



SECOND ADDITIONAL PROTOCOL TO THE BUDAPEST CONVENTION: THE (LONG) WAY AHEAD?

KEY ISSUE

How to ensure access to electronic evidence stored on servers in foreign, multiple, shifting or unknown jurisdictions (cloud) in an effective manner, while simultaneously providing adequate protection of fundamental human rights?

WHY ADDITIONAL PROTOCOL?

Current situation	Challenges
MLA requests	Not fast and effective enough
Unilateral transborder access to data	Undermines international rule of law
Voluntary disclosure of data by some providers	In principle effective, but of questionable legality. Admissibility of such evidence?
Emergency access to data	Very difficult in current legal context
MLA rules do not differentiate appropriately between different categories of data (content, traffic, subscriber)	Conditions and safeguards not properly set

WHY ADDITIONAL PROTOCOL?

- Current procedures not sufficiently effective
- Current procedures not always in line with international and European human rights requirements
- States have positive obligation under international law to protect their citizens against crime, which includes enacting necessary legislation to achieve this aim

ELEMENTS OF THE NEW PROTOCOL

- A. Provisions on more efficient mutual legal assistance;
- B. Provisions on direct cooperation with providers in other jurisdictions;
- C. Framework and safeguards for existing practices of extending searches transborder;
- D. Rule of law and data protection safeguards

PROGRESS MADE

DRAFTS ARE AVAILABLE FOR ARTICLES REGARDING:

- Languages of requests
- Emergency mutual assistance
- Video conferencing

WORK IS STILL IN PROGRESS REGARDING:

- Jurisdiction
- Special investigative techniques
- Joint investigations and joint investigation teams
- Extending searches
- Direct cooperation with foreign providers
- Giving effect to production orders

THE LONG WAY AHEAD

- Agreement on the final draft
- Ratification of the new protocol
- Implementation in national law
- Ensuring consistent interpretation and application among Parties
- Acceptance by non-member states

Thank you!

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