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Strasbourg, 15 September 2016

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

T-CY (2016)27E

Cybercrime Convention Committee (T-CY)

Assessment of the mutual legal assistance provisions of the Budapest Convention

Questionnaire on follow up given by Parties to Recommendations on MLA adopted in December 2014

Background:

The purpose of this questionnaire is to allow the T-CY Plenary to review follow up given by Parties to the Budapest Convention to the [Recommendations on mutual legal assistance](#) adopted by the T-CY in December 2014. The T-CY had agreed that:

“Parties are invited to follow up on recommendations falling under the responsibility of domestic authorities to report back to the T-CY no later than 18 months from adoption of this report on measures taken to permit the T-CY, in line with the Rules of Procedure (Article 2.1.g), to review progress made.”

Recommendations 1 to 15 were considered “falling primarily under the responsibility of domestic authorities”. It is recalled that with regard to Recommendation 8 (emergency procedures), the T-CY documented practices by Parties and providers in May 2016 (document [T-CY\(2016\)13](#)).

[T-CY 15 \(May 2016\) decided:](#)

“To invite the Bureau to develop and the Secretariat to circulate a request for information on follow up given to Recommendations 1-7 and 9-15 of the MLA Assessment Report, as well as on Recommendation 16 on time periods for data preservation periods.”

Implementation:

[T-CY representatives](#) are invited to prepare/compile consolidated replies to this questionnaire from their respective country.

Replies should be submitted no later than 21 October 2016 in electronic form and in English or French to:

Alexander Seger, Executive Secretary of the Cybercrime Convention Committee, Council of Europe
Email: alexander.seger@coe.int

The Bureau will then provide an initial summary to T-CY 16 (November 2016), and a full draft report by spring 2017 for consideration by T-CY 17 (mid-2017).

Question 1: Please provide information on measures taken or on relevant developments with respect to each of the following Recommendations. Please attach additional information as appropriate.

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| Rec 1 | Parties should fully implement and apply the provisions of the Budapest Convention on Cybercrime, including preservation powers (follow up to T-CY Assessment Report 2012). |
| Measures taken/relevant developments: | |
| Rec 2 | Parties should consider maintaining statistics or establish other mechanisms to monitor the efficiency of the mutual legal assistance process related to cybercrime and electronic evidence. |
| Measures taken/relevant developments: | |
| Rec 3 | Parties should consider allocating more and more technology-literate staff for mutual legal assistance not only at central levels but also at the level of institutions responsible for executing requests (such as local prosecution offices). |
| Measures taken/relevant developments: | |
| Rec 4 | Parties should consider providing for better training to enhance mutual legal assistance, police-to-police and other forms of international cooperation on cybercrime and electronic evidence. Training and experience exchange should in particular target prosecutors and judges and encourage direct cooperation between judicial authorities. Such training should be supported by the capacity building programmes of the Council of Europe and other organisations. |
| Measures taken/relevant developments: | |
| Rec 5 | <p>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:</p> <ol style="list-style-type: none"> 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; |

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| f. Facilitating 24/7 points of contact to play a supportive role in "Article 31" requests. | |
| Measures taken/relevant developments: | |
| Rec 6 | Parties should consider streamlining the procedures and reduce the number of steps required for mutual assistance requests at the domestic level. Parties should share good practices in this respect with the T-CY. |
| Measures taken/relevant developments: | |
| Rec 7 | Parties should make use of all available channels for international cooperation. This may include formal mutual legal assistance, police to police cooperation and others. |
| Measures taken/relevant developments: | |
| Rec 8 | Parties are encouraged to establish emergency procedures for requests related to risks of life and similar exigent circumstances. The T-CY should document practices by Parties and providers. |
| Measures taken/relevant developments: ¹ | |
| Rec 9 | Parties should confirm receipt of requests systematically and give, upon request, notice of action taken. |
| Measures taken/relevant developments: | |
| Rec 10 | Parties may consider the opening of domestic investigation upon a foreign request or spontaneous information to facilitate the sharing of information or accelerate MLA. |
| Measures taken/relevant developments: | |
| Rec 11 | Parties should make use of electronic transmission of requests in line with Article 25.3 Budapest Convention on expedited means of communication. |
| Measures taken/relevant developments: | |
| Rec 12 | Parties should ensure that requests are specific and complete with all necessary information. |
| Measures taken/relevant developments: | |

¹ Completion of this field is only requested if information has not been provided to the T-CY before (See document [T-CY\(2016\)13](#)).

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| Rec 13 | Pursuant to Article 25.5 Budapest Convention and Paragraph 259 Explanatory Report, Parties are reminded to apply the dual criminality standard in a flexible manner that will facilitate the granting of assistance. |
| Measures taken/relevant developments: | |
| Rec 14 | Parties are encouraged to consult with authorities of requested Party prior to sending requests, when necessary. |
| Measures taken/relevant developments: | |
| Rec 15 | Parties should consider ensuring transparency regarding requirements for mutual assistance requests, and reasons for refusal, including thresholds for minor cases, on the websites of central authorities. |
| Measures taken/relevant developments: | |

Question 2: Please provide information on time periods for preservation requests under Article 29 Budapest Convention in your country. ²

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| Rec 16 | The T-CY should facilitate greater transparency regarding the time period for data preservation upon a foreign preservation request in line with Article 29 Budapest Convention. The T-CY should document time periods. |
| Time periods for preservation of data following a foreign request: | |
| Conditions and periods to extend or renew the preservation of specified data: | |

² Article 29.7 Budapest Convention foresees that:

“Any preservation effected in response to the request referred to in paragraph 1 shall be for a period not less than sixty days, in order to enable the requesting Party to submit a request for the search or similar access, seizure or similar securing, or disclosure of the data. Following the receipt of such a request, the data shall continue to be preserved pending a decision on that request.”