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CONSEIL DE L'EUROPE

Strasbourg, 18 June 2014

T-CY (2014)11 rev

Cybercrime Convention Committee (T-CY)

11th Plenary

Strasbourg, 17-18 June 2014

Abridged meeting report

1 Introduction

The T-CY Committee, meeting in Strasbourg on 17 and 18 June 2014, was chaired by Markko Künnapu (Estonia). Some 80 representatives of State Parties and Observers participated;

It was followed by a Conference on Article 15 Safeguards and Law Enforcement Access to Data (19-20 June 2014).

2 Decisions

The T-CY decided:

Agenda item 2: Status of signatures, ratifications, accessions to the Budapest Convention and its Protocol

- To note with appreciation the accession by Panama to the Convention on Cybercrime;
- To take note of steps underway in view of ratification or accession to the Convention or its Protocol in Andorra, Argentina, Czech Republic, Israel, Luxembourg, Philippines, Mexico, Monaco, Morocco, Senegal and Turkey and that ratification of or accession to the Convention can be expected by several of these States in the course of 2014;
- To encourage States that have signed or been invited to accede to become Parties as soon as possible.

Agenda item 3: Information provided by parties and observers – Tour de table

- To note with interest information provided on cybercrime policies, legislative developments, training or major cases by Albania, Armenia, Australia, Azerbaijan, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Dominican Republic, Estonia, Finland, France, Georgia, Iceland, Japan, Lithuania, Mauritius, Mexico, Moldova, Montenegro, Netherlands, Norway, Panama, Philippines, Portugal, Romania, Serbia, Sri Lanka, Singapore, Slovakia, "The former Yugoslav Republic of Macedonia", Tonga, Turkey, Ukraine, United Kingdom, and USA;
- To draw attention to a trend that carries risks to the rule of law: while the threat and complexity of cybercrime and challenges related to electronic evidence are increasing, the authority of criminal justice institutions to investigate and prosecute cybercrime and to obtain and share electronic evidence appears to be diminishing.

Agenda item 4: Dialogue with international organisations (T-CY observers)

- To welcome the information shared by the European Commission and Europol.

Agenda item 5: Follow up to T-CY Assessment Report on the expedited preservation provisions

- To assess the implementation of the expedited preservation provisions by Denmark, Iceland and the new Parties to the Convention at the 12th Plenary; to invite these Parties to complete the questionnaire and submit it to the Secretariat by 31 August 2014 in view of the preparation of a draft supplementary report for consideration by the 12th Plenary;
- To invite Parties to submit information in writing to the Secretariat by 31 August 2014 on follow up given to the Assessment Report adopted in December 2012 (T-CY(2012)10rev) where domestic provisions were considered "partially" or "not in line" with the Budapest

Convention – and other Parties to submit additional information as appropriate – in view of the preparation of a draft report for consideration by the 12th Plenary;

- To call on Parties to make more extensive use of the expedited preservation provisions (Articles 16, 17, 29 and 30);
- To take note of the preliminary ruling of the European Court of Justice in April 2014 declaring Data Retention Directive 2006/24/EC invalid which – while not putting in question the principle of data retention – confirms rule of law requirements to be met;
- To note that while this ruling does not annul domestic laws implementing this Directive, the implications of this ruling on domestic legislation are now being studied by many State Parties and Observers.

Agenda item 6: Assessment of Article 31 and related Articles on international cooperation: Finalisation of the draft report and draft recommendations

- To continue to give consideration to the draft assessment report at the 12th Plenary in view of its adoption;
- To invite Parties and Observers to provide further information and comments on the draft report by 15 September 2014.

Agenda item 7: Provisions to be assessed in the 3rd round of T-CY assessments (2015)

- To dedicate the 3rd cycle of assessments on Article 13 (sanctions and measures) and request the Bureau to prepare a draft questionnaire for consideration at the 12th plenary;
- To underline the importance of the question of jurisdiction, and thus to maintain Article 22 as a possible provision to be assessed in the following round of assessments.

Agenda item 8: Transborder access to data

- To take note of the constructive exchange of views held between the T-CY transborder group, EU Data Protection Working Party 29, European Data Protection Supervisor (EDPS) and Consultative Committee of the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (T-PD) on 28 May 2014.

Agenda item 9: T-CY Guidance Notes

With regard to the Draft Guidance Note on Subscriber Information:

- To consider that the adoption of a Guidance Note on Subscriber Information reflecting the common understanding of the Parties would be premature given the diverse rules, conditions and procedures in the Parties;
- To request the Secretariat to turn the summary of the replies to the questionnaire into a stand-alone report;
- To encourage Parties to take account of the observations of this report when reforming their domestic legislation.

With regard to additional Guidance Notes:

- To invite the Bureau to continue its work on a Guidance Note on SPAM.

Agenda item 10: T-CY Workplan: review and adoption of the workplan 2014/15

- To note that the workplan as adopted by the T-CY in December 2013 is being implemented as planned.

Agenda item 11: Elections of chair, vice-chair and members of the Bureau

- To thank the outgoing Chair, Vice-chair and Bureau members for their contribution to the work of the T-CY;
- To elect for a period of two years:

Chair	Erik Planken, Netherlands
Vice-chair	Cristina Schulman, Romania
Members	Eirik Tronnes Hansen, Norway Tsuyoshi Kitagawa, Japan Markko Kunnapu, Estonia (former chair and member de jure) Justin Millar, United Kingdom Claudio Peguero, Dominican Republic Betty Shave, USA Branko Stamenkovic, Serbia Giorgi Tielidze, Georgia Pedro Verdelho, Portugal

- To consider that a Bureau of this size and composition will allow for implementation of the T-CY workplan and meet the increasing workload.

Agenda item 12: Financial resourcing of the T-CY for 2014-15

- To call on Members and Observers to consider additional, non-earmarked voluntary contributions to the Cybercrime@Octopus project, including in view of support to the T-CY.

Agenda item 13: Activities of capacity building projects and the Cybercrime Programme Office of the Council of Europe (C-PROC)

- To note with appreciation the activities supported through the capacity building projects of the Council of Europe;
- To welcome the contributions by Estonia, Japan, Monaco, Romania, United Kingdom, USA and Microsoft to the Cybercrime@Octopus project as well as the funding provided by the European Union;
- To thank the authorities of Mexico, of Senegal, the National Institute of Magistrates of Romania and the European Cybercrime Centre (EC3) at EUROPOL for the hosting and co-organisation of regional capacity building workshops organised by the Council of Europe;
- To welcome the opening of the Cybercrime Programme Office of the Council of Europe in Bucharest and thank the authorities of Romania for hosting this office.

Agenda item 14: Any other business

- To adopt the opinion on the Recommendation 2041 (2014) of the Parliamentary Assembly of the Council of Europe on "improving user protection and security in cyberspace" and request the Secretariat to submit it to the Committee of Ministers;
- To take note of the activities related to the Council of Europe Convention on the counterfeiting of medical products and similar crimes involving threats to public health (MEDICRIME Convention CETS 211), the (draft) Council of Europe Convention against Trafficking in Human Organs as well as the work of CODEXTER (Committee of Experts on Terrorism) on special investigative techniques.

Agenda item 15: Next meeting of the T-CY

- To hold the 12th Plenary of the T-CY on 2-4 December 2014 (2.5 days) subject to the availability of resources.
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3 Appendix

3.1 Annotated agenda

Annotated agenda

(Please note that agenda items marked with * are for decision by the members representing contracting Parties to the Budapest Convention)

1.	Opening of the 11 th Plenary and adoption of the agenda
2.	<p>Status of signatures, ratifications, accessions to the Budapest Convention and its Protocol</p> <p>Participants are invited to discuss the status of signature, ratification or accession by specific countries.</p>
3.	<p>Information provided by parties and observers – Tour de table</p> <p>Participants are invited to present information on legislative developments, major cases, important events, training provided to other countries, including by international organisations etc.</p>
4.	<p>Dialogue with international organisations (T-CY observers)</p> <p>Representatives of international organisations with observer status in the T-CY are invited to present relevant activities and engage in a dialogue with T-CY members. Observers include the African Union Commission, ENISA, European Union, Interpol, ITU, OAS, OECD, OSCE, UNODC, G8 High-tech Crime Subgroup.</p>
5.	<p>Follow up to T-CY Assessment Report on the expedited preservation provisions</p> <p>The T-CY – at its 8th Plenary in December 2012 – adopted the Assessment Report which states that “The T-CY will review progress made within 18 months of adoption of the report (that is, by mid-2014).”</p> <p>Parties are invited to provide a brief update on follow up measures taken. They are furthermore invited to discuss the implications of the judgment of the European Court of Justice declaring Data Retention Directive 2006/24/EC invalid.</p>
6.	<p>Assessment of Articles 31 and related Articles on international cooperation: Finalisation of the draft report and draft recommendations*</p> <p>Parties and observers are invited to provide comments on the draft assessment report in view of its finalisation.</p> <p>Parties are invited to discuss the draft recommendations in view of their adoption.</p> <p>It is strongly recommended that delegations comprise practitioners responsible for mutual assistance in the Parties.</p>
7.	<p>Provisions to be assessed in the 3rd round of T-CY assessments (2015)*</p> <p>Parties will be invited to consider which provisions are to be analysed in the 3rd round of assessments (in 2015). The Bureau proposes to assess Article 13 (Sanctions and Measures). A comparative analysis would give guidance to States reforming their legislation.</p>

<p>Following a T-CY decision on the items to be assessed, the Bureau would then prepare a draft questionnaire for consideration and adoption at the 12th Plenary (December 2014).</p>
<p>8. Transborder access to data*</p> <p>The Sub-group on transborder access to data will present a summary report on its work underway in 2014 for consideration by the T-CY.</p> <p>The T-CY is invited to discuss the Conference on Article 15 Safeguards and Criminal Justice Access to Data which follows the 11th Plenary (19-20 June 2014)</p>
<p>9. T-CY Guidance Notes*</p> <p>The T-CY is invited to consider draft Guidance Note # 8 on subscriber information.</p> <p>Parties are invited to make proposals for additional Guidance Notes.</p>
<p>10. T-CY Workplan: review of the workplan 2014/15*</p> <p>Parties are invited to consider progress made.</p>
<p>11. Elections of chair, vice-chair and members of the Bureau</p> <p>In line with Article 6 of the Rules of Procedures, the T-CY is invited to elect the chair, vice-chair and members of the Bureau of the T-CY.</p>
<p>12. Financial resourcing of the T-CY for 2014-15*</p> <p>The Secretariat will inform participants on the state of financial resources available for the T-CY in 2014-15.</p> <p>Following the decision on T-CY financing taken at the 9th Plenary, Parties are invited to consider financial support to the T-CY through voluntary contribution to the CYBERCRIME@OCTOPUS project.</p>
<p>13. Activities of capacity building projects and the Cybercrime Programme Office of the Council of Europe (C-PROC)</p> <p>The Secretariat will provide an update of capacity building projects and the Council of Europe Programme Office on Cybercrime (C-PROC) in Bucharest.</p>
<p>14. Any other business</p> <ul style="list-style-type: none"> - Other matters - Secretariat update on activities related to conventions on MEDICRIME and Trafficking in Human Organs
<p>15. Next meeting of the T-CY*</p> <p>T-CY members are invited to decide on the proposal to hold the 12th T-CY Plenary in December 2015. This proposal is subject to the availability of funding.</p>

3.2 List of participants

Bureau members

Country	Name	Institution
ESTONIA	Mr Markko KÜNNAPU (T-CY Chair)	Adviser Ministry of Justice Tonismagi 5A EST-15191 Tallinn
NETHERLANDS	Mr Erik PLANKEN (T-CY Vice-Chair)	Senior Policy Advisor Cybercrime Law Enforcement Department Ministry of Justice Schedeldoekshaven 100 NL-2511 EX Den Haag H9.42
JAPAN	Mr Tsuyoshi KITAGAWA (T-CY Representative)	Principal Deputy Director International Safety and Security Cooperation Division Foreign Policy Bureau
ROMANIA	Apologised	
PORTUGAL	Mr Pedro VERDELHO (T-CY Representative)	Public Prosecutor General Prosecutor's Office of Lisbon Procuradoria Geral da Republica Rua de Vale do Pereiro, nº 2, 3º 1269-113 LISBOA
SERBIA	Mr Branko STAMENKOVIC (T-CY Representative)	Head of the Special Department for High-Tech Crime of HPPO Belgrade Office of the Public Prosecutor of Serbia Nemanjina 22-26 str. RS-11000 Belgrade
UNITED KINGDOM	Mr Justin MILLAR (T-CY Representative)	Head of Cyber Crime Policy Home Office London
USA	Ms Betty SHAVE (T-CY Representative)	Assistant Deputy Chief for International Computer Crime Computer Crime and Intellectual Property Section US Department of Justice Washington, DC

Parties to the Convention

Country	Name	Institution
ALBANIA	Ms Diana STILLO SILA (T-CY Representative)	Department of Foreign Jurisdictional Relations Ministry of Justice
ARMENIA	Mr Armen ABRAHAMYAN	Officer Fight Against High-tech Crimes, General Department of Struggle Against Organized Crime
AUSTRALIA	Mr Simon Lee	Senior Legal Officer Telecommunications and Surveillance Law Branch
AUSTRIA		
AZERBAIJAN	Mr Hajiaga HAJIYEV	Ministry of National Security
AZERBAIJAN	Ms Pustakhanim AGHAZADA	Attase Ministry of Foreign Affairs of Azerbaijan
BELGIUM	Mr Philippe VAN LINTHOUT	Judge – Investigating judge
BOSNIA AND HERZE-GOVINA	Tomislav CURIC (T-CY Representative)	Expert Adviser Department for Combating Organized Crime and Corruption
BULGARIA	Mr Vasil PETKOV	Inspector State Agency for National Security, Cybercrime Department and 24/7 National Contact Point for High-tech crimes Cybercrime, IPR and Gambling Section General Directorate Combating Organized Crime Ministry of Interior
CROATIA	Mr Ivan MIJATOVIC	High-tech Crime Department, National Police Office for Suppression of Corruption and Organized Crime
CYPRUS	Mr ANASTASIADES	Police Inspector Office for Combating Cybercrime and Forensic Lab Cyprus Police Headquarters
CZECH REPUBLIC	Dominik KORČÁK	Legal expert International Cooperation Department Ministry of Justice of the Czech Republic Vysehradská 16, 12810 Prague
DENMARK	Mr Peter Johan Christopher BARTHOLIN (T-CY Representative)	Criminal Law Division Slotsholmsgade 10 DK-1216 Copenhagen K
DOMINICAN REPUBLIC	Mr Claudio PEGUERO	Advisor to the chief of Police in ICT National Police

DOMINICAN REPUBLIC	Mr César MOLINÉ RODRÍGUEZ (T-CY Representative)	Legal advisor Instituto Dominicano de las Telecomunicaciones
FINLAND	Mr Mikko MONTO (T-CY Representative)	Ministry of Justice
FRANCE	Ms Delphine GAY (T-CY Representative)	Capitaine de Police OCLCTIC
GEORGIA	Mr Giorgi TIELIDZE (T-CY Representative)	Chief Specialist, International relations department Ministry of Internal Affairs
GERMANY	Ms Inga Wahlen	Deputy Head of Division Economic Crime, Computer Crime, Corruption-related Crime and Environmental Crime
HUNGARY	Dr Anita IZSÁK	Ministry of Interior Departement of Codification and Coordination
ICELAND	Mr Sigurdur Emil PÁLSSON	Senior Advisor Ministry of the Interior
ITALY		
JAPAN	Mr. Tomohiko SHIRATORI	Attorney Criminal Affairs Bureau Ministry of Justice
JAPAN	Ms. Akino KOWASHI	Official International Safety and Security Cooperation Division Foreign Policy Bureau Ministry of Foreign Affairs
JAPAN	Mr. Makoto NAKAMURA	Superintendent Assistant Director for Cyber Security Commissioner General's Secretariat National Police Agency
JAPAN	Mr. Takaaki SHINTAKU	Consul, Consulate General of Japan in Strasbourg
JAPAN	Ms. Emiko SAITO	Researcher and Adviser, Consulate General of Japan in Strasbourg
LATVIA	Mr Tikums Jānis	Senior inspector Police major State police of Latvia Central Criminal police department Economic crime enforcement department, 4th unit
LATVIA	Mr Oskars GAILĪTIS	Senior inspector of 24/7 National Cybercrime Contact Point

LITHUANIA	Mr Žilvinas SIDERAVIČIUS (T-CY Representative)	Chief Investigator Police Department Ministry of the Interior Criminal Police Board Saltoniškių str. 19 Vilnius
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MOLDOVA	Mr Veaceslav SOLTAN (T-CY Representative)	Prosecutor Chief of Department on Information Technology and Cybercrime Investigation General Prosecutor Office Mitropolit Banulescu-Bodoni, 26 MD-Chisinau
MOLDOVA	Mr Eugeniu MORARU	Republic of Moldova Head of Center for combating cyber-crime General Inspectorate of Police
MONTENEGRO	Mr Vladimir VUJOTIC (T-CY Representative)	Adviser Ministry of Justice Vuka Karadzica 3, 81000 Podgorica
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ROMANIA	Ms Cristina SCHULMAN (T-CY Representative)	Legal Adviser Ministry of Justice Directorate International Law and Judicial Cooperation 5, Apolodor Street RO - 050741 Bucharest
SLOVAKIA	Mr Branislav KADLECIC (T-CY Representative)	General State Counsellor International Public Law Division International Relations Department
SLOVENIA	Mr Toni KASTELIC (T-CY Representative)	Head of Computer Investigation Centre Criminal Police Directorate
SPAIN	Ms Maria Elvira TEJADA DE LA FUENTE (T-CY Representative)	Head Cybercrime Prosecutor's Office
SPAIN	Mr Ramón GONZÁLEZ GALLEGO	Grupo de delitos telemáticos Unidad Central Operativa - Guardia Civil

SPAIN	Mr Fernando Fernandez LAZARO	Inspector Jefe Jefe de la sección de investigación tecnológica de la UIT
SWITZERLAND		
"THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA"	Mr Vladimir MILOSHESKI (T-CY Representative)	Public Prosecutor
UKRAINE	Mr Oleksii Tkachenko	International Relations officer Cyber Department, SBU
UKRAINE	Mr Ievgen CHUMACHENKO	Senior detective inspector Division for combating cybercrime of the Ministry of Internal Affairs of Ukraine

Observers

Country / Organisation	Name	Institution
ANDORRA	Ms Carmen Perna	Assessora Jurídica Secretaria General
ARGENTINA	Mr Norberto FRONTINI (T-CY Representative)	Subsecretaria de Política Criminal Ministerio de Justicia, Seguridad y Derechos Humanos Sarmiento 329, 4º piso Ciudad Autónoma de Buenos Aires, C1041AAG AG-Buenos Aires
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CHILE		
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GREECE	Mr Theofilos ZAFEIRAKOS	Counselor of Embassy Permanent Representation of Greece to the Council of Europe
IRELAND		
ISRAEL	Mr Haim Wismontsky	National Supervisor, Law & Technology Israel's Attorney General's
LIECHTENSTEIN		
LUXEMBOURG	Mrs Pascale MILLIM	Attaché du Gouvernement Direction des affaires pénales et judiciaires
MEXICO	Santiago OÑATE	Observateur Permanent du Mexique auprès du Conseil de l'Europe
MEXICO	Jorge Alejandro COLÍN ELÍAS	Secrétaire Technique du Comité Spécialisé en Sécurité de l'Information, du Conseil National de Sécurité.

MEXICO	Mr Jorge Cicero Fernandez	Deputy Director General Global Affairs Foreign Affairs Ministry Mexico
MEXICO	Mr. José Humberto LÓPEZ- PORTILLO SÁNCHEZ (T-CY Representative)	Deputy Attaché for Legal Affairs Legal Attaché Office for Europe of the Attorney General of Mexico Embassy of Mexico in Spain
MEXICO	Mr Diego SANDOVAL PIMENTEL	Adjoint à l' Observateur Permanent du Mexique auprès du Conseil de l'Europe
MONACO	Mr Gabriel REVEL	Adjoint au Représentant Permanent de Monaco auprès du Conseil de l'Europe
MOROCCO	Mr Abdeljalil TAKI	Commissaire Divisionnaire Ministere de l'Interieur (DGST)
MOROCCO	Mr Mohamed YESSEF	Agent d'autorité à la Division de la Sécurité Ministère de l'Intérieur
MOROCCO	Ms Amina DIK	Ingénieur en Chef
MOROCCO	Ms Layla EZZOUINE	Head of cybercrime unit General directorate of national security Ministry of Interior
MOROCCO	Mr Rafik Abdelhadi	Ingénieur d'État
MOROCCO	Mr Khalid El Battachi	Vice-Consul Consulat du Maroc
PHILIPPINES	Mr Geronimo SY (T-CY Representative)	Assistant Secretary Ministry of Justice
POLAND	Ms Dominika Śliwkiewicz/ Ms Joanna Kulewska.	Deputy to the Permanent Representative Permanent Representation of Poland to the Council of Europe
RUSSIAN FEDERATION		
SAN MARINO		
SENEGAL	Mr Papa Assane TOURE (T-CY Representative)	Conseiller technique Ministère de la Justice Dakar
SENEGAL	M. El Hadji Gormack TALL	Substitut General Cour D'Appel de Dakar Ministère Justice Sénégal
SOUTH AFRICA		
SOUTH AFRICA		
SWEDEN		
TURKEY	Mr Bilal SEN (T-CY Representative)	Superintendent TNP - Cyber Crimes Department Bilişim Suçlarıyla Mücadele Daire Başkanlığı Söğütözü / Ankara

TURKEY	Mr Yasin Köse	Deputy Director of International Operations, Department of Cyber Crime, Turkish National Police
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Other States

Country	Name	Position
SINGAPORE	Mr G KANNAN	Senior State Counsel / Deputy Public Prosecutor Senior Director Corruption Directorate & Senior Director Technology Crime Unit Economic Crimes & Governance Division Criminal Justice Division Attorney-General's Chambers
SINGAPORE	Suhas MALHOTRA	Deputy Public Prosecutor / State Counsel Criminal Justice Division
SRI LANKA	Mr Jayantha FERNANDO	Director & Legal Advisor ICT Agency of Sri Lanka (ICTA)
TONGA	Mr 'Unga FA'AOA	Deputy Commissioner of Police Deputy Commissioner for Operations Services

Observer Organisations

Organisation	Name	Position
AFRICAN UNION COMMISSION (AUC)		
AFRICAN UNION COMMISSION (AUC)		
EUROPEAN UNION/ENISA		
EUROPEAN UNION/ EUROPEAN COMMISSION	Mr Giovanni Carlo Bruno	Deputy to the Head of Delegation
EUROPEAN UNION/EUROPEAN COMMISSION	Mr Cesar ALONSO IRIARTE	Legal and Policy Officer – Fight against organised crime European Commission
EUROPEAN UNION/EUROPOL	Mr Adrian Ionut BOBEICA	Cybercrime specialist Europol EC3 Cyber Intelligence

G8 Roma-Lyon Group		
INTERPOL		
International Telecommunication Union (ITU)		
ORGANIZATION OF AMERICAN STATES (OAS)		
OSCE		
UNODC		

Council of Europe committees & other bodies

Committees	Name	Details
POMPIDOU GROUP		
CDPC (European Committee on Crime Problems)		
Committee of the Parties to the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (T-ES)		
Consultative Committee of the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (T-PD)		
Parliamentary Assembly of the Council of Europe (PACE)		

Council of Europe Secretariat

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Interpreters

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