

Cybercrime Convention Committee  
Development of standards for  
cooperation with Service Providers

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# Procedural measures

- Art 16 -17 Preservation and disclosure
- Art 18 Production order
- Art 19 Search and seizure
- Art 20-21 Real-time collection, interception
- Important to respect the principles of necessity and proportionality
- Always preference for a “lighter” measure

# National legal framework

- Specific provisions vs general powers
- TCY recommendation: first preference specific provisions
- Enables regulate conditions and safeguards in a better manner
- Increases foreseeability and trust between public and private sector

# 2008 Guidelines

- Guidelines for the cooperation between law enforcement and internet service providers against cybercrime
- Adopted by the Octopus Conference on 1-2 April 2008
- To promote the culture of cooperation
- To agree on procedures, guarantees, costs
- Designated personnel, contact points
- Training

# T-CY MLA assessment report 2014

## Recommendations

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

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

Rec 18 - The Council of Europe should explore the possibility of establishing an online resource providing information on laws of Parties on electronic evidence and cybercrime as well as on legal thresholds, and evidentiary and other requirements to be met to obtain the disclosure of stored computer data for use in court proceedings

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 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.

# Guidance Note on Article 18

## Article 18 – Production order

1 Each Party shall adopt such legislative and other measures as may be necessary to empower its competent authorities to order:

a a person in its territory to submit specified computer data in that person's possession or control, which is stored in a computer system or a computer-data storage medium; and

b a service provider offering its services in the territory of the Party to submit subscriber information relating to such services in that service provider's possession or control.

# The scope of Article 18.1.b

- Subsection b is restricted to a “service provider”.
- The service provider to which the order is issued is not necessarily present, but offers its services in the territory of the Party.
- It is restricted to “subscriber information.”
- The subscriber information relates to such services and is in that service provider’s possession or control

# Guidance Note - conclusions

- It is being used by most Parties and has become a usual practice
- Production order can be sent abroad:
  - the service provider enables persons in the territory of the Party to subscribe to its services
  - the service provider has established a real and substantial connection to a Party
- One way traffic – EU providers are not allowed
- Question on enforceability
- Although the GN was agreed, there were calls to address this issue in more detail manner in the Additional Protocol



# Additional Protocol

- International production orders
- Provisions allowing for direct cooperation with service providers in other jurisdictions with regard to requests for subscriber information, preservation requests, and emergency requests
- Clearer framework and stronger safeguards for existing practices of transborder access to data
- Safeguards, including data protection requirements

# Challenges to be solved

- Certainty for both sides
- Mandatory vs voluntary cooperation
- Service Providers have obligations to protect customer data
- Clear legal basis for requests for law enforcement
- More transparency with regard to the disclosure policies
- Procedures including emergency procedures
- Consultations and dialogues
- Standard request templates

Thank you!