



Project Cybercrime@Octopus

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Conference on Article 15 safeguards and criminal justice access to data

19 – 20 June 2014, Council of Europe, Strasbourg, France

Conclusions by the chair

Some 100 representatives of public and private sector institutions as well as international organisations responsible for measures against cybercrime and for data protection met at the Council of Europe on 19 and 20 June 2014 in order to identify solutions permitting criminal justice authorities to obtain electronic evidence in an effective manner and in compliance with data protection and rule of law standards.

The conference was part of a dialogue between the Cybercrime Convention Committee (T-CY), representing the Parties to the Budapest Convention on Cybercrime, and data protection authorities and other stakeholders. It will in particular inform the work of the T-CY on transborder access to data.

Following an open and constructive exchange of views and discussion of practical scenarios, the conference reached the following conclusions:

- The work of the T-CY on transborder access to data is part of a broad range of activities undertaken by the T-CY to support implementation of the Budapest Convention on Cybercrime to protect society and individuals against crime, to protect their rights and to promote the rule of law in cyberspace.
- It is understood that the Budapest Convention is a criminal law treaty that applies to specified criminal investigations and specified data.
- Access to electronic evidence in foreign jurisdictions is primarily governed by mutual legal assistance (MLA) arrangements. The current T-CY assessment of the functioning of the MLA provisions in view of enhancing their application is welcome.
- In the light of technological developments and the volatility of electronic evidence, MLA procedures are not always effective or useful. Data may be stored in unknown locations, be fragmented or moving between multiple locations or jurisdictions. This limits the ability of criminal justice authorities to protect society and individuals against crime.
- The Budapest Convention on Cybercrime – with Article 32 – allows for transborder access to data in limited situations.
- States increasingly develop unilateral solutions to access data in foreign or unknown jurisdictions beyond the provisions of the Budapest Convention. Common solutions are required to provide an international legal basis.
- Such solutions need to provide for safeguards, conditions and respect rule of law and human rights, including data protection, principles.

- Conditions include that powers to access data or permit transborder data flows are provided for by law, serve a legitimate aim and are necessary and proportionate in a democratic society. This will help avoid conflicts between data protection and criminal law.
 - The principles and provisions of Data Protection Convention 108 and Recommendation R 87 15 may assist the T-CY in its further work. It was suggested that accession to Data Protection Convention 108 by Parties to the Budapest Convention would be welcome.
 - Solutions are indeed required permitting criminal justice authorities to obtain electronic evidence in an effective manner and in compliance with data protection and rule of law standards. The constructive dialogue to elaborate such solutions should therefore continue.
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