CONFERENCE ON ENHANCED CO-OPERATION AND DISCLOSURE OF ELECTRONIC EVIDENCE

CO-OPERATION IN EMERGENCY SITUATIONS:
THE ROLE OF 24/7 POINTS OF CONTACT

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Article 35 – 24/7 Network

➢ Each Party shall designate a point of contact available on a twenty-four hour, seven-day-a-week basis, in order to ensure the provision of immediate assistance for the purpose of investigations or proceedings concerning criminal offences related to computer systems and data, or for the collection of evidence in electronic form of a criminal offence. Such assistance shall include facilitating, or, if permitted by its domestic law and practice, directly carrying out the following measures:

➢ the provision of technical advice
➢ the preservation of data pursuant to Articles 29 and 30
➢ the collection of evidence, the provision of legal information, and locating of suspects

➢ If not part of the authority or authorities responsible for international mutual assistance or extradition, the point of contact shall ensure that it is able to co-ordinate with such authority or authorities on an expedited basis.

Capacities to deal with:

 ✓ technical aspects of a computer crime
 ✓ specific characteristics of the electronic evidence (volatility or easy to tamper with)
 ✓ manner to obtain electronic evidence, conditions and format that confer admissibility under the law etc.
 ✓ legal aspects and proceedings in criminal matters
 ✓ legal aspects related to transfer of evidence under mutual legal assistance
 ✓ different levels of understanding of foreign languages (reading, writing) used for correspondence
 ✓ bad translations
 ✓ different means of communication
 ✓ different ways of describing the facts
 ✓ different understanding of legal or technical terms
 ✓ immediate action
The mechanism of the Budapest Convention and its 2nd Additional Protocol

**Issue**: no common understanding on “emergency”, thus lack of predictability in providing responsive approaches in such cases

**Article 3 – Definitions**

...  
2.c. For the purposes of this Protocol, the following additional definitions apply: an “emergency” means a situation in which there is a significant and imminent risk to the life or safety of any natural person;

**Examples**: Hostage situations, kidnappings, ongoing sexual abuse of a child, anticipated terrorist attack, cyber attacks on critical infrastructure resulting in imminent death or injury.

**OBJECTIVE** – legal basis for obtaining immediate assistance in emergency situations as defined for expedited disclosure of specified, stored computer data in a service provider’s possession or control in the territory of another Party, without a request for mutual assistance.

**Article 9 – Expedited disclosure of data in an emergency**

- procedural measure to enable its 24/7 PoC to transmit a request to and receive a request from a 24/7 PoC in another Party, seeking immediate assistance
- procedural power to empower a competent authority to seek data from a service provider in its territory following a request under Article 9 and to provide the requested data to the requesting Party
- measures to enable a service provider to disclose the requested data to its authorities in response to a request formulated by its authorities pursuing a request under Article 9
The mechanism of the Budapest Convention and its 2nd Additional Protocol

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OBJECTIVE - to provide a maximally expedited procedure for mutual assistance requests made in emergency situations as defined

Article 10 Emergency mutual assistance

➢ mandatory content besides the content required in a mutual assistance request ➢ a description of the facts that demonstrate that there is an emergency and how the assistance sought relates to it
➢ obligation to ensure with the central authorities or other authorities responsible a system available 24/7 with the purpose of reviewing a request in an emergency situation outside business hours – this doesn’t mean a central authority may become operative
➢ declaration to nominate 24/7 PoC as a channel of transmission
The mechanism of the Budapest Convention and its 2nd Additional Protocol

**Article 10**

**OBJECTIVE** - to provide legal basis for a maximally expedited procedure for mutual assistance requests made in emergency situations

**LIMITED** to emergency situations as defined

**NOT LIMITED** to stored evidence in a service provider’s possession or control in the territory of another Party

**Mandatory content** - a description of the facts that demonstrate that there is an emergency and how the assistance sought relates to it

**Option for a Party to declare the 24/7 Point of Contact as a channel of transmission**

**Article 9**

**OBJECTIVE** – legal basis for obtaining immediate assistance for expedited disclosure of specified, stored computer data without a request for mutual assistance.

**LIMITED** to specified stored computer data in a service provider’s possession or control in the territory of another Party

**Standard content**

**Procedural measure** to enable the 24/7 Point of Contact to transmit a request to and receive a request from a 24/7 Point of Contact in another Party seeking immediate assistance
THANK YOU!

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