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Cybercrime Convention Committee (T-CY)

Cloud Evidence Group

Exchange of views with data protection organisations

Agenda (draft)

Monday, 23 May 2016, 11h-17h00, Palais de l'Europe, Room 5
Council of Europe, Strasbourg

Document prepared by the Secretariat

Agenda

11h00	<p>Opening</p> <ul style="list-style-type: none"> ▪ Jan Kleijssen, Director for Information Society and Action against Crime, DG1, Council of Europe ▪ Cristina Schulman, Vice-chair, T-CY, Ministry of Justice, Romania
11h15	<p>Introductory presentations</p> <ul style="list-style-type: none"> ▪ Summary of proposals under consideration by the Cloud Evidence Group¹ (Alexander Seger, Executive Secretary T-CY, Council of Europe) ▪ Summary of EU data protection package (Regulation and Directive)² (Juraj Sajfert, DG JUST, European Commission) ▪ Summary of modernization proposals related to Council of Europe Convention 108³ and review of Recommendation R(1987)15⁴ (Sophie Kwasny, Secretary, T-PD, Council of Europe)
12h00	Discussion of Question 1: Implications of the EU DP package and amendments to Convention 108 for Budapest Convention
13h00	<p>Discussion of Question 2: Disclosure of personal data by criminal justice authorities to service providers in foreign jurisdictions</p> <p>Including new question 2 c) Could Article 18 Budapest Convention on Production Orders serve as the legal basis for such processing?</p>
13h30-14h30	Coffee break
14h30	Intervention by Philippe De Backer, Secretary of State for Social fraud, Privacy and the North Sea, Belgium
14h45	<p>Discussion of question 3: Disclosure of personal data by service providers to LEA in foreign jurisdictions</p> <p>Including new question 3 e) Could Article 18 Budapest Convention on Production Orders serve as the legal basis for such processing?</p>
16h00	Discussion of question 4: Customer notification
16h45	Conclusions

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<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016805a53c8>

<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168064b77c>

² <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:L:2016:119:TOC>

³ [http://www.coe.int/t/dghl/standardsetting/dataprotection/CAHDATA/CAHDATA\(2016\)01_E.pdf](http://www.coe.int/t/dghl/standardsetting/dataprotection/CAHDATA/CAHDATA(2016)01_E.pdf)

⁴ <http://ec.europa.eu/justice/data-protection/law/files/coe-fra-rpt-2670-en-471.pdf>

Appendix: Questions for discussion

Question 1:	In December 2015, the European Union reached agreement on the substance of a new General Regulation on Data Protection and a Directive on data protection in the criminal justice sector. The Amending Protocol to the Council of Europe data protection Convention 108 is about to be finalised. What are the implications of these instruments with regard to the Budapest Convention on Cybercrime in its current form?
Question 2:	Criminal justice authorities may need to disclose personal data directly to a service provider in another jurisdiction, for example, in situations of imminent danger or other exigent circumstances. This appears to be foreseen in Article 39 of the future EU Directive:
a)	Does it make a difference if the service provider is in an EU Member State, or in another Party to Convention 108, or in a third country?
b)	Could a Protocol to the Budapest Convention provide a legal basis for such processing? If so, what would be the elements to be foreseen?
NEW c)	Could Article 18 Budapest Convention on Production Orders serve as the legal basis for such processing?
Question 3:	Criminal justice authorities increasingly send requests for subscriber information (and sometimes also for other data) directly to service providers in other jurisdictions, and often service provider respond positively to such requests. In emergency situations, including situations of child abuse, service providers are sometimes also prepared to disclose content information:
a)	What would be the basis or reasoning under European data protection instruments and/or domestic law permitting such disclosure directly transborder in non-emergency situations?
b)	What would be the basis or reasoning under European data protection instruments and/or domestic law permitting such disclosure, including of content, directly transborder in emergency situations?
c)	Does it make a difference if the receiving criminal justice authority is in an EU M/S or adequate country or territory, or in another Party to Convention 108 or in a 3 rd country?
d)	Could a Protocol to the Budapest Convention provide a legal basis for such processing? If so, what would be the elements to be foreseen?
NEW e)	Could Article 18 Budapest Convention on Production Orders serve as the legal basis for such processing?
Question 4:	Service providers receiving requests for data from criminal justice authorities in another jurisdiction may notify their customer of such request. Customer notification may harm investigations or witnesses or threaten the safety of requesting law enforcement officials. Is customer notification a requirement under data protection instruments (e.g. under Article 14 of the future General Data Protection Regulation)?