



CONFERENCE ON ENHANCED CO-OPERATION AND DISCLOSURE OF ELECTRONIC EVIDENCE

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

Strasbourg, 13 May 2022

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Budapest Convention - CHAPTER III – international co-operation

Article 35 – 24/7 Network

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- 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

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

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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**

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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