



Octopus Conference 2015
Cooperation against Cybercrime
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Workshop 5: International Cooperation

T-CY assessment of international cooperation provisions

(Report with recommendations adopted in December 2014)

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www.coe.int/cybercrime



T-CY Assessments in 2013/14

2nd round of T-CY Assessments:

Efficiency of international cooperation provisions:

- Article 31 on mutual assistance regarding accessing of stored computer data.
- And related Articles 23, 25, 26, 27, 28 and 35.

Aim:

- Better use of existing provisions
- Additional solutions

Procedure and status:

- Questionnaire February 2013.
- Plenary discussions June 2013, Dec 2013, June 2014.
- Report adopted in December 2014.



T-CY assessment: findings

Overall conclusions

- **MLA process inefficient, many investigations abandoned**
- **Opportunities of existing agreements not yet fully utilised**
- **Data/statistics on MLA not available**



T-CY assessment: findings

Types of requests

Types of data requested:

- 1. Subscriber information (80+%?)**
- 2. Traffic data**
- 3. Content data**

Underlying offences

- 1. Fraud and other financial crimes**
- 2. Violent and serious crime (murder, assault, trafficking, child abuse etc.)**
- 3. Offences against computer systems**



T-CY assessment: findings

Procedures and requirements

- Often not known, requests incomplete
- No response in minor cases
- Language

Channels and means of cooperation

- Use of multiple channels and agreements
- Possibility of direct cooperation underused
- Diverse procedures for urgent cases
- Role of 24/7 points of contact often too limited
- Issue of direct cooperation with foreign service providers
- Joint investigation teams (not yet foreseen in Budapest Convention)



T-CY assessment: recommendations

Possible solutions?



T-CY assessment: recommendations

Recommendations falling under the responsibility of domestic authorities

- Implement provisions of Budapest Convention
- Statistics or other measures to monitor efficiency of the MLA process
- More technology-literate staff for MLA
- More training
- Strengthen 24/7 contact points
- Streamline procedures and reduce the number of steps required for MLA at domestic levels
- Make use of all available channels for international cooperation
- Establish emergency procedures
- Confirm receipts of MLA requests
- Open domestic investigations upon a foreign request or spontaneous information
- Electronic transmission of requests (art. 25.3)
- Make sure requests are specific and complete
- Consult foreign authorities before sending MLA requests



T-CY assessment: recommendations

Recommendations falling under the responsibility of CoE capacity building programmes

- Multi-language templates for Article-31 type MLA requests
- Online resource on MLA requirements by Parties to Budapest Convention



T-CY assessment: recommendations

Recommendations that may require an Additional Protocol

- Allow for expedited disclosure of subscriber information
- Introduce international production order
- Direct cooperation between judicial authorities
- Directly obtain specified traffic and subscriber information from foreign service providers
- Joint investigations and JITs
- Requests in English language



T-CY assessment: recommendations

Rec 5: Parties and the Council of Europe should work toward strengthening the role of 24/7 points of contact in line with Article 35 Budapest Convention



T-CY assessment: recommendations

Rec 5 Parties and the Council of Europe should work toward strengthening the role of 24/7 points of contact in line with Article 35 Budapest Convention, including through:

- a. Ensuring, pursuant to article 35.3 Budapest Convention that **trained and equipped personnel is available** to facilitate the operative work and conduct or support mutual legal assistance (MLA) activities
- b. Encouraging **contact points to pro-actively promote their role** among domestic and foreign counterpart authorities;
- c. Conducting **regular meetings and training of the 24/7 network** among the Parties;
- d. Encouraging competent authorities and 24/7 points of contact to consider **procedures to follow up to and provide feedback** to the requesting State on Article 31 requests;
- e. Considering to establish, where feasible, **contact points in prosecution offices to permit a more direct role in mutual legal assistance** and a quicker response to requests;
- f. Facilitating 24/7 points of contact to **play a supportive role in "Article 31" requests.**

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T-CY assessment: recommendations

Recommendations that may need to be addressed through an Additional Protocol to the Budapest Convention on Cybercrime

Rec 20 - 24



T-CY assessment: recommendations

Rec 20: Interested Parties may consider the possibility and scope of an **international production order** to be directly sent by the authorities of a Party to the law enforcement authorities of another Party.

Rec 21: Parties should consider enhancing **direct cooperation between judicial authorities** in mutual legal assistance requests.

Rec 22: Parties may consider addressing the practice of law enforcement and prosecution services **obtaining information directly from foreign service providers**, and related safeguards and conditions.

Rec 23: Parties should consider **joint investigations** and/or the establishment of joint investigation teams between Parties.

Rec 24: Parties should consider allowing for requests to be sent in **English language**. Parties should in particular allowing for preservation requests to be sent in English.