

## Panel

### The 2<sup>nd</sup> Additional Protocol in practice: new tools for cooperation

- Markko Kunnapu (Ministry of Justice, Estonia)
- Thomas Grégoire (Chef du bureau des négociations pénales européennes et internationales de la direction des affaires criminelles et des grâces au ministère de la justice, France)
- Normand Wong (Criminal Law Policy Section, Justice Canada)
- Sheri Shepherd-Pratt (Associate Director, Office of International Affairs, US Department of Justice, USA)

# 2<sup>nd</sup> Additional Protocol to the Convention on Cybercrime: content

## Preamble

### Chapter I: Common provisions

- Article 1 Purpose
- Article 2 Scope of application
- Article 3 Definitions
- Article 4 Language

### Chapter II: Measures for enhanced cooperation

- Article 5 General principles applicable to Chapter II
- Article 6 Request for domain name registration information
- Article 7 Disclosure of subscriber information
- Article 8 Giving effect to orders from another party for expedited production of subscriber information and traffic data
- Article 9 Expedited disclosure of stored computer data in an emergency
- Article 10 Emergency mutual assistance
- Article 11 Video conferencing
- Article 12 Joint investigation teams and joint investigations

### Chapter III – Conditions and safeguards

- Article 13 Conditions and safeguards
- Article 14 Protection of personal data

### Chapter IV: Final provisions

- Article 15 Effects of this Protocol
- Article 16 Signature and entry into force
- Article 17 Federal clause
- Article 18 Territorial application
- Article 19 Reservations and declarations
- Article 20 Status and withdrawal of reservations
- Article 21 Amendments
- Article 22 Settlement of disputes
- Article 23 Consultations of the Parties and assessment of implementation
- Article 24 Denunciation
- Article 25 Notification

- For several years the T-CY has discussed how to address the emerging challenges in cybercrime investigations, the volatile nature of computer data and how to ensure access to electronic evidence in the „Cloud“
- Reports from T-CY working groups, the results of the assessment round on international cooperation, work on Guidance Notes showed the need for additional solutions and frameworks
- Specific recommendations and proposals were developed, including for more effective MLA, direct cooperation with Multinational Service Providers, access to domain registration data
- Needs and existing practices, including challenges were considered while drafting recommendations, elements for the future protocol
- The Protocol as adopted is a response to earlier concerns and questions and provides new additional tools for law enforcement
- Instead of only voluntary cooperation there is a binding legislative framework with all the necessary conditions and safeguards

## Example: Article 7 – direct disclosure of subscriber information

### Article 7 – Disclosure of subscriber information

1 Each Party shall adopt such legislative and other measures as may be necessary to empower its competent authorities to issue an order to be submitted directly to a service provider in the territory of another Party, in order to obtain the disclosure of specified, stored subscriber information in that service provider's possession or control, where the subscriber information is needed for the issuing Party's specific criminal investigations or proceedings.

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- Une coopération **directe** avec les fournisseurs de service :
  - simplification du formalisme et amélioration des délais
- Un champ d'application **large**:
  - Le type d'affaire : toute infraction pénale, même en dehors de la cybercriminalité
- Le type de preuves électroniques : ce que recouvrent les « données relatives aux abonnés » (focus sur les adresses IP)
- Une **illustration pratique** des avantages de la coopération directe par rapport à l'entraide classique
- De solides **garanties**
- La déclinaison de cet article au sein de l'Union européenne

## Example: Article 8 – Giving effect to orders from another Party ...

### **Article 8 – Giving effect to orders from another Party for expedited production of subscriber information and traffic data**

- 1 Each Party shall adopt such legislative and other measures as may be necessary to empower its competent authorities to issue an order to be submitted as part of a request to another Party for the purpose of compelling a service provider in the requested Party's territory to produce specified and stored
  - a subscriber information, and
  - b traffic datain that service provider's possession or control which is needed for the Party's specific criminal investigations or proceedings.

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- **Enforceability:** In effect, orders from one party for subscriber information or traffic data will be made enforceable in the territory of another party.
- **Efficiencies:** Improvement over existing MLA – for some responding countries could mean significant time savings – from 18 months to 30 days.
- **Safeguards:** Control retained by the responding country to ensure human rights and other relevant safeguards and conditions are met.
- **Flexibility:** Allows any legal system or framework to benefit from the expedited process.

Article 3.1.c “emergency” means a situation in which there is a significant and imminent risk to the life or safety of any natural person;

## Article 9 – Expedited disclosure of stored computer data in an emergency

1 a Each Party shall adopt such legislative and other measures as may be necessary, in an emergency, for its point of contact for the 24/7 Network referenced in Article 35 of the Convention (“point of contact”) to transmit a request to and receive a request from a point of contact in another Party seeking immediate assistance in obtaining from a service provider in the territory of that Party the expedited disclosure of specified, stored computer data in that service provider’s possession or control, without a request for mutual assistance.....

## Article 10 – Emergency mutual assistance

1 Each Party may seek mutual assistance on a rapidly expedited basis where it is of the view that an emergency exists. A request under this article shall include, in addition to the other contents required, a description of the facts that demonstrate that there is an emergency and how the assistance sought relates to it.....

- Innovations and flexibility for faster cooperation in an emergency
- Article 9: expedited disclosure of stored computer data in an emergency
  - Stored computer data, including traffic and content data
  - 24-7 Network POCs
  - No prior mutual assistance request required
- Article 10: emergency mutual assistance
  - Rapidly expedited procedures for mutual assistance requests
  - Broader than just computer data
  - May be easier to authenticate evidence received