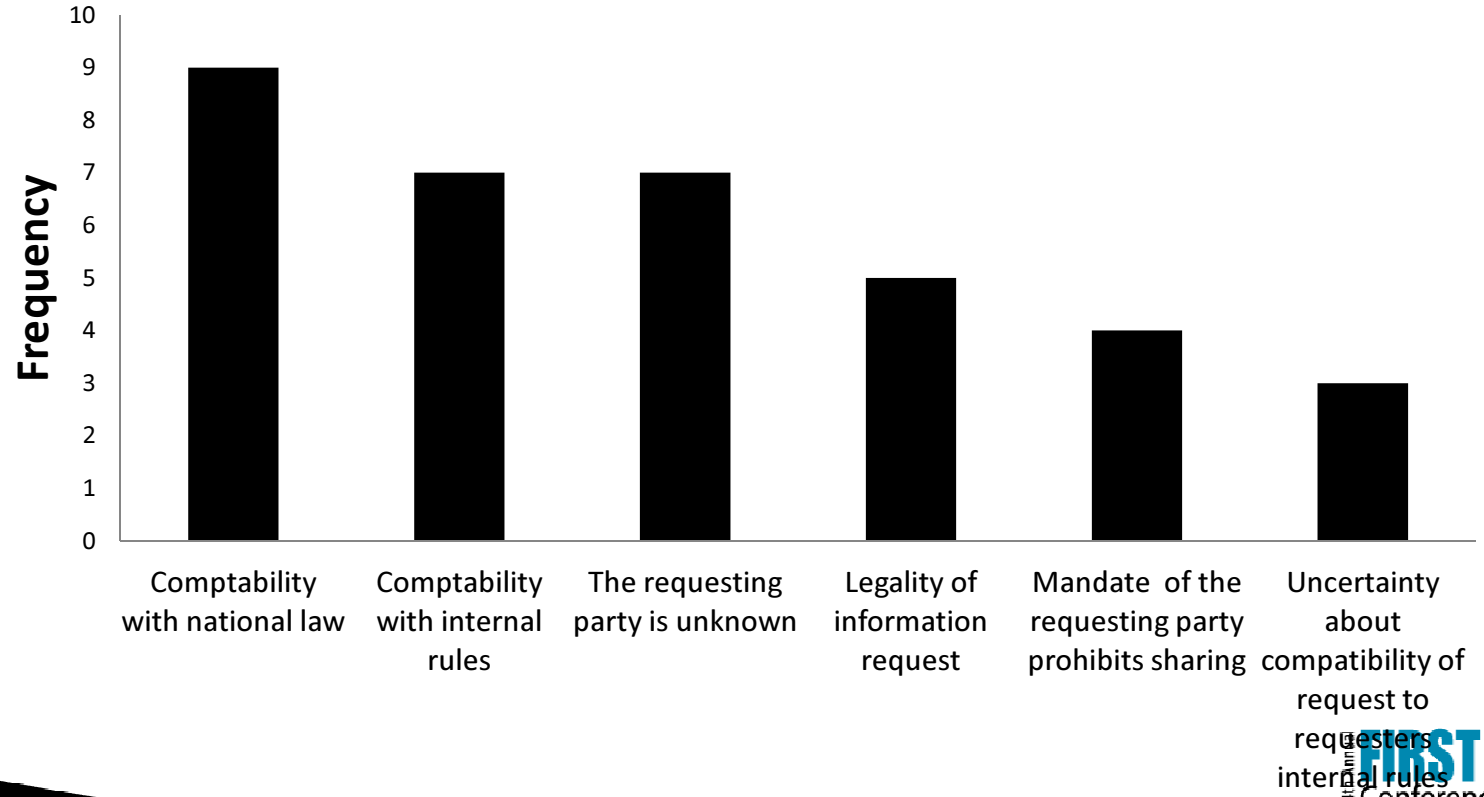
Several relevant legal frameworks identified

- Definitions of computer and network misuse
- Privacy and data protection legislation
- Public sector re-use of information
- Criminal procedure
- Intellectual property rights
- Determining applicable law

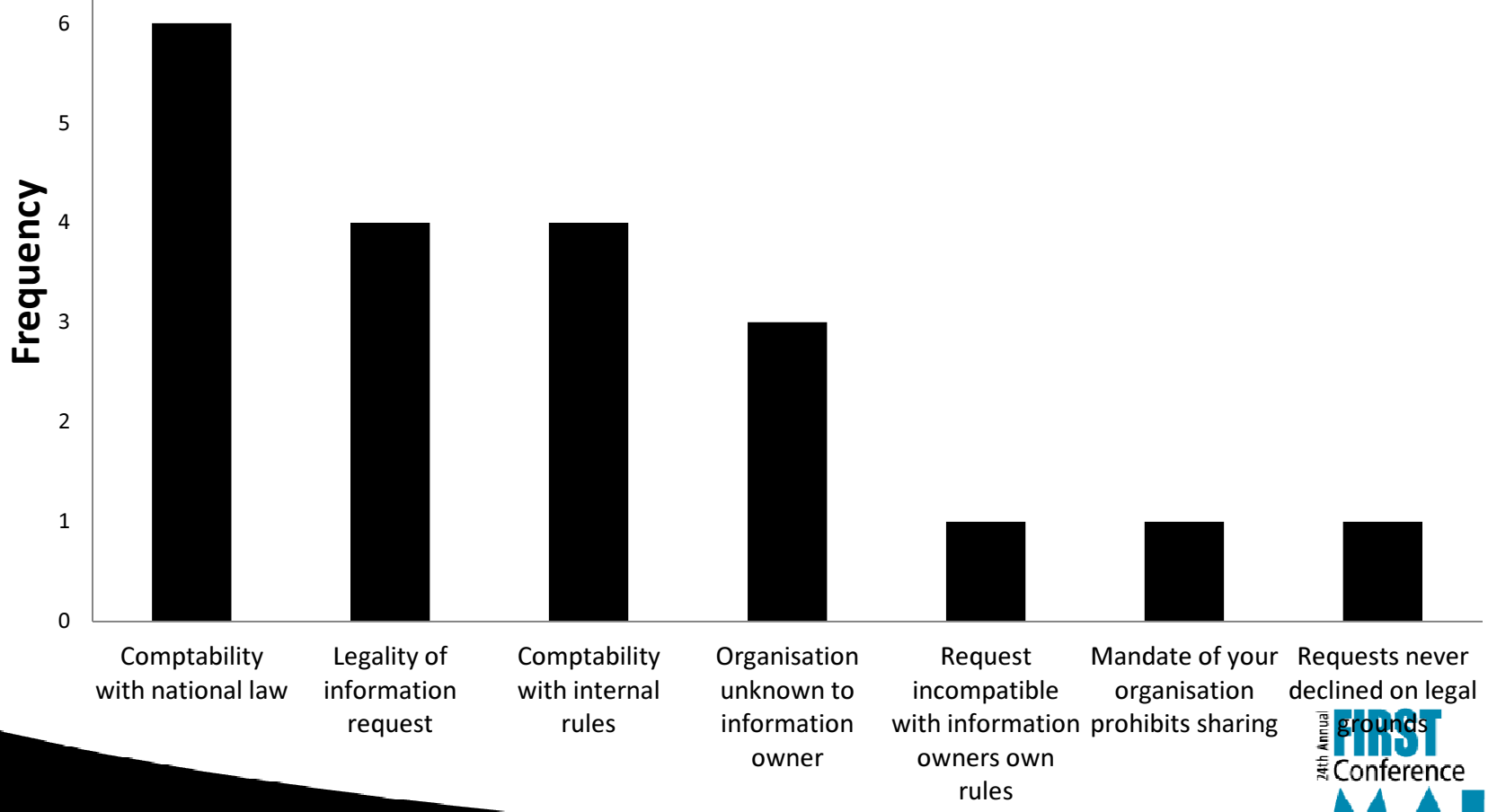
Cross border information exchange is not a rare event



What legal reasons are used by CERTs declining to give information to other CERTs?



What legal reasons do CERTs receive for not getting information from other CERTs?



An uncertain picture emerges

- CERTs exposed to cross border requests but lacking in legal expertise
- Data protection, data retention and laws relating to working with law enforcement were regarded as most relevant
- Less familiarity with international legal frameworks than national laws
- ‘Asymmetry’ of role of law in enabling information exchange
  - Reported as less problematic when preparing requests compared to responding to request from others

We derived some operational recommendations

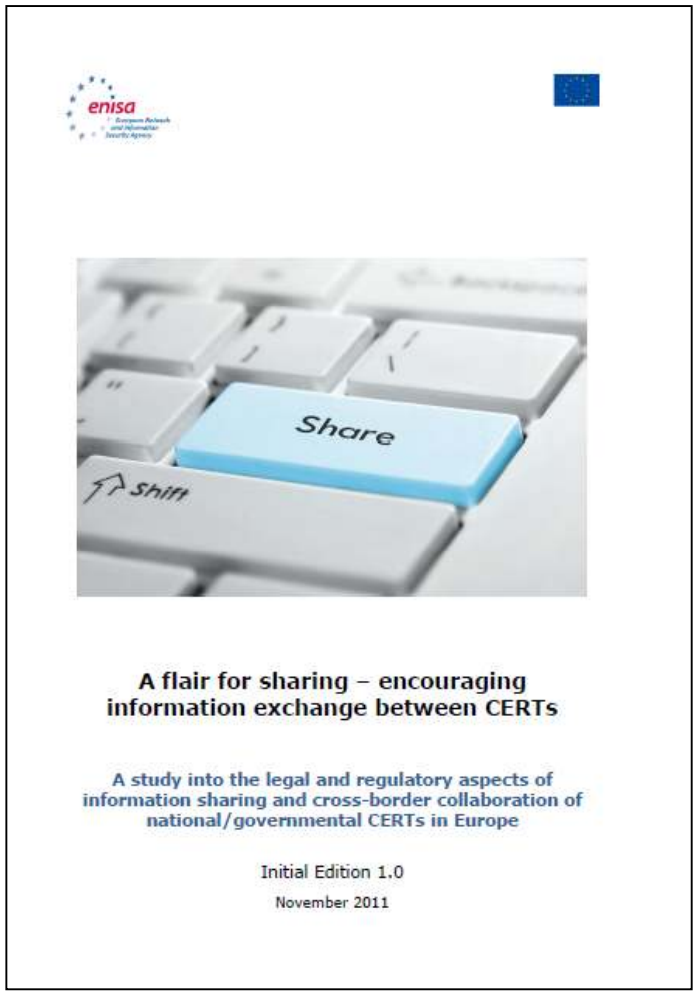
- A.1: Establish direct approaches to support cooperation between CERTs
  - e.g. establishment of a centralised ‘legal hotline’
- A.2: Disseminate Declared Level of Service templates
- A.3: Investigative measures to encourage cross-border information exchange
  - e.g. exploring possibility of organisational models of sanitised sharing
  - e.g. exploring possibility of non-binding confidentiality charters and

And others aimed at addressing immediate policy issues

- B.1: Addressing legal uncertainty
- B.2: National/governmental CERTs on a specific legal footing
- B.3: EU-level legislation that takes account of scope of national/governmental CERTs
- B.4: Threshold for incidents requiring national/governmental CERTs response and sharing
- B.5: Articulate why CERTs need to process personal data to the relevant authorities

And finally longer-term recommendations

- C.1: Incorporate information on the legal basis for an information request
- C.2: Further foster R&D into privacy enhancing Security Event & Incident Monitoring (SEIM)
- C.3: Conduct further empirical research into cross-border CERT cooperation activities



http://www.enisa.europa.eu/activities/cert/support

Follow up ENISA activities in 2012

- Cybercrime projects 2012
  - Good practice guide on legal/regulatory aspects of cybercrime; and
  - Good practice guide on operational NIS aspects of the fight against cybercrime

- Both good practice guides are expected to be published by the end of the year on the ENISA website

2012 Good practice guide on legal aspects of CERTs & LEAs cooperation

Main goals:

- Describe the legal/regulatory aspects of the fight against cybercrime
- Compile an inventory of legal/regulatory and procedural challenges and possible ways to overcome these challenges
- Focus: Information exchange
  - between CERTs – Law enforcement agencies (LEAs) in Europe
  - between CERTs - CERTs/LEAs from Third Countries
- Collect existing good and best practices
- Develop recommendations

2012 Good practice guide on legal aspects - Informal Expert Group

- Composition
  - CERTs
  - Law Enforcement Agencies
  - Data Protection Authorities
- Discussion via email, teleconference and probably a F2F meeting
- Input during the development of the good practice guide and during the review process

2012 Good practice guide on legal aspects - Survey

- We are currently conducting an online survey to collect input for the 2012 good practice guide on legal aspects of CERTs and LEAs cooperation in the fight against cybercrime
- The survey is aimed at CERTs and also LEAs
- CERT version: **https://smapp2.rand.org/surv4/TakeSurvey.aspx?SurveyID=78MM556**
- LEA version: **https://smapp2.rand.org/surv4/TakeSurvey.aspx?SurveyID=98MMn86**

Your input is important – please try to fill in the survey by 10th July 2012! The survey takes approximately 30 minutes to complete!

Conclusions

- Information sharing of CERTs and between CERTs & LEAs is paramount for the incident handling and for the fight against cyber crime
- A better understanding of the legal aspects helps to enhance the cross-boarder information sharing
- Addressing the (legal and operational) challenges of cross-border information sharing of CERTs and between CERTs and LEAs is an on-going process which requires joint efforts

Questions?

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