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T-CY (2016)30

Cybercrime Convention Committee (T-CY)

Follow up to the Assessment Report on Mutual Legal Assistance –

T-CY(2013)17rev

Compilation of replies to the questionnaire

[www.coe.int/TCY](http://www.coe.int/TCY)

## Background

The Cybercrime Convention Committee (T-CY), in its 12th Plenary Session (2-3 December 2014) decided to adopt the report on mutual legal assistance regarding accessing to stored computer data<sup>1</sup>. Paragraph 5.2.1 of this report comprises some recommendations falling primarily under the responsibility of domestic authorities. The part dedicated to follow up measures mentions that:

*Parties are invited to follow up on recommendations falling under the responsibility of domestic authorities and to report back to the T-CY no later than 18 months from adoption of this report on measures taken to permit the T-CY, in line with the Rules of Procedure (Article 2.1.g), to review progress made.*

*The Council of Europe Secretariat is requested to follow up on recommendations falling under its responsibility and to report back to the T-CY within 18 months of adoption of the report.*

*The T-CY is to assess the feasibility of taking up recommendation representing "protocol material" in an additional protocol to the Budapest convention.*

T-CY 15 (May 2016) decided:

*"To invite the Bureau to develop and the Secretariat to circulate a request for information on follow up given to Recommendations 1-7 and 9-15 of the MLA Assessment Report, as well as on Recommendation 16 on time periods for data preservation periods;"*

On 16<sup>th</sup> September 2016, the T-CY Secretariat sent the questionnaire prepared by the T-CY Bureau, with deadline for replies 21 October 2016, to all T-CY representatives.

T-CY 16 (November 2016) decided:

*"To welcome the replies to the questionnaire on follow up given by 18 Parties; and to invite the remaining Parties and Observer States to provide their replies no later than 15 December 2016".*

T-CY 17 (June 2017) decided:

*"To encourage additional Parties and Observers to send replies to the questionnaire by 15 July 2017."*

By 01 October 2017, 41 Parties and 1 Observer State replied the questionnaire.

The present document represents a compilation of the replies received.

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# 1 Replies

## 1.1 Albania

Question 1: Please provide information on measures taken or on relevant developments with respect to each of the following Recommendations. Please attach additional information as appropriate.

Rec 1	Parties should fully implement and apply the provisions of the Budapest Convention on Cybercrime, including preservation powers (follow up to T-CY Assessment Report 2012).
Measures taken/relevant developments: No further developments	
Rec 2	Parties should consider maintaining statistics or establish other mechanisms to monitor the efficiency of the mutual legal assistance process related to cybercrime and electronic evidence.
Measures taken/relevant developments: It is set up a document and case management system at the International Judicial Cooperation Unit at MOJ. Starting from January 2017, the communication between the National/International Institutions and all related information will be registered electronically.	
Rec 3	Parties should consider allocating more and more technology-literate staff for mutual legal assistance not only at central levels but also at the level of institutions responsible for executing requests (such as local prosecution offices).
Measures taken/relevant developments: It is not taken any further measure yet in terms of technology. The appointed prosecutors for cybercrimes are responsible for the MLA requests.	
Rec 4	Parties should consider providing for better training to enhance mutual legal assistance, police-to-police and other forms of international cooperation on cybercrime and electronic evidence. Training and experience exchange should in particular target prosecutors and judges and encourage direct cooperation between judicial authorities. Such training should be supported by the capacity building programmes of the Council of Europe and other organisations.
Measures taken/relevant developments: School of Magistrate is in process of upgrading the curricula in terms of MLA in cybercrime	
Rec 5	Parties and the Council of Europe should work toward strengthening the role of 24/7 points of contact in line with Article 35 Budapest Convention, including through: <ul style="list-style-type: none"> <li>a. Ensuring, pursuant to article 35.3 Budapest Convention that trained and equipped personnel is available to facilitate the operative work and conduct or support mutual legal assistance (MLA) activities</li> <li>b. Encouraging contact points to pro-actively promote their role among domestic and foreign counterpart authorities;</li> <li>c. Conducting regular meetings and training of the 24/7 network among the Parties;</li> </ul>

Albania

	<ul style="list-style-type: none"> <li>d. Encouraging competent authorities and 24/7 points of contact to consider procedures to follow up to and provide feedback to the requesting State on Article 31 requests;</li> <li>e. Considering to establish, where feasible, contact points in prosecution offices to permit a more direct role in mutual legal assistance and a quicker response to requests;</li> <li>f. Facilitating 24/7 points of contact to play a supportive role in "Article 31" requests.</li> </ul>
	<p>Measures taken/relevant developments:</p> <p>The appointed prosecutors for cybercrime are encharged as contact points in terms of MLA and the 24/7 is the Albanian State Police.</p>
<p>Rec 6</p>	<p>Parties should consider streamlining the procedures and reduce the number of steps required for mutual assistance requests at the domestic level. Parties should share good practices in this respect with the T-CY.</p>
	<p>Measures taken/relevant developments:</p> <p>No further developments</p>
<p>Rec 7</p>	<p>Parties should make use of all available channels for international cooperation. This may include formal mutual legal assistance, police to police cooperation and others.</p>
	<p>Measures taken/relevant developments:</p> <p>No further developments</p>
<p>Rec 8</p>	<p>Parties are encouraged to establish emergency procedures for requests related to risks of life and similar exigent circumstances. The T-CY should document practices by Parties and providers.</p>
	<p>Measures taken/relevant developments:</p> <p>No further developments</p>
<p>Rec 9</p>	<p>Parties should confirm receipt of requests systematically and give, upon request, notice of action taken.</p>
	<p>Measures taken/relevant developments:</p> <p>No further developments</p>
<p>Rec 10</p>	<p>Parties may consider the opening of domestic investigation upon a foreign request or spontaneous information to facilitate the sharing of information or accelerate MLA.</p>
	<p>Measures taken/relevant developments:</p> <p>There is a good practice for filing case from prosecutors upon request prior official MLA request.</p>
<p>Rec 11</p>	<p>Parties should make use of electronic transmission of requests in line with Article 25.3 Budapest Convention on expedited means of communication.</p>
	<p>Measures taken/relevant developments:</p>

Albania

It is already used as mean of communication	
Rec 12	Parties should ensure that requests are specific and complete with all necessary information.
Measures taken/relevant developments: All procedure is taken fully in line with convention and domestic legislation	
Rec 13	Pursuant to Article 25.5 Budapest Convention and Paragraph 259 Explanatory Report, Parties are reminded to apply the dual criminality standard in a flexible manner that will facilitate the granting of assistance.
Measures taken/relevant developments: There is no any case yet, but we are open to consider such requests	
Rec 14	Parties are encouraged to consult with authorities of requested Party prior to sending requests, when necessary.
Measures taken/relevant developments: It is a good practice communication with requested parties prior sending the request to fully guarantee the timing and execution of the request GPO & MoJ	
Rec 15	Parties should consider ensuring transparency regarding requirements for mutual assistance requests, and reasons for refusal, including thresholds for minor cases, on the websites of central authorities.
Measures taken/relevant developments: The websites of central authorities are not used yet for information on cases.	

Question 2: Please provide information on time periods for preservation requests under Article 29 Budapest Convention in your country.

Rec 16	The T-CY should facilitate greater transparency regarding the time period for data preservation upon a foreign preservation request in line with Article 29 Budapest Convention. The T-CY should document time periods.
Time periods for preservation of data following a foreign request: The period for data preservation will be document in any MLA request.	
Conditions and periods to extend or renew the preservation of specified data: The Criminal Procedure Code set forth the renew of period with the same length of 90 days.	

1.2 Armenia

Question 1: Please provide information on measures taken or on relevant developments with respect to each of the following Recommendations. Please attach additional information as appropriate.

<p>Rec 1 Parties should fully implement and apply the provisions of the Budapest Convention on Cybercrime, including preservation powers (follow up to T-CY Assessment Report 2012).</p>
<p>Measures taken/relevant developments:                  Answer as for implementation of Budapest Convention on Cybercrime                  Republic of Armenia has signed the Convention on 23/11/2001 and ratified on 12/10/2006. On 01/02/2007, the convention came into force for Armenia with reservation made on 16/07/2008.                  Becoming a part of Armenian legislation the Convention is applied in due process.</p>
<p>Rec 2 Parties should consider maintaining statistics or establish other mechanisms to monitor the efficiency of the mutual legal assistance process related to cybercrime and electronic evidence.</p>
<p>Measures taken/relevant developments:                  Statistics in the Prosecutor General’s Office is not being classified by types of crime, so it is not possible to present cybercrime-related statistics.                   The Ministry of Justice of Armenia is classified the information and provide statistics by types of crime in mutual assistance in criminal matters only when the case is in trial stage. Taking into account that the mutual legal assistance on cybercrime cases are mostly in pre-trial stage, so there is no information on mutual legal assistance requests on this type of cases in trial stage for the period of 2015-2016.</p>
<p>Rec 3 Parties should consider allocating more and more technology-literate staff for mutual legal assistance not only at central levels but also at the level of institutions responsible for executing requests (such as local prosecution offices).</p>
<p>Measures taken/relevant developments:                  Prosecutor General’s Office of the Republic of Armenia is the authority designated to receive, respond and to proceed with assistance and cooperation in frames of the MLA requests made for the cases which are in pre-trial stage of investigation. The MLA request are being executed by the relevant investigation /law-enforcement body of Armenia/.</p>
<p>Rec 4 Parties should consider providing for better training to enhance mutual legal assistance, police-to-police and other forms of international cooperation on cybercrime and electronic evidence. Training and experience exchange should in particular target prosecutors and judges and encourage direct cooperation between judicial authorities. Such training should be supported by the capacity building programmes of the Council of Europe and other organisations.</p>
<p>Measures taken/relevant developments:                  In order to enhance mutual legal assistance Prosecutor General’s Office of the Republic of Armenia is actively cooperating with the Council of Europe in the scope of the projects “CyberCrime@EAP II” and “CyberCrime@EAP III”.</p>



## Armenia

In order to enhance mutual legal assistance and improve the activities of competent authorities of Armenia, the Ministry of Justice involved in the "Program for 2017 of the Government on Prevailing Legal Acts", the drafting of the specific Law on Mutual Legal Assistance in Criminal Matters, which planned to be drafted and represented to the Government of Armenia in May 2017.

Rec 5 Parties and the Council of Europe should work toward strengthening the role of 24/7 points of contact in line with Article 35 Budapest Convention, including through:

- a. Ensuring, pursuant to article 35.3 Budapest Convention that trained and equipped personnel is available to facilitate the operative work and conduct or support mutual legal assistance (MLA) activities
  - b. Encouraging contact points to pro-actively promote their role among domestic and foreign counterpart authorities;
  - c. Conducting regular meetings and training of the 24/7 network among the Parties;
  - d. Encouraging competent authorities and 24/7 points of contact to consider procedures to follow up to and provide feedback to the requesting State on Article 31 requests;
  - e. Considering to establish, where feasible, contact points in prosecution offices to permit a more direct role in mutual legal assistance and a quicker response to requests;
  - f. Facilitating 24/7 points of contact to play a supportive role in "Article 31" requests.

Measures taken/relevant developments:

Providing police-to-police cooperation under the Budapest Convention and the network of high-tech crime units under the G7

Processing only operative and intelligence information (not evidence in criminal proceedings)

Does not receive and process mutual legal assistance requests

Information received through the 24/7 point of contact is forwarded to competent investigative authorities; if the specific investigative action is required, referral is done through the Prosecutor's Office

Technical assistance and support/advice can provided by the 24/7

Rec 6 Parties should consider streamlining the procedures and reduce the number of steps required for mutual assistance requests at the domestic level. Parties should share good practices in this respect with the T-CY.

Measures taken/relevant developments:

Received MLA requests are subject for consideration and implementation according to the requirements of criminal procedural actions prescribed by the domestic legislation.

e.g: in case of request for subscriber information or content data

In case of the treaty basis: the party should provide the MLA request in compliance with the provisions of the relevant treaty. In addition, corresponding/relevant court decision of the requesting state is necessary, as this is a requirement for issuing the domestic court order for obtaining stored computer data. Otherwise, confirmation that evidence could be obtained in the requesting state without court decision and legal provisions, should be provided.

In case of reciprocity: requesting state should follow (as a guidance) Article 14 of European Convention on the Mutual Legal Assistance in Criminal Matters or the Article 18, p. 15 of the UN Convention on Transnational Organized Crime. In addition, corresponding/relevant court decision of the requesting state is necessary, as this is a requirement for issuing the domestic court order for obtaining stored computer data.

## Armenia

<p>Otherwise, confirmation that evidence could be obtained in the requesting state without court decision and legal provisions should be provided. In case of absence of treaty written confirmation from requesting state – as a reciprocity prerequisite – is necessary:</p> <p>e.g: in case of request for access to banking information</p> <p>Where access to banking information is sought and the request refers to a specific person, a document that recognizes the person as charged with an offence and information that connects this person or information to Armenian jurisdiction (summary of facts) is necessary.</p>	
Rec 7	Parties should make use of all available channels for international cooperation. This may include formal mutual legal assistance, police to police cooperation and others.
<p>Measures taken/relevant developments:</p> <p>Legal basis to provide Mutual Legal Assistance or seek assistance</p> <p>Budapest Convention on Cybercrime and its Additional Protocol</p> <p>European Convention on Mutual Assistance in Criminal Matters and Additional Protocols</p> <p>UN Convention against Transnational Organized Crime</p> <p>Minsk and Chisinau Conventions on Legl Assistance and Legal Relations in Civil, Family and Criminal Matters (in frames of CIS)</p> <p>Bilateral agreements</p>	
Rec 8	Parties are encouraged to establish emergency procedures for requests related to risks of life and similar exigent circumstances. The T-CY should document practices by Parties and providers.
<p>Measures taken/relevant developments:</p> <p>Usually a note of urgency or risk of of life included in the request is preferable. However, if it is seen from the context that the request is time-sensitive or it is related to risk of life, or otherwise urgent, the request will be dealt with immediately.</p> <p>If any of the below criteria are applied, the requesting country advised to refer to them in the request: "Urgency"; "Person in custody"; "Seriousness of the offence"; "Risk of life".</p> <p>In general, (in ordinary cases) the MLARs are implemented by Armenian law-enforcements in 2-month period.</p>	
Rec 9	Parties should confirm receipt of requests systematically and give, upon request, notice of action taken.
<p>Measures taken/relevant developments:</p> <p>In materials of implemented MLAR are subject for forwarding to the initiating (Requesting) party immediately. Confirmation of receipt can be made as well.</p>	
Rec 10	Parties may consider the opening of domestic investigation upon a foreign request or spontaneous information to facilitate the sharing of information or accelerate MLA.
<p>Measures taken/relevant developments:</p> <p>According to the Criminal Procedure Code of the Republic of Armenia (art. 176) law enforcement</p>	

## Armenia

<p>authorities can open the investigation upon a foreign request or spontaneous information.</p> <p>As for sharing of information mentioned in the MLAR:</p> <p>According to the Criminal Procedure Code of the Republic of Armenia (art. 201), investigation is confidential for the domestic cases. So similar approach can be provided to the MLA requests if the Requesting Party provides a note of confidentiality in the request. Sharing of information mentioned in the MLAR can be made if there is no confidentiality in the request, either by Requesting State or the agreement on legal assistance, or by receiving the consent of the Requesting state.</p>	
Rec 11	Parties should make use of electronic transmission of requests in line with Article 25.3 Budapest Convention on expedited means of communication.
Measures taken/relevant developments:	
There is no made reservation by Armenia to the article 25.3 of the Convention, so electronic transition of the request, with formal confirmation to follow, can be ensured.	
Rec 12	Parties should ensure that requests are specific and complete with all necessary information.
Measures taken/relevant developments:	
Please refer to the Recs 6 and 7.	
Rec 13	Pursuant to Article 25.5 Budapest Convention and Paragraph 259 Explanatory Report, Parties are reminded to apply the dual criminality standard in a flexible manner that will facilitate the granting of assistance.
Measures taken/relevant developments:	
Dual criminality requirement is considered due to the Budapest Convention Article 25.5 and other MLA-regulating relevant Conventions.	
Rec 14	Parties are encouraged to consult with authorities of requested Party prior to sending requests, when necessary.
Measures taken/relevant developments:	
The preliminary consultations can be provided, and email communications are preferred.	
Rec 15	Parties should consider ensuring transparency regarding requirements for mutual assistance requests, and reasons for refusal, including thresholds for minor cases, on the websites of central authorities.
Measures taken/relevant developments:	
The grounds for refusal for MLARs are prescribed by the Convention in issue and by the article 477 of the Armenian CPC.	

Question 2: Please provide information on time periods for preservation requests under Article 29 Budapest Convention in your country.

Armenia

Rec 16 The T-CY should facilitate greater transparency regarding the time period for data preservation upon a foreign preservation request in line with Article 29 Budapest Convention. The T-CY should document time periods.

Time periods for preservation of data following a foreign request:

There are no regulatory framework and thus no specific time limits for either retention or preservation of data under Armenian legislation.

Conditions and periods to extend or renew the preservation of specified data:

## Australia

### 1.3 Australia

Question 1: Please provide information on measures taken or on relevant developments with respect to each of the following Recommendations. Please attach additional information as appropriate.

<p>Rec 1 Parties should fully implement and apply the provisions of the Budapest Convention on Cybercrime, including preservation powers (follow up to T-CY Assessment Report 2012).</p>
<p>Measures taken/relevant developments:</p> <p>The Cybercrime Legislation Amendment Act 2012 was passed to ensure that Australian legislation meets all the Convention's requirements, subject to certain reservations. Preservation powers were introduced in this legislation.</p>
<p>Rec 2 Parties should consider maintaining statistics or establish other mechanisms to monitor the efficiency of the mutual legal assistance process related to cybercrime and electronic evidence.</p>
<p>Measures taken/relevant developments:</p> <p>The Central Authority maintains a database of all mutual assistance cases, including those relating to cybercrime and electronic evidence. The database enables the Central Authority to produce statistics about the number of cases in particular categories (including by country of origin, offence type and assistance type). The Central Authority is currently reviewing its casework management requirements with a view to developing a new database that provides greater operability and flexibility. The Central Authority continually monitors and reviews casework practices for responsiveness and efficiency.</p>
<p>Rec 3 Parties should consider allocating more and more technology-literate staff for mutual legal assistance not only at central levels but also at the level of institutions responsible for executing requests (such as local prosecution offices).</p>
<p>Measures taken/relevant developments:</p> <p>The Central Authority provides induction and ongoing training to case officers in an attempt to keep abreast of developing technologies, both in relation to the use of those technologies by criminal elements (as impacts how we make and action mutual assistance requests) and in how new and emerging technologies can assist us to respond to requests for mutual legal assistance.</p>
<p>Rec 4 Parties should consider providing for better training to enhance mutual legal assistance, police-to-police and other forms of international cooperation on cybercrime and electronic evidence. Training and experience exchange should in particular target prosecutors and judges and encourage direct cooperation between judicial authorities. Such training should be supported by the capacity building programmes of the Council of Europe and other organisations.</p>
<p>Measures taken/relevant developments:</p> <p>The Central Authority engages with domestic and international partners to share knowledge and expertise and build capacity in all forms of international cooperation. The Central Authority welcomes opportunities to engage in and be supported by available mechanisms for training and cooperation with our partners.</p>

## Australia

Rec 5 Parties and the Council of Europe should work toward strengthening the role of 24/7 points of contact in line with Article 35 Budapest Convention, including through:

- a. Ensuring, pursuant to article 35.3 Budapest Convention that trained and equipped personnel is available to facilitate the operative work and conduct or support mutual legal assistance (MLA) activities
  - b. Encouraging contact points to pro-actively promote their role among domestic and foreign counterpart authorities;
  - c. Conducting regular meetings and training of the 24/7 network among the Parties;
  - d. Encouraging competent authorities and 24/7 points of contact to consider procedures to follow up to and provide feedback to the requesting State on Article 31 requests;
  - e. Considering to establish, where feasible, contact points in prosecution offices to permit a more direct role in mutual legal assistance and a quicker response to requests;
  - f. Facilitating 24/7 points of contact to play a supportive role in "Article 31" requests.

Measures taken/relevant developments:

The Central Authority supports law enforcement and other 24/7 agencies to facilitate mutual legal assistance matters. The Central Authority provides on-call details to our operational partners to support these activities.

Rec 6 Parties should consider streamlining the procedures and reduce the number of steps required for mutual assistance requests at the domestic level. Parties should share good practices in this respect with the T-CY.

Measures taken/relevant developments:

The Central Authority continually critically assesses its processes with a view to streamlining procedures and the steps required to action mutual assistance requests, while still complying with domestic and international obligations for the lawful provision of assistance. For example, in the past year, the Central Authority has successfully implemented changes to enable certain delegations under the *Mutual Assistance in Criminal Matters Act* (the legislation that governs much of Australia's mutual assistance processes) to be exercised by decision-makers within the Central Authority. This has reduced the volume of briefing, the number of steps, and timeframes related to executing incoming mutual assistance requests. Efficiencies have also been found in processing outgoing mutual assistance requests as a result.

Rec 7 Parties should make use of all available channels for international cooperation. This may include formal mutual legal assistance, police to police cooperation and others.

Measures taken/relevant developments:

Where the laws of Australia and the relevant foreign country allow, the Central Authority encourages alternative avenues for international cooperation including police-to-police and agency-to-agency cooperation, particularly in the early stages of investigations.

Rec 8 Parties are encouraged to establish emergency procedures for requests related to risks of life and similar exigent circumstances. The T-CY should document practices by Parties and providers.

## Australia

Measures taken/relevant developments:	
Australia has previously provided a response regarding emergency procedures under Australian law. This response is available in T – CY (2016) 13.	
Rec 9	Parties should confirm receipt of requests systematically and give, upon request, notice of action taken.
Measures taken/relevant developments:	
The Central Authority has established a process whereby new requests (incoming and outgoing) are assigned a file reference and acknowledged in writing (preferably email) within 2-5 business days of receipt. Once a request is assigned to a case officer in the Central Authority for action, the case officer provides direct contact details to relevant stakeholders (foreign and domestic) facilitate updates.	
Rec 10	Parties may consider the opening of domestic investigation upon a foreign request or spontaneous information to facilitate the sharing of information or accelerate MLA.
Measures taken/relevant developments:	
Where appropriate, the Central Authority refers information to the Australian Federal Police to consider whether to commence a domestic investigation or to facilitate information sharing between operational agencies.	
Rec 11	Parties should make use of electronic transmission of requests in line with Article 25.3 Budapest Convention on expedited means of communication.
Measures taken/relevant developments:	
The Central Authority is able to receive mutual assistance requests from foreign authorities in electronic form. The Central Authority prepares Australian mutual assistance requests based on the electronic submission of material by domestic agencies, and where possible provides advance copies by email to foreign authorities. The Central Authority welcomes advice from our partners about preferences for submission of mutual assistance requests.	
Rec 12	Parties should ensure that requests are specific and complete with all necessary information.
Measures taken/relevant developments:	
The Central Authority uses a standard format for all Australian requests, which includes specific categories of information required by our partners. The Central Authority endeavours to make requests that are targeted, specific and complete with respect to information required by requested countries and in setting out Australia's requirements for response. The Central Authority welcomes feedback from our foreign partners about specific requirements for inclusion in Australia's requests to facilitate international cooperation.	
Rec 13	Pursuant to Article 25.5 Budapest Convention and Paragraph 259 Explanatory Report, Parties are

Australia

reminded to apply the dual criminality standard in a flexible manner that will facilitate the granting of assistance.	
Measures taken/relevant developments:	
The Central Authority takes a conduct-based approach to dual criminality. A clear description of the conduct alleged should therefore be included in all mutual assistance requests to assist Australia to flexibly apply domestic offences.	
Rec 14	Parties are encouraged to consult with authorities of requested Party prior to sending requests, when necessary.
Measures taken/relevant developments:	
The Central Authority maintains direct lines of communication with our foreign partners wherever possible and consults on requests that may be unique, particularly sensitive or time critical, or on questions of procedure.	
Rec 15	Parties should consider ensuring transparency regarding requirements for mutual assistance requests, and reasons for refusal, including thresholds for minor cases, on the websites of central authorities.
Measures taken/relevant developments:	
The <i>Mutual Assistance in Criminal Matters Act</i> sets out requirements, including grounds for refusal and minimum thresholds in certain matters, for Australia's conduct of mutual assistance requests. The Act is available online from a number of sources. Australia's conduct of mutual assistance requests may also be set out in bilateral treaties, which are also available online via the Australian Department of Foreign Affairs and Trade treaties database. Where a decision is made to refuse a request, reasons are provided in writing to the requesting authority and opportunities given for further clarification or information to be provided if it may assist Australia to reconsider the request.	

Question 2: Please provide information on time periods for preservation requests under Article 29 Budapest Convention in your country.

Rec 16	The T-CY should facilitate greater transparency regarding the time period for data preservation upon a foreign preservation request in line with Article 29 Budapest Convention. The T-CY should document time periods.
Time periods for preservation of data following a foreign request:	
Division 3 of Part 3-1A of the Telecommunications (Interception and Access) Act 1979 specifies that a carrier must preserve communications held on the day a foreign preservation notice is served until they receive notice from the Australian Federal Police that the preservation notice has been revoked. The Australian Federal Police must revoke a preservation notice if a foreign country did not make a request to the Attorney-General for data for a period of 180 days.	
Conditions and periods to extend or renew the preservation of specified data:	



## Australia

No mechanism exists to extend or renew the preservation of specified data. The requesting country needs to complete a new preservation request. The effective preservation period of 180 days exceeds the minimum 60 days stipulated in Article 29.

## Austria

### 1.4 Austria

Question 1: Please provide information on measures taken or on relevant developments with respect to each of the following Recommendations. Please attach additional information as appropriate.

Rec 1	Parties should fully implement and apply the provisions of the Budapest Convention on Cybercrime, including preservation powers (follow up to T-CY Assessment Report 2012).
Measures taken/relevant developments:	
Austria has ratified the Budapest Convention on June 13th 2012, but not yet the Additional Protocol on Xenophobia and Racism.	
Rec 2	Parties should consider maintaining statistics or establish other mechanisms to monitor the efficiency of the mutual legal assistance process related to cybercrime and electronic evidence.
Measures taken/relevant developments:	
No statistics available.	
Rec 3	Parties should consider allocating more and more technology-literate staff for mutual legal assistance not only at central levels but also at the level of institutions responsible for executing requests (such as local prosecution offices).
Measures taken/relevant developments:	
In Austria the cooperation between the prosecution offices and the computer experts in the central police office is fast, flexible and efficient. Furthermore each Regional Court and each Prosecution Office has technical staff able to give support.	
Rec 4	Parties should consider providing for better training to enhance mutual legal assistance, police-to-police and other forms of international cooperation on cybercrime and electronic evidence. Training and experience exchange should in particular target prosecutors and judges and encourage direct cooperation between judicial authorities. Such training should be supported by the capacity building programmes of the Council of Europe and other organisations.
Measures taken/relevant developments:	
The Ministry of Justice and the Senior Prosecution Offices which are in charge of education have increased the number of relevant training events the last years, not only for Trainee Judges, but also for Judges and Prosecutors on national level. In addition to that the Ministry of Justice publishes all relevant international trainings on international level on the intranet and encourages judges and prosecutors to take part therein.	
Rec 5	Parties and the Council of Europe should work toward strengthening the role of 24/7 points of contact in line with Article 35 Budapest Convention, including through:

Austria

- a. Ensuring, pursuant to article 35.3 Budapest Convention that trained and equipped personnel is available to facilitate the operative work and conduct or support mutual legal assistance (MLA) activities
  - b. Encouraging contact points to pro-actively promote their role among domestic and foreign counterpart authorities;
  - c. Conducting regular meetings and training of the 24/7 network among the Parties;
  - d. Encouraging competent authorities and 24/7 points of contact to consider procedures to follow up to and provide feedback to the requesting State on Article 31 requests;
  - e. Considering to establish, where feasible, contact points in prosecution offices to permit a more direct role in mutual legal assistance and a quicker response to requests;
  - f. Facilitating 24/7 points of contact to play a supportive role in "Article 31" requests.

Measures taken/relevant developments:

The presentation in the last T-CY Plenary has shown, that the 24/7 contact points work very well in Austria.

Rec 6 Parties should consider streamlining the procedures and reduce the number of steps required for mutual assistance requests at the domestic level. Parties should share good practices in this respect with the T-CY.

Measures taken/relevant developments:

The Ministry of Justice has developed a "best-practice-information" sorted by country on its intranet.

Rec 7 Parties should make use of all available channels for international cooperation. This may include formal mutual legal assistance, police to police cooperation and others.

Measures taken/relevant developments:

The Ministry of Justice, prosecutors, judges and police use all available channels which are suitable in the concrete case.

Rec 8 Parties are encouraged to establish emergency procedures for requests related to risks of life and similar exigent circumstances. The T-CY should document practices by Parties and providers.

Measures taken/relevant developments:

Information has already been provided.

Rec 9 Parties should confirm receipt of requests systematically and give, upon request, notice of action taken.

Measures taken/relevant developments:

Austria

<p>The Ministry of Justice confirms receipt of request, if the other party so wishes. The Ministry of Justice has no information if the prosecution offices confirm in general but they certainly do it on demand of the requesting authority. Both the Ministry of Justice and the Prosecution offices inform about the action taken in short time.</p>	
Rec 10	<p>Parties may consider the opening of domestic investigation upon a foreign request or spontaneous information to facilitate the sharing of information or accelerate MLA.</p>
<p>Measures taken/relevant developments:</p> <p>Domestic investigations are often opened upon a foreign request.</p>	
Rec 11	<p>Parties should make use of electronic transmission of requests in line with Article 25.3 Budapest Convention on expedited means of communication.</p>
<p>Measures taken/relevant developments:</p> <p>Electronic transmission is often used.</p>	
Rec 12	<p>Parties should ensure that requests are specific and complete with all necessary information.</p>
<p>Measures taken/relevant developments:</p> <p>No problems known insofar.</p>	
Rec 13	<p>Pursuant to Article 25.5 Budapest Convention and Paragraph 259 Explanatory Report, Parties are reminded to apply the dual criminality standard in a flexible manner that will facilitate the granting of assistance.</p>
<p>Measures taken/relevant developments:</p> <p>No problems known insofar.</p>	
Rec 14	<p>Parties are encouraged to consult with authorities of requested Party prior to sending requests, when necessary.</p>
<p>Measures taken/relevant developments:</p> <p>This happens, whenever it seems to be necessary.</p>	
Rec 15	<p>Parties should consider ensuring transparency regarding requirements for mutual assistance requests, and reasons for refusal, including thresholds for minor cases, on the websites of central authorities.</p>
<p>Measures taken/relevant developments:</p>	

Austria

See above - Rec 6

Question 2: Please provide information on time periods for preservation requests under Article 29 Budapest Convention in your country.

Rec 16 The T-CY should facilitate greater transparency regarding the time period for data preservation upon a foreign preservation request in line with Article 29 Budapest Convention. The T-CY should document time periods.

Time periods for preservation of data following a foreign request:

Preservation of data is not limited by any time limit.

Conditions and periods to extend or renew the preservation of specified data:

An extension or renewal is possible subject to the receipt of a request of the requesting state and the proportionality of the continued preservation. Time limits or periods are not foreseen.

## Azerbaijan

### 1.5 Azerbaijan

Question 1: Please provide information on measures taken or on relevant developments with respect to each of the following Recommendations. Please attach additional information as appropriate.

Rec 1	Parties should fully implement and apply the provisions of the Budapest Convention on Cybercrime, including preservation powers (follow up to T-CY Assessment Report 2012).
Measures taken/relevant developments:	
Some provisions of the Budapest Convention are incorporated into the Criminal Code of the Republic of Azerbaijan (271-273.2 Articles); however, the preservation powers have not yet been determined in the legislation of the Republic of Azerbaijan (see: legal country profile information). The development is still underway.	
Rec 2	Parties should consider maintaining statistics or establish other mechanisms to monitor the efficiency of the mutual legal assistance process related to cybercrime and electronic evidence.
Measures taken/relevant developments:	
The General Prosecutor's Office and the Ministry of Justice maintain general statistics of the requests of the mutual legal assistance, including the requests related to cybercrime.	
Rec 3	Parties should consider allocating more and more technology-literate staff for mutual legal assistance not only at central levels but also at the level of institutions responsible for executing requests (such as local prosecution offices).
Measures taken/relevant developments:	
The relevant agencies of the Republic of Azerbaijan allocate technology-literate staff for mutual legal assistance both at central levels and at the level of institutions responsible for executing requests.	
Rec 4	Parties should consider providing for better training to enhance mutual legal assistance, police-to-police and other forms of international cooperation on cybercrime and electronic evidence. Training and experience exchange should in particular target prosecutors and judges and encourage direct cooperation between judicial authorities. Such training should be supported by the capacity building programmes of the Council of Europe and other organisations.
Measures taken/relevant developments:	
Training and experience sharing in this field are carried out with the European Union and Council of Europe Programmatic Cooperation Framework in the eastern Partnership region. Moreover, the Academy of the Ministry of Justice and the Academy of the State Security Service conduct substantive trainings on a variety of topics in the field of cybercrime for the officials of relevant government agencies in cooperation with international experts.	
Rec 5	Parties and the Council of Europe should work toward strengthening the role of 24/7 points of contact in line with Article 35 Budapest Convention, including through:

## Azerbaijan

- a. Ensuring, pursuant to article 35.3 Budapest Convention that trained and equipped personnel is available to facilitate the operative work and conduct or support mutual legal assistance (MLA) activities
  - b. Encouraging contact points to pro-actively promote their role among domestic and foreign counterpart authorities;
  - c. Conducting regular meetings and training of the 24/7 network among the Parties;
  - d. Encouraging competent authorities and 24/7 points of contact to consider procedures to follow up to and provide feedback to the requesting State on Article 31 requests;
  - e. Considering to establish, where feasible, contact points in prosecution offices to permit a more direct role in mutual legal assistance and a quicker response to requests;
  - f. Facilitating 24/7 points of contact to play a supportive role in "Article 31" requests.

Measures taken/relevant developments:

Two employes of the State Security service are 24/7 contact point of contacts and this network plays a supportive role in the activities of mutual legal assistance.

Rec 6 Parties should consider streamlining the procedures and reduce the number of steps required for mutual assistance requests at the domestic level. Parties should share good practices in this respect with the T-CY.

Measures taken/relevant developments:

The general prosecutor's Office has recently changed the internal regulation of the International relations department and according to these changes, urgent and important MLA requests will be executed by the prosecutors of the Department.

Rec 7 Parties should make use of all available channels for international cooperation. This may include formal mutual legal assistance, police to police cooperation and others.

Measures taken/relevant developments:

Relevant agencies make use of all available channels for international cooperation. It includes both formal and informal channels for communication related to risk of life and similar exigent circumstances.

Rec 8 Parties are encouraged to establish emergency procedures for requests related to risks of life and similar exigent circumstances. The T-CY should document practices by Parties and providers.

Measures taken/relevant developments:

The legislation of the Republic of Azerbaijan does not define emergency procedures for requests related to risk of life and similar exigent circumstances.

Rec 9 Parties should confirm receipt of requests systematically and give, upon request, notice of action taken.

Measures taken/relevant developments:

## Azerbaijan

<p>24/7 contact point confirms the receipt of requests immediately and gives, upon request, notice of actions taken.</p>	
Rec 10	<p>Parties may consider the opening of domestic investigation upon a foreign request or spontaneous information to facilitate the sharing of information or accelerate MLA.</p>
<p>Measures taken/relevant developments:</p> <p>The General Prosecutor's office has not yet forwarded spontaneous information to another state; however, the office received this kind of information several times and considers this useful. This is regulated by the Law of the Republic of Azerbaijan "On legal assistance in criminal matters" dated 29 June 2001.</p>	
Rec 11	<p>Parties should make use of electronic transmission of requests in line with Article 25.3 Budapest Convention on expedited means of communication.</p>
<p>Measures taken/relevant developments:</p> <p>The relevant agencies of the Republic of Azerbaijan make use of electronic transmission of requests in urgent cases or upon request of state.</p>	
Rec 12	<p>Parties should ensure that requests are specific and complete with all necessary information.</p>
<p>Measures taken/relevant developments:</p> <p>The relevant agencies of the republic of Azerbaijan make sure that requests on mutual legal assistance are specific and complete with all necessary information.</p>	
Rec 13	<p>Pursuant to Article 25.5 Budapest Convention and Paragraph 259 Explanatory Report, Parties are reminded to apply the dual criminality standard in a flexible manner that will facilitate the granting of assistance.</p>
<p>Measures taken/relevant developments:</p> <p>The General prosecutor's Office applies the dual criminality standard in flexible manner in cases of executing MLA requests.</p>	
Rec 14	<p>Parties are encouraged to consult with authorities of requested Party prior to sending requests, when necessary.</p>
<p>Measures taken/relevant developments:</p> <p>The relevant agencies of Azerbaijan consult with authorities of requested party prior to sending requests.</p>	
Rec 15	<p>Parties should consider ensuring transparency regarding requirements for mutual assistance requests, and reasons for refusal, including thresholds for minor cases, on the websites of central authorities.</p>
<p>Measures taken/relevant developments:</p> <p>The relevant agencies inform either officially or at the working level the other part in case of refusal.</p>	



Azerbaijan

Question 2: Please provide information on time periods for preservation requests under Article 29 Budapest Convention in your country.

Rec 16 The T-CY should facilitate greater transparency regarding the time period for data preservation upon a foreign preservation request in line with Article 29 Budapest Convention. The T-CY should document time periods.

Time periods for preservation of data following a foreign request:

Conditions and periods to extend or renew the preservation of specified data:

## Belgium

### 1.6 Belgium

Question 1: Please provide information on measures taken or on relevant developments with respect to each of the following Recommendations. Please attach additional information as appropriate.

Rec 1	Parties should fully implement and apply the provisions of the Budapest Convention on Cybercrime, including preservation powers (follow up to T-CY Assessment Report 2012).
Measures taken/relevant developments:	
The convention is ratified and implemented.	
Rec 2	Parties should consider maintaining statistics or establish other mechanisms to monitor the efficiency of the mutual legal assistance process related to cybercrime and electronic evidence.
Measures taken/relevant developments:	
The central authorities database is amended in order to include the relevant offences for each type of international cooperation in criminal matters, "cybercrime offences" are part of the list of offences.	
Rec 3	Parties should consider allocating more and more technology-literate staff for mutual legal assistance not only at central levels but also at the level of institutions responsible for executing requests (such as local prosecution offices).
Measures taken/relevant developments:	
As to the training of judicial staff (prosecutors, judges and administrative staff of both the prosecutor's offices and the courts): see Rec 4.	
Rec 4	Parties should consider providing for better training to enhance mutual legal assistance, police-to-police and other forms of international cooperation on cybercrime and electronic evidence. Training and experience exchange should in particular target prosecutors and judges and encourage direct cooperation between judicial authorities. Such training should be supported by the capacity building programmes of the Council of Europe and other organisations.
Measures taken/relevant developments:	
There is twofold dedicated cybercrime training, including international cooperation aspects is organised twice every year: a basic course and an advanced course. The trainers include prosecutors, specialized police officers and the central authority.	
Each year, all trainee magistrates (obligatory) and other magistrates receive a 3-day course on international police and judicial cooperation. The MLA-session also comprises cooperation in cybercrime / electronic evidence matters.	

## Belgium

Rec 5 Parties and the Council of Europe should work toward strengthening the role of 24/7 points of contact in line with Article 35 Budapest Convention, including through:

- a. Ensuring, pursuant to article 35.3 Budapest Convention that trained and equipped personnel is available to facilitate the operative work and conduct or support mutual legal assistance (MLA) activities
  - b. Encouraging contact points to pro-actively promote their role among domestic and foreign counterpart authorities;
  - c. Conducting regular meetings and training of the 24/7 network among the Parties;
  - d. Encouraging competent authorities and 24/7 points of contact to consider procedures to follow up to and provide feedback to the requesting State on Article 31 requests;
  - e. Considering to establish, where feasible, contact points in prosecution offices to permit a more direct role in mutual legal assistance and a quicker response to requests;
  - f. Facilitating 24/7 points of contact to play a supportive role in "Article 31" requests.

Measures taken/relevant developments:

At the EU (including Eurojust and EJM), the CoE and the UN as well as bilateral levels, contact point-sheets and additional dedicated MLA and Extradition fact sheets have been prepared and updated (yearly).

Contact points have regular meetings, esp. at the EJM level and at the CoE level (P-TY and PC-OC, apart from dedicate meetings in other domains that involve international cooperation, at least potentially re. electronic evidence) regular meetings involving the central authorities in general and / or dedicated contact points in particular are held.

Training on general aspects re. international cooperation in criminal matters and on cybercrime in particular are provided for prosecutors and judges on a yearly basis.

International cooperation is pooled in dedicate , specialized prosecutor's offices, i.e. one or two (maximum) per province following the general reshaping of the judicial landscape. In other fields of expertise, similar pools of dedicated prosecuting offices were established.

Rec 6 Parties should consider streamlining the procedures and reduce the number of steps required for mutual assistance requests at the domestic level. Parties should share good practices in this respect with the T-CY.

Measures taken/relevant developments:

The requirement for a double (before executing incoming MLA-requests and afterwards for the transmission of seized evidence) authorization for house searches and seizures will be abolished as early as during the first half of 2017.

Rec 7 Parties should make use of all available channels for international cooperation. This may include formal mutual legal assistance, police to police cooperation and others.

Measures taken/relevant developments:

## Belgium

Direct transmission between the relevant judicial authorities is common practise at the UE-level – since the 29 May 2000 MLA Convention and at the CoE-level since the entering into force of the 2001 2<sup>nd</sup> Additional Protocol and even before in urgent matters since the entering into force of the 1959 MLA Convention.

Police transmission channels are commonly used, esp. for the preparation of MLA requests seeking electronic data and evidence abroad (mainly in the United States).

Rec 8 Parties are encouraged to establish emergency procedures for requests related to risks of life and similar exigent circumstances. The T-CY should document practices by Parties and providers.

Measures taken/relevant developments:

Emergency (very urgent) requests when risk of life is apparent are applied. In those cases police channels are used as well as direct communication via liaison officers both located in Belgium and abroad.

Requests for freezing of data and to the widest extent possible, requests for registry data are transmitted directly to the providers in accordance with the providers' compliance policy.

Rec 9 Parties should confirm receipt of requests systematically and give, upon request, notice of action taken.

Measures taken/relevant developments:

Confirmation of receipt is not automatically provided, at least as the judicial and the executive (Ministry of Justice) level is concerned. Insofar the requested Party explicitly requests to confirm the receipt as well as in high profile / important and / or urgent matters, the receipt is confirmed, usually via the most efficient channel of communication available (e-mail).

Rec 10 Parties may consider the opening of domestic investigation upon a foreign request or spontaneous information to facilitate the sharing of information or accelerate MLA.

Measures taken/relevant developments:

Spontaneous information is upon evaluation by the proper prosecuting authorities, transmitted to the police services. At that point the information becomes police information and part of the police database. The information is perfectly exploitable for the purpose of either a new or an existing investigation. Insofar the information should be used as judicial evidence, either authorization is sought from the Party that has initially furnished the information or – after consultations – via a proper mutual legal assistance request.

Rec 11 Parties should make use of electronic transmission of requests in line with Article 25.3 Budapest Convention on expedited means of communication.

Measures taken/relevant developments:

## Belgium

Dedicated 'Budapest' requests are being transmitted electronically. Since most MLA-requests concern other evidence than just 'Budapest evidence', the great majority of requests relies on the applicable bi- or multilateral MLA-instrument. The transmission remains thus rather 'traditional', even when drafts and (urgent) finished requests are also transmitted by e-mail, often as well to the proper law enforcement service.

Rec 12 Parties should ensure that requests are specific and complete with all necessary information.

Measures taken/relevant developments:

Given the yearly training, including one full day dedicated to MLA and the use of (binding) guidelines containing detailed explanation on the drafting of requests, all Belgian prosecutors and investigating judges have proper guidance on the drafting of MLA (and other) requests.

Rec 13 Pursuant to Article 25.5 Budapest Convention and Paragraph 259 Explanatory Report, Parties are reminded to apply the dual criminality standard in a flexible manner that will facilitate the granting of assistance.

Measures taken/relevant developments:

Double Criminality is not a requirement for MLA, except when coercive measures are requested. In the latter cases it is sufficient that the (f)acts are punishable with a minimum prison sentence of at least one year.

Dual criminality is evaluated in abstracto and thus does not require any equivalent offences, nor is it required that (all) elements of the offence are identical or even similar.

Rec 14 Parties are encouraged to consult with authorities of requested Party prior to sending requests, when necessary.

Measures taken/relevant developments:

The transmission of draft MLA-requests is generally encouraged and applied, esp. in complex cases, including cases re. cybercrime. Drafts are either transmitted directly (even when the applicable MLA-Treaty or Convention does not contain a provision allowing direct communication) or via the central authority.

Rec 15 Parties should consider ensuring transparency regarding requirements for mutual assistance requests, and reasons for refusal, including thresholds for minor cases, on the websites of central authorities.

Measures taken/relevant developments:

The Belgian Central Authority does not have a dedicated website, however fact sheets for MLA, Extradition and other types of international cooperation in criminal matters are posted on the PC-OC's website. These include a brief explanation of the Belgian MLA-process in general.

Belgium

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Question 2: Please provide information on time periods for preservation requests under Article 29 Budapest Convention in your country.

Rec 16 The T-CY should facilitate greater transparency regarding the time period for data preservation upon a foreign preservation request in line with Article 29 Budapest Convention. The T-CY should document time periods.
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Time periods for preservation of data following a foreign request:
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Conditions and periods to extend or renew the preservation of specified data:
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## Bosnia and Herzegovina

### 1.7 Bosnia and Herzegovina

Question 1: Please provide information on measures taken or on relevant developments with respect to each of the following Recommendations. Please attach additional information as appropriate.

<p>Rec 1 Parties should fully implement and apply the provisions of the Budapest Convention on Cybercrime, including preservation powers (follow up to T-CY Assessment Report 2012).</p>
<p>Measures taken/relevant developments:</p> <p>The Convention on Cybercrime provisions have been incorporated into the Criminal Code of the Federation of Bosnia and Herzegovina (Articles 393 through 398 of Chapter XXXII – Criminal Offences Relating to Electronic Data Processing), the Criminal Code of Brcko District of Bosnia and Herzegovina (Articles 387 through 392 of Chapter XXXII - Criminal Offences Relating to System of Electronic Data Processing), and the Criminal Code of the Republika Srpska (Articles 292a through 292e of Chapter XXIV - Criminal Offenses Relating to the Computer Security) – all of them being considered as partly harmonized.</p> <p>Bosnia and Herzegovina is participating in the iPROCEEDS Project, which is a joint project of the European Union and the Council of Europe on cooperation in combating cybercrime. The project would last for 25 months, and is to be completed on 31/12/2019. Having in mind that one of the project's objectives concern better compliance of national cybercrime legislation with international standards, which includes the Budapest Convention, the activities relating to this area are expected in the forthcoming period.</p>
<p>Rec 2 Parties should consider maintaining statistics or establish other mechanisms to monitor the efficiency of the mutual legal assistance process related to cybercrime and electronic evidence.</p>
<p>Measures taken/relevant developments:</p> <p>A database to allow the monitoring of such statistical data is in process of establishment.</p>
<p>Rec 3 Parties should consider allocating more and more technology-literate staff for mutual legal assistance not only at central levels but also at the level of institutions responsible for executing requests (such as local prosecution offices).</p>
<p>Measures taken/relevant developments:</p> <p>This is a continuous subject matter of Structured Dialogue on Justice Sector, which includes the undertakings to improve the field of professional trainings of staff on provision of this type of legal assistance.</p>
<p>Rec 4 Parties should consider providing for better training to enhance mutual legal assistance, police-to-police and other forms of international cooperation on cybercrime and electronic evidence. Training and experience exchange should in particular target prosecutors and judges and encourage direct cooperation between judicial authorities. Such training should be</p>

## Bosnia and Herzegovina

supported by the capacity building programmes of the Council of Europe and other organisations.

Measures taken/relevant developments:

Our judges and prosecutors undergo targeted trainings, which also include these topics. The Centers for Education of Judges and Prosecutors conduct such trainings in cooperation with the High Judicial and Prosecutorial Council, where the Ministry of Justice of Bosnia and Herzegovina would use the channel of the Structural Dialogue on Justice Sector to advocate the intensification of such trainings for targeted groups.

Rec 5 Parties and the Council of Europe should work toward strengthening the role of 24/7 points of contact in line with Article 35 Budapest Convention, including through:

- a. Ensuring, pursuant to Article 35.3 Budapest Convention that trained and equipped personnel is available to facilitate the operative work and conduct or support mutual legal assistance (MLA) activities
  - b. Encouraging contact points to pro-actively promote their role among domestic and foreign counterpart authorities;
  - c. Conducting regular meetings and training of the 24/7 network among the Parties;
  - d. Encouraging competent authorities and 24/7 points of contact to consider procedures to follow up to and provide feedback to the requesting State on Article 31 requests;
  - e. Considering to establish, where feasible, contact points in prosecution offices to permit a more direct role in mutual legal assistance and a quicker response to requests;
  - f. Facilitating 24/7 points of contact to play a supportive role in "Article 31" requests.

Measures taken/relevant developments:

The Prosecutor's Office of Bosnia and Herzegovina possesses a point of contact for Eurojust. BiH is in the process of negotiation to access Eurojust, which would allow for more efficient communication.

The Convention's Article 35 obliges each country to nominate a 24/7 point of contact for assistance in emergencies caused by cybercrimes.

Following the BiH Ministry of Security's invitation, a representative of the Directorate for Coordination of Police Bodies has been appointed by the end of 2011 as a 24/7 contact for Bosnia and Herzegovina.

Rec 6 Parties should consider streamlining the procedures and reduce the number of steps required for mutual assistance requests at the domestic level. Parties should share good practices in this respect with the T-CY.

Measures taken/relevant developments:

This matter is regulated by the Law on Mutual Legal Assistance in Criminal Matters, which envisages the simplified procedures, so the authorities dealing with such cases should be encouraged to use them.

Rec 7 Parties should make use of all available channels for international cooperation. This may include formal mutual legal assistance, police to police cooperation and others.



## Bosnia and Herzegovina

Measures taken/relevant developments:	
<p>The Law on Mutual Legal Assistance in Criminal Matters prioritizes all international agreements settling this field, so all the channels of communication provided by international agreements are allowed. Still, the Judiciary and police structures should be encouraged to use them to the extent permitted by international agreements.</p>	
Rec 8	Parties are encouraged to establish emergency procedures for requests related to risks of life and similar exigent circumstances. The T-CY should document practices by Parties and providers.
Measures taken/relevant developments:	
<p>The answer is the same as the one provided under Rec 7.</p>	
Rec 9	Parties should confirm receipt of requests systematically and give, upon request, notice of action taken.
Measures taken/relevant developments:	
<p>In mutual assistance procedures, the Ministry of Justice of Bosnia and Herzegovina is the central contact authority and, as such, notifies an applicant: on receipt of the request (if required); to whom the request was referred to, and; on the status of requested case.</p>	
Rec 10	Parties may consider the opening of domestic investigation upon a foreign request or spontaneous information to facilitate the sharing of information or accelerate MLA.
Measures taken/relevant developments:	
<p>The answer is the same as the one provided under Rec 7.</p>	
Rec 11	Parties should make use of electronic transmission of requests in line with Article 25.3 Budapest Convention on expedited means of communication.
Measures taken/relevant developments:	
<p>This possibility is also allowed. However, to ensure that the case is recorded, monitored, and available for both the statistics and the other specific actions carried by the central contacting authority, the direct communication has to be conducted by inserting the BiH Ministry of Justice in the Cc. (to inform them on the subject).</p>	
Rec 12	Parties should ensure that requests are specific and complete with all necessary information.

## Bosnia and Herzegovina

Measures taken/relevant developments:

Consistent application of the agreement would ensure compliance with the above set conditions, so it is only required to encourage the relevant authorities to directly apply the Convention instead of exclusive use of the other general provisions of bilateral and multilateral agreements settling this field. For example, it was noticed that the acting authorities refer to a bilateral agreement or the European Convention on Mutual Assistance in Criminal Matters, and disregard the provisions of the Convention in question.

Rec 13 Pursuant to Article 25.5 Budapest Convention and Paragraph 259 Explanatory Report, Parties are reminded to apply the dual criminality standard in a flexible manner that will facilitate the granting of assistance.

Measures taken/relevant developments:

Law on Mutual Legal Assistance in Criminal Matters enables the application of standards of dual criminality in a very flexible way, so the fulfillment of this principle does not require the identity of norms or the identity of the offense. Namely, the only prerequisite is that an action requiring the assistance contains a form of any criminal offence in Bosnia and Herzegovina.

Rec 14 Parties are encouraged to consult with authorities of requested Party prior to sending requests, when necessary.

Measures taken/relevant developments:

Prior to submitting a request for legal assistance, our competent authorities are provided with possibility to informally consult counterpart authorities of the other countries.

Rec 15 Parties should consider ensuring transparency regarding requirements for mutual assistance requests, and reasons for refusal, including thresholds for minor cases, on the websites of central authorities.

Measures taken/relevant developments:

We are of opinion that this matter should be settled through appropriate position determined by the authority for monitoring and implementation of the European Convention on Mutual Assistance in Criminal Matters.

Question 2: Please provide information on time periods for preservation requests under Article 29 Budapest Convention in your country.

Rec 16 The T-CY should facilitate greater transparency regarding the time period for data preservation upon a foreign preservation request in line with Article 29 Budapest Convention. The T-CY should document time periods.

Time periods for preservation of data following a foreign request:

## Bosnia and Herzegovina

To settle this matter, it is necessary to harmonize the Rulebook on Keeping Archived Files and Documents in a way that all files are kept during the period prescribed by the Convention. The only exception would concern the existing electronic databases of the Central Authority that would be permanently kept.

Conditions and periods to extend or renew the preservation of specified data:

To settle this matter, it is necessary to harmonize the Rulebook on Keeping Archived Files and Documents in a way that all files are kept during the period prescribed by the Convention. The only exception would concern the existing electronic databases of the Central Authority that would be permanently kept.

## Bulgaria

### 1.8 Bulgaria

Question 1: Please provide information on measures taken or on relevant developments with respect to each of the following Recommendations. Please attach additional information as appropriate.

<p>Rec 1 Parties should fully implement and apply the provisions of the Budapest Convention on Cybercrime, including preservation powers (follow up to T-CY Assessment Report 2012).</p>
<p>Measures taken/relevant developments:</p> <p>Bulgaria has implemented the provisions of the Budapest Convention.</p> <p>Preservation orders are possible under the broad powers defined in Article 159 of the Criminal Procedure Code which obliges legal and physical persons to “preserve and hand over” computerised data that may be significance to the case.</p> <p>This is ordered by a court or, during pre-trial proceedings, by a prosecutor or the police. Such orders can be obtained rapidly and are issued several times per week. It pertains to all types of data, any crime and any legal or physical person. In addition, search and seizure powers may be used. Moreover, data retention is regulated in the Bulgarian Electronic Communication Act with a period of 6 months.</p> <p>The powers used for expedited preservation at the domestic level can also be applied for international requests. A 24/7 contact point has been established at the Cybercrime Unit, General Directorate for Combating Organised Crime, Ministry of the Interior with trained personnel and national responsibilities and capabilities.</p> <p>A request to the 24/7 CP is sufficient to enable a preservation order within one day.</p>
<p>Rec 2 Parties should consider maintaining statistics or establish other mechanisms to monitor the efficiency of the mutual legal assistance process related to cybercrime and electronic evidence.</p>
<p>Measures taken/relevant developments:</p> <p>There is no specific statistics about cybercrime related legal assistance processes. There is a general one out of which data could be extracted regarding cybercrime matters.</p>
<p>Rec 3 Parties should consider allocating more and more technology-literate staff for mutual legal assistance not only at central levels but also at the level of institutions responsible for executing requests (such as local prosecution offices).</p>
<p>Measures taken/relevant developments:</p> <p>Regarding the issue of building the capacity of law-enforcement entities in Bulgaria, there are a number of courses designed for investigating police officers, prosecutors and judges which are being implemented.</p>
<p>Rec 4 Parties should consider providing for better training to enhance mutual legal assistance, police-to-police and other forms of international cooperation on cybercrime and electronic evidence. Training and experience exchange should in particular target prosecutors and judges and encourage direct cooperation between judicial authorities. Such training should be supported by the capacity building programmes of the Council of Europe and other organisations.</p>

## Bulgaria

Measures taken/relevant developments:	
There are trainings which are provided on a regular basis by the National Institute of Justice, NGOs and internal trainings.	
Rec 5	Parties and the Council of Europe should work toward strengthening the role of 24/7 points of contact in line with Article 35 Budapest Convention, including through: <ul style="list-style-type: none"><li>a. Ensuring, pursuant to article 35.3 Budapest Convention that trained and equipped personnel is available to facilitate the operative work and conduct or support mutual legal assistance (MLA) activities<ul style="list-style-type: none"><li>b. Encouraging contact points to pro-actively promote their role among domestic and foreign counterpart authorities;</li><li>c. Conducting regular meetings and training of the 24/7 network among the Parties;</li><li>d. Encouraging competent authorities and 24/7 points of contact to consider procedures to follow up to and provide feedback to the requesting State on Article 31 requests;</li><li>e. Considering to establish, where feasible, contact points in prosecution offices to permit a more direct role in mutual legal assistance and a quicker response to requests;</li><li>f. Facilitating 24/7 points of contact to play a supportive role in "Article 31" requests.</li></ul></li></ul>
Measures taken/relevant developments:	
The Bulgarian 24/7 CP is constantly conducting meetings with different law-enforcement bodies in Bulgaria to promote it's role and capabilities. It is situated within the cybercrime investigation unit of General Directorate Combating Organized Crime, for the purpose of ensuring it has the properly trained personnel and national responsibilities and capabilities. Through a network of informal connections we maintain good relationship with different bodies, NGOs and private sector.	
Rec 6	Parties should consider streamlining the procedures and reduce the number of steps required for mutual assistance requests at the domestic level. Parties should share good practices in this respect with the T-CY.
Measures taken/relevant developments:	
No recent developments in this regard.	
Rec 7	Parties should make use of all available channels for international cooperation. This may include formal mutual legal assistance, police to police cooperation and others.
Measures taken/relevant developments:	
Bulgarian law enforcement is conducting cooperation with it's counterparts in various ways: by the 24/7 CP, liaison officers, Europol and Interpol channels, MLA. We also have some experience with direct cooperation with foreign service providers (for example Facebook).	
Rec 8	Parties are encouraged to establish emergency procedures for requests related to risks of life and similar exigent circumstances. The T-CY should document practices by Parties and providers.

## Bulgaria

Measures taken/relevant developments:	
Emergency situations are covered by the law in a very general way. When it comes to incoming requests to Bulgaria, we consider them urgent, if the issuing party specifically states that in the request. After that there are procedures (for example: procedure in Electronic Communications Act for access to subscriber and traffic data – the Minister of Interior can specify a concrete time period for which a response from a service provider should be provided) for expedited access to required data.	
Rec 9	Parties should confirm receipt of requests systematically and give, upon request, notice of action taken.
Measures taken/relevant developments:	
The lack of proper confirmation to requests is noted, and we are working on building up on that.	
Rec 10	Parties may consider the opening of domestic investigation upon a foreign request or spontaneous information to facilitate the sharing of information or accelerate MLA.
Measures taken/relevant developments:	
No recent developments on that.	
Rec 11	Parties should make use of electronic transmission of requests in line with Article 25.3 Budapest Convention on expedited means of communication.
Measures taken/relevant developments:	
It is possible to receive electronic only requests through the 24/7 CP. For MLA requests we can receive electronic request in order to start a procedure faster, but generally an official paper request should follow.	
Rec 12	Parties should ensure that requests are specific and complete with all necessary information.
Measures taken/relevant developments:	
No developments in this regard.	
Rec 13	Pursuant to Article 25.5 Budapest Convention and Paragraph 259 Explanatory Report, Parties are reminded to apply the dual criminality standard in a flexible manner that will facilitate the granting of assistance.
Measures taken/relevant developments:	
No developments in this regard.	
Rec 14	Parties are encouraged to consult with authorities of requested Party prior to sending requests, when necessary.
Measures taken/relevant developments:	
Bulgarian law enforcement is actively consulting with authorities of the requested Party prior to sending requests, whenever possible. An example of that is the cooperation with the US authorities through their	

Bulgaria

liaison officers and specially designated person for cooperation in cybercrime investigations.	
Rec 15	Parties should consider ensuring transparency regarding requirements for mutual assistance requests, and reasons for refusal, including thresholds for minor cases, on the websites of central authorities.
Measures taken/relevant developments:	
No recent developments in this regard.	

Question 2: Please provide information on time periods for preservation requests under Article 29 Budapest Convention in your country.

Rec 16	The T-CY should facilitate greater transparency regarding the time period for data preservation upon a foreign preservation request in line with Article 29 Budapest Convention. The T-CY should document time periods.
Time periods for preservation of data following a foreign request:	
Data preservation is 3 months	
Conditions and periods to extend or renew the preservation of specified data:	
No extension possible	

1.9 Canada

Question 1: Please provide information on measures taken or on relevant developments with respect to each of the following Recommendations. Please attach additional information as appropriate.

<p>Rec 1 Parties should fully implement and apply the provisions of the Budapest Convention on Cybercrime, including preservation powers (follow up to T-CY Assessment Report 2012).</p>
<p>Measures taken/relevant developments:</p> <p>In 2014 Canada enacted the Protecting Canadians from Online Crime Act to allow Canada to cooperate more effectively with our global partners in the fight against cybercrime and other crimes that exploit modern technologies, including organized crime, terrorism, and child exploitation offences.</p> <p>Under this new law, Canada has the ability to preserve computer data on police demand or by court order.</p>
<p>Rec 2 Parties should consider maintaining statistics or establish other mechanisms to monitor the efficiency of the mutual legal assistance process related to cybercrime and electronic evidence.</p>
<p>Measures taken/relevant developments:</p> <p>Since the enactment of the Protecting Canadians from Online Crime Act, Canada has been closely monitoring mutual legal assistance requests seeking access to electronic evidence to ensure that the most accurate statistical data is available when needed.</p>
<p>Rec 3 Parties should consider allocating more and more technology-literate staff for mutual legal assistance not only at central levels but also at the level of institutions responsible for executing requests (such as local prosecution offices).</p>
<p>Measures taken/relevant developments:</p> <p>Canada has established a Cyber Unit within the Canadian Central Authority to increase the level of expertise in this complex area of the law and to implement a process that will increase efficiencies and ensure consistency in the review and execution of requests seeking access to computer data. Canada provides training and expertise to the Canadian competent authorities on the mutual legal assistance process, including the process for executing requests seeking computer data.</p>
<p>Rec 4 Parties should consider providing for better training to enhance mutual legal assistance, police-to-police and other forms of international cooperation on cybercrime and electronic evidence. Training and experience exchange should in particular target prosecutors and judges and encourage direct cooperation between judicial authorities. Such training should be supported by the capacity building programmes of the Council of Europe and other organisations.</p>
<p>Measures taken/relevant developments:</p>



## Canada

Canada provides extensive training to Canadian and foreign police and prosecutors on the importance of pursuing international cooperation through agency-to-agency channels whenever possible, and using the mutual legal assistance process only when other, more expedient avenues of cooperation, are not available. Extensive training on cooperation in cybercrime and electronic evidence has been and continues to be provided.

In addition, Canada's Central Authority maintains a comprehensive public website dedicated to providing substantive and procedural guidance to both Canadian and foreign police and prosecutors on how to make an effective mutual legal assistance request. Practical guides and templates are available on this website to ensure transparency and efficiency with respect to Canada's requirements.

Rec 5 Parties and the Council of Europe should work toward strengthening the role of 24/7 points of contact in line with Article 35 Budapest Convention, including through:

- a. Ensuring, pursuant to article 35.3 Budapest Convention that trained and equipped personnel is available to facilitate the operative work and conduct or support mutual legal assistance (MLA) activities
  - b. Encouraging contact points to pro-actively promote their role among domestic and foreign counterpart authorities;
  - c. Conducting regular meetings and training of the 24/7 network among the Parties;
  - d. Encouraging competent authorities and 24/7 points of contact to consider procedures to follow up to and provide feedback to the requesting State on Article 31 requests;
  - e. Considering to establish, where feasible, contact points in prosecution offices to permit a more direct role in mutual legal assistance and a quicker response to requests;
  - f. Facilitating 24/7 points of contact to play a supportive role in "Article 31" requests.

Measures taken/relevant developments:

Canada has a well-staffed Central Authority with 25 lawyers and several paralegals and administrative staff to implement Canada's obligations in extradition and mutual legal assistance matters.

Canada has developed a new centralized mechanism through the 24/7 Point of Contact to optimize requests for electronic evidence, including the preservation of electronic data, in a manner that enhances our ability to address deconfliction when multiple agencies may be requesting the same data and to reduce the risk of unnecessary data destruction.

The Royal Canadian Mounted Police's (RCMP) National Operations Centre (NOC) is the 24/7 point of contact under the Budapest Convention. Convention-related requests received by the NOC are referred to the National Child Exploitation and Coordination Centre (NCECC) or the Federal Policing Intake Unit (FPIU), both of which are within the RCMP. Specifically, child sexual exploitation-related requests go to the NCECC, and all other requests go to the FPIU. Requests may also be received by INTERPOL-Ottawa, which in turn refers these to the NCECC or FPIU as the case may be.

In June, 2015, the Government of Canada made a targeted, foundational investment in the RCMP to support its obligations under the Convention. This included four human resources for intake and assessment at the NCECC, FPIU, and INTERPOL-Ottawa.

Rec 6 Parties should consider streamlining the procedures and reduce the number of steps required for mutual assistance requests at the domestic level. Parties should share good practices in this

## Canada

respect with the T-CY.	
Measures taken/relevant developments:	
<p>Canada's Central Authority works closely with its competent authorities to encourage a streamlined approach to the execution of mutual legal assistance requests including, in appropriate cases, by discussing the requests with the executing competent authority before providing feedback to the requesting authority. Canada also facilitates direct contact between competent authorities on complex cases.</p>	
Rec 7	Parties should make use of all available channels for international cooperation. This may include formal mutual legal assistance, police to police cooperation and others.
Measures taken/relevant developments:	
<p>Canada's Central Authority always encourages the use of all available channels for international cooperation, including formal mutual legal assistance, police to police cooperation, as well as cooperation between prosecuting authorities. In order to facilitate and maximize the use of police to police cooperation wherever possible, Canada's central authority has developed a list to share with its partners of the types of evidence that can be obtained without the need for a formal request for MLA. In providing training to domestic and foreign partners, the Central Authority routinely highlights the types of assistance that may be available without engaging the mutual legal assistance process.</p>	
Rec 8	Parties are encouraged to establish emergency procedures for requests related to risks of life and similar exigent circumstances. The T-CY should document practices by Parties and providers.
Measures taken/relevant developments:	
<p>Canada has emergency procedures in place to quickly respond to requests involving risk to life or other exigent circumstances, including having on-call counsel with the Central Authority and posting the on-call number on the Central Authority's website.</p>	
Rec 9	Parties should confirm receipt of requests systematically and give, upon request, notice of action taken.
Measures taken/relevant developments:	
<p>Canada's Central Authority has efficient procedures in place to track mutual legal assistance requests made and received, and to report to requesting authorities on the receipt and status of requests.</p>	
Rec 10	Parties may consider the opening of domestic investigation upon a foreign request or spontaneous information to facilitate the sharing of information or accelerate MLA.
Measures taken/relevant developments:	

## Canada

<p>The Canadian central authority regularly refers cases involving conduct that could be prosecuted in Canada, to law enforcement in Canada to consider opening a domestic investigation upon receipt of a foreign request or spontaneous information.</p>	
Rec 11	Parties should make use of electronic transmission of requests in line with Article 25.3 Budapest Convention on expedited means of communication.
<p>Measures taken/relevant developments:</p> <p>Canada encourages its mutual assistance partners to transmit requests electronically to avoid any unnecessary delay in the processing of a request and indeed does not require requests to be received through formal channels.</p>	
Rec 12	Parties should ensure that requests are specific and complete with all necessary information.
<p>Measures taken/relevant developments:</p> <p>In making mutual assistance requests, Canada provides the Requested State with comprehensive information to ensure that their legal and procedural requirements are met. Where necessary, Canada consults with the Requested State to determine its requirements, before submitting a request.</p>	
Rec 13	Pursuant to Article 25.5 Budapest Convention and Paragraph 259 Explanatory Report, Parties are reminded to apply the dual criminality standard in a flexible manner that will facilitate the granting of assistance.
<p>Measures taken/relevant developments:</p> <p>With few exceptions, Canada's mutual assistance laws do not require dual criminality but in those limited circumstances in which dual criminality is required, Canada applies a flexible conduct based approach to assessing dual criminality and does not require an exact match in Canadian law to the foreign offence.</p>	
Rec 14	Parties are encouraged to consult with authorities of requested Party prior to sending requests, when necessary.
<p>Measures taken/relevant developments:</p> <p>As noted above, where necessary, Canada will consult with the Requested State prior to sending mutual legal assistance requests.</p>	
Rec 15	Parties should consider ensuring transparency regarding requirements for mutual assistance requests, and reasons for refusal, including thresholds for minor cases, on the websites of central authorities.
<p>As indicated above, Canada's Central Authority maintains a comprehensive public website dedicated to providing substantive and procedural guidance to both Canadian and foreign police and prosecutors on how</p>	

## Canada

to make an effective mutual legal assistance request, including the approach involved in dealing with requests seeking assistance in minor matters. Practical guides and templates are available on this website to ensure transparency and efficiency with respect to Canada's requirements. Extensive training is provided to domestic and foreign partners on the Canadian mutual assistance regime.

Question 2: Please provide information on time periods for preservation requests under Article 29 Budapest Convention in your country.

Rec 16 The T-CY should facilitate greater transparency regarding the time period for data preservation upon a foreign preservation request in line with Article 29 Budapest Convention. The T-CY should document time periods.

Time periods for preservation of data following a foreign request:

As noted above, under the Protecting Canadians from Online Crime Act, Canada has the ability to preserve computer data on police demand or by court order. Usually, the first step for the preservation of data under the Act is for Canadian police to make a preservation demand on the record holder. The legal threshold for making a preservation demand is that there must be reasonable grounds to suspect that:

- An offence has been or will be committed under a law for a foreign state;
- An investigation is being conducted by a person or authority with responsibility in that state for the investigation of such offences; and,
- The computer data is in the person's possession or control and will assist in the investigation of the offence.

Preservation demands are valid for 90 days and cannot be renewed. However, Canadian police then have the ability to obtain a preservation order from a Canadian court, as explained below.

Conditions and periods to extend or renew the preservation of specified data:

To extend the preservation of data beyond the initial 90 day period provided by the police demand under the *Protecting Canadians from Online Crime Act*, Canadian authorities can obtain a preservation order from a Canadian court. Such orders are valid for 90 days. They cannot be extended but new orders for 90 day periods can be sought thereafter.

The legal threshold for obtaining a preservation order directed at someone who has in their possession or control of computer data is that:

- (a) There are reasonable grounds to suspect that an offence has been or will be committed under a law of a foreign state, that the computer data is in the person's possession or control and that it will assist in the investigation of the offence;
- (b) That the Canadian authorities intend to apply or have applied for a warrant or order in connection with the investigation to obtain a document that contains the computer data.

In addition, some Canadian ISPs will preserve data voluntarily. In such cases, the ISP will advise of the time period which applies to preservation. It may vary from ISP to ISP.

## Croatia

### 1.10 Croatia

Question 1: Please provide information on measures taken or on relevant developments with respect to each of the following Recommendations. Please attach additional information as appropriate.

<p>Rec 1 Parties should fully implement and apply the provisions of the Budapest Convention on Cybercrime, including preservation powers (follow up to T-CY Assessment Report 2012).</p>
<p>Measures taken/relevant developments:</p> <p>Croatian Parliament adopted the Act on the Ratification of the CoE Convention on Cybercrime on 3<sup>rd</sup> July 2002. The Convention entered into force with respect to the Republic of Croatia on 1<sup>st</sup> July 2004. The preservation of data is prescribed by the provisions of the Criminal Procedure Code.</p>
<p>Rec 2 Parties should consider maintaining statistics or establish other mechanisms to monitor the efficiency of the mutual legal assistance process related to cybercrime and electronic evidence.</p>
<p>Measures taken/relevant developments:</p> <p>International Legal Assistance (ILA) IT System, as a part of the IPA 2010 Project, is being used by the Ministry of Justice regarding the collection of statistical data on mutual legal assistance and judicial cooperation which also involve criminal offences in relation to cybercrime.</p>
<p>Rec 3 Parties should consider allocating more and more technology-literate staff for mutual legal assistance not only at central levels but also at the level of institutions responsible for executing requests (such as local prosecution offices).</p>
<p>Measures taken/relevant developments:</p>
<p>Rec 4 Parties should consider providing for better training to enhance mutual legal assistance, police-to-police and other forms of international cooperation on cybercrime and electronic evidence. Training and experience exchange should in particular target prosecutors and judges and encourage direct cooperation between judicial authorities. Such training should be supported by the capacity building programmes of the Council of Europe and other organisations.</p>
<p>Measures taken/relevant developments:</p> <p>The Regional Centre for Judicial Training on Cybercrime (hereinafter "the Regional Centre") was established at the Judicial Academy of Croatia in 2013 within the European Union/Council of Europe Joint Project Cybercrime@IPA "Regional Cooperation in Criminal Justice: Strengthening capacities in the fight against cybercrime". In 2014, the Regional Centre provided two trainings in the field of combating cybercrime for judicial officials of the countries involved in the EU/CoE Joint Project Cybercrime@IPA: the seminar entitled "The Fight against Cybercrime and Child Pornography on the Internet" in Zagreb in January 2014 in cooperation with ERA and TAIEX, and the conference entitled "Cybercrime" in Zagreb in October 2014. Due to budgetary reasons, the Regional Centre did not provide any trainings in 2015.</p>

## Croatia

However, 2016 and 2017 will see important changes in this respect. In October 2016, the Regional Centre will be involved in the CoE iPROCEEDS project as a host of the "Regional workshop on judicial training curricula in cybercrime, electronic evidence and online crime proceeds". One of the Regional Centre trainers, a Croatian Municipal Court judge, will be involved as a speaker and moderator at this Regional Workshop. Moreover, the Regional Centre, in cooperation with the Regional Cooperation Council, is organising an international conference on cybercrime which will take place in Zagreb in December 2016. It will be attended by representatives (judges and prosecutors) of all the countries involved in the work of the Regional Centre.

Being aware of the difficulties of providing funds in the national budget for the national trainings in the field of combating cybercrime, the Judicial Academy has become one of the co-beneficiaries in the ERA project "The Life Cycle of the Electronic Evidence in Criminal Proceedings from the Issuing Order to the Presentation to the Court Passing by the Whole Chain of Custody" the implementation of which starts in 2017. This project will be financed from the EU Justice Programme 2014-2020. Moreover, the Judicial Academy has listed cybercrime as one of the projects to be funded from the European Social Funds (ESF) in the period 2014-2020. This project should be contracted by the end of 2017.

Both, the project financed from the EU Justice Programme and the planned project to be financed from the ESF will target the national judges and prosecutors only, as well as the judges and prosecutors of other EU Member States and they, unfortunately, may not be used for the activities of the Regional Centre.

Rec 5 Parties and the Council of Europe should work toward strengthening the role of 24/7 points of contact in line with Article 35 Budapest Convention, including through:

- a. Ensuring, pursuant to article 35.3 Budapest Convention that trained and equipped personnel is available to facilitate the operative work and conduct or support mutual legal assistance (MLA) activities
  - b. Encouraging contact points to pro-actively promote their role among domestic and foreign counterpart authorities;
  - c. Conducting regular meetings and training of the 24/7 network among the Parties;
  - d. Encouraging competent authorities and 24/7 points of contact to consider procedures to follow up to and provide feedback to the requesting State on Article 31 requests;
  - e. Considering to establish, where feasible, contact points in prosecution offices to permit a more direct role in mutual legal assistance and a quicker response to requests;
  - f. Facilitating 24/7 points of contact to play a supportive role in "Article 31" requests.

Measures taken/relevant developments:

Contact point 24/7 in the Republic of Croatia is located at the Ministry of the Interior and in particular, the High-tech Crime Department is determined as the contact point.

To ensure continuously functioning (24 hours, 7 days a week), all the police officers of the said Department are trained for receiving and sending requests through the 24/7 network. This means that all police officers

## Croatia

are technically equipped to send or to receive request through the network 24/7 at any time.

In addition, all organizational units of the Ministry of the Interior are familiar with the possibilities and ways of functioning of sending requests via the network 24/7. Also, the State Attorney's Office was informed about all the above mentioned possibilities.

The functioning of the network 24/7 is one of the main topics on the training taking place at the Ministry of the Interior. Also, the representatives of the Ministry regularly take part in all sort of education at the international level.

**Rec 6** Parties should consider streamlining the procedures and reduce the number of steps required for mutual assistance requests at the domestic level. Parties should share good practices in this respect with the T-CY.

Measures taken/relevant developments:

**Rec 7** Parties should make use of all available channels for international cooperation. This may include formal mutual legal assistance, police to police cooperation and others.

Measures taken/relevant developments:

The Ministry of Justice of the Republic of Croatia is the competent authority for receiving/sending requests for MLA. By way of exception, the domestic judicial authority may directly submit a request for MLA to a foreign judicial authority when this is expressly laid down in the provisions of the Act on International Legal Assistance in Criminal Matters or in international agreements (direct communication) and on the basis of reciprocity. In those cases, the domestic judicial authority shall send a copy of the request for MLA to the Ministry of Justice. In urgent cases, and in case of reciprocity, the Ministry of Justice may send and receive requests for MLA via Interpol. In the case of direct communication, the domestic judicial authority may do the same.

**Rec 8** Parties are encouraged to establish emergency procedures for requests related to risks of life and similar exigent circumstances. The T-CY should document practices by Parties and providers.

Measures taken/relevant developments:

**Rec 9** Parties should confirm receipt of requests systematically and give, upon request, notice of action taken.

Measures taken/relevant developments:

**Rec 10** Parties may consider the opening of domestic investigation upon a foreign request or spontaneous information to facilitate the sharing of information or accelerate MLA.

Measures taken/relevant developments:

## Croatia

According to the Article 18 of the Act On Mutual Legal Assistance In Criminal Matters, domestic judicial authorities may, without prior request, forward to the competent foreign judicial authorities information obtained within the framework of their own investigations, which relate to criminal offences or breach of the rule of law, when they consider that the disclosure of such information might assist the receiving state in initiating or carrying out investigations or court proceedings or might lead to a request for mutual assistance by that state. Domestic judicial authority shall request from the foreign judicial authority to which it transmitted the information, the communications on any action undertaken upon such information, as well as transmission of issued decisions, and it may also impose other conditions for the use of such information at the receiving state

Rec 11 Parties should make use of electronic transmission of requests in line with Article 25.3 Budapest Convention on expedited means of communication.

Measures taken/relevant developments:

In urgent circumstances, the requests for mutual assistance received via fax or e-mail, to the extent that such means provide appropriate levels of security and authentication (including the use of encryption, where necessary), would also be executed and the response to the request would be sent by any such expedited means of communication.

According to the Article 8 of the Act On Mutual Legal Assistance In Criminal Matters, a domestic judicial authority shall act upon a request for mutual legal assistance of a foreign judicial authority even if the request was transmitted via electronic or some other telecommunications means which provide written record, if it may establish its authenticity and if the foreign competent authority is willing, upon request, to deliver a written evidence on the manner of transmission and the original request.

Rec 12 Parties should ensure that requests are specific and complete with all necessary information.

Measures taken/relevant developments:

Article 8 of the Act On Mutual Legal Assistance In Criminal Matters prescribes that, unless provided otherwise by an international treaty or the provisions of the Act On Mutual Legal Assistance In Criminal Matters, the request for mutual legal assistance shall indicate the following:

- place of issuance and the name of the competent authority making the request,
- legal grounds to afford mutual legal assistance,
- detailed description of an act of mutual legal assistance sought and the reason for request,
- legal title, short factual and legal description of the criminal offence (unless the request refers to service of judicial verdicts, depositions of parties, documents and alike),
- exact data and nationality of the person concerned and his status in the proceedings,
- in case of service of judicial writs, also the type of the writ to be served

Rec 13 Pursuant to Article 25.5 Budapest Convention and Paragraph 259 Explanatory Report, Parties are reminded to apply the dual criminality standard in a flexible manner that will facilitate the granting of assistance.



Croatia

Measures taken/relevant developments:	
<p>According to the Article 1, paragraph 2 of the Act on MLA, mutual legal assistance is provided in respect of criminal acts the punishment of which, at the time of the request for assistance, falls within the jurisdiction of the judicial authorities of the requesting state. Therefore, dual criminality is usually not required in order to provide mutual legal assistance, unless regarding the extradition procedure, where the Act on MLA prescribes that extradition will not be allowed if the offence for which extradition is claimed is not a criminal offence in both domestic law and the law of the state in which it was committed.</p>	
Rec 14	Parties are encouraged to consult with authorities of requested Party prior to sending requests, when necessary.
Measures taken/relevant developments:	
Rec 15	Parties should consider ensuring transparency regarding requirements for mutual assistance requests, and reasons for refusal, including thresholds for minor cases, on the websites of central authorities.
Measures taken/relevant developments:	

Question 2: Please provide information on time periods for preservation requests under Article 29 Budapest Convention in your country.

Rec 16	The T-CY should facilitate greater transparency regarding the time period for data preservation upon a foreign preservation request in line with Article 29 Budapest Convention. The T-CY should document time periods.
Time periods for preservation of data following a foreign request:	
Conditions and periods to extend or renew the preservation of specified data:	

## 1.11 Czech Republic

Question 1: Please provide information on measures taken or on relevant developments with respect to each of the following Recommendations. Please attach additional information as appropriate.

<p>Rec 1 Parties should fully implement and apply the provisions of the Budapest Convention on Cybercrime, including preservation powers (follow up to T-CY Assessment Report 2012).</p>
<p>Measures taken/relevant developments:</p> <p>Under the current legislation the duty to preserve data can be ensured via the request for cooperation addressed to the provider or to another person in compliance with the section 8 paragraph 1 of the Criminal Procedure Code; a request of another country for preservation of data shall be also executed through this provision, if this request is sent via MLA.</p> <p>However, the Czech Republic is considering establishing of a special provision regarding this matter explicitly regulating the order for data preservation which shall be issued by the relevant law enforcement authority. This shall be followed by the amendment to the Act on International Judicial Cooperation in Criminal Matters with the inclusion of this issue within the provisions concerning legal assistance and the new provision would deal with procedure of taking care of and sending a request for data preservation in relation to other parties to the Budapest Convention. The working group has prepared the draft of the legislation that is currently discussed within its members. Final version of this provision is not available yet.</p>
<p>Rec 2 Parties should consider maintaining statistics or establish other mechanisms to monitor the efficiency of the mutual legal assistance process related to cybercrime and electronic evidence.</p>
<p>Measures taken/relevant developments:</p> <p>The new e-register of cases is being developed at the Supreme Public Prosecutor's Office. This electronic register will improve central monitoring mechanism and evaluation of the efficiency of the mutual legal assistance process, including cases related to cybercrime and electronic evidence.</p>
<p>Rec 3 Parties should consider allocating more and more technology-literate staff for mutual legal assistance not only at central levels but also at the level of institutions responsible for executing requests (such as local prosecution offices).</p>
<p>Measures taken/relevant developments:</p> <p>Regarding the Public Prosecution Service:</p> <p>The direct contacts for mutual legal assistance in the EU and possible direct contacts for mutual legal assistance are established according to the 2001 Second Additional Protocol to the 1959 Convention on MLA in criminal matters.</p> <p>The new domestic law concerning all kinds of MLA in criminal matters was enacted in the Czech Republic –</p>

## Czech Republic

the Act No. 104/2013 Coll., on International Judicial Cooperation in Criminal Matters. The Act has been in force since 1 January 2014. The main responsibility is at the Regional prosecutors' Offices (in pre-trial proceedings) that execute overwhelming majority MLA requests. The relevant authorities and personnel are specialized and ongoing training is available for them.

Regarding Police:

The reorganization of Police of the Czech Republic took place this year. The two police units which dealt with the organized crime and serious financial crime were merged together in order to promote more focused and organized approach and deal with complex cases. The new Agency - the National Agency for Organised Crime of the Criminal Police and Investigation Service - operates across the Czech Republic. A specialized cybercrime section within the structure of an already existing body has been established and one of the main priorities of the Police of the Czech Republic is to fight cybercrime and therefore the reorganization also provided increased resources and training for specialized unit.

Moreover, there are also regional units under Regional Police Directorate such as Information Crime Units within the Analytical Departments of the Criminal Police and Investigation Service and Information Crime Groups within the Territorial Departments. The Information Crime units are trained and prepared to seize electronic evidence within MLA. The police officers within the Information Crime Units are experienced forensic investigators in the field of IT.

Rec 4 Parties should consider providing for better training to enhance mutual legal assistance, police-to-police and other forms of international cooperation on cybercrime and electronic evidence. Training and experience exchange should in particular target prosecutors and judges and encourage direct cooperation between judicial authorities. Such training should be supported by the capacity building programmes of the Council of Europe and other organisations.

Measures taken/relevant developments:

Such trainings are regularly organised by the Judicial Academy of the Czech Republic. Every year there is a national training seminar on MLA for all prosecutors and judges, twice a year there is a meeting of specialists in MLA for prosecutors and once a year for judges. Moreover, the regular trainings for judges and prosecutors within the Judicial Academy consist of seminars focused on various criminal offences e.g. economic crime, cybercrime, crimes connected to drugs and these seminars usually contain also one part devoted to MLA in such cases.

As regards the police trainings, they are also regular. Moreover, the plan for intensification and extension has been already in place. The aim is to set standard practices and knowledge in the detection and investigation of cybercrime and sharing best practice among Police. Currently, the main focus is on securing of digital traces and evidence. Available basic course is regularly provided and is led by IT experts. At the end there is an expert examination at the Institute of Criminalistics in Prague and the graduate obtains a certification for the securing of digital traces and evidence.

Rec 5 Parties and the Council of Europe should work toward strengthening the role of 24/7 points of contact in line with Article 35 Budapest Convention, including through:

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- a. Ensuring, pursuant to article 35.3 Budapest Convention that trained and equipped personnel is available to facilitate the operative work and conduct or support mutual legal assistance (MLA) activities
  - b. Encouraging contact points to pro-actively promote their role among domestic and foreign counterpart authorities;
  - c. Conducting regular meetings and training of the 24/7 network among the Parties;
  - d. Encouraging competent authorities and 24/7 points of contact to consider procedures to follow up to and provide feedback to the requesting State on Article 31 requests;
  - e. Considering to establish, where feasible, contact points in prosecution offices to permit a more direct role in mutual legal assistance and a quicker response to requests;
  - f. Facilitating 24/7 points of contact to play a supportive role in "Article 31" requests.

Measures taken/relevant developments:

24/7 contact point is represented by a continuous service of an operating officer from the Department of International Police Cooperation of the Police Presidium of the Czech Republic. Another contact point is a specialized Cybercrime section, National Agency for Organised Crime of the Criminal Police and Investigation Service. The cybercrime section provides assistance including facilitating, if permitted by its domestic law and practice, directly carrying out the following measures:

- the provision of technical advice;
- the preservation of data – (up to 6 months, according to the Act No. 127/2005 Coll. "Electronic Communications and on Amendment to Certain Related")
- the collection of information which can be considered as evidence later (MLAT), the provision of legal information, and locating of suspects.
- carrying out communications with the contact points of another Party on an expedited basis
- trained and equipped personnel are available, in order to facilitate the operation of the network

There is a very close cooperation between 24/7 point of contact in the Czech Republic and prosecutors, particularly the Supreme Public Prosecutor's Office that is the central judicial authority for MLA in pre-trial criminal proceedings if there is no direct contact with a foreign country (i.e. USA).

Rec 6 Parties should consider streamlining the procedures and reduce the number of steps required for mutual assistance requests at the domestic level. Parties should share good practices in this respect with the T-CY.

Measures taken/relevant developments:

Requesting and providing the mutual legal assistance in criminal matters is regulated in the Section 39 and following of the Act n. 104/ 2013 Coll. of Law, on the international judicial cooperation in criminal matters. This law applies also to the MLA request, which concerns the cybercrime and electronic evidence.

Simple procedure with direct contact points:

If there are direct contact points based on the international treaty between responsible courts and prosecutors regarding MLA, a prosecutor or a court that makes a request is responsible for its content and further communication in MLA procedure. Two central judicial authorities for MLA (the Supreme Public Prosecutor's Office for prosecutors and the Ministry of Justice for courts) exercise a function of "help desk".

## Czech Republic

Procedure without direct contact points:

If direct contact points are not available based on the international treaty, the situation is following - there are 4 levels of prosecutors' offices in the Czech Republic. Only immediate superior prosecutor's office can issue an instruction to immediate inferior one. However, there is an exception concerning MLA. Any prosecutor from any level of public prosecution can contact directly the International Department of the Supreme Public Prosecutor's Office that is the central judicial authority for MLA in pre-trial criminal proceedings.

The Ministry of Justice has the same direct contact with all judges in Czech courts. Instructions of these two central judicial authorities for MLA are binding for prosecutors and judges in the area of MLA. The communication channels between the responsible prosecutors or judges and the central judicial authorities are reduced thus to minimum and the procedure is conducted in the most efficient way.

Rec 7 Parties should make use of all available channels for international cooperation. This may include formal mutual legal assistance, police to police cooperation and others.

Measures taken/relevant developments:

International Department for Criminal Matters of the Ministry of Justice is one of two central authorities of the Czech Republic for mutual legal assistance in criminal matters, however its current experience in relation to MLA requests concerning the cybercrime and electronic evidence is very limited, when generally this type of mutual legal assistance is requested in the stage of pre-trial proceedings, where it is the Supreme Public Prosecutor's Office, which acts as the second central authority of the Czech Republic for mutual legal assistance in criminal matters.

The investigating, prosecuting and adjudicating authorities (a police authority, a public prosecutor, a court) can send requests to the foreign state within their (national) competencies in the criminal proceedings which are conducted in the Czech Republic.

The evidence for the criminal proceedings conducted in the Czech Republic can be obtained from the foreign state in the following ways:

- 1) upon the MLA request (Section 40 (1) of the Act No. 104/2013 Coll., on International Judicial Cooperation in Criminal Matters, as amended);
- 2) a foreign authority (an authority competent for international judicial cooperation) sends itself without previous MLA request an evidence to the Czech Republic. Such an evidence can be used in the criminal proceedings in the Czech Republic if it was obtained in accordance with the legal order of the foreign state in question or with the legal order of the Czech Republic (Section 42 (3) of the Act on International Judicial Cooperation in Criminal Matters);
- 3) Information obtained by a police authority within the framework of police cooperation from another Member State of the European Union or a state associated through an international treaty to implement the Schengen regulations may be used as evidence in criminal proceedings only on the basis of consent of the competent authority of this state (Section 20 (1) of the Act on International Judicial Cooperation in Criminal Matters);

Czech Republic

4) a natural or a legal person as an injured person and/or a person who reported a crime themselves and voluntarily send a document to the Czech Republic to be used for the purpose of the criminal proceedings.

Otherwise the cooperation is done via police channels (communication via Interpol and Europol, via contact point 24/7). The information received via police cooperation serve as operational information, not as evidence (with exception of Section 20 (1) of the Act on International Judicial Cooperation in Criminal Matters).

Rec 8 Parties are encouraged to establish emergency procedures for requests related to risks of life and similar exigent circumstances. The T-CY should document practices by Parties and providers.

Measures taken/relevant developments:

Any urgent request is communicated primarily via electronic and thus fastest means such as fax or email and after that it is sent via post. Such urgent requests are also supported via authorities or networks of specialists for international cooperation (e.g. Eurojust, the EJM, CARIN etc.)

Rec 9 Parties should confirm receipt of requests systematically and give, upon request, notice of action taken.

Measures taken/relevant developments:

The central authorities of the Czech Republic competent for receiving foreign MLA requests inform their counterparts about the status of execution of the MLA requests or reasons, why the MLA requests cannot be executed in accordance with the Act n. 104/ 2013 Coll. of Law, on the international judicial cooperation in criminal matters. Any suspension of execution or refusal of providing legal assistance has to be justified (Sec. 53(2) and Sec 54(3) of the Act No. 104/2013 Coll.). Upon a request, prosecutors or judges that execute MLA request give a notice of action taken.

Rec 10 Parties may consider the opening of domestic investigation upon a foreign request or spontaneous information to facilitate the sharing of information or accelerate MLA.

Measures taken/relevant developments:

In accordance with the Section 56 of the Act No. 104/ 2013 Coll. of Law, on the International Judicial Cooperation in Criminal Matters, judicial authority of the Czech Republic may provide the foreign judicial authority without prior foreign MLA request with information or evidence, if the judicial authority of the Czech Republic is of the view that such information may be used in foreign criminal proceedings and it will not infringe the purpose of criminal proceedings in the Czech Republic.

In the opposite way, Section 42 par. 3 of the Act No. 104/ 2013 Coll. of Law, on the International Judicial Cooperation in Criminal Matters, provides that information or evidence which has been provided by the foreign judicial authority without requesting them through MLA request may be used in the criminal proceedings in the Czech Republic.

Execution of a MLA request according the Act No. 104/2013 Coll. is considered as criminal proceedings

## Czech Republic

(Sec 12(10) of the Criminal Procedural Code (“The criminal proceedings will be understood as a procedure pursuant to this Code and the Act on International Judicial Cooperation in Criminal Matters, ...”). Prosecutors and judges are entitled to use all investigative techniques that are allowed in Czech criminal proceedings in compliance with conditions prescribed by the Criminal Procedural Code, the Act No. 104/2013 Coll. or international treaty.

There is a principle of legality of criminal proceedings in the Czech Republic – Sec. 2(3) of the Criminal Procedural Code (“The public prosecutor is obliged to prosecute all criminal offences which they gain knowledge of, unless the law or a promulgated international treaty binding the Czech Republic stipulates otherwise.”). That means that it is obligatory to launch a criminal proceeding in all cases where the jurisdiction is established and information justify so.

**Rec 11** Parties should make use of electronic transmission of requests in line with Article 25.3 Budapest Convention on expedited means of communication.

Measures taken/relevant developments:

As it was stated already above, the urgent MLA requests are sent or received via electronic means such as fax or mail, the original of the request is sent after that by post. See Sec. 8(3)(4) of the Act No. 104/2013 Coll.:

(3) Liaison with foreign authorities will in principle be realized in documentary form.

(4) In case a judicial authority or central authority requests international legal assistance with a foreign state via telephone, facsimile, electronically, by the means of international police cooperation, personally or otherwise, they will always subsequently send the original of the request in documentary form to the foreign authority, unless this Act or an international treaty provide otherwise, or unless the foreign authority expressly declares that they do not require sending the original of the request in documentary form.

**Rec 12** Parties should ensure that requests are specific and complete with all necessary information.

Measures taken/relevant developments:

The International Department of the Supreme Public Prosecutor’s Office issued 38 templates of requests and other documents for prosecutor and the Ministry of Justice issued templates for courts concerning MLA. If there are no direct contact points based on international treaties, requests of responsible prosecutors or judges are checked at the central judicial authorities – see Sec 40(2) of the Act No. 104/2013 Coll.:

“The central authority will review the request for legal assistance, especially with regard to the conditions and essentials implied by this Act or by an international treaty, and to the requirements arising from previous mutual relations, and will send it to the foreign state, unless it returns it along with stating reasons, for which it was impossible to send it to the foreign state. In relation to reviewing the request for legal assistance the central authority may request the judicial authority to make necessary corrections and amendments. Opinion of the central authority is binding for the judicial authority.”

**Rec 13** Pursuant to Article 25.5 Budapest Convention and Paragraph 259 Explanatory Report, Parties are

Czech Republic

reminded to apply the dual criminality standard in a flexible manner that will facilitate the granting of assistance.

Measures taken/relevant developments:

According to the Section 47 of the Act n. 104/ 2013 Coll. of Law, on the international judicial cooperation in criminal matters, the mutual legal assistance is subject to dual criminality in cases, when:

- surrender and removal of items, seizure of financial resources, booked securities, real estate and other asset values
- house and personal search, search of other premises and parcels, entry to residence, other premises and parcels
- securing execution of a sentence of confiscation of property pursuant,
- securing the claim of an aggrieved person,
- intercepting and opening consignments and its replacement,
- monitoring consignments,
- interception and recording of telecommunications,
- inspection of mental state,
- use of operative-search means, or
- covert investigation.

For other types of mutual legal assistance the dual criminal standard does not apply. The dual criminality is applied according to the description of facts and not according to a formal name or a category of a crime.

Rec 14 Parties are encouraged to consult with authorities of requested Party prior to sending requests, when necessary.

Measures taken/relevant developments:

In the area of mutual legal assistance in criminal matters, the Czech Republic judicial and central authorities regularly consult with its most frequent foreign partners the quality and way of providing this kind of international cooperation.

Complex cases are consulted in writing directly between responsible authorities (if there is a direct contact), or via networks of specialists for MLA the EJM, CARIN) or in coordination meetings (bilateral ones or in Eurojust).

Rec 15 Parties should consider ensuring transparency regarding requirements for mutual assistance requests, and reasons for refusal, including thresholds for minor cases, on the websites of central authorities.

Measures taken/relevant developments:

According to the Section 54 par. 2 of the Act n. 104/ 2013 Coll. of Law, on the international judicial cooperation in criminal matters, before the mutual legal assistance requested from abroad is refused to be provided by the Czech Republic competent authority, it shall first to be consulted with the central authority of the Czech Republic for this purpose.



Czech Republic

Some information can be found on the EJN website and English information about these requirements for the website of the Supreme Public Prosecutor's Office has being currently prepared.

Question 2: Please provide information on time periods for preservation requests under Article 29 Budapest Convention in your country.

Rec 16 The T-CY should facilitate greater transparency regarding the time period for data preservation upon a foreign preservation request in line with Article 29 Budapest Convention. The T-CY should document time periods.

Time periods for preservation of data following a foreign request:

There is no time limit set in Czech domestic law for such data preservation in line with Article 29 Budapest Convention. However, the MLA request should be sent as soon as possible.

Conditions and periods to extend or renew the preservation of specified data:

## 1.12 Denmark

Question 1: Please provide information on measures taken or on relevant developments with respect to each of the following Recommendations. Please attach additional information as appropriate.

<p>Rec 1 Parties should fully implement and apply the provisions of the Budapest Convention on Cybercrime, including preservation powers (follow up to T-CY Assessment Report 2012).</p>
<p>Measures taken/relevant developments:</p> <p>Many mutual legal assistance requests to and from Denmark are processed according to the EU 2000-convention on mutual legal assistance. The Cybercrime Convention is applied typically only for mutual legal assistance requests between non-EU member states.</p>
<p>Rec 2 Parties should consider maintaining statistics or establish other mechanisms to monitor the efficiency of the mutual legal assistance process related to cybercrime and electronic evidence.</p>
<p>Measures taken/relevant developments:</p> <p>Please note that the Ministry of Justice per 1 March 2016 has appointed the Office of the Director of Public Prosecutions as a central authority regarding mutual assistance in criminal matters. The Director of Public Prosecutions does not have detailed statistics yet.</p>
<p>Rec 3 Parties should consider allocating more and more technology-literate staff for mutual legal assistance not only at central levels but also at the level of institutions responsible for executing requests (such as local prosecution offices).</p>
<p>Measures taken/relevant developments:</p> <p>Cybercrime has been a high focus area for the Director of Public Prosecutions in 2015 and 2016. All prosecutors have been required to undergo training specialized in Cybercrime to ensure a high level of expertise. At the same time there has been appointed a specialist in Cybercrime at the offices of district and state prosecutors and a few national experts has been appointed as well.</p> <p>The Office of the Director of Public Prosecutions is currently working on new and improved guidelines on mutual legal assistance for prosecutors. This includes guidelines about obtaining e-evidence.</p>
<p>Rec 4 Parties should consider providing for better training to enhance mutual legal assistance, police-to-police and other forms of international cooperation on cybercrime and electronic evidence. Training and experience exchange should in particular target prosecutors and judges and encourage direct cooperation between judicial authorities. Such training should be supported by the capacity building programmes of the Council of Europe and other organisations.</p>
<p>Measures taken/relevant developments:</p>

## Denmark

The Danish Police College is overall responsible for the provision of training of the Danish police, whereas the Director of Public Prosecutions is responsible for competence development of the prosecution service. However, the National Cyber Crime Center (NC3) has a central role in the provision of cybercrime training for both police and the prosecution service. A close cooperation between the Director of Public Prosecutions, the Danish Police College, representatives from police districts and the NC3 resulted in 2015 in the "National Cybercrime Programme-level 1" and a new programme "National Cybercrime programme-level 2" is being developed and expected to be launched in 2016.

ECTEG modules are overall regarded as specialist educational modules targeted at national specialists who have already completed the NCFI programme of the Norwegian Police University College. EGTEC modules are offered to specialists at NC3 and a few have completed a full master programme at University College Dublin, which is partly based on ECTEG modules. The NC3 has also contributed to the review and development of ECTEG modules.

CEPOL courses are disseminated through the Danish Police College and cybercrime relevant courses are announced to NC3 employees and are regarded as supplementary courses.

In relation to cybercrime specialists from the National Cyber Crime Center (NC3) also have a role in international cooperation.

All national specialists in the NC3 receive cybercrime related training. All new employees have to complete a basic 3 week programme offered by NC3, which focuses on itforensic methods, digital evidence, it-forensic tools and legal framework.

IT- forensic experts at NC3 are required to complete the NCFI programme (offered by Oslo Police University College, 30 ECTS) or comparable during their first 2 years of employment. The purpose of this programme is to ensure quality in the investigation of digital evidence with respect to legal certainty.

Civilian IT- specialists (e.g. engineers or computer scientist) can be exempted from the NCFI requirement depending on their competences and area of work.

NC3 offers approximately once a year internal update courses in IT-forensic tools (X-Ways, ENCASE, XRY, CellBright) for NC3 employees. NC3 has an ongoing focus on quality assurance in IT-forensic methods, reporting, chain of custody etc.

Moreover, employees complete on an annual basis external courses, seminars or conferences in accordance with individual competence development plans.

Rec 5 Parties and the Council of Europe should work toward strengthening the role of 24/7 points of contact in line with Article 35 Budapest Convention, including through:

- a. Ensuring, pursuant to article 35.3 Budapest Convention that trained and equipped personnel is available to facilitate the operative work and conduct or support mutual legal assistance (MLA) activities
- b. Encouraging contact points to pro-actively promote their role among domestic and foreign counterpart authorities;

Denmark

- c. Conducting regular meetings and training of the 24/7 network among the Parties;
- d. Encouraging competent authorities and 24/7 points of contact to consider procedures to follow up to and provide feedback to the requesting State on Article 31 requests;
- e. Considering to establish, where feasible, contact points in prosecution offices to permit a more direct role in mutual legal assistance and a quicker response to requests;
- f. Facilitating 24/7 points of contact to play a supportive role in "Article 31" requests.

Measures taken/relevant developments:

The National Centre of Investigation under the Danish National Police operates the Danish Communications Centre 24/7/365 as a Single Point of Contact (SPOC) to the entire Danish police force which includes requests under the auspices of Europol, Schengen, Baltic Sea Task Force, Frontex, Interpol, the Nordic police cooperation, bilateral cooperation with law enforcement of other countries, cross border surveillance and controlled deliveries. It furthermore handles urgent requests according to the Budapest Convention relating to cybercrime. This means one point of entry to the entire Danish police and no "red tape" in the opening phase of cooperation with other countries. Procedural steps are in place so that requests directed to the SPOC are immediately redirected to the National Cyber Crime Center (NC3) in order to implement appropriate investigative measures and the involvement of the prosecution service and the judiciary system when needed.

Rec 6 Parties should consider streamlining the procedures and reduce the number of steps required for mutual assistance requests at the domestic level. Parties should share good practices in this respect with the T-CY.

Measures taken/relevant developments:

As mentioned above, the Ministry of Justice has per 1 March 2016 appointed the Office of the Director of Public Prosecutions as a central authority regarding mutual assistance in criminal matters.

Incoming mutual legal assistance requests are sent to the Office of the Director of Public Prosecutions. The requests will be sent to the correct, competent authority, which often is the District Police Commissioners, who will provide the requested information and send it back to the Office of the Director of Public Prosecutions, who then sends the information gathered to the requesting country.

Incoming mutual legal assistance from or to other EU Member States are sent direct to the competent judicial authority.

Rec 7 Parties should make use of all available channels for international cooperation. This may include formal mutual legal assistance, police to police cooperation and others.

Measures taken/relevant developments:

Denmark has a history of pragmatic cooperation, including using both police channels and formal mutual legal assistance. Denmark will continue to applying this approach, especially in urgent matters.

Denmark

The Danish Police uses all of these channels on a regular basis.

Rec 8 Parties are encouraged to establish emergency procedures for requests related to risks of life and similar exigent circumstances. The T-CY should document practices by Parties and providers.

Measures taken/relevant developments:

Extremely urgent requests will typically be sent via the secure channels of SIRENE/Interpol, as the Danish SIRENE/Interpol offices are open 24/7. This also ensures an immediate response to incoming requests of this nature.

The Office of the Director of Public Prosecutions has a 24/7 hotline to which all prosecutors can call to get help in urgent cases regarding mutual legal assistance in criminal matters.

Such requests are also handled by the Danish SPOC (see answer to rec 5).

Rec 9 Parties should confirm receipt of requests systematically and give, upon request, notice of action taken.

Measures taken/relevant developments:

This is already a part of the normal procedure at the Office of the Director of Public Prosecutions.

The Danish National Cyber Crime Center (NC3) sends out the following receipt upon receiving urgent requests:

"The [nationality] authorities have urgently requested the assistance of the Danish Police by letter of [date] to execute a preliminary seizure of evidence in a criminal case regarding [case description] as the purpose of the seizure was feared to be lost if the seizure of evidence had to await the submission of a formal letter rogatory.

[The Danish National Cyber Crime Center (NC3)] hereby inform the [nationality] authorities, that a preliminary seizure has been executed. In order to further process the case, please forward a formal letter rogatory to the Copenhagen Police, Public Prosecutors' Office on Quality and Knowledge, Polititorvet, DK-1567 Copenhagen V, as soon as possible and within 3 months from today. The formal letter rogatory shall include the necessary information to establish whether the preconditions for seizure have been met.

In the event that the Copenhagen Police does not receive the formal letter rogatory of the [nationality] authorities' within the mentioned time limit, the preliminary seizure will be repealed."

Rec 10 Parties may consider the opening of domestic investigation upon a foreign request or spontaneous information to facilitate the sharing of information or accelerate MLA.

Measures taken/relevant developments:

Denmark

This possibility is always taken into consideration by the authority competent to process a request for mutual legal assistance.

Rec 11 Parties should make use of electronic transmission of requests in line with Article 25.3 Budapest Convention on expedited means of communication.

Measures taken/relevant developments:

All competent authorities in Denmark has access to fax and encrypted e-mail and may use these form of communication in accordance with domestic rules on data protection.

Rec 12 Parties should ensure that requests are specific and complete with all necessary information.

Measures taken/relevant developments:

The Prosecution Service has some formulas that include all necessary information, which are available to all prosecutors.

Rec 13 Pursuant to Article 25.5 Budapest Convention and Paragraph 259 Explanatory Report, Parties are reminded to apply the dual criminality standard in a flexible manner that will facilitate the granting of assistance.

Measures taken/relevant developments:

Dual criminality is generally required for assistance that requires a court order. Assistance that requires a court order (coercive measures) is subject to the statute of limitations for the corresponding offence in Denmark. If consistent with the basic concepts of Denmark's legal system, assistance that is not considered a coercive measure - such as police interrogation - can be given even if the underlying matter of the request is not punishable under Danish law. Provisions on coercive measures are contained in the Danish Administration of Justice Act (fourth book, second division). Examples of coercive measures include search, seizure, disclosure, interception of communications etc.

If it is not possible to comply with a request due to lack of dual criminality, it will generally be discussed with the requesting country whether they can provide additional information which might enable the Danish authorities to comply with the request, or if more limited assistance not involving coercive measures is wanted.

There is no legislation on the execution time of requests for mutual legal assistance, but a request will be dealt with as quickly as possible. Assistance to other countries always has a high priority, but may, of course, be delayed if the request concerns matters that take time or if the request is not sufficiently precise and there is need to ask the requesting State Party for clarification.

Rec 14 Parties are encouraged to consult with authorities of requested Party prior to sending requests, when necessary.

## Denmark

Measures taken/relevant developments:	
This is already the practice of competent authorities in Denmark.	
Rec 15	Parties should consider ensuring transparency regarding requirements for mutual assistance requests, and reasons for refusal, including thresholds for minor cases, on the websites of central authorities.
Measures taken/relevant developments:	
Mutual legal assistance in Denmark is given on a case-to-case assessment and the principle of cooperation, and therefore it has not been deemed necessary to give specific guidelines on receiving mutual legal assistance from Denmark.	

Question 2: Please provide information on time periods for preservation requests under Article 29 Budapest Convention in your country.

Rec 16	The T-CY should facilitate greater transparency regarding the time period for data preservation upon a foreign preservation request in line with Article 29 Budapest Convention. The T-CY should document time periods.
Time periods for preservation of data following a foreign request:	
The owner of the data that has been preserved following a request for expedited preservation is asked to keep the data for a period of 6 months.	
Conditions and periods to extend or renew the preservation of specified data:	
In order to further process the case a formal letter rogatory has to be sent to the Copenhagen Police, Public Prosecutors' Office. The formal letter rogatory shall include the necessary information to establish whether the preconditions for seizure have been met.	
In the event that the Copenhagen Police does not receive the formal letter rogatory of the within the mentioned time limit, the preliminary seizure will be repealed and the owner of the preserved data is free to delete the data if he so desires.	

Dominican Republic

1.13 Dominican Republic

Question 1: Please provide information on measures taken or on relevant developments with respect to each of the following Recommendations. Please attach additional information as appropriate.

Rec 1	Parties should fully implement and apply the provisions of the Budapest Convention on Cybercrime, including preservation powers (follow up to T-CY Assessment Report 2012).
	<p>The Criminal Law Procedure Code in its chapter IV, ARTICLES 155-165 and the law 53-07 both designate the General Attorney's Office as the focal point to treat the Legal Mutual Assistance. In order to accomplish this task the GA's Office has created a specialized office, in charge of HiTech Crimes procedures that has the established mechanism in order for Mutual Legal Assistance to be accomplished, with the assistance of the National Police.</p> <p>The Law 53-07, in its article 54, facultates the GA to preserve the evidence.</p>
Rec 2	Parties should consider maintaining statistics or establish other mechanisms to monitor the efficiency of the mutual legal assistance process related to cybercrime and electronic evidence.
	<p>Both, the HighTech Crime Division from the GA's office as well as the HighTech Crime Department of the National Police, both have the statistic on the matter of Cibercrime, including the Mutual Legal Assistance.</p>
Rec 3	Parties should consider allocating more and more technology-literate staff for mutual legal assistance not only at central levels but also at the level of institutions responsible for executing requests (such as local prosecution offices).
	<p>Just at the center Level, the GA's office, and National Police DICAT, have the personell necessary for the Mutual Legal Assistance.</p>
Rec 4	Parties should consider providing for better training to enhance mutual legal assistance, police-to-police and other forms of international cooperation on cybercrime and electronic evidence. Training and experience exchange should in particular target prosecutors and judges and encourage direct cooperation between judicial authorities. Such training should be supported by the capacity building programmes of the Council of Europe and other organisations.
	<p>The Dominican Republic is receiveng the trainning in all the themes that have relationship with the sponsorship of the European Council, the Glacy+ Project, and also REEMJA (OAS) and the INTERPOL.</p>
Rec 5	Parties and the Council of Europe should work toward strengthening the role of 24/7 points of contact in line with Article 35 Budapest Convention, including through:
	<p>a. Ensuring, pursuant to article 35.3 Budapest Convention that trained and equipped personnel is available to facilitate the operative work and conduct or support mutual legal assistance (MLA) activities</p> <p>b. Encouraging contact points to pro-actively promote their role among domestic and foreign counterpart authorities;</p> <p>c. Conducting regular meetings and training of the 24/7 network among the Parties;</p> <p>d. Encouraging competent authorities and 24/7 points of contact to consider procedures to follow up to and provide feedback to the requesting State on Article 31 requests;</p> <p>e. Considering to establish, where feasible, contact points in prosecution offices to permit a</p>



Dominican Republic

	<p>more direct role in mutual legal assistance and a quicker response to requests;</p> <p>f. Facilitating 24/7 points of contact to play a supportive role in "Article 31" requests.</p>
	<p>As a country we have been establishing the necessary efforts to strengthen the 24/7 contact focal points.</p> <p>This focal points, until now, have been only established at a central level. As established in the law 53-07, they are located in the DICAT.</p>
Rec 6	<p>Parties should consider streamlining the procedures and reduce the number of steps required for mutual assistance requests at the domestic level. Parties should share good practices in this respect with the T-CY.</p>
	<p>This point has been a concern for the Dominican Republic. In that matter, one of the aspects we have taken into consideration is to impel the modification of the 53-07 law, which is being discussed in this exact time.</p>
Rec 7	<p>Parties should make use of all available channels for international cooperation. This may include formal mutual legal assistance, police to police cooperation and others.</p>
	<p>Both the Mutual Legal Assistance, as well as the police-police cooperation are being used right now.</p>
Rec 8	<p>Parties are encouraged to establish emergency procedures for requests related to risks of life and similar exigent circumstances. The T-CY should document practices by Parties and providers.</p>
	<p>Actually in the Dominican Republic we have not established procedures for this type of cases. In this matter, these cases are being considered in the modification of the 53-07 law.</p>
Rec 9	<p>Parties should confirm receipt of requests systematically and give, upon request, notice of action taken.</p>
	<p>National Police DICAT'S receives all the electronic solicitations. In this order, also response to all the actions being taken.</p>
Rec 10	<p>Parties may consider the opening of domestic investigation upon a foreign request or spontaneous information to facilitate the sharing of information or accelerate MLA.</p>
	<p>Law 53-07 permits the opening of the investigation of domestic cases.</p>
Rec 11	<p>Parties should make use of electronic transmission of requests in line with Article 25.3 Budapest Convention on expedited means of communication.</p>
	<p>National legislation permits the use of electronic documents.</p>
Rec 12	<p>Parties should ensure that requests are specific and complete with all necessary information.</p>

Dominican Republic

All the solicitudes are revised by the GA's office, before the procedure.	
Rec 13	Pursuant to Article 25.5 Budapest Convention and Paragraph 259 Explanatory Report, Parties are reminded to apply the dual criminality standard in a flexible manner that will facilitate the granting of assistance.
The 53-07 law gives the flexibility for the application of the double standard of criminality to be applied	
Rec 14	Parties are encouraged to consult with authorities of requested Party prior to sending requests, when necessary.
The Dominican Republic establishes the contact with authorities involved and the focal points before the send the formal solicitude.	
Rec 15	Parties should consider ensuring transparency regarding requirements for mutual assistance requests, and reasons for refusal, including thresholds for minor cases, on the websites of central authorities.
Actually, we dont have publicity being held in the web for the solicitudes of Legal Mutual Assistance. This recommendation is being taken into consideration.	

Question 2: Please provide information on time periods for preservation requests under Article 29 Budapest Convention in your country.

Rec 16	The T-CY should facilitate greater transparency regarding the time period for data preservation upon a foreign preservation request in line with Article 29 Budapest Convention. The T-CY should document time periods.
The period of time concerning this issue is of ninety (90) days , renewable anytime asked for the same amount of days.	
Conditions and periods to extend or renew the preservation of specified data:	

## Estonia

### 1.14 Estonia

Question 1: Please provide information on measures taken or on relevant developments with respect to each of the following Recommendations. Please attach additional information as appropriate.

Rec 1	Parties should fully implement and apply the provisions of the Budapest Convention on Cybercrime, including preservation powers (follow up to T-CY Assessment Report 2012).
Measures taken/relevant developments:	
Estonia has implemented the Budapest Convention. For issue preservation orders general powers of the police and prosecutor are used.	
Rec 2	Parties should consider maintaining statistics or establish other mechanisms to monitor the efficiency of the mutual legal assistance process related to cybercrime and electronic evidence.
Measures taken/relevant developments:	
Overall statistics are kept. There is no separate statistics for cybercrime and electronic evidence.	
Rec 3	Parties should consider allocating more and more technology-literate staff for mutual legal assistance not only at central levels but also at the level of institutions responsible for executing requests (such as local prosecution offices).
Measures taken/relevant developments:	
Necessary staff exists. No follow-up.	
Rec 4	Parties should consider providing for better training to enhance mutual legal assistance, police-to-police and other forms of international cooperation on cybercrime and electronic evidence. Training and experience exchange should in particular target prosecutors and judges and encourage direct cooperation between judicial authorities. Such training should be supported by the capacity building programmes of the Council of Europe and other organisations.
Measures taken/relevant developments:	
Trainings are being organised on a regular basis for the law enforcement and judicial authorities.	
Rec 5	Parties and the Council of Europe should work toward strengthening the role of 24/7 points of contact in line with Article 35 Budapest Convention, including through:
a. Ensuring, pursuant to article 35.3 Budapest Convention that trained and equipped personnel is available to facilitate the operative work and conduct or support mutual legal assistance (MLA) activities	
b. Encouraging contact points to pro-actively promote their role among domestic and foreign counterpart authorities;	

Estonia

<ul style="list-style-type: none"> <li>c. Conducting regular meetings and training of the 24/7 network among the Parties;</li> <li>d. Encouraging competent authorities and 24/7 points of contact to consider procedures to follow up to and provide feedback to the requesting State on Article 31 requests;</li> <li>e. Considering to establish, where feasible, contact points in prosecution offices to permit a more direct role in mutual legal assistance and a quicker response to requests;</li> <li>f. Facilitating 24/7 points of contact to play a supportive role in "Article 31" requests.</li> </ul>
<p>Measures taken/relevant developments:</p> <p>No follow-up.</p>
<p>Rec 6 Parties should consider streamlining the procedures and reduce the number of steps required for mutual assistance requests at the domestic level. Parties should share good practices in this respect with the T-CY.</p>
<p>Measures taken/relevant developments:</p> <p>Steps required for mutual assistance requests at domestic level have been brought to minimum No follow-up.</p>
<p>Rec 7 Parties should make use of all available channels for international cooperation. This may include formal mutual legal assistance, police to police cooperation and others.</p>
<p>Measures taken/relevant developments:</p> <p>All available channels are used including Interpol, Europol and 24/7 points of contact.</p>
<p>Rec 8 Parties are encouraged to establish emergency procedures for requests related to risks of life and similar exigent circumstances. The T-CY should document practices by Parties and providers.</p>
<p>Measures taken/relevant developments:</p> <p>Legislation does not define emergency procedures. However if request is considered urgent it will be given a priority.</p>
<p>Rec 9 Parties should confirm receipt of requests systematically and give, upon request, notice of action taken.</p>
<p>Measures taken/relevant developments:</p> <p>Reception of requests is confirmed. Information on action taken is provided.</p>
<p>Rec 10 Parties may consider the opening of domestic investigation upon a foreign request or spontaneous information to facilitate the sharing of information or accelerate MLA.</p>

Estonia

Measures taken/relevant developments:
Legislation does not require opening a domestic investigation upon a foreign request.
Rec 11 Parties should make use of electronic transmission of requests in line with Article 25.3 Budapest Convention on expedited means of communication.
Measures taken/relevant developments:
Electronic transmission of requests is enabled.
Rec 12 Parties should ensure that requests are specific and complete with all necessary information.
Measures taken/relevant developments:
Consultations take place in order to ensure the correctness and completeness of requests.
Rec 13 Pursuant to Article 25.5 Budapest Convention and Paragraph 259 Explanatory Report, Parties are reminded to apply the dual criminality standard in a flexible manner that will facilitate the granting of assistance.
Measures taken/relevant developments:
Dual criminality is applied in a flexible manner as regards offences provided by the Budapest Convention.
Rec 14 Parties are encouraged to consult with authorities of requested Party prior to sending requests, when necessary.
Measures taken/relevant developments:
Consultations take place prior to sending request.
Rec 15 Parties should consider ensuring transparency regarding requirements for mutual assistance requests, and reasons for refusal, including thresholds for minor cases, on the websites of central authorities.
Measures taken/relevant developments:
Consultations take place and foreign counterparts are informed about the requirements if necessary. There is no website available.

Question 2: Please provide information on time periods for preservation requests under Article 29 Budapest Convention in your country.

Rec 16 The T-CY should facilitate greater transparency regarding the time period for data preservation upon a foreign preservation request in line with Article 29 Budapest Convention. The T-CY should
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## Estonia

document time periods.
Time periods for preservation of data following a foreign request:  Data preservation can be done very quickly, if possible during one day.
Conditions and periods to extend or renew the preservation of specified data:  For data preservation general powers are used. No further conditions or time periods have are provided by the legislation.

## Finland

### 1.15 Finland

Question 1: Please provide information on measures taken or on relevant developments with respect to each of the following Recommendations. Please attach additional information as appropriate.

Rec 1	Parties should fully implement and apply the provisions of the Budapest Convention on Cybercrime, including preservation powers (follow up to T-CY Assessment Report 2012).
Measures taken/relevant developments:	
There is no information showing that the situation in Finland is in contradiction with this recommendation.	
Rec 2	Parties should consider maintaining statistics or establish other mechanisms to monitor the efficiency of the mutual legal assistance process related to cybercrime and electronic evidence.
Measures taken/relevant developments:	
The new technical solution for law enforcement authorities and prosecution authorities under development and construction at the moment should allow maintaining statistics.	
A new data management system called "Kasi" has been put into operation in the National Bureau of Investigation since December 2015. The development of the system is still in progress but the objective is to achieve multifaceted information of all international communication including the efficiency of the mutual legal assistance process and its latency times.	
Rec 3	Parties should consider allocating more and more technology-literate staff for mutual legal assistance not only at central levels but also at the level of institutions responsible for executing requests (such as local prosecution offices).
Measures taken/relevant developments:	
Prosecutors in Finland don't execute requests of mutual legal assistance (other than some based on EU instruments). Prosecution service is planning more cybercrime related training for the future use.	
The national Bureau of Investigation, which is responsible of being the central unit for mutual legal assistance requests from Finland to other EU member states, is currently allocating more technology-literate staff for mutual legal assistance by recruiting a civil servant specialised e.g. in cybercrime-related requests for mutual legal assistance and other executive assistance.	
Rec 4	Parties should consider providing for better training to enhance mutual legal assistance, police-to-police and other forms of international cooperation on cybercrime and electronic evidence. Training and experience exchange should in particular target prosecutors and judges and encourage direct cooperation between judicial authorities. Such training should be supported by the capacity building programmes of the Council of Europe and other organisations.
Measures taken/relevant developments:	

## Finland

Prosecution service is planning more cybercrime related training for the future use.

The Police should enhance training in international cooperation and information exchange in order to increase especially local police departments' capacity building in cybercrime investigation.

Rec 5 Parties and the Council of Europe should work toward strengthening the role of 24/7 points of contact in line with Article 35 Budapest Convention, including through:

- a. Ensuring, pursuant to article 35.3 Budapest Convention that trained and equipped personnel is available to facilitate the operative work and conduct or support mutual legal assistance (MLA) activities
  - b. Encouraging contact points to pro-actively promote their role among domestic and foreign counterpart authorities;
  - c. Conducting regular meetings and training of the 24/7 network among the Parties;
  - d. Encouraging competent authorities and 24/7 points of contact to consider procedures to follow up to and provide feedback to the requesting State on Article 31 requests;
  - e. Considering to establish, where feasible, contact points in prosecution offices to permit a more direct role in mutual legal assistance and a quicker response to requests;
  - f. Facilitating 24/7 points of contact to play a supportive role in "Article 31" requests.

Measures taken/relevant developments:

The Communications Centre, which is open 24 hours a day, is the focal point for international contacts such as Interpol and Europol. The Communications Centre acts also as a point of contact in line with Article 35 of the Budapest Convention.

The Communications Centre itself does not have electronic evidence experts, but e.g. investigators with such expertise (e.g. personnel of the Cybercrime Center within The National Bureau of Investigation) can be contacted swiftly through this channel. The Cybercrime Centre itself operates mainly on business hours with an exception of some of its functions. In addition to this, a senior police officer is available on a 24/7 basis as a duty officer and has all resources of the agency available if needed. The duty officer has legal competency to decide of, for instance, preservation of data, search and seizure as well as arrest.

The Communications Centre conveys e.g. Article 31 requests to appropriate parties (competent authorities) who are able to execute such requests. The executing party will then follow up and provide feedback to the requesting State as soon as possible.

Rec 6 Parties should consider streamlining the procedures and reduce the number of steps required for mutual assistance requests at the domestic level. Parties should share good practices in this respect with the T-CY.

Measures taken/relevant developments:

Rec 7 Parties should make use of all available channels for international cooperation. This may include formal mutual legal assistance, police to police cooperation and others.



Finland

Measures taken/relevant developments:	
Rec 8	Parties are encouraged to establish emergency procedures for requests related to risks of life and similar exigent circumstances. The T-CY should document practices by Parties and providers.
Measures taken/relevant developments:	
Rec 9	Parties should confirm receipt of requests systematically and give, upon request, notice of action taken.
Measures taken/relevant developments:	
Is already done.	
Rec 10	Parties may consider the opening of domestic investigation upon a foreign request or spontaneous information to facilitate the sharing of information or accelerate MLA.
Measures taken/relevant developments:	
Domestic criminal investigation is possible to open if there is a reason to suspect that an offence has been committed and if Finnish law may be applied to the offences and if conduct of the criminal investigation in Finland is appropriate in view of investigative reasons and the determination of criminal liability. It's not usually appropriate in view of investigative reasons to open criminal investigation if an offence is already investigated or could be investigated in some other country.	
Rec 11	Parties should make use of electronic transmission of requests in line with Article 25.3 Budapest Convention on expedited means of communication.
Measures taken/relevant developments:	
Use is already made thereof.	
Rec 12	Parties should ensure that requests are specific and complete with all necessary information.
Measures taken/relevant developments:	
Police-prosecutor cooperation aims at ensuring that the requests are specific and complete.	
Rec 13	Pursuant to Article 25.5 Budapest Convention and Paragraph 259 Explanatory Report, Parties are reminded to apply the dual criminality standard in a flexible manner that will facilitate the granting of assistance.
Measures taken/relevant developments:	
Is already applied in accordance with the in abstracto –concept.	

Finland

Rec 14 Parties are encouraged to consult with authorities of requested Party prior to sending requests, when necessary.
Measures taken/relevant developments:
Rec 15 Parties should consider ensuring transparency regarding requirements for mutual assistance requests, and reasons for refusal, including thresholds for minor cases, on the websites of central authorities.
Measures taken/relevant developments:
Is under consideration.

Question 2: Please provide information on time periods for preservation requests under Article 29 Budapest Convention in your country.

Rec 16 The T-CY should facilitate greater transparency regarding the time period for data preservation upon a foreign preservation request in line with Article 29 Budapest Convention. The T-CY should document time periods.
Time periods for preservation of data following a foreign request:
Conditions and periods to extend or renew the preservation of specified data:

1.16 France

Question 1: Veuillez fournir des informations concernant les mesures prises ou concernant les développements pertinents relatifs au suivi des recommandations. Veuillez ajouter toutes informations supplémentaires que vous jugerez utiles.

<p>Rec 1 Les Parties devraient pleinement mettre et appliquer les dispositions de la Convention de Budapest sur la cybercriminalité, y compris les pouvoirs en matière de conservation (suite au rapport d'évaluation de 2012 du T-CY).</p>
<p>Mesures prises/ développements pertinents:</p> <p>La France applique les dispositions de la Convention relative à l'entraide pénale en application des instruments internationaux. Bien que la divulgation rapide des données ne soit pas explicitement prévu en droit interne, le point de contact FR sollicite ces informations auprès des hébergeurs à l'occasion de la mise en place des mesures de préservations.</p>
<p>Rec 2 Les Parties devraient envisager de tenir des statistiques ou d'établir d'autres mécanismes pour suivre l'efficience du processus d'entraide en ce qui concerne la cybercriminalité et les preuves électroniques</p>
<p>Mesures prises/ développements pertinents:</p> <p>Des statistiques relatives aux demandes de préservation de données (article 29) à ont été mise en place au point de contact H24/7.</p> <p>La France ne dispose pas de statistiques précises relatives aux demandes d'entraides judiciaires concernant la cybercriminalité et les preuves électroniques, mais est en mesure de comptabiliser les demandes ayant transité par l'autorité centrale.</p>
<p>Rec 3 Les Parties devraient envisager, pour l'entraide, d'affecter davantage de personnel et du personnel plus formé aux technologies, non seulement au niveau central mais au niveau des institutions responsables de l'exécution des demandes (par exemple les Bureaux locaux des procureurs).</p>
<p>Mesures prises/ développements pertinents:</p> <p>Au sein de la direction criminelle et des grâces du ministère de la Justice, le BEPI (Bureau de l'Entraide Pénale Internationale), autorité centrale en charge du traitement opérationnel des demandes d'entraide et composé de vingt et une personnes, comprend un magistrat référent pour les questions relatives à la cybercriminalité. D'autre part, un magistrat est dédié à une mission de lutte contre la cybercriminalité et participe aux réflexions d'amélioration du recueil de la preuve numérique. Le parquet de Paris est doté d'une section spécialisée en cybercriminalité (Section F1) et le parquet de Lille est particulièrement sensibilisé aux requêtes concernant l'hébergeur OVH. Certains parquets disposent d'un référent « cybercriminalité ».</p> <p>La Section Internationale de l'OCLCTIC, en charge de la mise en œuvre des demandes adressées au point de contact a été renforcée depuis 2012. Des fonctionnaires spécialisés en matière de cybercriminalité y sont affectés et travaillent en coordination avec les spécialistes en investigations cyber et en forensic de l'OCLCTIC.</p>
<p>Rec 4 Les Parties devraient envisager de dispenser une meilleure formation pour renforcer l'entraide, la coopération policière et d'autres formes de coopération internationale en matière de</p>

## France

cybercriminalité et de preuves électroniques. La formation et l'échange d'expériences devraient en particulier viser les procureurs et les juges et encourager une coopération directe entre autorités judiciaires. Une telle formation devrait être soutenue par les programmes de consolidation de capacités du Conseil de l'Europe et d'autres organisations.

Mesures prises/ développements pertinents:

Les policiers affectés au point de contact H24/7 sont tous formés à la problématique de la cybercriminalité et du recueil de la preuve numérique. En outre, le point de contact se situe au sein de l'Office Central de Lutte contre la Criminalité liée aux TIC, ce qui facilite le partage d'expérience pratique avec des enquêteurs spécialisés.

L'ENM (Ecole nationale de la magistrature) dispense plusieurs formations axées sur la cybercriminalité, notamment un diplôme universitaire en partenariat avec la Faculté de Montpellier.

Rec 5 Renforcer le rôle des points of contact 24/7 conformément à l'Article 35 Convention de Budapest, notamment :

- a. veiller, conformément à l'article 35.3 Convention de Budapest, à disposer de personnel formé et équipé pour faciliter le travail opérationnel et conduire ou soutenir des activités liées à l'entraide ;
- b. veiller à ce que les points de contact promeuvent activement leur rôle de faire les autorités nationales et de leurs homologues étrangères ;
- c. assurer des réunions régulières et la formation du réseau 24/7 ;
- d. les autorités compétentes et les points de contact 24/7 devraient envisager des procédures de suivi pour superviser le traitement des demandes basées sur l'article 31 et faire un retour d'information à l'Etat requérant
- e. établir, dans la mesure du possible, des points de contact (supplémentaires) dans les services de poursuite pour permettre un rôle plus direct en matière d'entraide et une réponse plus rapide aux demandes ;
- f. les points de contact 24/7 devraient jouer au moins un rôle de soutien pour les demandes "Article 31"

Mesures prises/ développements pertinents:

Les policiers affectés au point de contact H24/7 sont tous formés à la problématique de la cybercriminalité et du recueil de la preuve numérique. En outre, le point de contact se situe au sein de l'Office Central de Lutte contre la Criminalité liée aux TIC, ce qui facilite le partage d'expérience pratique avec des enquêteurs spécialisés.

Le point de contact H24/7 est en contact direct avec le Bureau de l'Entraide Pénale Internationale (DACG/Ministère de la Justice/BEPI) afin d'assurer le traitement des demandes d'entraides judiciaires relevant de l'article 31.

Le point de contact H24/7 communique à ses homologues étrangers sur demande toutes les informations nécessaires à la correcte formulation d'une demande d'entraide et le mets si nécessaire en relation avec le BEPI.

Rec 6 Les Parties devraient rationaliser les procédures et réduire le nombre d'étapes exigées pour les demandes d'entraide au niveau national. Les Parties devraient partager les bonnes pratiques cet égard avec le T-CY.

France

Mesures prises/ développements pertinents:

Au sein de l'Union Européenne et en cas d'urgence lorsque cela est prévu par l'instrument conventionnel applicable, la transmission directe d'une demande d'entraide d'autorité judiciaire à autorité judiciaire est le principe. Hors ce cadre, les moyens de communication moderne sont utilisés pour accélérer les transmissions des demandes en copie avancée au parquet général français ou à l'autorité centrale étrangère, saisis en exécution de la demande, avant transmission des pièces originales par la voie habituelle.

Rec 7 Les Parties devraient utiliser tous les canaux disponibles pour la coopération internationale. Cela peut inclure l'entraide judiciaire, la coopération police à police ou autres.

Mesures prises/ développements pertinents:

La coopération police à police est utilisée par la France, que ce soit en relation bilatérale ou par l'intermédiaire d'organisations internationales (Interpol, Europol).

Cette coopération permet d'échanger des informations qui sont disponibles dans les services d'enquête, sans qu'il soit nécessaire de prendre ou solliciter une réquisition ou toute autre mesure coercitive, en application des dispositions du code de procédure pénale français.

Cet échange d'information ne peut se faire qu'avec l'autorisation préalable d'un magistrat chaque fois que cette autorisation est requise en France pour accéder à ces mêmes informations ou les transmettre à un service ou à une unité de police judiciaire.

Les canaux de l'entraide judiciaire sont principalement utilisés en France en raison du système judiciaire et procédural français qui implique que le procureur ou le juge d'instruction dirigent les enquêtes.

Rec 8 Les Parties sont encouragées à établir des procédures d'urgence pour des demandes lorsqu'il y a risque pour la vie ou dans d'autres circonstances extrêmes similaires. Le T-CY devrait documenter la pratique des pays.

Mesures prises/ développements pertinents:

Réponse déjà fournie.

Rec 9 Les Parties devraient confirmer la réception des demandes systématiquement et notifier les actions prises.

Mesures prises/ développements pertinents:

Les demandes adressées au point de contact H24/7 font toutes l'objet d'un accusé de réception.

Rec 10 Les Parties devraient envisager l'ouverture d'une enquête nationale sur demande étrangère ou information spontanée pour faciliter le partage d'informations ou accélérer l'entraide.

Mesures prises/ développements pertinents:

Lorsque les conditions pour l'ouverture d'une enquête en France sont réunies, l'opportunité d'ouvrir une enquête nationale est souvent appréciée favorablement pour les infractions d'une certaine gravité ou d'une certaine ampleur.

France

Rec 11	Les Parties devraient utiliser la transmission électronique des demandes, conformément à l'article 25.3 Convention de Budapest
Mesures prises/ développements pertinents: Nous le faisons en pratique, avec envoi en parallèle de l'exemplaire papier.	
Rec 12	Les Parties devraient veiller à ce que les demandes soient spécifiques et contiennent toutes les informations nécessaires.
Mesures prises/ développements pertinents: Le BEPI et les magistrats de liaison ont un rôle de conseil dans la rédaction des demandes d'entraide. Un guide méthodologique sur les demandes d'entraides en matière numérique à destination des USA a été réalisé.	
Rec 13	Conformément à l'article 25.5 Convention de Budapest et au Paragraphe 259 du Rapport explicatif, les Parties sont encouragées à faire preuve de flexibilité lorsqu'elles appliquent la double incrimination, qui faciliterait l'octroi de l'aide
Mesures prises/ développements pertinents: La pratique de la France est conforme aux dispositions de cet article.	
Rec 14	Les Parties sont encouragées à se consulter avec les autorités de la Partie requise avant d'envoyer les demandes.
Mesures prises/ développements pertinents: Comme indiqué au point 12, le BEPI et les magistrats de liaison ont un dialogue constructif avec les autorités de la partie requise. Toutefois, il convient de souligner qu'il n'est pas souhaitable qu'une consultation préalable soit systématique, au risque de devenir un « filtre » excessif.	
Rec 15	Les Parties devraient assurer la transparence en ce qui concerne les conditions applicables en matière de demandes d'entraide, notamment pour les seuils concernant les affaires vénielles, sur les sites Web des autorités centrales.
Mesures prises/ développements pertinents: Nous n'appliquons pas de règle « de minimis ».	

Question 2: Veuillez informer sur les périodes de temps pour les demandes préservation dans le cadre de l'article 29 de la Convention de Budapest dans votre pays.

Rec 16	Le T-CY devrait faciliter une plus grande transparence vis-à-vis la période de conservation des données suite à une demande de conservation conformément l'article 29 de la Convention de Budapest. Le T-CY devrait documenter les périodes de conservation :
Période de conservation pour la préservation des données suite à une demande étrangère: Dans la pratique les données sont conservées 90 jours à compter de la réception de la demande au point de contact. (notamment en référence à l'article 16 de la convention de Budapest qui évoque la durée	

## France

maximale de 90 jours)

Les conditions et périodes de conservation afin de prolonger ou renouveler la conservation de données spécifiques :

Dans la pratique, et avant l'échéance du délai de 90 jours, la demande de préservation peut être renouvelée suivant le même formalisme.

## Germany

### 1.17 Germany

Rec 1	Parties should fully implement and apply the provisions of the Budapest Convention on Cybercrime, including preservation powers (follow up to T-CY Assessment Report 2012).
Measures taken/relevant developments:	
Rec 2	Parties should consider maintaining statistics or establish other mechanisms to monitor the efficiency of the mutual legal assistance process related to cybercrime and electronic evidence.
Measures taken/relevant developments:	
Rec 3	Parties should consider allocating more and more technology-literate staff for mutual legal assistance not only at central levels but also at the level of institutions responsible for executing requests (such as local prosecution offices).
Measures taken/relevant developments:	
Rec 4	Parties should consider providing for better training to enhance mutual legal assistance, police-to-police and other forms of international cooperation on cybercrime and electronic evidence. Training and experience exchange should in particular target prosecutors and judges and encourage direct cooperation between judicial authorities. Such training should be supported by the capacity building programmes of the Council of Europe and other organisations.
Measures taken/relevant developments:	
Rec 5	Parties and the Council of Europe should work toward strengthening the role of 24/7 points of contact in line with Article 35 Budapest Convention, including through:  a. Ensuring, pursuant to article 35.3 Budapest Convention that trained and equipped personnel is available to facilitate the operative work and conduct or support mutual legal assistance (MLA) activities b. Encouraging contact points to pro-actively promote their role among domestic and foreign counterpart authorities; c. Conducting regular meetings and training of the 24/7 network among the Parties; d. Encouraging competent authorities and 24/7 points of contact to consider procedures to follow up to and provide feedback to the requesting State on Article 31 requests; e. Considering to establish, where feasible, contact points in prosecution offices to permit a more direct role in mutual legal assistance and a quicker response to requests; f. Facilitating 24/7 points of contact to play a supportive role in "Article 31" requests.
Measures taken/relevant developments:	
Rec 6	Parties should consider streamlining the procedures and reduce the number of steps required for mutual assistance requests at the domestic level. Parties should share good practices in this respect with the T-CY.
Measures taken/relevant developments:	



Germany

Rec 7	Parties should make use of all available channels for international cooperation. This may include formal mutual legal assistance, police to police cooperation and others.
Measures taken/relevant developments:	
Rec 8	Parties are encouraged to establish emergency procedures for requests related to risks of life and similar exigent circumstances. The T-CY should document practices by Parties and providers.
Measures taken/relevant developments:	
Rec 9	Parties should confirm receipt of requests systematically and give, upon request, notice of action taken.
Measures taken/relevant developments:	
Rec 10	Parties may consider the opening of domestic investigation upon a foreign request or spontaneous information to facilitate the sharing of information or accelerate MLA.
Measures taken/relevant developments:	
Rec 11	Parties should make use of electronic transmission of requests in line with Article 25.3 Budapest Convention on expedited means of communication.
Measures taken/relevant developments:	
Rec 12	Parties should ensure that requests are specific and complete with all necessary information.
Measures taken/relevant developments:	
Rec 13	Pursuant to Article 25.5 Budapest Convention and Paragraph 259 Explanatory Report, Parties are reminded to apply the dual criminality standard in a flexible manner that will facilitate the granting of assistance.
Measures taken/relevant developments:	
Rec 14	Parties are encouraged to consult with authorities of requested Party prior to sending requests, when necessary.
Measures taken/relevant developments:	
Rec 15	Parties should consider ensuring transparency regarding requirements for mutual assistance requests, and reasons for refusal, including thresholds for minor cases, on the websites of central authorities.

## Germany

Measures taken/relevant developments:

The recommendations on mutual legal assistance adopted by the T-CY in December 2014 did not give rise to any need for legislative action in Germany. The domestic law that has been applicable since 2014 with regard to MLA meets the requirements of the Budapest Convention and facilitates all the MLA measures envisaged by the Budapest Convention. Current MLA practices likewise comply with all the points raised in the recommendations. They are based on well-established procedures which ensure that smooth and efficient support is provided to the competent authorities of other Parties.

Regardless of the legal and practical standards already achieved, it goes without saying that the German Federal Government continues to attach great importance to international cooperation in the fight against cybercrime and is working to ensure that the existing standards are maintained (or improved wherever this proves to be necessary) – primarily by way of ongoing dialogue between all those involved. The Federal Government actively supports the work relating to the fight against cybercrime and criminal prosecution in cyberspace/the gathering of e-evidence – work which is done not only at Council of Europe level but which for the last year or so has been increasingly done at European Union level.

To this end, a regular inter-departmental “cyber meeting” was initiated at the federal level in early 2016, where those departments chiefly affected by current issues can exchange views and coordinate positions. Concrete legal questions are also discussed, e.g. on interpreting Article 18 of the Budapest Convention and on possibilities for simplifying legal assistance in the gathering of e-evidence. The results are then fed into consultations at the international level. This regular meeting – which has so far been held twice – is also attended by external experts, e.g. from the Council of Europe or the European Union.

Furthermore, the Federal Government is in regular contact with legal practitioners so that current issues can be discussed on this front also. In addition to the meetings with representatives of the *Länder* which already take place on a regular basis (criminal prosecution is generally a matter for the *Länder* within Germany's federal structure), a fixed network of practitioners has been set up and is supported by the Federal Ministry of Justice and Consumer Protection. Members of this network include judicial and police law enforcement agencies. Apart from the Federal Criminal Police Office, these primarily include the public prosecution offices of the individual *Länder* which specialize in cybercrime. Discussions within this network serve to ensure that the Federal Government is well informed about the concerns of justice practitioners, while also making sure that the proposed solutions which are developed to deal with current problems and are discussed during international talks meet the actual needs of criminal prosecution practice.

In addition to this, the competent prosecution authorities of the Federation and the *Länder* constantly exchange ideas on legal questions relating to the (cross-border) prosecution of cybercrime. One example here is the annual meeting of the Public Prosecutors General.

The ongoing and regular exchange of ideas and information between the different *Länder*, between the Federation and the *Länder*, and within the Federal Government ensures that the points raised in the T-CY recommendations are standard practice. This applies (for example) to the recommendation that mutual assistance requests should be accompanied by direct dialogue between the judicial authorities involved, and that mutual assistance requests should be formulated in a goal-oriented and recipient-friendly manner. The same applies to the recommendation

## Germany

that incoming requests should be processed in the quickest and most fact-oriented manner possible, and that consideration must be given at this stage to whether supportive domestic concurrent proceedings need to be initiated.

### On recommendation 4

Numerous training courses are available in Germany to equip judges and prosecutors with the necessary skills to recognise criminal law problems in the area of cybercrime and to deal with such problems in the appropriate manner. The German Judicial Academy holds conferences under the headings "Criminal law and the internet" and "Forms of internet crime and how to tackle them" along with other similar events. These conferences can be attended by judges and prosecutors from all the federal *Länder*, regardless of what their specialist responsibilities might be. Furthermore, *Länder*-level conferences are held on criminal law topics of relevance to cybercrime – often in conjunction with the competent police authorities. Current issues and developments are regularly addressed within the scope of specialist conferences and staff meetings.

### On recommendation 8

The information already provided to the T-CY (document T-CY(2016)13) makes reference to the Ordinance concerning the Technical and Organizational Implementation of Measures for the Interception of Telecommunications (Telecommunications Interception Ordinance – TKÜV). Please note that an update of this ordinance is currently under review.

## 1.18 Hungary

Question 1: Please provide information on measures taken or on relevant developments with respect to each of the following Recommendations. Please attach additional information as appropriate.

<p>Rec 1 Parties should fully implement and apply the provisions of the Budapest Convention on Cybercrime, including preservation powers (follow up to T-CY Assessment Report 2012).</p>
<p>Measures taken/relevant developments:</p> <p>The referred Assessment Report found that Hungary is partially in line with Article 17, 29 and not in line with Article 30. With regard to this additional information, clarification has been sent to T-CY in December 2015. Please find them attached.</p> <p>The chapter XLIII on Illicit access to data and offences against information systems of the Act C of 2012 on the Criminal Code (CC) - which entered into force on 1 January 2013 - defines the type of unlawful conducts as provided for by the Budapest Convention and Directive 2013/40/EU of the European Parliament and of the Council on attacks against information systems (e.g. child pornography, violation of an information system or data, etc.)</p> <p>In addition, Article 16 and 17 are fully exposed by art. 158/A § (Order to preserve data stored in an information system) of Act XIX of 1998 on the criminal proceedings (CPA). According to § 177 of the CPA, in case of urgency, this coercive measure can be applied immediately, even before ordering an investigation.</p> <p>The compliance with Article 17 is also ensured by sectorial legislation, such as the Act C of 2003 on Electronic Communications (Article 159/A, 159/B). You can find it in separate attachment.</p> <p>With regard to Article 30 it is important to note that electronic data available at service provider are accessible to law enforcement authorities upon request, and can be afterwards forwarded to the requesting party in the framework of legal assistance.</p>
<p>Rec 2 Parties should consider maintaining statistics or establish other mechanisms to monitor the efficiency of the mutual legal assistance process related to cybercrime and electronic evidence.</p>
<p>Measures taken/relevant developments:</p> <p>In 2015 the Prosecutor's Office decided on the setting up of the Prosecutors' Network on Cybercrime related Matters (hereinafter: Network). The Network started its operation in 2016. Its mission is to support prosecutors dealing with offences committed with the use of information systems by providing trainings, setting up a knowledge base and enhancing the involvement of prosecutorial IT specialists.</p> <p>1 prosecutor from each chief prosecutor's offices and prosecutors from the Prosecutor General's relevant departments have been nominated to be members of the Network. According to the annual action plan, the</p>

## Hungary

communication between the members, as well as between the members and colleagues in their organisational units is ensured. In addition, at most of the chief prosecutor's offices local networks have been established which incorporates the – lower level – local prosecutor's office subordinated to the chief prosecutor's offices.

Prosecutors at the chief prosecutor's offices can discuss with each other their questions concerning MLAs with the help of the appointed Network member through the local network, or if needed the questions can be referred to the country-wide Network, and experiences can be shared at this level.

The knowledge base (intranet site and content) is being developed. In addition, the Network held a number of trainings in 2016, where topics concerning international legal assistance were touched upon. The last training was organised together with representatives from the USA where presentations on the MLA requests concerning cybercrime-related offences sent to the US were also held.

The prosecutor services of Hungary do not currently maintain statistics specifically on cybercrime-related MLA requests. Nevertheless, such control can be executed on ad-hoc basis by inquiring the registration system. Besides, the operation of the Network provides strong guaranties for detecting and solving difficulties in managing MLA requests.

**Rec 3** Parties should consider allocating more and more technology-literate staff for mutual legal assistance not only at central levels but also at the level of institutions responsible for executing requests (such as local prosecution offices).

Measures taken/relevant developments:

The management of the Network is of the opinion that allocating more and more technology-literate staff at local level - in itself - is not enough for ensuring the adequate level of the management of MLA requests, because colleagues often move from one position to another one. For this reason, beside the increase of the number of specialised staff it is important to ensure the possibility of effective work and gathering practical experiences for the entire staff. The aforementioned knowledge base can also serve this aim, and the Network members and the structure of the chief prosecutor's offices ensures that staff members can raise questions to more their more experienced colleagues.

In addition, the holders of the employer's rights strive for appointing staff with adequate experience and knowledge in the area when it comes to dealing with of cybercrime related matters (including executing MLA requests).

**Rec 4** Parties should consider providing for better training to enhance mutual legal assistance, police-to-police and other forms of international cooperation on cybercrime and electronic evidence. Training and experience exchange should in particular target prosecutors and judges and encourage direct cooperation between judicial authorities. Such training should be supported by the capacity building programmes of the Council of Europe and other organisations.

Measures taken/relevant developments:

## Hungary

Since the adoption of the MLA assessment report a number of cybercrime-related trainings, presentations targeting a variety of levels and areas of expertise of the prosecution service were held.

A few examples:

- Trainings of prosecutors managing specialty area of IT/computer sciences
- Training for prosecutors dealing with cases in which juveniles are concerned; presentation on high-tech crime, internet and offences committed with the use of information systems
- Topical issues of the administration of MLA requests; trainings for criminal deputy chief prosecutors and trainings for the heads local prosecutors' offices (five trainings in 2015 and 2016)
- Rational for establishing JITs, experiences acquired so far; Trainings for prosecutors dealing with offences related to economic crime and corruption
- Trainings for heads of local prosecutors' offices – topics: IT specialists of the prosecution services in the investigations; Challenges in the application of regulations concerning money laundering, in view of questions arising in the area of international cooperation in criminal matters; Special forms of cooperation in criminal matters, with special attention to JITs
- The Network organises a conference on 29.11.2016
- Trainings are regularly organised also for the local IT specialists by the Network

Investigative authorities and judges are also regularly invited to the trainings organised by the Network. This helps to establish a similar level of knowledge at the different organisation, to a better understanding of the relevant competent authorities' practices and thus to the formation of a country-wide consistent practice.

Rec 5 Parties and the Council of Europe should work toward strengthening the role of 24/7 points of contact in line with Article 35 Budapest Convention, including through:

- a. Ensuring, pursuant to article 35.3 Budapest Convention that trained and equipped personnel is available to facilitate the operative work and conduct or support mutual legal assistance (MLA) activities
  - b. Encouraging contact points to pro-actively promote their role among domestic and foreign counterpart authorities;
  - c. Conducting regular meetings and training of the 24/7 network among the Parties;
  - d. Encouraging competent authorities and 24/7 points of contact to consider procedures to follow up to and provide feedback to the requesting State on Article 31 requests;
  - e. Considering to establish, where feasible, contact points in prosecution offices to permit a more direct role in mutual legal assistance and a quicker response to requests;
  - f. Facilitating 24/7 points of contact to play a supportive role in "Article 31" requests.

Measures taken/relevant developments:

- a. The non-stop contact point is the National Police Headquarters National Criminal Cooperation Centre (NEBEK) for the COE 24/7 and also in the G8 24/7 contact point system, that receives requests and reports over phone, fax and e-mail in English, German, French and Spanish languages. In either contact point list the Special Police Services National Bureau of Investigation (NBI) Corruption and Economic Crime Department Cybercrime Division is a contact point that can receive requests and reports during working hours.

## Hungary

b. The role of the NEBEK and the NBI Cybercrime Division as 24/7 contact points are promoted at every cybercrime or forensic work related presentations, events.

c. The head of NBI Cybercrime Division took part in the ISEC Programme 2013 project "Effective 24/7 POC on Cybercrime". This project was a great opportunity to meet the representatives of other country's 24/7 POCs. In addition, the Network mentioned in Rec. 2 strives for supporting all prosecutors in better exploiting the advantages provided by the 24/7 contact point system.

d. In the daily practice of the point of contact during any 24/7 request or MLA procedure direct feedback to the requesting country is always provided not only about receiving the request but also about the main steps of the fulfilling of it.

**Rec 6** Parties should consider streamlining the procedures and reduce the number of steps required for mutual assistance requests at the domestic level. Parties should share good practices in this respect with the T-CY.

Measures taken/relevant developments:

In general terms, MLA requests received by the Office of the Prosecutor General are - according to the principle of expediency – forwarded to that chief prosecutor's office from which the fastest execution of the requested procedural step is expected. As a good practice it should also be mentioned that – as mentioned in Art. 25/3 of the Convention - the urgent requests are also sent by the requesting party in email or fax, prior to the submission by post. In such cases the preparation for the execution of the requests can be started as soon as possible saving thus valuable time.

**Rec 7** Parties should make use of all available channels for international cooperation. This may include formal mutual legal assistance, police to police cooperation and others.

Measures taken/relevant developments:

During cybercrime investigations NBI Cybercrime Division and Forgery of Money and Payment Card Fraud Division uses every possible international cooperation channel such as Interpol, Europol, SELEC, or bilateral agreements. The divisions delegate national experts to Europol FP Cyborg, Twins and Terminal and also to the working groups of EMPACT Cybercrime priority.

This cooperation can also effectively prepare the submission and smooth execution of an MLA request aiming at obtaining evidences.

The abovementioned Network shares the opinion that in the case of offences committed with the use of information systems the execution of MLA requests faces difficulties. For this reason during the trainings other procedurals forms are also promoted, such as police-to-police cooperation, JITs.

**Rec 8** Parties are encouraged to establish emergency procedures for requests related to risks of life and similar exigent circumstances. The T-CY should document practices by Parties and providers.

## Hungary

Measures taken/relevant developments:	
Rec 9	Parties should confirm receipt of requests systematically and give, upon request, notice of action taken.
Measures taken/relevant developments:	
<p>It is the part of the daily practice of the contact points that during any 24/7 request or MLA procedures direct feedback to the requesting country is always provided not only about receiving the request but also at the main steps of the fulfilling of it.</p> <p>Also, while forwarding the request to the chief prosecutor's office appointed to fulfil the request, written notice is given to the requesting party about the appointed chief prosecutor's office and its contact details.</p>	
Rec 10	Parties may consider the opening of domestic investigation upon a foreign request or spontaneous information to facilitate the sharing of information or accelerate MLA.
Measures taken/relevant developments:	
<p>If any criminal information or the success of an international police/judicial cooperation requires and the legal rules allows the opening of a domestic investigation the necessary steps are always taken.</p> <p>In practice, in the case that a request arrives for transferring a criminal proceeding but based on the request no definitive position can be taken on the takeover of the proceeding, the request is handled as a request for legal assistance. Based on the evidences gathered during the fulfilling of the request the possibility of launching of a domestic criminal proceeding is re-examined.</p>	
Rec 11	Parties should make use of electronic transmission of requests in line with Article 25.3 Budapest Convention on expedited means of communication.
Measures taken/relevant developments:	
<p>During 24/7 or MLA requests electric communication channels - such as Europol SIENA, Interpol Channel or direct e-mail - are preferred.</p> <p>Pls refer also to point 6.</p>	
Rec 12	Parties should ensure that requests are specific and complete with all necessary information.
Measures taken/relevant developments:	
<p>24/7 requests or MLAs sent by the divisions of the NBI always includes all necessary information what is needed to fulfil them.</p> <p>86/3 § of the Prosecutor General's instruction Nr 11/2013 provides for that in the requests for assistance the facts and circumstances, which are necessary for the fulfilment of the request, must be indicated in a</p>	



Hungary

concise and unequivocal manner, and the content of the requested procedural steps shall be formulated in the same way.

Rec 13 Pursuant to Article 25.5 Budapest Convention and Paragraph 259 Explanatory Report, Parties are reminded to apply the dual criminality standard in a flexible manner that will facilitate the granting of assistance.

Measures taken/relevant developments:

In determining whether a request can be fulfilled the principle of providing mutual assistance to the widest extent possible (Art. 25/1 of the Convention) is always respected. The request for assistance can be refused in the absence dual criminality if the reciprocity from the side of the requesting country does not seem to be ensured.

Act XXXVIII of 1996 on International Mutual Assistance in Criminal Matters

Section 5

(1) Unless otherwise provided for under this Act, requests for mutual assistance shall be executed or made where

a) the act is punishable under both the law of Hungary and the law of the foreign state;

...

Section 62

Requests for procedural assistance may also be executed where the condition set out in Section 5 (1) a) is not fulfilled, provided that the Requesting State guarantees reciprocity in this respect as well.

Rec 14 Parties are encouraged to consult with authorities of requested Party prior to sending requests, when necessary.

Measures taken/relevant developments:

If it is needed before sending 24/7 request or a MLAT the divisions of the NBI always get into contact with the representatives of the requested country using Europol or Interpol channel, Europol Liaison Bureaus or any other personal contacts.

According to the experiences of the prosecution services consultations mentioned in the recommendation takes place for instance prior to the establishment of JITs, during coordination meetings organised by Eurojust or when the settlement of conflicts of jurisdiction is necessary.

Rec 15 Parties should consider ensuring transparency regarding requirements for mutual assistance requests, and reasons for refusal, including thresholds for minor cases, on the websites of central authorities.

Measures taken/relevant developments:

Hungary

Question 2: Please provide information on time periods for preservation requests under Article 29 Budapest Convention in your country.

Rec 16 The T-CY should facilitate greater transparency regarding the time period for data preservation upon a foreign preservation request in line with Article 29 Budapest Convention. The T-CY should document time periods.

Time periods for preservation of data following a foreign request:

Article 158/A (8) of Act on Criminal Proceedings – Order to preserve data stored in an information system  
The obligation to preserve data shall be in effect until the seizure of the data medium containing the original data or in the case of paragraph (4) until the copy of the data, but no longer than for 3 months. The obligation to preserve the data shall terminate if the criminal proceedings has been concluded. The obliged party shall be advised of the conclusion of the criminal proceedings.

Conditions and periods to extend or renew the preservation of specified data:

1.19 Israel

Question 1: Please provide information on measures taken or on relevant developments with respect to each of the following Recommendations. Please attach additional information as appropriate.

<p>Rec 1 Parties should fully implement and apply the provisions of the Budapest Convention on Cybercrime, including preservation powers (follow up to T-CY Assessment Report 2012).</p>
<p>Measures taken/relevant developments: On May 2015 the "National Cyber Centre" in the Israeli Police Cyber Unit has been founded. The National Cyber Centre is the PoC for preservation requests according to the Cybercrime Convention. The erection of the National Cyber Centre, its completion and operation has been completed before the State of Israeli and officially joined the Cybercrime Convention and ratified the Convention, on April 14th, 2016.</p>
<p>Rec 2 Parties should consider maintaining statistics or establish other mechanisms to monitor the efficiency of the mutual legal assistance process related to cybercrime and electronic evidence.</p>
<p>Measures taken/relevant developments: As of today, we were unable to achieve data about MLA requests regarding cybercrime and digital evidence.</p>
<p>Rec 3 Parties should consider allocating more and more technology-literate staff for mutual legal assistance not only at central levels but also at the level of institutions responsible for executing requests (such as local prosecution offices).</p>
<p>Measures taken/relevant developments: At the end of 2015, the Israeli State Attorney's Office has begun the process of founding the Cybercrime Department. Amongst its other duties, the Department engages in an on-going corporation and discourse with colleagues around the world and with several ISP's. Additionally, in the International Department in the Israeli State Attorney's Office, which is the central authority in matters of MLA, has begun to operate a designated authority on matters of law and technology.</p>
<p>Rec 4 Parties should consider providing for better training to enhance mutual legal assistance, police-to-police and other forms of international cooperation on cybercrime and electronic evidence. Training and experience exchange should in particular target prosecutors and judges and encourage direct cooperation between judicial authorities. Such training should be supported by the capacity building programmes of the Council of Europe and other organisations.</p>
<p>Measures taken/relevant developments: Representatives from the Israeli State Attorney's Office and the Israeli Police have taken part of numerous bilateral meetings with colleagues from different countries, and in these meetings valuable information has been exchanges between the parties, regarding collaboration and mutual assistance in collecting information with investigative value. The Israeli Police and the Israeli State Attorney's Office would like to strengthen the collaboration with the other states that have signed the Convention.</p>

## Israel

As part of the Israeli Police's basic and advanced training for computer investigators, and as part of the relevant prosecutors' training, the matter of international cooperation is discussed thoroughly.

Rec 5 Parties and the Council of Europe should work toward strengthening the role of 24/7 points of contact in line with Article 35 Budapest Convention, including through:

- a. Ensuring, pursuant to article 35.3 Budapest Convention that trained and equipped personnel is available to facilitate the operative work and conduct or support mutual legal assistance (MLA) activities
  - b. Encouraging contact points to pro-actively promote their role among domestic and foreign counterpart authorities;
  - c. Conducting regular meetings and training of the 24/7 network among the Parties;
  - d. Encouraging competent authorities and 24/7 points of contact to consider procedures to follow up to and provide feedback to the requesting State on Article 31 requests;
  - e. Considering to establish, where feasible, contact points in prosecution offices to permit a more direct role in mutual legal assistance and a quicker response to requests;
  - f. Facilitating 24/7 points of contact to play a supportive role in "Article 31" requests.

Measures taken/relevant developments:

The National Cyber Centre has taken the following steps to strengthen Israel's 24/7 POC:

Only trained and equipped personnel is available to conduct and support MLA requests. The personnel works constantly in order to improve its abilities and help facilitate MLA requests.

A contact point has been established in the Israeli State Attorney's Office – in the Cybercrime Department.

Israel plays a supportive role in "Article 31" requests.

Rec 6 Parties should consider streamlining the procedures and reduce the number of steps required for mutual assistance requests at the domestic level. Parties should share good practices in this respect with the T-CY.

Measures taken/relevant developments:

None

Rec 7 Parties should make use of all available channels for international cooperation. This may include formal mutual legal assistance, police to police cooperation and others.

Measures taken/relevant developments:

Additionally to the information disclosed regarding recommendation 1 and 3, it will be noted that these two units are also active in the non-formal channel in order to facilitate and aid in MLA requests.

Rec 8 Parties are encouraged to establish emergency procedures for requests related to risks of life and similar exigent circumstances. The T-CY should document practices by Parties and providers.

Measures taken/relevant developments:

The "National Cyber Centre" in the Israeli Police Cyber Unit is prepared for handling urgent requests and

## Israel

	<p>have actually received a few such requests since in was founded. The National Cyber Centre has dealt with these requests without delay.</p>
Rec 9	<p>Parties should confirm receipt of requests systematically and give, upon request, notice of action taken.</p>
	<p>Measures taken/relevant developments:</p> <p>As part of the National Cyber Centre's regular course of action as part of the 24/7 network, the National Cyber Centre delivers a conformation and update for every request it receives.</p>
Rec 10	<p>Parties may consider the opening of domestic investigation upon a foreign request or spontaneous information to facilitate the sharing of information or accelerate MLA.</p>
	<p>Measures taken/relevant developments:</p> <p>Due to the fact that criminal offences in the cyberspace are often committed in a few geographical locations at the same time, there might be cases in which the MLA request that Israel has received will lead to the initiation of a domestic criminal investigation. In such cases, there might be a case in which the State of Israel will have an interest to indict the suspect/s in Israel. Therefore, the decision regarding which country will be the one to indict will be discussed between the requesting state and the requested state.</p>
Rec 11	<p>Parties should make use of electronic transmission of requests in line with Article 25.3 Budapest Convention on expedited means of communication.</p>
	<p>Measures taken/relevant developments:</p> <p>Since it was founded, the National Cyber Centre uses the electronic transmission communication manners, mainly e-mail, as its central course of communication. The National Cyber Centre's e-mail address is - <a href="mailto:cybercrime24X7@police.gov.il">cybercrime24X7@police.gov.il</a></p> <p>The International Department in the Israeli State Attorney's Office recieves and sendes MLA requests using e-mail. This method is used only in order to save time and "speed up" the process, even though a "regular" (hard copy) request will be sent additionally. The request has to be received in a "hard copy" in order to send the answer to the MLA request.</p>
Rec 12	<p>Parties should ensure that requests are specific and complete with all necessary information.</p>
	<p>Measures taken/relevant developments:</p> <p>Every request that reaches the Israeli authorities, whether it is a formal request for MLA or a request to the 24/7 National Cyber Centre, is first being examined by an employee in the receiving unit, that performs an initial "Gating" process. The employee checks whether the request has all the necessary details and sends back the request, if needed. Additionally, on the phase of actual execution, an additional examination is made regarding the details in the request and if necessary details are still missing, the unit sends back the request in order for it to be completed. It will be noted that the initial "Gating" process is meant to make sure that fewer requests are sent back on the stage of actual execution of the request.</p>
Rec 13	<p>Pursuant to Article 25.5 Budapest Convention and Paragraph 259 Explanatory Report, Parties are</p>

## Israel

reminded to apply the dual criminality standard in a flexible manner that will facilitate the granting of assistance.

### Measures taken/relevant developments:

Upon receiving a MLA request, it is examined by the authorized unit in the Israeli Police. When doubts arise regarding the justification or authority to execute the action requested in the MLA request, because the basis for the request violates public policy in Israel, the matter is brought to the Israeli State Attorney's Office for further inspection, when the final authority to deny MLA requests in the Minister of Justice.

Rec 14 Parties are encouraged to consult with authorities of requested Party prior to sending requests, when necessary.

### Measures taken/relevant developments:

The State of Israel sees great importance in prior consultations, in order to optimize and improve the process of examining requests. These consultations are conducted when doubts arise regarding the ability to receive the requested investigation material, or doubts regarding the concreteness of the request, or in terms of the relevant state (meaning whether or not it has the requested investigation material).

Rec 15 Parties should consider ensuring transparency regarding requirements for mutual assistance requests, and reasons for refusal, including thresholds for minor cases, on the websites of central authorities.

### Measures taken/relevant developments:

Basic information can be found in the International Department's website (<http://www.justice.gov.il/En/Units/StateAttorney/DepartmentInternational/Pages/default.aspx>).

Question 2: Please provide information on time periods for preservation requests under Article 29 Budapest Convention in your country.

Rec 16 The T-CY should facilitate greater transparency regarding the time period for data preservation upon a foreign preservation request in line with Article 29 Budapest Convention. The T-CY should document time periods.

### Time periods for preservation of data following a foreign request:

The Israeli Law enables preservation for a time period of six months, based on a decision of a magistrate judge.

### Conditions and periods to extend or renew the preservation of specified data:

An Israeli magistrate judge can extend the time period beyond six months, under conditions he will decide upon based on a specific request. In practice, the court will consider the intensity of the infringement of the suspect and third party's privacy, in contrast of the investigative interest.

## Italy

### 1.20 Italy

Question 1: Please provide information on measures taken or on relevant developments with respect to each of the following Recommendations. Please attach additional information as appropriate.

Rec 1	Parties should fully implement and apply the provisions of the Budapest Convention on Cybercrime, including preservation powers (follow up to T-CY Assessment Report 2012).
Measures taken/relevant developments:	
In general, the Budapest Convention law provisions have already been implemented well before 2014. Italy is seriously considering what emerged from the Assessment report - Implementation of the preservation provisions of the Budapest Convention on Cybercrime (adopted from the 13th Plenary of the T-CY, 15-16 June 2015) in relation to the full implementation of articles 29 and 30.	
Rec 2	Parties should consider maintaining statistics or establish other mechanisms to monitor the efficiency of the mutual legal assistance process related to cybercrime and electronic evidence.
Measures taken/relevant developments:	
Please refer to what has already been stated in relation to Recommendation nr. 5 (in particular, sub a).	
Rec 3	Parties should consider allocating more and more technology-literate staff for mutual legal assistance not only at central levels but also at the level of institutions responsible for executing requests (such as local prosecution offices).
Measures taken/relevant developments:	
Even in this respect, please refer to what has already been stated in relation to Recommendation nr. 4 and nr. 5.	
Rec 4	Parties should consider providing for better training to enhance mutual legal assistance, police-to-police and other forms of international cooperation on cybercrime and electronic evidence. Training and experience exchange should in particular target prosecutors and judges and encourage direct cooperation between judicial authorities. Such training should be supported by the capacity building programmes of the Council of Europe and other organisations.
Measures taken/relevant developments:	
In 2015, the Scuola Superiore della Magistratura [Judiciary training school] held in its headquarters a training course on criminal law on cybercrime. Another training course was organised at local level in Milan in 2016, this session was not addressed to Magistrates only (Public Prosecutors and Judges) but also included judicial police, focussing in particular on the cooperation with American Internet Service Providers and cloud computing issues.	
Rec 5	Parties and the Council of Europe should work toward strengthening the role of 24/7 points of

## Italy

contact in line with Article 35 Budapest Convention, including through:

- a. Ensuring, pursuant to article 35.3 Budapest Convention that trained and equipped personnel is available to facilitate the operative work and conduct or support mutual legal assistance (MLA) activities
  - b. Encouraging contact points to pro-actively promote their role among domestic and foreign counterpart authorities;
  - c. Conducting regular meetings and training of the 24/7 network among the Parties;
  - d. Encouraging competent authorities and 24/7 points of contact to consider procedures to follow up to and provide feedback to the requesting State on Article 31 requests;
  - e. Considering to establish, where feasible, contact points in prosecution offices to permit a more direct role in mutual legal assistance and a quicker response to requests;
  - f. Facilitating 24/7 points of contact to play a supportive role in "Article 31" requests.

Measures taken/relevant developments:

- a. Ensuring, pursuant to article 35.3 Budapest Convention that trained and equipped personnel is available to facilitate the operative work and conduct or support mutual legal assistance (MLA) activities

As laid down in Article 35 of the Budapest Convention, even prior to 2014 the 24/7 contact point was set up and became operational: this office is based in Rome at the Anticrime National IT Center for the protection of critical infrastructure of State Police Communications [*Centro Nazionale Anticrimine Informatico per la Protezione delle Infrastrutture Critiche del Servizio Polizia delle Comunicazioni della Polizia di Stato*].

Trained staff working closely with the judiciary and in particular with the *Procura della Repubblica di Roma* [Rome Prosecuting office], was trained with a view to meeting the standards of professionalism and communication both of the National Judicial Authority and their foreign counterparts adhering to the Budapest Convention.

In addition to taking steps to freeze the data requested by the foreign authorities and execute any request for assistance, the judicial police shall forward outgoing requests.

The Point of Contact (P.o.C.) shall deal with the outgoing and incoming mutual legal assistance requests and facilitate the operational activities, the so-called "police to police" cooperation.

An effective communication protocol was developed to manage the activities of police offices and prosecuting offices with a view to harmonising and expediting the practices concerning preservation orders and their relevant validation by the competent judicial authorities.

Ad-hoc statistics are compiled to monitor the status of the requests, their flow, volume and processing time with a view to ascertaining also the maintenance of the required operational standards and response times of third parties.

- b. Encouraging contact points to pro-actively promote their role among domestic and foreign counterpart authorities;

The activities of the domestic P.o.C. shall include the assistance to all police bodies and judiciary by ensuring their operational presence.



## Italy

- c. Conducting regular meetings and training of the 24/7 network among the Parties;

Specialised operators of the domestic P.o.C. shall closely collaborate with representatives of the Ministry of Justice, offering their expertise in institutional activities at both domestic and international level.

The ongoing training activity of the staff of the domestic P.o.C. is granted thanks to its involvement in other working tables at international level.

- d. Encouraging competent authorities and 24/7 points of contact to consider procedures to follow up to and provide feedback to the requesting State on Article 31 requests;

Mutual assistance concerning accessing to stored data shall be granted with the same procedures for the requests for securing data submitted by the domestic P.o.C., including the entry or seizure in case the relevant legal basis are met, through international instruments, agreements or legislations referred to in Article 23 of the Budapest Convention.

- e. Considering to establish, where feasible, contact points in prosecution offices to permit a more direct role in mutual legal assistance and a quicker response to requests;

The full coordination between domestic P.o.C. and the Rome Prosecuting Office makes unnecessary any other solution that is different from the actual one.

- f. Facilitating 24/7 points of contact to play a supportive role in "Article 31" requests.

The P.o.C. shall become operational upon request for urgent cooperation, not only when the request (both from foreign countries and Italian authorities) provides for freezing volatile memory data, but also when the timely access to data or their relevant seizure is required for investigation purposes.

It is not unusual that different laws in force in the interested States establish that criminal conducts at the basis of the request should be specified, which makes the application of article 31 difficult if not impossible.

Moreover, the lack of information on the ongoing investigation (most often due to the confidential nature of the investigation), triggers a spiral of requests for supplementary information to implement the measures to be taken by the authorities receiving the request.

The adoption of a protocol for requests for assistance including the minimum necessary requirements to enforce the requested orders shared by the States parties to the Budapest Convention could be useful to expedite the exchange of information making the Network even more effective in performing its role.

Rec 6 Parties should consider streamlining the procedures and reduce the number of steps required for mutual assistance requests at the domestic level. Parties should share good practices in this respect with the T-CY.

Measures taken/relevant developments:

## Italy

Parliament passed Law no. 149 of 21 July 2016 enabling the Government to adopt one or more legislative decrees with a view to reforming book XI of the code of criminal procedure devoted to relationships with foreign judicial authorities. Streamlined authorisation procedures and execution of incoming requests are expected from the delegation to the Government. An ad-hoc Commission appointed by the Minister of Justice has already drafted the relevant law provisions the approval of which is expected in a short time-frame.

Rec 7 Parties should make use of all available channels for international cooperation. This may include formal mutual legal assistance, police to police cooperation and others.

Measures taken/relevant developments:

Please refer to what has already been stated in relation to Recommendation nr. 5.

Rec 8 Parties are encouraged to establish emergency procedures for requests related to risks of life and similar exigent circumstances. The T-CY should document practices by Parties and providers.

Measures taken/relevant developments:

Also in this respect, please refer to what has already been stated in relation to Recommendation nr. 5 (in particular, sub f).

Rec 9 Parties should confirm receipt of requests systematically and give, upon request, notice of action taken.

Measures taken/relevant developments:

Where requests for assistance are submitted, the Ministry of Justice confirms their receipt and indicates the relevant measures taken, specifying to the Requesting State the competent Judicial Authority to give effect to the request.

Rec 10 Parties may consider the opening of domestic investigation upon a foreign request or spontaneous information to facilitate the sharing of information or accelerate MLA.

Measures taken/relevant developments:

The practical implementation of the said Recommendation falls within the jurisdiction of judicial authorities. Potential raising-awareness initiatives are being studied by the Ministry of Justice (which, under specific circumstances provided for by law, is entitled to request to institute a criminal proceeding).

Rec 11 Parties should make use of electronic transmission of requests in line with Article 25.3 Budapest Convention on expedited means of communication.

Measures taken/relevant developments:

## Italy

None.	
Rec 12	Parties should ensure that requests are specific and complete with all necessary information.
Measures taken/relevant developments:  Also in this respect, please refer to what has already been stated in relation to Recommendation nr. 5 (in particular, sub f).	
Rec 13	Pursuant to Article 25.5 Budapest Convention and Paragraph 259 Explanatory Report, Parties are reminded to apply the dual criminality standard in a flexible manner that will facilitate the granting of assistance.
Measures taken/relevant developments:  There are no cases of refusal of assistance for lack of dual criminality, to date.	
Rec 14	Parties are encouraged to consult with authorities of requested Party prior to sending requests, when necessary.
Measures taken/relevant developments:  The advice of foreign liaison magistrates based in Italy is often sought in advance.	
Rec 15	Parties should consider ensuring transparency regarding requirements for mutual assistance requests, and reasons for refusal, including thresholds for minor cases, on the websites of central authorities.
Measures taken/relevant developments:  At the beginning of this year were updated and completed the information on the single instruments of judicial assistance on the <i>European Judicial Network</i> website.	

Question 2: Please provide information on time periods for preservation requests under Article 29 Budapest Convention in your country.

Rec 16	The T-CY should facilitate greater transparency regarding the time period for data preservation upon a foreign preservation request in line with Article 29 Budapest Convention. The T-CY should document time periods.
Time periods for preservation of data following a foreign request:  In lack of a specific law provision regulating this issue, in respect of Article 29 it is possible– through MLA – to execute the requests coming from Member States for the time required. Whereas for what concerns Article 30, domestic law provides for the possibility of storing data for a period exceeding 6 months.	

## Italy

Section 132 PERSONAL DATA PROTECTION CODE, Legislative Decree no. 196 of 30 June 2003:

4-ter. The Minister for Home Affairs or the heads of the central offices specialising in computer and/or IT matters from the State Police, the Carabinieri, and the Financial Police as well as the other entities mentioned in paragraph 1 of section 226 of the implementing, consolidating, and transitional provisions related to the Criminal Procedure Code as per legislative decree no. 271/1989, where delegated by the Minister for Home Affairs, may order IT and/or Internet service providers and operators to retain and protect Internet traffic data, except for contents data, according to the arrangements specified above and for no longer than ninety days, also in connection with requests lodged by foreign investigating authorities, in order to carry out the pre-trial investigations referred to in the said section 226 of the provisions enacted via legislative decree no. 271/1989, or else with a view to the detection and suppression of specific offences. The term referred to in the order in question may be extended, on grounds to be justified, up to six months whilst specific arrangements may be made for keeping the data as well as for ensuring that the data in question are not available to the IT and/or Internet service providers and operators and/or to third parties.

Conditions and periods to extend or renew the preservation of specified data:

See previous reply.

## Japan

### 1.21 Japan

Question 1: Please provide information on measures taken or on relevant developments with respect to each of the following Recommendations. Please attach additional information as appropriate.

Rec 1	Parties should fully implement and apply the provisions of the Budapest Convention on Cybercrime, including preservation powers (follow up to T-CY Assessment Report 2012).
Measures taken/relevant developments: Japan fully implements and applies the provisions of the Budapest Convention.	
Rec 2	Parties should consider maintaining statistics or establish other mechanisms to monitor the efficiency of the mutual legal assistance process related to cybercrime and electronic evidence.
Measures taken/relevant developments: The Ministry of Justice and National Police Agency (NPA) register all the incoming and outgoing mutual legal assistance (MLA) requests in a database so as to keep track of the process and to monitor its efficiency.	
Rec 3	Parties should consider allocating more and more technology-literate staff for mutual legal assistance not only at central levels but also at the level of institutions responsible for executing requests (such as local prosecution offices).
Measures taken/relevant developments: Technology-literate prosecutors are designated as prosecutors in charge of cybercrime in the Supreme Prosecutors' Office and in major District Prosecutors' Offices. The Ministry of Justice also promotes the improvement of the ability of the prosecutors and prosecutor's assistant officers to investigate cybercrime nation-wide by providing various trainings on technologies used in cybercrime and practical investigation methods such as collecting, preserving and analysing electronic evidence. The NPA and prefectural police headquarters allocate the staffs for MLA who sufficiently received technology-literate trainings of cybercrime investigation.	
Rec 4	Parties should consider providing for better training to enhance mutual legal assistance, police-to-police and other forms of international cooperation on cybercrime and electronic evidence. Training and experience exchange should in particular target prosecutors and judges and encourage direct cooperation between judicial authorities. Such training should be supported by the capacity building programmes of the Council of Europe and other organisations.
Measures taken/relevant developments: The Ministry of Justice holds an annual conference nation-wide, gathering prosecutors in charge of international affairs to share information and discuss issues concerning MLA, and provides basic lectures concerning MLA to all public prosecutors in the early stages of their career. The NPA also holds an annual conference nation-wide, gathering police officers in charge of MLA to share information, and provides basic lectures concerning MLA to cybercrime investigators. In addition, the NPA promotes international cooperation including hosting programs to share knowledge and experiences regarding cybercrime investigation and MLA, and to enhance investigative capabilities with law enforcement agencies in the Asia	

## Japan

Pacific region.	
Rec 5	Parties and the Council of Europe should work toward strengthening the role of 24/7 points of contact in line with Article 35 Budapest Convention, including through: a. Ensuring, pursuant to article 35.3 Budapest Convention that trained and equipped personnel is available to facilitate the operative work and conduct or support mutual legal assistance (MLA) activities b. Encouraging contact points to pro-actively promote their role among domestic and foreign counterpart authorities; c. Conducting regular meetings and training of the 24/7 network among the Parties; d. Encouraging competent authorities and 24/7 points of contact to consider procedures to follow up to and provide feedback to the requesting State on Article 31 requests; e. Considering to establish, where feasible, contact points in prosecution offices to permit a more direct role in mutual legal assistance and a quicker response to requests; f. Facilitating 24/7 points of contact to play a supportive role in "Article 31" requests.
Measures taken/relevant developments: Regarding 24/7 points of contact on Article 35 of the Convention, the NPA allocates the staffs for MLA who received trainings so as to conduct or support MLA activities.	
Rec 6	Parties should consider streamlining the procedures and reduce the number of steps required for mutual assistance requests at the domestic level. Parties should share good practices in this respect with the T-CY.
Measures taken/relevant developments: Japan strongly encourages prior consultation between the central authorities before sending official requests in order to avoid taking unnecessary steps and to conduct MLA as efficiently as possible. In addition, the NPA started to send preservation requests to several foreign countries through G7 24/7 point of contact network from 2013 in order to enable expeditious preservation of traffic data while it did so through the ICPO route.	
Rec 7	Parties should make use of all available channels for international cooperation. This may include formal mutual legal assistance, police to police cooperation and others.
Measures taken/relevant developments: Japan utilizes every possible channel such as MLA, Interpol, informal communication through legal attaches to obtain the best results in each case.	
Rec 8	Parties are encouraged to establish emergency procedures for requests related to risks of life and similar exigent circumstances. The T-CY should document practices by Parties and providers.
Measures taken/relevant developments:	
Rec 9	Parties should confirm receipt of requests systematically and give, upon request, notice of action taken.
Measures taken/relevant developments: Japan responds to any questions from the requesting state, including regarding the receipt of request and the status of the procedure.	

## Japan

Rec 10	Parties may consider the opening of domestic investigation upon a foreign request or spontaneous information to facilitate the sharing of information or accelerate MLA.
Measures taken/relevant developments: Domestic investigation may be carried out properly depending on necessity.	
Rec 11	Parties should make use of electronic transmission of requests in line with Article 25.3 Budapest Convention on expedited means of communication.
Measures taken/relevant developments: Japan makes use of electronic transmission of requests depending on the urgency of each case.	
Rec 12	Parties should ensure that requests are specific and complete with all necessary information.
Measures taken/relevant developments: For each outgoing request, the central authority makes sure that the requests are specific and that all necessary information is written in the request.	
Rec 13	Pursuant to Article 25.5 Budapest Convention and Paragraph 259 Explanatory Report, Parties are reminded to apply the dual criminality standard in a flexible manner that will facilitate the granting of assistance.
Measures taken/relevant developments: Japan applies the dual criminality standard in accordance with Article 25.5 of the Budapest Convention.	
Rec 14	Parties are encouraged to consult with authorities of requested Party prior to sending requests, when necessary.
Measures taken/relevant developments: Japan strongly encourages prior consultation between the central authorities before sending official requests.	
Rec 15	Parties should consider ensuring transparency regarding requirements for mutual assistance requests, and reasons for refusal, including thresholds for minor cases, on the websites of central authorities.
Measures taken/relevant developments: Japan provides detailed explanations in English on requirements for MLA (including reasons for refusal) on the website of the Ministry of Justice.	

Question 2: Please provide information on time periods for preservation requests under Article 29 Budapest Convention in your country.

Rec 16	The T-CY should facilitate greater transparency regarding the time period for data preservation upon a foreign preservation request in line with Article 29 Budapest Convention. The T-CY should
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## Japan

document time periods.

Time periods for preservation of data following a foreign request:

サ参室仮訳：外国からの要請に基づくデータ保全の期間：

According to Article 8(1)vi of the Act on International Assistance in Investigation and Other Related Matters and Article 197(3) and (4) of the Code of Criminal Procedure, the maximum preservation period is 60 days when particularly necessary. In case of data preservation based on voluntary cooperation by ISPs, the preservation period may be more than 60 days.

Conditions and periods to extend or renew the preservation of specified data: See above.



1.22 Latvia

Question 1: Please provide information on measures taken or on relevant developments with respect to each of the following Recommendations. Please attach additional information as appropriate.

<p>Rec 1 Parties should fully implement and apply the provisions of the Budapest Convention on Cybercrime, including preservation powers (follow up to T-CY Assessment Report 2012).</p>
<p>Measures taken/relevant developments:</p> <p>According to the "Criminal Procedure Law" of Latvia Section 191. (Storage of Data located in an Electronic Information System):</p> <p>(1) A person directing the proceedings may assign, with a decision thereof, the owner, possessor or keeper of an electronic information system (that is, a natural or legal person who processes, stores or transmits data via electronic information systems, including a merchant of electronic communications) to immediately ensure the storage, in an unchanged state, of the totality of the specific data (the retention of which is not specified by law) necessary for the needs of criminal proceedings that is located in the possession thereof, and the inaccessibility of such data to other users of the system.</p> <p>According to the "Criminal Procedure Law" Section 192 (Disclosure of Data Stored in an Electronic Information System)</p> <p>(1) During the pre-trial criminal proceedings an investigator with the consent of a public prosecutor or a data subject and a public prosecutor with the consent of a higher-ranking prosecutor or a data subject may request, that the merchant of an electronic information system disclose and issue the data to be stored in the information system in accordance with the procedures laid down in the Electronic Communications Law.</p> <p>(2) During the pre-trial criminal proceedings the person directing the proceedings may request in writing, based on a decision of an investigating judge or with the consent of a data subject, that the owner, possessor or keeper of an electronic information system disclose and issue the data stored in accordance with the procedures provided for in Section 191 of this Law.</p> <p>(3) In adjudicating a criminal case, a judge or the court panel may request that a merchant of electronic communications discloses and issues the data to be stored in accordance with the procedures laid down in the Electronic Communications Law or that the owner, possessor or keeper of an electronic information system disclose and issue the data stored in accordance with the procedures provided for in Section 191 of this Law.</p>
<p>Rec 2 Parties should consider maintaining statistics or establish other mechanisms to monitor the efficiency of the mutual legal assistance process related to cybercrime and electronic evidence.</p>
<p>Measures taken/relevant developments:</p>
<p>Rec 3 Parties should consider allocating more and more technology-literate staff for mutual legal assistance not only at central levels but also at the level of institutions responsible for executing requests (such as local prosecution offices).</p>
<p>Measures taken/relevant developments:</p>

## Latvia

The competent institution for mutual legal assistance in criminal matters is the State Police, General Prosecutor's Office and Ministry of Justice.

State police – Central Criminal police International Cooperation Bureau Legal assistance request unit is responsible institution for execution MLA directly received or from General Prosecutor's Office in pre-trial stage. At the same time institution who is coordinating MLA on national case.

Legal bases:

European Convention on Mutual Assistance in Criminal Matters of 20 April 1959

Convention established by the Council in accordance with Article 34 of the Treaty on European Union, on Mutual Assistance in Criminal Matters between the Member States of the European Union of 29 May 2000

Bilateral agreements

Rec 4 Parties should consider providing for better training to enhance mutual legal assistance, police-to-police and other forms of international cooperation on cybercrime and electronic evidence. Training and experience exchange should in particular target prosecutors and judges and encourage direct cooperation between judicial authorities. Such training should be supported by the capacity building programmes of the Council of Europe and other organisations.

Measures taken/relevant developments:

The State Police College of Latvia offers police ensure the different types of training programmes: police-to-police and other forms of international cooperation on cybercrime and electronic evidence such as the information on international cooperation in criminal cases, exchange of information, cybercrimes, peculiarities of the investigation in information technology-related crimes, Phishing area (creation of the forged web link to steal confidential information), cooperation with other national law enforcement authorities, Internet Forum (phishing) monitoring, recent trends in the field „phishing“, the nature of the investigation

Rec 5 Parties and the Council of Europe should work toward strengthening the role of 24/7 points of contact in line with Article 35 Budapest Convention, including through:

- a. Ensuring, pursuant to article 35.3 Budapest Convention that trained and equipped personnel is available to facilitate the operative work and conduct or support mutual legal assistance (MLA) activities
  - b. Encouraging contact points to pro-actively promote their role among domestic and foreign counterpart authorities;
  - c. Conducting regular meetings and training of the 24/7 network among the Parties;
  - d. Encouraging competent authorities and 24/7 points of contact to consider procedures to follow up to and provide feedback to the requesting State on Article 31 requests;
  - e. Considering to establish, where feasible, contact points in prosecution offices to permit a more direct role in mutual legal assistance and a quicker response to requests;
  - f. Facilitating 24/7 points of contact to play a supportive role in “Article 31” requests.

Measures taken/relevant developments:

Representative of Latvian 24/7 Network taking part in regular meeting and training of the 24/7 network among the Parties, as example can be mention last activity held on 11th to 14th of July in UK “Effective 24/7 POC on Cybercrime Project Final Meeting”.

## Latvia

In Republic of Latvia there is no special legal framework, which would determine the arrangements for cooperation between internet service provider and foreign law enforcement authorities without the Latvian Republic state authorities. This means that the disclosure of data for foreign law enforcement agencies takes place only in accordance with international agreements and mechanisms, including the letter of legal assistance and cybercrimes 24/7 contact point (24/7 Network).

Rec 6 Parties should consider streamlining the procedures and reduce the number of steps required for mutual assistance requests at the domestic level. Parties should share good practices in this respect with the T-CY.

Measures taken/relevant developments:

According to Criminal Procedure Law for traffic data storage is needed an investigator's decision and to disclosure and issue traffic data is necessary an investigating judge decision.

Rec 7 Parties should make use of all available channels for international cooperation. This may include formal mutual legal assistance, police to police cooperation and others.

Measures taken/relevant developments:

State police of Latvia are using all available channels for cooperation in criminal cases, like MLA (Eurojust and EJM for faster cooperation in MLA), police to police, Cybercrime contact point.

Rec 8 Parties are encouraged to establish emergency procedures for requests related to risks of life and similar exigent circumstances. The T-CY should document practices by Parties and providers.

Measures taken/relevant developments:

According to the Cabinet regulation No. 820 adopted 4 December 2007 "Procedures by which Pre-trial Investigative Institutions, Bodies Performing Investigatory Operations, State Security Institutions, Office of the Prosecutor and Court Request and a Merchant of Electronic Communications Transfers Data to be Retained, and Procedures by which Statistical Information regarding Requests of Data to be Retained and Issuing thereof is Compiled" the matter of urgency is presumed to exist when. In those cases the information can be obtained within three hours, if the data requested have been retained within a time period of the last twenty-four hours or in one hour if requested the data concerning:

the subscriber or registered user – initiator of the call – the given name, surname, personal identity number and address of a natural person or the name, registration number and address of a legal person;

the International Mobile Subscriber Identity (IMSI) of the calling party;

the International Mobile Equipment Identity (IMEI) of the calling party;

if the user of a pre-paid service is anonymous - the date and time of the activation of the service and the location label (for example, Cell ID) from which the service was activated;

the user ID(s) allocated;

the subscriber or registered user to whom an Internet Protocol (IP) address was allocated at the time of the connection - the given name, surname, personal identity number of a natural person or the name, registration number and address, ID and telephone number of a legal person.

All urgent MLA are executed according Criminal Procedure law, conventions and bilateral agreements.

Latvia

Rec 9	Parties should confirm receipt of requests systematically and give, upon request, notice of action taken.
Measures taken/relevant developments:  According Criminal law, institution who received request confirm receipt and giving update of execution MLA as required.	
Rec 10	Parties may consider the opening of domestic investigation upon a foreign request or spontaneous information to facilitate the sharing of information or accelerate MLA.
Measures taken/relevant developments:  After receiving spontaneous information: verifying the information received; make decision (start investigation or not). The competent institution to exchange spontaneous information is the State Police and General Prosecutor's Office  Legal base: European Convention on Mutual Assistance in Criminal Matters of 20 April 1959 Convention established by the Council in accordance with Article 34 of the Treaty on European Union, on Mutual Assistance in Criminal Matters between the Member States of the European Union of 29 May 2000.	
Rec 11	Parties should make use of electronic transmission of requests in line with Article 25.3 Budapest Convention on expedited means of communication.
Measures taken/relevant developments:  According to the Criminal Procedure Law must be requested only the electronic information, which does not affect an individual's state-guaranteed civil rights to privacy and property. Electronical information is permitted only after the consent of the entity (individual), the prosecutor's acceptance and / or the investigating judge's decision. Accordingly, acquisition of the electronic information system data is possible on request of initiator, which has been acquired by subject's consent or approval of a prosecutor. On other hand, acquisition of unsaved electronical data is possible only after the conservation process by directing the decision, with the further opening of the investigation after the judge's decision. In all mentioned cases, information shall be requested thought MLA. In Republic of Latvia there is no special legal framework, which would determine the arrangements for cooperation between internet service provider and foreign law enforcement authorities without the Latvian Republic state authorities. This means that the disclosure of data for foreign law enforcement agencies takes place only in accordance with international agreements and mechanisms, including the letter of legal assistance and cybercrimes 24/7 contact point (24/7 Network) according to the Law On the Convention on Cybercrime Convention on Cybercrime and the Additional Protocol on racist and xenophobic offenses that are committed through computer systems Generally there are two ways of every day practice: First: Traffic data storage is made directly to contact with Cybercrime contact point and than to disclosure and	

Latvia

<p>issue traffic data in MLA.</p> <p>Second:</p> <p>During in execution of MLA is made traffic data storage and than disclosure and issue traffic data.</p> <p>If questions are urgent State police accept electronic transmission of requests.</p>
<p>Rec 12 Parties should ensure that requests are specific and complete with all necessary information.</p>
<p>Measures taken/relevant developments:</p> <p>All MLA are preparing according Criminal Procedure law, conventions and bilateral agreements.</p>
<p>Rec 13 Pursuant to Article 25.5 Budapest Convention and Paragraph 259 Explanatory Report, Parties are reminded to apply the dual criminality standard in a flexible manner that will facilitate the granting of assistance.</p>
<p>Measures taken/relevant developments:</p> <p>Data preservation:</p> <p>Budapest Convention on Cybercrime.</p> <p>Legal base for MLA:</p> <ul style="list-style-type: none"><li>- European Convention on Mutual Assistance in Criminal Matters of 20 April 1959</li><li>- Convention established by the Council in accordance with Article 34 of the Treaty on European Union, on Mutual Assistance in Criminal Matters between the Member States of the European Union of 29 May 2000.</li></ul>
<p>Rec 14 Parties are encouraged to consult with authorities of requested Party prior to sending requests, when necessary.</p>
<p>Measures taken/relevant developments:</p> <p>No comments.</p>
<p>Rec 15 Parties should consider ensuring transparency regarding requirements for mutual assistance requests, and reasons for refusal, including thresholds for minor cases, on the websites of central authorities.</p>
<p>Measures taken/relevant developments:</p> <p>All MLA from abroad examined and executed according Criminal law, conventions and bilateral agreements. If are reasons for refusal, initiator are informed about it. All MLA are examined according Criminal Procedure law section 848.</p> <p>Section 848. Deciding of a Request of a Foreign State</p> <p>(1) A request of a foreign state regarding the provision of assistance in the performance of a procedural action shall be decided immediately, but not later than within 10 days after receipt thereof. If additional information is necessary for deciding of a request, such information shall be requested from the state that submitted the request.</p> <p>(2) In examining a request of a foreign state, the competent authority shall take one of the following</p>

## Latvia

decisions:

- 1) on possibility of the execution of the request, determining the institution that will fulfil the request, terms, and other conditions;
- 2) on refusal to fulfil the request or a part thereof, substantiating the refusal.
- (3) The state that submitted the request shall be, without delay, informed regarding the decision taken, if the execution of the request or a part thereof has been rejected or if a foreign state has so requested.

### Section 850. Reasons for Refusal of the Execution of a Request of a Foreign State

The execution of a request of a foreign state may be refused, if:

- 1) the request is related to a political offence, except the case when a request applies to terrorism or financing of terrorism;
- 2) the execution of the request may harm the sovereignty, security, social order, or other substantial interests of the State of Latvia;
- 3) sufficient information has not been submitted and the acquisition of additional information is not possible.

Question 2: Please provide information on time periods for preservation requests under Article 29 Budapest Convention in your country.

Rec 16 The T-CY should facilitate greater transparency regarding the time period for data preservation upon a foreign preservation request in line with Article 29 Budapest Convention. The T-CY should document time periods.

Time periods for preservation of data following a foreign request:

Latvia joined and signed the 23.11.2001 Budapest Convention on Cybercrime. According to Criminal Procedure law Section 191 the duty to store data may be specified for a term of up to thirty days, but such term may be extended, if necessary, by an investigating judge by a term of up to thirty days.

This term could be extended for more 90 days and Latvian competent authority must send the request for legal assistance to appropriate country in order to obtain preserved data.

In case of cooperation with EU Member States concerning the investigation of cybercrimes data retention and obtaining of preserved information is possible in the frame of so called "Swedish Initiative" (Council Framework Decision 2006/960/JHA on simplifying the exchange of information and intelligence between law enforcement authorities of the Member States of the European Union ("Swedish Framework Decision").

Conditions and periods to extend or renew the preservation of specified data:

According to Criminal Procedure law Section 191. if necessary, by an investigating judge by a term may be extended of up to thirty days.

### 1.23 Liechtenstein

Question 1: Please provide information on measures taken or on relevant developments with respect to each of the following Recommendations. Please attach additional information as appropriate.

<p>Rec 1 Parties should fully implement and apply the provisions of the Budapest Convention on Cybercrime, including preservation powers (follow up to T-CY Assessment Report 2012).</p>
<p>Measures taken/relevant developments:</p> <p>Liechtenstein fully implemented the provisions of the Budapest Convention on Cybercrime, with small exceptions. These exceptions will be addressed as part of the next revision of the Code of Criminal Procedure. Detailed information are available in the country profile of Liechtenstein that were sent to the Council of Europe in the beginning of November.</p>
<p>Rec 2 Parties should consider maintaining statistics or establish other mechanisms to monitor the efficiency of the mutual legal assistance process related to cybercrime and electronic evidence.</p>
<p>Measures taken/relevant developments:</p> <p>Due to the small sample seize of mutual legal assistance related to cybercrime and electronic evidence, maintaining statistics is a disproportionate effort. The goal is to provide mutual legal assistance in a comprehensive and timely manner. The short channels of communication and the simplified structure of public authorities are helping to reach this goal. The Office of Justice in its function as central authority for mutual legal assistance also has a monitoring function.</p>
<p>Rec 3 Parties should consider allocating more and more technology-literate staff for mutual legal assistance not only at central levels but also at the level of institutions responsible for executing requests (such as local prosecution offices).</p>
<p>Measures taken/relevant developments:</p> <p>All relevant national institutions have technology-literate staff or the possibility to request assistance from the IT experts of the national police.</p>
<p>Rec 4 Parties should consider providing for better training to enhance mutual legal assistance, police-to-police and other forms of international cooperation on cybercrime and electronic evidence. Training and experience exchange should in particular target prosecutors and judges and encourage direct cooperation between judicial authorities. Such training should be supported by the capacity building programmes of the Council of Europe and other organisations.</p>
<p>Measures taken/relevant developments:</p> <p>If possible, judges and prosecutors communicate directly with their counterparts in other countries in order to save time. Also the National Police can request mutual legal assistance directly at foreign judges and prosecutes and can also provide mutual legal assistance in accordance with art. 35 of the police law. The National Police of Liechtenstein is member of the Focal Point Cyborg (EC3) at Europol. At a regional level, a close cooperation with the Swiss Police is in place. The National Police is a member of the working group "IT-Forensics" of the East-Switzerland Police force. An Agreement with the cantonal police of</p>

## Liechtenstein

Graubünden, Switzerland regulates the cooperation in areas of Cyber- and Economic Crimes.

Rec 5 Parties and the Council of Europe should work toward strengthening the role of 24/7 points of contact in line with Article 35 Budapest Convention, including through:

- a. Ensuring, pursuant to article 35.3 Budapest Convention that trained and equipped personnel is available to facilitate the operative work and conduct or support mutual legal assistance (MLA) activities
  - b. Encouraging contact points to pro-actively promote their role among domestic and foreign counterpart authorities;
  - c. Conducting regular meetings and training of the 24/7 network among the Parties;
  - d. Encouraging competent authorities and 24/7 points of contact to consider procedures to follow up to and provide feedback to the requesting State on Article 31 requests;
  - e. Considering to establish, where feasible, contact points in prosecution offices to permit a more direct role in mutual legal assistance and a quicker response to requests;
  - f. Facilitating 24/7 points of contact to play a supportive role in "Article 31" requests.

Measures taken/relevant developments:

a. The Central Police Services of the Liechtenstein National Police are the central point of contact for requests on a police to police basis. If you have a cybercrime 24/7 request, you will be connected to the Forensic Unit of the C.I.D. that has two IT-investigators with responsibilities for combating cybercrime as well as any other computer related crime, and with expertise in obtaining electronic evidence. Requests for mutual legal assistance can also be transmitted via the 24/7-contact point. All requests for mutual legal assistance received by the Court of Justice are in practice accepted, regardless of how they were transmitted.

b. The 24/7 contact point in Liechtenstein joined the G8 24/7 network of contact points to combat cybercrime in 2008 and is well established in Liechtenstein and also at foreign counterpart authorities.

c. The IT-investigators of the Forensic Unit of the Liechtenstein National Police are participating every year at the symposium for IT-Forensic of the German Federal Bureau of Investigation in Knüllwald, Germany as well as the national IT-Investigation Conference of Federal Police Office Switzerland (Fedpol) in Bern, Switzerland. In 2015 a specialized IT-Investigator participated in the "1st Interpol TTF on Computer Forensics" in Hong Kong.

d. In the case of a MLA-request, the Court of Justice sends the requesting authority immediately a confirmation of receipt containing the case number and the contact information of the assigned judge. Once the ruling becomes final, the requesting authority is informed of the outcome of the procedure. If the assessment is positive, the secured evidence is handed over. If the assessment is negative, the reasons for refusing the request for legal assistance are communicated.

e. Urgent requests may often be implemented on the same day, provided they are complete and depending on the time they arrive. Short channels of communication and the simplified structure of public authorities allow for the direct communication between the 24/7-contact points and the prosecution office.

f. Requests of mutual assistance regarding accessing of stored computer data is (in urgent cases) also via



## Liechtenstein

	the 24/7 contact point possible.
Rec 6	Parties should consider streamlining the procedures and reduce the number of steps required for mutual assistance requests at the domestic level. Parties should share good practices in this respect with the T-CY.
	Measures taken/relevant developments: Only few steps are required for mutual assistance requests at the domestic level, a further reduction of the number of steps is often not possible, since in most cases there is only one step needed to forward the request to the competent authority. Requests often can be implemented on the same day. In fall 2016 Liechtenstein provided all necessary information for requesting mutual assistance to the Octopus Community Tool for international Cooperation.
Rec 7	Parties should make use of all available channels for international cooperation. This may include formal mutual legal assistance, police to police cooperation and others.
	Measures taken/relevant developments: Liechtenstein makes use of available channels for international cooperation, which includes formal mutual legal assistance and police to police cooperation. The National Police can request mutual legal assistance directly at foreign judges and prosecutes and can also provide mutual legal assistance in accordance with art. 35 of the police law. More information are provided in the Octopus Community Tool for international Cooperation.
Rec 8	Parties are encouraged to establish emergency procedures for requests related to risks of life and similar exigent circumstances. The T-CY should document practices by Parties and providers.
	Measures taken/relevant developments: Normal and expedited requests are dealt with by the same authority, and there are no procedural differences. An indication of urgency results in expedited processing. Urgent requests may often be implemented on the same day under the condition that they are complete. Specific emergency procedures are not foreseen.
Rec 9	Parties should confirm receipt of requests systematically and give, upon request, notice of action taken.
	Measures taken/relevant developments: At the time the request for mutual legal assistance is assigned internally to a responsible judge at the Court of Justice, the requesting authority is immediately sent a confirmation of receipt containing the case number and the contact information of the assigned judge. Once the ruling becomes final, the requesting authority is informed of the outcome of the procedure. If the assessment is positive, the secured evidence is handed over. If the assessment is negative, the reasons for refusing the request for legal assistance are communicated.
Rec 10	Parties may consider the opening of domestic investigation upon a foreign request or

## Liechtenstein

spontaneous information to facilitate the sharing of information or accelerate MLA.	
Measures taken/relevant developments: If a request for mutual legal assistance includes information that falls under the domestic criminal jurisdiction, criminal proceedings are regularly introduced. Liechtenstein law does not know a discretionary principle in these cases. Spontaneous transmission of information is governed by Article 54a of the Liechtenstein Mutual Legal Assistance Act. According to that provision, the court may spontaneously transmit to a foreign authority information that it has obtained for its own criminal proceedings if an international agreement provides a basis for such transmission, this information might be helpful for the opening or carrying out of investigations or proceedings of a foreign authority, and the transmission of the information would also be permissible within the framework of a request for mutual legal assistance by the foreign authority. The transmission of information is permissible even without an international agreement if it must be assumed that the content of the information may help prevent an extraditable offence or avert an immediate and serious threat to public security, and if transmission of the information would also be permissible within the framework of a request for mutual legal assistance by the foreign authority. The conditions for such transmission is that the transmitted information may not be used without prior consent of the transmitting authority for any purpose other than the purpose giving rise to the transmission, and that the transmitted data must immediately be deleted or corrected by the receiving authority as soon as it turns out that the data is incorrect, or the transmitting authority communicates that the data has been gathered or transmitted unlawfully, or it turns out that the data is not or no longer needed for the purpose giving rise to the transmission.	
Rec 11	Parties should make use of electronic transmission of requests in line with Article 25.3 Budapest Convention on expedited means of communication.
Measures taken/relevant developments: Expedited means of communication, including fax or e-mail, are permissible when transmitting requests for mutual legal assistance in urgent circumstances, as long as the original copy of the request or other communication is subsequently transmitted by post.	
Rec 12	Parties should ensure that requests are specific and complete with all necessary information.
Measures taken/relevant developments: The responsibility for the comprehensiveness of a mutual legal assistance request lies with the competent judges. To ensure the comprehensiveness, judges in general follow international requirements.	
Rec 13	Pursuant to Article 25.5 Budapest Convention and Paragraph 259 Explanatory Report, Parties are reminded to apply the dual criminality standard in a flexible manner that will facilitate the granting of assistance.
Measures taken/relevant developments: According to the Mutual Legal Assistance Act (Article 51(1) (1)), the provision of mutual legal assistance is impermissible if the precondition of dual criminality is not met.	

## Liechtenstein

Rec 14 Parties are encouraged to consult with authorities of requested Party prior to sending requests, when necessary.

Measures taken/relevant developments:

If ambiguities or uncertainties exist, they are clarified over the European Judicial Network or direct contacts. Due to the large amount of mutual legal assistance requests, the judges in Liechtenstein have already extensive know how about procedures and many contacts to foreign authorities.

Rec 15 Parties should consider ensuring transparency regarding requirements for mutual assistance requests, and reasons for refusal, including thresholds for minor cases, on the websites of central authorities.

Measures taken/relevant developments:

A written request for mutual legal assistance must be submitted, containing the information set out in Article 29(2) of the Budapest Convention. The requirements are regularly met, but where they are not, a correction must be requested; therefore the reasons for a refusal are made clear. These requirements essentially also correspond to Article 14 ECMA, so that a certain practice has established itself in Europe.

Question 2: Please provide information on time periods for preservation requests under Article 29 Budapest Convention in your country.

Rec 16 The T-CY should facilitate greater transparency regarding the time period for data preservation upon a foreign preservation request in line with Article 29 Budapest Convention. The T-CY should document time periods.

Time periods for preservation of data following a foreign request:

The same day (provided they are complete and depending on the time they arrive).

Conditions and periods to extend or renew the preservation of specified data:

## 1.24 Lithuania

Question 1: Please provide information on measures taken or on relevant developments with respect to each of the following Recommendations. Please attach additional information as appropriate.

Rec 1	Parties should fully implement and apply the provisions of the Budapest Convention on Cybercrime, including preservation powers (follow up to T-CY Assessment Report 2012).
Measures taken/relevant developments:	
<p>Lithuania ratified Budapest Convention on Cybercrime and its Addition Protocol on Racism and Xenophobia on January 22, 2004 and June 8, 2006 accordingly. In pursue of meeting the requirements for the ratification, relevant national legal framework in the area of fight against cybercrime has been aligned with the provisions of the Convention and the Additional Protocol.</p> <p>In terms of preservation powers, relevant provisions granting the police the right to order preservation of any data, documents and other information (electronic and physical) processed by service providers, are set out in the Police Law, the Law on Electronic Communications, and as of 2014, in the Law on Cyber Security.</p> <p>Along with the legal prerequisites for data preservation, efforts are made to keep close relationship between the police and the private sector, especially with service providers in order to speed up the process of preservation and collection of electronic evidence.</p>	
Rec 2	Parties should consider maintaining statistics or establish other mechanisms to monitor the efficiency of the mutual legal assistance process related to cybercrime and electronic evidence.
Measures taken/relevant developments:	
<p>No common solution for automated collection of statistics on implementation of mutual legal assistance requests related to cybercrime and electronic evidence, is currently in place.</p> <p>However, relevant data are collected at Prosecutor General's Office of the Republic of Lithuania as the central competent authority responsible for the processing and final implementation of the received MLA requests.</p> <p>Also, statistics on police-to-police requests are collected at the Lithuanian Criminal Police Bureau as the central criminal police agency.</p>	
Rec 3	Parties should consider allocating more and more technology-literate staff for mutual legal assistance not only at central levels but also at the level of institutions responsible for executing requests (such as local prosecution offices).
Measures taken/relevant developments:	
<p>Execution of MLA requests in Lithuania is a joint work of public prosecutors and the investigators.</p> <p>Within the Public Prosecutor's Offices, cases as well as MLA requests are distributed in accordance with the competences and professional experience of the prosecutors, handling the cases or requests. This means that requests related to cybercrime and collection of electronic evidence, are typically assigned to a competent prosecutor who has prior experience in the field. They have enough knowledge to tackle legal</p>	

## Lithuania

part of the implementation of MLA requests.

Technical part, i.e. the actual collection of e-evidence, is covered by specialized cybercrime investigators. In Lithuania, cybercrime divisions are established both at central and local levels. At central level, MLA requests are executed by the cybercrime division of the Lithuanian Criminal Police Bureau. The mandate of this division is usually limited to high-profile, OCG-related, transnational cases. At local level, MLA requests are executed by specialized cybercrime units that were established in 2015 in 10 counties of Lithuania. These units usually execute MLA requests linked to their county. Investigators and experts at both levels have high proficiency in dealing with cybercrimes and e-evidence both on technical and legal levels.

Rec 4 Parties should consider providing for better training to enhance mutual legal assistance, police-to-police and other forms of international cooperation on cybercrime and electronic evidence. Training and experience exchange should in particular target prosecutors and judges and encourage direct cooperation between judicial authorities. Such training should be supported by the capacity building programmes of the Council of Europe and other organisations.

Measures taken/relevant developments:

Training and development of professional competencies among relevant stakeholders working in the area of fight against cybercrime is part of the cyber security policy in Lithuania.

Lithuania is an active participant in the specialized training activities organized by various EU agencies, including Europol, CEPOL, OLAF, as well as law enforcement entities of other countries, such as National Crime Agency in the UK, Federal Bureau of Investigations and Secret Service in the US). Annually, police officers participate in training activities organized by these partners.

In 2014, Lithuanian Criminal Police Bureau as the central criminal entity, launched specialized training on various aspects of cybercrime investigations. This training initially targeted future staff of the specialized cybercrime units that were established in 10 County Police Headquarters in Lithuania. Although the training focus more on investigatory, forensic and tactical techniques, as part of the curriculum, the participants are introduced to the possibilities provided by the Budapest Convention, as well as other international instruments in the area of fight against cybercrime, including MLA, police-to-police, and other forms of international cooperation on cybercrime and electronic evidence.

Public prosecutor's offices across the country also provide cybercrime-related training for specialized law enforcement and judicial authorities. Public prosecutors deliver lectures themselves and invite external experts as well. This kind of training events take place up to 4 times per year.

To enhance capacities in the field of cybercrime investigations and prosecution, Prosecutor General's Office jointly with the Lithuanian Criminal Police Bureau have been working on the Recommendations on cybercrime for public prosecutors. The recommendations cover such aspects as legal qualification, investigatory techniques, international cooperation, including MLA, police-to-police, data preservation possibilities. The Recommendations should be approved and circulated shortly.

Rec 5 Parties and the Council of Europe should work toward strengthening the role of 24/7 points of contact in line with Article 35 Budapest Convention, including through:

- a. Ensuring, pursuant to article 35.3 Budapest Convention that trained and equipped personnel is available to facilitate the operative work and conduct or support mutual legal assistance (MLA) activities
- b. Encouraging contact points to pro-actively promote their role among domestic and foreign counterpart authorities;

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- c. Conducting regular meetings and training of the 24/7 network among the Parties;
- d. Encouraging competent authorities and 24/7 points of contact to consider procedures to follow up to and provide feedback to the requesting State on Article 31 requests;
- e. Considering to establish, where feasible, contact points in prosecution offices to permit a more direct role in mutual legal assistance and a quicker response to requests;
- f. Facilitating 24/7 points of contact to play a supportive role in "Article 31" requests.

### Measures taken/relevant developments:

a. In Lithuania, functions of 24/7 point of contact are performed by the specialized cybercrime unit of the Lithuanian Criminal Police Bureau (central criminal police entity). 24/7 POC also serves as a point of contact within Europol SIENA platform, as well as for cooperation with service providers. It constantly liaise with the competent units and officers in public prosecutor's offices. The staff of the 24/7 POC are well placed to facilitate efficient and timely functioning of the network and to support implementation of MLA requests.

b. Information about the possibilities of the Lithuanian 24/7 POC is shared with relevant stakeholders during various training events and meetings. Also, its description is included in the Recommendations referred to in the Point 4 above. For international partners, information about 24/7 POC capabilities is provided in the Directory of 24/7 POCs administered by the Council of Europe.

c. Officer responsible for 24/7 POC in Lithuania is appointed as national representative to the T-CY committee.

d. Lithuanian 24/7 POC is commonly used by the requesting States on Art 31 requests. Also, it is used by national police units and prosecution authorities to check on the status of Art 31 requests and other inquiries.

e. 24/7 POC is established in the central criminal police, not in the prosecution office in order to provide higher technical, investigatory and tactical support in the area of cybercrime and e-evidence. However, the POC constantly liaises with the competent prosecution offices on various issues of implementing relevant requests. So far, this practice proved to be effective.

f. Art 31 requests are received in the form of MLA requests. Even if the requests do not specifically say that there had been a preservation request sent in accordance with Art 29 before and that the data had been preserved, competent prosecutor's offices cross-check the requests with 24/7 POC.

Rec 6 Parties should consider streamlining the procedures and reduce the number of steps required for mutual assistance requests at the domestic level. Parties should share good practices in this respect with the T-CY.

### Measures taken/relevant developments:

In Lithuania, MLA procedures are streamlined efficiently enough to have the minimum possible steps to implement the requests. MLA requests may be sent to the central prosecutor's office – Prosecutor General's Office, in which case the request is evaluated to see if it falls within the competence of the central authorities, or the local police and prosecutor's offices. In case it falls within the competence of the local police and prosecutor's office, it is immediately forwarded to the competent prosecutor's office for implementation.

Also, it is permitted to directly cooperate between the requesting State and the competent local

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	prosecutor's office without the need to send the MLA request to the central authority, which reduces the number of steps even more.
Rec 7	Parties should make use of all available channels for international cooperation. This may include formal mutual legal assistance, police to police cooperation and others.
	Measures taken/relevant developments:  In cybercrime investigations, competent Lithuanian authorities use a wide range of international cooperation channels and instruments. If there is a possibility to obtain information needed for an investigation without going through the MLA procedures, the facilitated method is used. Europol and Interpol channels are commonly used. Also, diplomatic channels are used. Lithuanian 24/7 POC serves as POC for cooperation with major foreign service providers, including Facebook, Inc. and Google, Inc., that allow direct cooperation.
Rec 8	Parties are encouraged to establish emergency procedures for requests related to risks of life and similar exigent circumstances. The T-CY should document practices by Parties and providers.
	Measures taken/relevant developments:
Rec 9	Parties should confirm receipt of requests systematically and give, upon request, notice of action taken.
	Measures taken/relevant developments:  All requests received at 24/7 POC are immediately replied with an automatic confirmation of receipt. The requesting State is also additionally informed about the actions taken and the status of their request. If necessary and appropriate, the requesting State may be provided with at least minimum information to proceed with the investigation on the police-to-police grounds.
Rec 10	Parties may consider the opening of domestic investigation upon a foreign request or spontaneous information to facilitate the sharing of information or accelerate MLA.
	Measures taken/relevant developments:  Domestic investigation is usually not opened upon a foreign request. However, this does not restrict the sharing of information or timely implementation of MLA. In case of MLA requests, domestic investigations are not necessary to issue necessary sanctions to obtain electronic evidence or perform other procedural actions.
Rec 11	Parties should make use of electronic transmission of requests in line with Article 25.3 Budapest Convention on expedited means of communication.
	Measures taken/relevant developments:  MLA requests are as general rule transmitted via post, sending the originals of the documentation. However, in urgent cases, expedited means of communication are acceptable. Usually, 24/7 POC is used to

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<p>transmit the copy of the original MLA request.</p> <p>Currently, the initiative to automate the exchange of MLA requests and electronic evidence among EU Member States is discussed at EU level. After the implementation of this initiative, the implementation of MLA requests should be seemingly enhanced.</p>	
Rec 12	Parties should ensure that requests are specific and complete with all necessary information.
<p>Measures taken/relevant developments:</p> <p>To increase the quality of the requests (both police-to-police and MLA), prior consultations are conducted with the requested States.</p>	
Rec 13	Pursuant to Article 25.5 Budapest Convention and Paragraph 259 Explanatory Report, Parties are reminded to apply the dual criminality standard in a flexible manner that will facilitate the granting of assistance.
<p>Measures taken/relevant developments:</p> <p>Dual criminality standard is applied in line with the applicable legal framework. For MLA requests relevant provisions of the following legal acts are applied:</p> <ul style="list-style-type: none"><li>- within the EU – the 2000 Convention on Mutual Legal Assistance in Criminal Matters between the EU Member States, which was approved by the Council according to Article 34 of the Treaty on European Union, and the 2001 Additional Protocol to the Convention;</li><li>- with non-EU countries – bilateral agreements on legal assistance and legal relations in civil and criminal matters (concluded with Armenia, Azerbaijan, China, Russia, Belarus, Ukraine, Moldova, Uzbekistan, Kazakhstan and USA (upon integration of the provisions of the US-EU mutual legal assistance agreement) and multilateral agreements, i. e. the European Convention on Mutual Legal Assistance in Criminal Matters of 20 April 1959 and its Additional Protocols of 1978 and 2001.</li></ul> <p>For police-to-police cooperation and requests, dual criminality standards are applied in a more flexible way, evaluating the nature of request on a case by case basis.</p>	
Rec 14	Parties are encouraged to consult with authorities of requested Party prior to sending requests, when necessary.
<p>Measures taken/relevant developments:</p> <p>Requested Parties are usually consulted prior to sending the requests, especially when the request is sent to a State that we had no prior cooperation with or when the request is related to a sensitive or complex issue. Recommendation for prior consultations is also set out in the Recommendations referred to in the reply to Rec4.</p>	
Rec 15	Parties should consider ensuring transparency regarding requirements for mutual assistance requests, and reasons for refusal, including thresholds for minor cases, on the websites of central authorities.
<p>Measures taken/relevant developments:</p> <p>No developments. Reasons for refusals are communicated directly to the requesting States.</p>	



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Question 2: Please provide information on time periods for preservation requests under Article 29 Budapest Convention in your country.

Rec 16 The T-CY should facilitate greater transparency regarding the time period for data preservation upon a foreign preservation request in line with Article 29 Budapest Convention. The T-CY should document time periods.

Time periods for preservation of data following a foreign request:

Based on the provisions of the Law on Electronic Communication, service providers in Lithuania are obliged to preserve the data for 6 months with the possibility for one renewal for additional 6 months.

Conditions and periods to extend or renew the preservation of specified data:

No specific conditions need to be met to extend or renew the preservation. Additional request for renewal is sufficient.

## 1.25 Malta

Question 1: Please provide information on measures taken or on relevant developments with respect to each of the following Recommendations. Please attach additional information as appropriate.

<b>Rec 1</b> Parties should fully implement and apply the provisions of the Budapest Convention on Cybercrime, including preservation powers (follow up to T-CY Assessment Report 2012).
Measures taken/relevant developments: The offences found in the Budapest Convention have been implemented in the Criminal Code, Chapter 9 of the Laws of Malta:  Article 2 – Illegal access Article 3 – Illegal interception Article 4 – Data interference Article 5 – System interference Article 6 – Misuse of devices Articles 2 – 6 of the Convention – These are implemented in articles 337B to 337H of the Criminal Code dealing with Computer Misuse;  Article 7 – Computer-related forgery – This is catered for under the general provisions on forgery in the Criminal Code (articles 166-190 of the Criminal Code). There is no specific provision for computer-related forgery. The general provisions on forgery are applicable to forgery of computer data;  Article 8 – Computer-related fraud – This is catered for under the general provisions on fraud in the Criminal Code (articles 293-310C of the Criminal Code). There is no specific provision for computer-related fraud. The general provisions on fraud are applicable to fraud of computer data;  Article 9 – Offences related to child pornography – This is catered for in article 208A of the Criminal Code;  Article 10 – Offences related to infringements of copyright and related rights – This is catered for in the Copyright Act, Chapter 415 of the Laws of Malta, the Trademark Act, Chapter 416 of the Laws of Malta and article 298B of the Criminal Code, Chapter 9 of the Laws of Malta (violation of copyright);  Article 11 – Attempt and aiding or abetting – The attempted offence is catered for in article 41 of the Criminal Code, Chapter 9 of the Laws of Malta for all criminal offences;  The offence of aiding or abetting is catered for in article 42 of the Criminal Code, Chapter 9 of the Laws of Malta for all criminal offences. In the case of the offence of child pornography, the offence of aiding or abetting is specifically catered for in article 208C of the Criminal Code, Chapter 9 of the Laws of Malta;  Article 12 – Corporate Liability - Corporate liability is catered for in article 13 of the Interpretation Act, Chapter 249 of the Laws of Malta. This article applies in general to any offence contained in any provision of any Maltese Act. However, in some instances specific provisions were enacted to cater for corporate

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liability in the case of specific offences. In the case of computer misuse, corporate liability is specifically catered for in article 337H of the Criminal Code, Chapter 9 of the Laws of Malta. In the case of fraud, the offence of corporate liability is specifically catered for in article 310A of the Criminal Code, Chapter 9 of the Laws of Malta. In the case of the offence of child pornography, corporate liability is specifically catered for in article 208B(3) of the Criminal Code, Chapter 9 of the Laws of Malta. In the case of the offence in article 298B of the Criminal Code, Chapter 9 of the Laws of Malta (violation of copyright), the offence of corporate liability is specifically catered for by means of article 310A of the Criminal Code, Chapter 9 of the Laws of Malta;

With respect to the preservation powers, the Executive Police has the power to ask service providers to provide them with certain data under the Legal Notice 198/2008.

Rec 2 Parties should consider maintaining statistics or establish other mechanisms to monitor the efficiency of the mutual legal assistance process related to cybercrime and electronic evidence.

Measures taken/relevant developments:

The Office of the Attorney General has a stand alone database which keeps statistical information about all requests for mutual assistance received and also all requests sent. This database is kept for all forms of mutual assistance including offences in relation to cybercrime and electronic evidence.

Rec 3 Parties should consider allocating more and more technology-literate staff for mutual legal assistance not only at central levels but also at the level of institutions responsible for executing requests (such as local prosecution offices).

Measures taken/relevant developments:

The 24/7 contact point is made up of technical staff since it is located at the Cyber Crime Unit within the Malta Police Force. Its main role is to assist and provide technical assistance to investigating officers both in processing MLA requests and also during police investigations.

The Attorney General Office (who is also the chief prosecutor and also the central designated authority when it comes to international cooperation) also has a duty prosecutor on a daily basis that liaises continuously and work closely with the police on a daily basis.

Rec 4 Parties should consider providing for better training to enhance mutual legal assistance, police-to-police and other forms of international cooperation on cybercrime and electronic evidence. Training and experience exchange should in particular target prosecutors and judges and encourage direct cooperation between judicial authorities. Such training should be supported by the capacity building programmes of the Council of Europe and other organisations.

Measures taken/relevant developments:

The training received by the technical personnel at the Cyber Crime Unit is not formal. The Cyber Crime Unit is a small unit and generally officers receive on the job training and are shadowed by senior officers.

Rec 5 Parties and the Council of Europe should work toward strengthening the role of 24/7 points of contact in line with Article 35 Budapest Convention, including through:

- a. Ensuring, pursuant to article 35.3 Budapest Convention that trained and equipped personnel is available to facilitate the operative work and conduct or support mutual legal assistance (MLA) activities

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- b. Encouraging contact points to pro-actively promote their role among domestic and foreign counterpart authorities;
- c. Conducting regular meetings and training of the 24/7 network among the Parties;
- d. Encouraging competent authorities and 24/7 points of contact to consider procedures to follow up to and provide feedback to the requesting State on Article 31 requests;
- e. Considering to establish, where feasible, contact points in prosecution offices to permit a more direct role in mutual legal assistance and a quicker response to requests;
- f. Facilitating 24/7 points of contact to play a supportive role in "Article 31" requests.

### Measures taken/relevant developments:

- a. The 24/7 contact point is made up of technical staff since it is located at the Cyber Crime Unit within the Malta Police Force. Its main role is to assist and provide technical assistance to investigating officers both when processing MLA requests and also during police investigations.
- b. The Cyber Crime Unit is the point of contact. Its role is specifically to provide any technical assistance required through criminal investigations. Therefore, its contribution is not limited only to the information gathered through the 24/7 network but to provide any form of assistance required by investigating officers. The small size of the country enables personal contact and direct communication between the investigating officer and the Cyber Crime Unit.
- c. The Cyber Crime Unit has not been involved in training in collaboration with other Parties.
- d. The Cyber Crime Unit makes use of MLA requests and the Europol channel to forward information which it gathers to the requesting state. The training received by the technical personnel at the Cyber Crime Unit is not formal. The Cyber Crime Unit is a small unit and generally officers receive on the job training and are shadowed by senior officers.
- e. There are a number of contact points at the Office of the Attorney General that receive MLA requests who liaise directly not only with the local authorities who might be executing the request but also with the competent foreign judicial authorities so as to facilitate and better the quality of cooperation when it comes to the fight against crime.
- f. 24/7 points of contact are technical officers established at the Cyber Crime Unit who are involved directly in the seizure of the evidence requested.

Rec 6 Parties should consider streamlining the procedures and reduce the number of steps required for mutual assistance requests at the domestic level. Parties should share good practices in this respect with the T-CY.

### Measures taken/relevant developments:

The competent authorities in Malta endeavour to process MLA requests within a reasonable time ensuring that any undue delay is avoided. As soon as the request is received at the Office of the Attorney General, this is sent to the competent authority without delay for processing and further action from their end.

Rec 7 Parties should make use of all available channels for international cooperation. This may include formal mutual legal assistance, police to police cooperation and others.

### Measures taken/relevant developments:

Police law enforcement has access to all police channels (example: Interpol & Europol) whereas they also have access to judicial channels i.e. MLA requests through the Office of the Attorney General.

Rec 8 Parties are encouraged to establish emergency procedures for requests related to risks of life and similar exigent circumstances. The T-CY should document practices by Parties and providers.

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<p>Measures taken/relevant developments:</p> <p>In the case of the 24/7 contact point under the Convention which is located at the Cyber Crime Unit, there is no specific procedure for emergency requests with service providers. However, urgent requests are followed telephonically with a contact person at the service providers. Malta only has 3 major service providers.</p> <p>In the case of MLA requests received at the Office of the Attorney General, the request is forwarded to the competent local authority for execution.</p>	
Rec 9	Parties should confirm receipt of requests systematically and give, upon request, notice of action taken.
<p>Measures taken/relevant developments:</p> <p>In the case of requests received by the 24/7 contact point at the Cyber Crime Unit, these are acknowledged straightaway and feedback is also provided.</p>	
Rec 10	Parties may consider the opening of domestic investigation upon a foreign request or spontaneous information to facilitate the sharing of information or accelerate MLA.
<p>Measures taken/relevant developments:</p> <p>In the case of requests received through the 24/7 contact point at the Cyber Crime Unit, the normal practice is that the information requested is secured and retained by the Police at the Cyber Crime Unit pending receipt of the formal request through formal channels either through the MLA channel or police channels.</p>	
Rec 11	Parties should make use of electronic transmission of requests in line with Article 25.3 Budapest Convention on expedited means of communication.
<p>Measures taken/relevant developments:</p> <p>The Office of the Attorney General receives requests for mutual legal assistance by fax, email and by post. In order to expedite the procedure, the request is processed forthwith by the person in charge of MLAs.</p>	
Rec 12	Parties should ensure that requests are specific and complete with all necessary information.
<p>Measures taken/relevant developments:</p> <p>The competent authority in Malta dealing with MLAs ensures that requests are specific and that it contains information as required for its execution. In the event that not all the information is provided, the Maltese Authorities will liaise directly with the foreign judicial authorities so that the information will be provided with the aim of executing the request in the swiftest manner possible.</p>	
Rec 13	Pursuant to Article 25.5 Budapest Convention and Paragraph 259 Explanatory Report, Parties are reminded to apply the dual criminality standard in a flexible manner that will facilitate the granting of assistance.
<p>Measures taken/relevant developments:</p> <p>The competent authority in Malta applies the dual criminality principle which is applied in a flexible manner when possible.</p>	

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Rec 14	Parties are encouraged to consult with authorities of requested Party prior to sending requests, when necessary.
Measures taken/relevant developments: Malta is a member of Eurojust and therefore its national member can contact the national member of another Member State if need be prior to sending requests.	
Rec 15	Parties should consider ensuring transparency regarding requirements for mutual assistance requests, and reasons for refusal, including thresholds for minor cases, on the websites of central authorities.
Measures taken/relevant developments: The rules regarding the transparency requirements and grounds of refusal are those stipulated in international agreements to which Malta is a Party and to which the latter adheres to. In fact the Maltese Authorities inform the requesting country of any reason why a particular letter of request cannot be executed.	

Question 2: Please provide information on time periods for preservation requests under Article 29 Budapest Convention in your country.

Rec 16	The T-CY should facilitate greater transparency regarding the time period for data preservation upon a foreign preservation request in line with Article 29 Budapest Convention. The T-CY should document time periods.
Time periods for preservation of data following a foreign request: According to article 22 of Legal Notice 198/2008: The categories of data specified in regulation 21 shall be retained by the service providers for the following periods: <ul style="list-style-type: none"><li>communications data relating to Internet Access and internet e-mail for a period of six months from the date of communication;</li><li>communications data concerning fixed network telephony, mobile telephony and Internet telephony for a period of one year from the date of communication.</li></ul>	
Conditions and periods to extend or renew the preservation of specified data: According to article 23 of Legal Notice 198/2008: (1) The Police may, in addition to the request for data under regulation 20, issue a conservation order in relation to the data. (2) The conservation order shall be served on the service provider within the retention period applicable under regulation 22. (3) Where a conservation order has been issued, the service provider shall conserve the data (a) either for a period of six months in addition to the original or extended applicable retention period which period shall not, without an order of a Magistrate or of a competent Court, exceed a total period of two years; or (b) where criminal proceedings have been commenced within the applicable retention period or within such	

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period as extended in accordance with paragraph (a), for such time as may be necessary for the conclusion of the criminal proceedings where the data is required to be produced as evidence; such conclusion shall be deemed to occur when the judgement in the proceedings becomes final and conclusive, whichever is the longer period.

1.26 Mauritius

Question 1: Please provide information on measures taken or on relevant developments with respect to each of the following Recommendations. Please attach additional information as appropriate.

<p>Rec 1 Parties should fully implement and apply the provisions of the Budapest Convention on Cybercrime, including preservation powers (follow up to T-CY Assessment Report 2012).</p>
<p>Measures taken/relevant developments:</p> <p>The provisions of the Budapest Convention on Cybercrime (BCC) are being fully implemented. The Computer Misuse and Cybercrime Act 2003 (CMCA) is clearly inspired by the structure of the BCC.</p> <p>The CMCA provides for an investigatory authority to apply to the Judge in Chambers for an order in relation to:-</p> <ul style="list-style-type: none"> <li>the expeditious preservation of data – Section 11, Preservation Order</li> <li>the disclosure of all preserved data – Section 12 (a), Disclosure of preserved data</li> <li>the disclosure of sufficient data to identify service providers and path through which data was transmitted – Section 12 (b), Disclosure of preserved data</li> <li>the disclosure of electronic key enabling access to or the interpretation of data – Section 12 (c), Disclosure of preserved data</li> <li>the submission of specified data in a person's possession or control stored in a computer system – Section 13 (a), Production Order</li> <li>the submission of subscriber information in a service provider's possession or control – Section 13 (b), Production Order</li> <li>a warrant to enter any premises to access, search and seize data – Section 14, Powers of access, etc.</li> <li>the collection or recording of traffic data in real time – Section 15, Real time collection of traffic data</li> <li>compelling a service provider to effect or assist in the collection or recording of traffic data in real time – Section 15, Real time collection of traffic data, and</li> <li>the deletion of data containing an indecent photograph of a child – Section 16, Deletion Order.</li> </ul>
<p>Rec 2 Parties should consider maintaining statistics or establish other mechanisms to monitor the efficiency of the mutual legal assistance process related to cybercrime and electronic evidence.</p>
<p>Measures taken/relevant developments:</p> <p>Mechanism have been put into place to collect and maintain relevant statistics to monitor the efficiency of mutual legal assistance process related to cybercrime and electronic evidence</p>
<p>Rec 3 Parties should consider allocating more and more technology-literate staff for mutual legal assistance not only at central levels but also at the level of institutions responsible for executing requests (such as local prosecution offices).</p>



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Measures taken/relevant developments:

The Judiciary, The Attorney General's office (International Affairs and Mutual Legal Assistance Division), The Office of the Director of the Public Prosecutions(International Cooperation/MLA and Extradition Unit), the Police Prosecution Office, Cybercrime Unit and the Police IT Unit , have technology-literate staff allocated for the execution of MLA requests.

The different units involved in MLA work together in close collaboration.

Rec 4 Parties should consider providing for better training to enhance mutual legal assistance, police-to-police and other forms of international cooperation on cybercrime and electronic evidence. Training and experience exchange should in particular target prosecutors and judges and encourage direct cooperation between judicial authorities. Such training should be supported by the capacity building programmes of the Council of Europe and other organisations.

Measures taken/relevant developments:

Training and seminars are organised at various level on mutual legal assistance and international cooperation on cybercrime and electronic evidence and are attended regularly by different stake holders of the criminal justice system.

There are also experience exchange and training organised by the IJLS whereby prosecutors and judges discuss and exchange their views on cooperation.

Joint training programme supported by the Council of Europe will also be organised in future as part of capacity building programmes under the Glacy + as strategic priority under judicial training.

As far as Police-to-Police and International Cooperation are concerned: -

- Two officers (1 from the Police IT Unit as the 24/7 Point of Contact and 1 Officer from the Cybercrime unit as Investigation Officer) attended the 'International Workshop and Training on the 24/7 Points of Contact of the GLACY Countries organised by the Council of Europe in Sri Lanka in April last.
- One officer from the Police IT Unit attended the Europol Cybercrime Conference under the GLACY project held in Singapore in September last.

The knowledge and skill gained from the above workshops are being imparted to other police officers.

Rec 5 Parties and the Council of Europe should work toward strengthening the role of 24/7 points of contact in line with Article 35 Budapest Convention, including through:

- a. Ensuring, pursuant to article 35.3 Budapest Convention that trained and equipped personnel is available to facilitate the operative work and conduct or support mutual legal assistance (MLA) activities
  - b. Encouraging contact points to pro-actively promote their role among domestic and foreign counterpart authorities;
  - c. Conducting regular meetings and training of the 24/7 network among the Parties;

## Mauritius

- d. Encouraging competent authorities and 24/7 points of contact to consider procedures to follow up to and provide feedback to the requesting State on Article 31 requests;
- e. Considering to establish, where feasible, contact points in prosecution offices to permit a more direct role in mutual legal assistance and a quicker response to requests;
- f. Facilitating 24/7 points of contact to play a supportive role in "Article 31" requests.

### Measures taken/relevant developments:

The 24/7 Points of Contact are all officers from the Police IT Unit and are adequately equipped with the Cybercrime Unit to facilitate the network's operation.

The office of the Commissioner of Police has approved a procedure on 18 June 2016 situating responsibilities between the Police IT Unit and the Cybercrime Unit and to be complied with wherever assistance is required.

Key departments involved in investigation, namely FIU, ICAC, Bank of Mauritius, MRA and CERT MU have been informed about and provided with the contact details of the 24/7 Points of Contact.

Two officers (1 from the Police IT Unit as the 24/7 Point of Contact and 1 Officer from the Cybercrime unit as Investigation Officer) attended the 'International Workshop and Training on the 24/7 Points of Contact of the GLACY Countries organised by the Council of Europe in Sri Lanka in April last.

The 24/7 Points of contact aims at acting pro-actively and to play a supportive role in 'Article 31' requests and will provide feedback to the requesting State.

**Rec 6** Parties should consider streamlining the procedures and reduce the number of steps required for mutual assistance requests at the domestic level. Parties should share good practices in this respect with the T-CY.

### Measures taken/relevant developments:

The Mutual Assistance in Criminal and Related Matters Act 2003(MACRMA) is a comprehensive legal framework for international cooperation. Procedures have been streamlined and both the International Affairs and Mutual Legal Assistance Division of the AGO and the International Cooperation/MLA and Extradition Unit of the ODPP work closely under specific and clear guidance and in compliance of section 5 to either promptly grant, in whole or in part and subject to conditions or refuse in whole or in part the request on specified grounds.

**Rec 7** Parties should make use of all available channels for international cooperation. This may include formal mutual legal assistance, police to police cooperation and others.

### Measures taken/relevant developments:

All the available channels for International Cooperation are explored and used including the 24/7 Points of Contacts under the BCC, Mutual Legal Assistance, International Association of Prosecutors, Interpol and Informal Cooperation.

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Rec 8	Parties are encouraged to establish emergency procedures for requests related to risks of life and similar exigent circumstances. The T-CY should document practices by Parties and providers.
Measures taken/relevant developments:	
Re footnote 1. Information to the T-CY has been already been provided to the T-CY - <a href="#">T-CY(2016)13</a> ).	
Rec 9	Parties should confirm receipt of requests systematically and give, upon request, notice of action taken.
Measures taken/relevant developments:	
The 24/7 Point will acknowledge receipt by sending back a Mail to the sender and will endeavour to provide upon request notice of action taken.	
Rec 10	Parties may consider the opening of domestic investigation upon a foreign request or spontaneous information to facilitate the sharing of information or accelerate MLA.
Measures taken/relevant developments:	
Section 6 of the MACRMA- 'Procedure for an evidence-gathering order or a search warrant' provides for the opening of a domestic investigation.	
The Cybercrime Unit will open an entry in the CCID Occurrence Book as to the gist of the request on the basis of which the enquiry would be started and an application for Judge's Order may be made.	
Rec 11	Parties should make use of electronic transmission of requests in line with Article 25.3 Budapest Convention on expedited means of communication.
Measures taken/relevant developments:	
Official e-Mail will be used for communication between Mauritius 24/7 Points of contact and requesting parties. Contact details have been included in 'Budapest Convention 24/7 contact point Directory'.	
Rec 12	Parties should ensure that requests are specific and complete with all necessary information.
Measures taken/relevant developments:	
Requests to be made by Mauritius will be in the formats provided in the 'International Workshop and Training on the 24/7 Points of Contact of the GLACY Countries organised by the Council of Europe in Sri Lanka in April last.	
Section 4(3) and 6(2) of the MACRMA provides for requirements and particulars to be included in requests	

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which have to be specific and complete.

Rec 13 Pursuant to Article 25.5 Budapest Convention and Paragraph 259 Explanatory Report, Parties are reminded to apply the dual criminality standard in a flexible manner that will facilitate the granting of assistance.

Measures taken/relevant developments:

Dual criminality standard are applied flexibly. Section 5 of the MACRMA provides that a request to Mauritius from a foreign State has to be in relation to a 'serious offence', which has been defined as 'an offence against a law of a foreign state for which a maximum penalty is imprisonment for not less than 12 months.

Rec 14 Parties are encouraged to consult with authorities of requested Party prior to sending requests, when necessary.

Measures taken/relevant developments:

Consultations are held, correspondences and emails are exchanged and terms and conditions may be imposed , where appropriate, for the execution of the request.

Rec 15 Parties should consider ensuring transparency regarding requirements for mutual assistance requests, and reasons for refusal, including thresholds for minor cases, on the websites of central authorities.

Measures taken/relevant developments:

There is transparency regarding MLA requests.

Section 5(1) of the MACRMA sets out the requirement, i.e. 'serious offence' while section 5(2) (b) provides grounds on which a request may be refused , in whole or in part where:

- (i) that compliance with the request would be contrary to the Constitution;
- (ii) of prejudice to the sovereignty, international relations, security, public order, or other public interest of Mauritius;
- (iii) of reasonable belief that the request for assistance has been made for the purpose of prosecuting a person on account of that person's race, sex, religion, nationality, ethnic origin or political opinions, or that a person's position may be prejudiced for any of those reasons;
- (iv) of absence of dual criminality, where granting the request would require a Court in Mauritius to make an order in respect of any person or property in respect of conduct which does not constitute an offence, nor gives rise to a confiscation or restraining order, in Mauritius;
- (v) that the request relates to an offence under military law, or a law relating to military obligations, which would not be an offence under ordinary criminal law;
- (vi) that the request relates to a political offence or an offence of a political character;
- (vii) that the request relates to an offence, the prosecution of which, in the foreign State, would be incompatible with laws of Mauritius on double jeopardy;
- (viii) that the request requires Mauritius to carry out measures that are inconsistent with its

Mauritius

laws and practice, or that cannot be taken in respect of criminal matters arising in Mauritius; or

Question 2: Please provide information on time periods for preservation requests under Article 29 Budapest Convention in your country.

Rec 16 The T-CY should facilitate greater transparency regarding the time period for data preservation upon a foreign preservation request in line with Article 29 Budapest Convention. The T-CY should document time periods.

Section 11 (3) of the CMCA provides for an application for an 'Order' for an expeditious preservation order to be made before a Judge in Chambers which remains in force: -

Until such time as may reasonably be required for the investigation of an offence;  
Where prosecution is instituted, until the final determination of the case,; or  
Until such time as the Judge in Chambers deems fit.

Conditions and periods to extend or renew the preservation of specified data:

Conditions, extension and renewal will depend on the requirements as set out in section 11(3) of the CMCA above.

Moldova

1.27 Moldova

Question 1: Please provide information on measures taken or on relevant developments with respect to each of the following Recommendations. Please attach additional information as appropriate.

Rec 1	Parties should fully implement and apply the provisions of the Budapest Convention on Cybercrime, including preservation powers (follow up to T-CY Assessment Report 2012).
Measures taken/relevant developments: Preservation data is provided by Law No. 20 dated 03.02.2009 on preventing and combating cybercrime	
Rec 2	Parties should consider maintaining statistics or establish other mechanisms to monitor the efficiency of the mutual legal assistance process related to cybercrime and electronic evidence.
Measures taken/relevant developments:  The General Prosecutor's Office maintains statistics on all request for legal assistance, including the ones related to cybercrime. We don't have a data base only for cybercrime cases, but we do maintain a strict control of request related to cybercrime together with the Department for Information Technology and Combating Cybercrimes.	
Rec 3	Parties should consider allocating more and more technology-literate staff for mutual legal assistance not only at central levels but also at the level of institutions responsible for executing requests (such as local prosecution offices).
Measures taken/relevant developments:  According to the Law on prosecution dated 25.02.2016, the new Specialized Prosecutor's Office for Combating Organized Crimes and Special Cases is also investigating cases related to cybercrime and executes request for legal assistance incoming from other states.	
Rec 4	Parties should consider providing for better training to enhance mutual legal assistance, police-to-police and other forms of international cooperation on cybercrime and electronic evidence. Training and experience exchange should in particular target prosecutors and judges and encourage direct cooperation between judicial authorities. Such training should be supported by the capacity building programmes of the Council of Europe and other organisations.
Measures taken/relevant developments:  The General Prosecutor's Office together with international and national NGOs and the National Institute of Justice offers trainings for prosecutors and judges related to cybercrime investigation and managing the electronic evidence.	
Rec 5	Parties and the Council of Europe should work toward strengthening the role of 24/7 points of contact in line with Article 35 Budapest Convention, including through:

Moldova

- a. Ensuring, pursuant to article 35.3 Budapest Convention that trained and equipped personnel is available to facilitate the operative work and conduct or support mutual legal assistance (MLA) activities
  - b. Encouraging contact points to pro-actively promote their role among domestic and foreign counterpart authorities;
  - c. Conducting regular meetings and training of the 24/7 network among the Parties;
  - d. Encouraging competent authorities and 24/7 points of contact to consider procedures to follow up to and provide feedback to the requesting State on Article 31 requests;
  - e. Considering to establish, where feasible, contact points in prosecution offices to permit a more direct role in mutual legal assistance and a quicker response to requests;
  - f. Facilitating 24/7 points of contact to play a supportive role in "Article 31" requests.

Measures taken/relevant developments:

The personnel of 24/7 contact point is in continuous process of training both from the operational and technical point of view, promoting its role on nationally and international level. Actively participate in meetings of contact points from different countries, cooperation between the Eastern Partnership countries being very efficient.

The General Prosecutor's Office is considering naming a liaison person (prosecutor) within the Department for International Cooperation and European Integration who will directly work with the 24/7 contact point from the Department for Informational Technology and Combating Cybercrime of the General Prosecutor's Office of Moldova. Thus, it will make easier to receive all requests related to cybercrime, especially those who are urgent, and supply the requested Party with the necessary information in due time.

Rec 6 Parties should consider streamlining the procedures and reduce the number of steps required for mutual assistance requests at the domestic level. Parties should share good practices in this respect with the T-CY.

Measures taken/relevant developments:

According to the reservations made by the Republic of Moldova to the Budapest Convention (Article 27, paragraph 9, sub-paragraph e of the Convention), all the requests formulated in the phase of penal prosecution are to be addressed to the Office of the Prosecutor General, whilst those formulated in the judiciary phase or in the phase of the execution of punishment are to be addressed to the Ministry of Justice.

At the national level the only way to execute the request of the other state is if the following steps are fulfilled:

- the request is firstly sent to our Central Authority (the General Prosecutor's Office/ the Ministry of Justice);
- the Department for International Legal Assistance of the General Prosecutor's Office examines it and then

## Moldova

sends it for execution to the competent district prosecutor's Office.

In order to facilitate the execution of the request (urgency), the Department for International Legal Assistance may receive the request via email. While waiting for the original request (which will be mandatory sent by post), the executor prepares all the documents necessary for the execution.

Rec 7 Parties should make use of all available channels for international cooperation. This may include formal mutual legal assistance, police to police cooperation and others.

Measures taken/relevant developments:

The Republic of Moldova uses the following channels for international cooperation:

- the Central Authority (the General Prosecutor's Office/ the Ministry of Justice); -
- 24/7 contact point (the Department for Information Technology and Combating Cybercrimes of the General Prosecutor's Office and the Ministry of Internal Affairs);
- Eurojust.

Police to police cooperation:

Interpol Channel;

Europol Channel;

24/7 contact point;

Direct contacts.

Rec 8 Parties are encouraged to establish emergency procedures for requests related to risks of life and similar exigent circumstances. The T-CY should document practices by Parties and providers.

Measures taken/relevant developments:

Rec 9 Parties should confirm receipt of requests systematically and give, upon request, notice of action taken.

Measures taken/relevant developments:

The Department for International Legal Assistance of the General Prosecutor's Office sends usually a confirmation of the receipt of request for legal assistance when receives it by fax/email or when the state asks directly in its request.

Rec 10 Parties may consider the opening of domestic investigation upon a foreign request or spontaneous information to facilitate the sharing of information or accelerate MLA.

Measures taken/relevant developments:

The Moldovan competent authorities do not usually open a domestic investigation based on the foreign request for legal assistance. There has been a single case where the Department for Information Technology and Combating Cybercrimes of the General Prosecutor's Office started its own investigation



Moldova

upon the information provided in the request for committing the offence of banking fraud and, in order to facilitated the exchange of information, a JIT has been created between states.

Rec 11 Parties should make use of electronic transmission of requests in line with Article 25.3 Budapest Convention on expedited means of communication.

Measures taken/relevant developments:

The General Prosecutor's Office uses the electronic transmission of requests, especially when the other state requests the preservation of data. We proceed immediately to its execution.

Rec 12 Parties should ensure that requests are specific and complete with all necessary information.

Measures taken/relevant developments:

When sending a request for legal assistance to other state, the Department for International Legal Assistance of the General Prosecutor's Office verifies it, if it is formulated according to the provisions of the Criminal Procedure Code of the Republic of Moldova:

Article 537. Content and Form of the Request for legal assistance

(1) The rogatory letter shall be made in writing and shall include:

- 1) the name of the body addressing the letter;
  - 2) the name and address, if known, of the institution to which the letter is sent;
  - 3) the international treaty or reciprocity agreement based on which the assistance is requested;
  - 4) reference to the criminal case in relation to which legal assistance is requested, The summary of the facts and their legal qualification, the text of the respective article of the Criminal Code of the Republic of Moldova and information about the damage caused by the respective crime;
  - 5) information about the persons in whose regard the rogatory letter is requested including about their procedural capacity, date and place of birth, citizenship, domicile, occupation, and for legal entities the name and address and the last and first names and addresses of the representatives of these entities, if necessary;
  - 6) the object of the rogatory letter and the data necessary to execute it; a description of circumstances that will be established; a list of documents, material evidence and other requested evidence; circumstances in relation to which the evidence is to be managed and the questions to be addressed to the persons to be heard;
  - 7) the date when a reply to the rogatory letter is expected and as the case may be, the request that a representative of a criminal investigative body of the Republic of Moldova attend the respective procedural actions;
- (1<sup>1</sup>) The rogatory letter shall have attached the procedural acts necessary to conduct the criminal investigative actions, drafted in line with the provisions of this Code.
- (2) The rogatory letter and the attached documents shall be signed and confirmed by the official stamp of the competent requesting institution.

Moldova

Rec 13	Pursuant to Article 25.5 Budapest Convention and Paragraph 259 Explanatory Report, Parties are reminded to apply the dual criminality standard in a flexible manner that will facilitate the granting of assistance.
Measures taken/relevant developments:	
The Criminal Code and the Criminal Procedure Code of the Republic of Moldova contains all the offences provided by the Budapest Convention, as well as the procedure of combating the cybercrime.	
Rec 14	Parties are encouraged to consult with authorities of requested Party prior to sending requests, when necessary.
Measures taken/relevant developments:	
The General Prosecutor's Office does not usually consult the requested Party when sends the request for legal assistance but sometimes, when it is urgent, we may send the request for legal assistance by email, so the other state may look first through it and inform us if it will be possible to execute it in due time.	
Rec 15	Parties should consider ensuring transparency regarding requirements for mutual assistance requests, and reasons for refusal, including thresholds for minor cases, on the websites of central authorities.
Measures taken/relevant developments:	
All the information on the requirements for mutual assistance requests is provided on the website of the General Prosecutor's office of the Republic of Moldova ( <a href="http://www.procuratura.md">www.procuratura.md</a> ), but it is only in Moldovan language. We will take into consideration to translate the information in English language. The Republic of Moldova executes all requests and has no thresholds for minor cases.	

Question 2: Please provide information on time periods for preservation requests under Article 29 Budapest Convention in your country.

Rec 16	The T-CY should facilitate greater transparency regarding the time period for data preservation upon a foreign preservation request in line with Article 29 Budapest Convention. The T-CY should document time periods.
Time periods for preservation of data following a foreign request:	
When we receive the request for preservation of data by post or even by email, the time period for executing the request is up to 1 month. When the request is being received using the 24/7 contact point, the data is preserved during 2 weeks.	
Conditions and periods to extend or renew the preservation of specified data:	
The time for data preservation may be extended up to six months, but usually within due time we receive a request for legal assistance for seizing the preserved information.	

Montenegro

1.28 Montenegro

Question 1: Please provide information on measures taken or on relevant developments with respect to each of the following Recommendations. Please attach additional information as appropriate.

<p>Rec 1 Parties should fully implement and apply the provisions of the Budapest Convention on Cybercrime, including preservation powers (follow up to T-CY Assessment Report 2012).</p>
<p>Measures taken/relevant developments:</p> <p>In practice, there are no major problems in respect of the application of the Convention, including the authority to preserve data.</p>
<p>Rec 2 Parties should consider maintaining statistics or establish other mechanisms to monitor the efficiency of the mutual legal assistance process related to cybercrime and electronic evidence.</p>
<p>Measures taken/relevant developments:</p> <p>The Ministry of Justice of Montenegro as the central authority officially started using the information system for electronic case management of mutual legal assistance on 1 January 2015, which represents the database, as well as an effective means of search and provision of statistical data by different criteria such as: criminal offence, the type of MLA, the state, and so on.</p>
<p>Rec 3 Parties should consider allocating more and more technology-literate staff for mutual legal assistance not only at central levels but also at the level of institutions responsible for executing requests (such as local prosecution offices).</p>
<p>Measures taken/relevant developments:</p> <p>All employees of the Ministry of Justice working on mutual legal assistance are technologically literate as all cases are processed through the information system. In all emergencies, we use electronic communication. Centre for Training in Judiciary and State Prosecution Service regularly conducts trainings for prosecutors and judges in order to increase the efficiency of procedures in cases of mutual legal assistance.</p>
<p>Rec 4 Parties should consider providing for better training to enhance mutual legal assistance, police-to-police and other forms of international cooperation on cybercrime and electronic evidence. Training and experience exchange should in particular target prosecutors and judges and encourage direct cooperation between judicial authorities. Such training should be supported by the capacity building programmes of the Council of Europe and other organisations.</p>
<p>Measures taken/relevant developments:</p> <p>Centre for Training in Judiciary and State Prosecution Service regularly conducts trainings for prosecutors and judges in the field of cybercrime. In addition, the Ministry of Justice at least once a year organizes regional meetings with representatives of the ministries of justice and the judiciary of countries with which</p>

## Montenegro

it has signed bilateral agreements in order to increase the efficiency of international legal assistance, with special emphasis on the direct cooperation of judicial authorities.

Rec 5 Parties and the Council of Europe should work toward strengthening the role of 24/7 points of contact in line with Article 35 Budapest Convention, including through:

- a. Ensuring, pursuant to article 35.3 Budapest Convention that trained and equipped personnel is available to facilitate the operative work and conduct or support mutual legal assistance (MLA) activities
  - b. Encouraging contact points to pro-actively promote their role among domestic and foreign counterpart authorities;
  - c. Conducting regular meetings and training of the 24/7 network among the Parties;
  - d. Encouraging competent authorities and 24/7 points of contact to consider procedures to follow up to and provide feedback to the requesting State on Article 31 requests;
  - e. Considering to establish, where feasible, contact points in prosecution offices to permit a more direct role in mutual legal assistance and a quicker response to requests;
  - f. Facilitating 24/7 points of contact to play a supportive role in "Article 31" requests.

Measures taken/relevant developments:

Cooperation through 24/7 contact points takes place without major difficulties.

Rec 6 Parties should consider streamlining the procedures and reduce the number of steps required for mutual assistance requests at the domestic level. Parties should share good practices in this respect with the T-CY.

Measures taken/relevant developments:

See response to recommendations Nos. 3 and 4. In addition, the Law on Mutual Legal Assistance in Criminal Matters provides for the obligation of complying with letters rogatory submitted electronically, provided that within 15 days they are delivered in the original form. Officials of the Ministry of Justice are trained and technically equipped to, if necessary, address electronically (e-mail, fax) the competent institutions and persons abroad.

Rec 7 Parties should make use of all available channels for international cooperation. This may include formal mutual legal assistance, police to police cooperation and others.

Measures taken/relevant developments:

In case of emergency, the Law provides for the possibility to receive/send letters rogatory through NCB INTERPOL. Also, Montenegro has recently appointed contact points for cooperation with EUROJUST - and the European Judicial Network. So far we received 1 request in the field of cybercrime through contact points for cooperation with EUROJUST - and acted upon it most urgently.

Rec 8 Parties are encouraged to establish emergency procedures for requests related to risks of life and similar exigent circumstances. The T-CY should document practices by Parties and

Montenegro

	providers.
	Measures taken/relevant developments:  provided to the T-CY before
Rec 9	Parties should confirm receipt of requests systematically and give, upon request, notice of action taken.
	Measures taken/relevant developments:  At the request of the requesting State, the receipt of the request is confirmed and provided information on the actions taken.
Rec 10	Parties may consider the opening of domestic investigation upon a foreign request or spontaneous information to facilitate the sharing of information or accelerate MLA.
	Measures taken/relevant developments:  No such cases so far.
Rec 11	Parties should make use of electronic transmission of requests in line with Article 25.3 Budapest Convention on expedited means of communication.
	Measures taken/relevant developments:  See response to Recommendation No. 4. In all emergencies we use electronic transmission of requests.
Rec 12	Parties should ensure that requests are specific and complete with all necessary information.
	Measures taken/relevant developments:  See response to recommendations Nos. 3 and 4.
Rec 13	Pursuant to Article 25.5 Budapest Convention and Paragraph 259 Explanatory Report, Parties are reminded to apply the dual criminality standard in a flexible manner that will facilitate the granting of assistance.
	Measures taken/relevant developments:  No refusals so far on the basis of dual criminality.
Rec 14	Parties are encouraged to consult with authorities of requested Party prior to sending requests, when necessary.
	Measures taken/relevant developments:

## Montenegro

Where necessary, the competent judicial authorities consult with the Ministry of Justice.

Rec 15 Parties should consider ensuring transparency regarding requirements for mutual assistance requests, and reasons for refusal, including thresholds for minor cases, on the websites of central authorities.

Measures taken/relevant developments:

Question 2: Please provide information on time periods for preservation requests under Article 29 Budapest Convention in your country.

Rec 16 The T-CY should facilitate greater transparency regarding the time period for data preservation upon a foreign preservation request in line with Article 29 Budapest Convention. The T-CY should document time periods.

Time periods for preservation of data following a foreign request:

The Code of Criminal Procedure does not provide for a time limit for preserving such data. In practice, it should look like this: the prosecutor's request includes a deadline that the investigating judge should state in the order, i.e. to provide for the reservation of data for 60, 90... days, and after that to send a formal request of the foreign state to exempt such reserved data.

Conditions and periods to extend or renew the preservation of specified data:

1.29 Netherlands

Question 1: Please provide information on measures taken or on relevant developments with respect to each of the following Recommendations. Please attach additional information as appropriate.

<p>Rec 1 Parties should fully implement and apply the provisions of the Budapest Convention on Cybercrime, including preservation powers (follow up to T-CY Assessment Report 2012).</p>
<p>Measures taken/relevant developments:                  Already available.                  The Netherlands have implemented all provisions from the Budapest Convention Before ratifying the cybercrime convention the so called Dutch Computer Crimes Act II was approved by parliament. This bill amended where necessary the Dutch Criminal Code (DCC) and the Dutch Criminal Code of Procedures (DCCP).The preservation powers have been codified in Article 126ni DCCP.</p>
<p>Rec 2 Parties should consider maintaining statistics or establish other mechanisms to monitor the efficiency of the mutual legal assistance process related to cybercrime and electronic evidence.</p>
<p>Measures taken/relevant developments:                  At the moment the Netherlands Nation wide database concerning MLA request(LURIS) is not designed to retrieve very specific statistics automatically.                  Currently discussions have been initiated on developing a system that will replace the LURIS system in the future. One of the aims is to simplify obtaining statistics also for cybercrime and electronic evidence.</p>
<p>Rec 3 Parties should consider allocating more and more technology-literate staff for mutual legal assistance not only at central levels but also at the level of institutions responsible for executing requests (such as local prosecution offices).</p>
<p>Measures taken/relevant developments:                  International cooperation in cyber crime cases is based on the legal framework in the Netherlands that regulates all mutual legal assistance, mutual recognition, surrender and extraditions. For the execution or refusal of a MLAT, the relevant treaties and Articles 552h to 552s and articles 552jj to 552vv of the Dutch Code Of Criminal Procedure (DCCP), are taken into account. These articles are currently under review, primarily in view of the implementation of the European Investigation Order.                  In the Netherlands, the administrative handling of all incoming and outgoing EU-requests for mutual legal assistance, both for judicial and police assistance, are organized in 10 International Legal Assistance Centres (Internationale Rechtshulp Centra, IRC) and one National IRC (LIRC).The Department for International Affairs and Legal Assistance in Criminal Matters (Afdeling Internationale Aangelegenheden en Rechtshulp in Strafzaken) of the                  Ministry of Security and Justice also forms part of this national network and assesses mainly non-EU mutual legal assistance requests. An IRC is a joint venture between the public prosecutions department and the police. Staff is explicitly trained. Upon experiences gathered the level of knowledge on and practice with handling ICT related requests has matured.</p>
<p>Rec 4 Parties should consider providing for better training to enhance mutual legal assistance, police-</p>

## Netherlands

to-police and other forms of international cooperation on cybercrime and electronic evidence. Training and experience exchange should in particular target prosecutors and judges and encourage direct cooperation between judicial authorities. Such training should be supported by the capacity building programmes of the Council of Europe and other organisations.

### Measures taken/relevant developments:

Although in theory every public prosecutor and judge is able to work on cyber crime cases, the judiciary invested in additional training on cyber crime. Moreover, the Public Prosecutor's Office appointed dedicated prosecutors in the districts and in the National Public Prosecutor's Office. The courts created a centre of expertise which employs two judges and a clerk. Also several investigating judges have specialized in cyber crime.

The training and study centre for the judiciary (Studiecentrum Rechtspleging; SSR) provides initial training programs and offers advanced education for judges, public prosecutors and legal staff, based on the principle that learning and continuing education remain essential throughout careers in the judiciary. SSR offers practical programs, courses, training, coaching and management development programs, including a dedicated module on digital investigation (comprising of an interception course and a basic cyber crime course).

Rec 5 Parties and the Council of Europe should work toward strengthening the role of 24/7 points of contact in line with Article 35 Budapest Convention, including through:

- a. Ensuring, pursuant to article 35.3 Budapest Convention that trained and equipped personnel is available to facilitate the operative work and conduct or support mutual legal assistance (MLA) activities
  - b. Encouraging contact points to pro-actively promote their role among domestic and foreign counterpart authorities;
  - c. Conducting regular meetings and training of the 24/7 network among the Parties;
  - d. Encouraging competent authorities and 24/7 points of contact to consider procedures to follow up to and provide feedback to the requesting State on Article 31 requests;
  - e. Considering to establish, where feasible, contact points in prosecution offices to permit a more direct role in mutual legal assistance and a quicker response to requests;
  - f. Facilitating 24/7 points of contact to play a supportive role in "Article 31" requests.

### Measures taken/relevant developments:

The 24/7 contact point for urgent requests is incorporated in the National High Tech Crime Unit (NHTCU), which liaises closely with the national prosecutor on high tech crime. The National Prosecutor's Office assesses the request and decides, with the National High Tech Crime Unit of the police, whether the request should be executed by the National High Tech Crime Unit or by the regional units of the police. If the latter is the case, the National Prosecutor's Office will forward the request to a local office for international legal assistance in criminal matters (IRC).

The 24/7 contact point is staffed by dedicated police officers which are trained and experienced in cybercrime matters and in international contacts in investigations into cybercrimes.



## Netherlands

Rec 6	Parties should consider streamlining the procedures and reduce the number of steps required for mutual assistance requests at the domestic level. Parties should share good practices in this respect with the T-CY.
Measures taken/relevant developments: For the execution or refusal of a MLAT, the relevant treaties and Articles 552h to 552s and articles 552jj to 552vv of the Dutch Code Of Criminal Procedure (DCCP), are taken into account. These articles are currently under review, primarily in view of the implementation of the European Investigation Order. Other goals of the review are raising effectiveness and enhancing the implementation of international cooperation, simplify procedures where possible and introducing extra safeguards if needed. This review is part of an overarching national project on modernisation of all of the Dutch criminal Code of Procedures. For this specific issue of international cooperation already a draft law is sent to parliament.	
Rec 7	Parties should make use of all available channels for international cooperation. This may include formal mutual legal assistance, police to police cooperation and others.
Measures taken/relevant developments: Already available. The Netherlands use mutual legal assistance between judicial authorities. Each district public prosecutor's office (arrondissementsparket) and all police bodies are linked to one of the IRCs. A request must therefore be sent to the IRC concerned. Where it is not known which public prosecutor's office or which police region is competent, a request for mutual legal assistance may be sent to the LIRC, a joint venture between the National Public Prosecutor's Office (Landelijk Parket) and the National Police Force which sees to the handling and/or forwarding of the request. In the absence of a Treaty or Agreement or where direct contact at the level of the public prosecutions department is excluded, the Ministry of Security and Justice (Office for International Affairs and Legal Assistance in Criminal Matters) will continue to act as the central authority to which all requests for mutual assistance in judicial matters must be sent.  Police to police cooperation may be possible. If information on data is shared before a formal request for transfer is received, the information may be shared on a police to police basis with the consent of the prosecutor, with the note the information may only be used for investigative purposes. To be able to use the information as evidence in criminal proceedings, the requesting country must send a formal MLA-request for transfer. In some specific cases countries, and the Netherlands as well, send spontaneous information to other states	
Rec 8	Parties are encouraged to establish emergency procedures for requests related to risks of life and similar exigent circumstances. The T-CY should document practices by Parties and providers.
Measures taken/relevant developments:	
Rec 9	Parties should confirm receipt of requests systematically and give, upon request, notice of action taken.

Netherlands

Measures taken/relevant developments:	
The national high tech crime unit of the Dutch national Police usually does confirm receipt of a requests and tries to answer the steps that will be taken to answer the request.	
Rec 10	Parties may consider the opening of domestic investigation upon a foreign request or spontaneous information to facilitate the sharing of information or accelerate MLA.
Measures taken/relevant developments:	
Usually opening up a Dutch investigation is the only way to execute the request, e.g. to seize data. This is a special investigatory power for which an order of prosecutor is needed.	
Rec 11	Parties should make use of electronic transmission of requests in line with Article 25.3 Budapest Convention on expedited means of communication.
Measures taken/relevant developments:	
Regular mail, fax and e mail are used for transmission of requests.	
Rec 12	Parties should ensure that requests are specific and complete with all necessary information.
Measures taken/relevant developments:	
The operating procedures, the training and the experience of people working with mutual legal assistance requests aim at issuing and answering to requests in a specified manner providing the necessary information.	
Rec 13	Pursuant to Article 25.5 Budapest Convention and Paragraph 259 Explanatory Report, Parties are reminded to apply the dual criminality standard in a flexible manner that will facilitate the granting of assistance.
Measures taken/relevant developments:	
For search and seizures a dual qualified criminality is mandatory.	
Rec 14	Parties are encouraged to consult with authorities of requested Party prior to sending requests, when necessary.
Measures taken/relevant developments:	
The Netherlands are active in such consultations within the national bureaus of Europol, of Interpol, as well as in the contacts with other 24/7 CP 's. The Netherlands participate in the EJM and in the EU network for judicial authorities on cybercrime.	
Rec 15	Parties should consider ensuring transparency regarding requirements for mutual assistance requests, and reasons for refusal, including thresholds for minor cases, on the websites of central authorities.
The Central Authority in the Netherlands is studying the possibilities on how to inform stakeholders in the most efficient way. Development of a website is part of this study.	

## Netherlands

Question 2: Please provide information on time periods for preservation requests under Article 29 Budapest Convention in your country.

Rec 16 The T-CY should facilitate greater transparency regarding the time period for data preservation upon a foreign preservation request in line with Article 29 Budapest Convention. The T-CY should document time periods.

Time periods for preservation of data following a foreign request:

90 Days.

A request for such preservation will be executed in cases where the sanctions to the criminalised behaviour equals the conditions for pre trial detention in the Netherlands. This is the threshold for allowing special investigation powers which is commonly used in the Netherlands is that the crime allows pre-trial detention. This is generally the case for crimes carrying a maximum of at least four years' imprisonment (art. 67, para. 1 under a DCCP), and for certain specifically mentioned offences (art. 67, para. 1 under b DCCP). Because digital investigation powers may also be required for "simple" cyber crimes, for example hacking without aggravating circumstances, the Computer Crime Act II has inserted almost all cyber crimes specifically into art. 67, para. 1 under b DCCP. As a result, for most cyber crimes, pre-trial detention is allowed, regardless of their maximum penalty, and most investigation powers can be used to investigate them.

Conditions and periods to extend or renew the preservation of specified data:

Extendable for 90 days.

Conditions:

- Pretrial detention is possible in the Netherlands;
- A request for preservation cannot be served on the suspect;

Norway

1.30 Norway

Question 1: Please provide information on measures taken or on relevant developments with respect to each of the following Recommendations. Please attach additional information as appropriate.

<p>Rec 1 Parties should fully implement and apply the provisions of the Budapest Convention on Cybercrime, including preservation powers (follow up to T-CY Assessment Report 2012).</p>
<p>Measures taken/relevant developments: The Convention was implemented in 2005, including preservation powers (the Criminal Procedure Act, Article 215a).</p>
<p>Rec 2 Parties should consider maintaining statistics or establish other mechanisms to monitor the efficiency of the mutual legal assistance process related to cybercrime and electronic evidence.</p>
<p>Measures taken/relevant developments: Currently, these statistics are not available, but future changes in how statistics are collected and analysed, may make this possible.</p>
<p>Rec 3 Parties should consider allocating more and more technology-literate staff for mutual legal assistance not only at central levels but also at the level of institutions responsible for executing requests (such as local prosecution offices).</p>
<p>Measures taken/relevant developments: Regarding the central point of contact (NCIS Norway), the Ministry of Justice is considering a reorganisation of several units into a Norwegian National Cybercrime Centre. In June 2017, at least two of this units at NCIS Norway will be co-located, to improve cooperation and capabilities. Regarding local police and prosecution services: in 2015, 27 police districts were merged into 12 larger police districts, in part to improve specialized services, including cyber investigations and international cooperation in general, at a local level.</p>
<p>Rec 4 Parties should consider providing for better training to enhance mutual legal assistance, police-to-police and other forms of international cooperation on cybercrime and electronic evidence. Training and experience exchange should in particular target prosecutors and judges and encourage direct cooperation between judicial authorities. Such training should be supported by the capacity building programmes of the Council of Europe and other organisations.</p>
<p>Measures taken/relevant developments: The Norwegian Police University College offers education and training related to cyber investigation, including the NCFI programme, that is open to police officers from all Nordic countries. The proposed National Cybercrime Centre at NCIS Norway would be in a position to assist and facilitate training and sharing of best practices, as NCIS Norway has police officers and prosecutors.</p>
<p>Rec 5 Parties and the Council of Europe should work toward strengthening the role of 24/7 points of contact in line with Article 35 Budapest Convention, including through:</p> <p>a. Ensuring, pursuant to article 35.3 Budapest Convention that trained and equipped personnel is available to facilitate the operative work and conduct or support mutual legal assistance (MLA)</p>

Norway

<p>activities</p> <ul style="list-style-type: none"><li>b. Encouraging contact points to pro-actively promote their role among domestic and foreign counterpart authorities;</li><li>c. Conducting regular meetings and training of the 24/7 network among the Parties;</li><li>d. Encouraging competent authorities and 24/7 points of contact to consider procedures to follow up to and provide feedback to the requesting State on Article 31 requests;</li><li>e. Considering to establish, where feasible, contact points in prosecution offices to permit a more direct role in mutual legal assistance and a quicker response to requests;</li><li>f. Facilitating 24/7 points of contact to play a supportive role in "Article 31" requests.</li></ul>
<p>Measures taken/relevant developments:</p> <p>The Norwegian 24/7 point of contact at NCIS Norway, is subject to a proposed reorganisation into a National Cybercrime Centre. In June this year, two relevant units (the Computer Crime Section and the Section for Internet Related Investigation Support) will be co-located. These developments should strengthen the efficiency and availability of the contact point.</p>
<p>Rec 6 Parties should consider streamlining the procedures and reduce the number of steps required for mutual assistance requests at the domestic level. Parties should share good practices in this respect with the T-CY.</p>
<p>Measures taken/relevant developments:</p> <p>As the central point of contact, NCIS Norway will assist and advice in matters regarding mutual assistance requests.</p> <p>Norwegian MLA practices often rely on the Council of Europe Convention on Mutual Assistance in Criminal Matters Article 15 nr. 2. This makes it possible to send letters rogatory directly from prosecutor to prosecutor.</p>
<p>Rec 7 Parties should make use of all available channels for international cooperation. This may include formal mutual legal assistance, police to police cooperation and others.</p>
<p>Measures taken/relevant developments:</p> <p>As the central point of contact in accordance with the Budapest Convention, NCIS Norway is also the central point of contact for Europol, INTERPOL and other international networks. NCIS Norway is also in charge of several national data systems used by Norwegian police. NCIS Norway has in-house prosecutors. MLA requests that will be handled by NCIS Norway, goes to the National Authority for Prosecution of Organised and Other Serious Crime, their office is physically located in the building next door to NCIS Norway.</p> <p>In sum, this makes it easier to cooperate by using different channels and networks, depending on the specific facts and needs.</p>
<p>Rec 8 Parties are encouraged to establish emergency procedures for requests related to risks of life and similar exigent circumstances. The T-CY should document practices by Parties and providers.</p>
<p>Measures taken/relevant developments:</p> <p>The NCIS Norway Desk is open 24/7, and is able to contact relevant personnel, including prosecutors, to follow up on urgent requests. The largest private telecom company/ISP in Norway has a 24/7 police</p>

## Norway

	response centre, to handle urgent incoming requests for electronic evidence.
Rec 9	Parties should confirm receipt of requests systematically and give, upon request, notice of action taken.
	According to practice, NCIS Norway confirms received requests. There is also typically a second, later confirmation, with information about action taken and specific contact information to the police officers and/or prosecutors handling the request.
Rec 10	Parties may consider the opening of domestic investigation upon a foreign request or spontaneous information to facilitate the sharing of information or accelerate MLA.
	A domestic investigation may be opened if the facts of the case has connections to Norway, apart from the fact that (electronic) evidence may be available in Norway. There is not a need for law enforcement other countries to specifically request a Norwegian domestic investigation, as this option can be considered by local authorities.
Rec 11	Parties should make use of electronic transmission of requests in line with Article 25.3 Budapest Convention on expedited means of communication.
	Electronic communication is current practice.
Rec 12	Parties should ensure that requests are specific and complete with all necessary information.
	No additional comments.
Rec 13	Pursuant to Article 25.5 Budapest Convention and Paragraph 259 Explanatory Report, Parties are reminded to apply the dual criminality standard in a flexible manner that will facilitate the granting of assistance.
	Dual criminality is generally required for assistance that requires a court order. Issues regarding possible lack of dual criminality, will be discussed with the requesting country. Additional information which might enable the Norwegian authorities to comply with the request, or if more limited assistance not involving coercive measures is wanted. In some cases without dual criminality, other Norwegian provisions may cover the facts of the crime in question.
Rec 14	Parties are encouraged to consult with authorities of requested Party prior to sending requests, when necessary.
	This is in accordance with Norwegian practice.
Rec 15	Parties should consider ensuring transparency regarding requirements for mutual assistance requests, and reasons for refusal, including thresholds for minor cases, on the websites of central authorities.
	Mutual legal assistance in Norway is based on a case-to-case review assessment and the principle of cooperation. There is no minimum threshold for minor cases.

Question 2: Please provide information on time periods for preservation requests under Article 29 Budapest Convention in your country.

## Norway

Rec 16 The T-CY should facilitate greater transparency regarding the time period for data preservation upon a foreign preservation request in line with Article 29 Budapest Convention. The T-CY should document time periods.

Time periods for preservation of data following a foreign request:

According to the Criminal Procedure Act Section 215a, expedited preservation of data based on a foreign request, will be done for a time period of minimum 60 days, maximum 90 days. This may be renewed later. There are no limits regarding possible renewals, apart from the general provision in the Criminal Procedure Act Section 170a regarding proportionality of investigative measures.

Conditions and periods to extend or renew the preservation of specified data:

According to Section 215a, first and second subsection, a preservation order can be issued for electronic data considered to be evidence. For data stored by a provider of electronic communications, there is an additional requirement: there must be reason to believe that a criminal act has been committed. Information about the preservation order should be given to a suspect when he has status as charged in the case.

## Philippines

### 1.31 Philippines

Please provide information on measures taken or on relevant developments with respect to each of the following Recommendations. Please attach additional information as appropriate.

Rec 1	Parties should fully implement and apply the provisions of the Budapest Convention on Cybercrime, including preservation powers (follow up to T-CY Assessment Report 2012).
Measures taken/relevant developments: Philippines' domestic law, Republic Act (R.A.) No. 10175 or the Cybercrime Prevention Act of 2012 adopted the power to preserve data through Preservation Orders. This has been utilized by law enforcement authorities (LEAs) since its enactment.	
Rec 2	Parties should consider maintaining statistics or establish other mechanisms to monitor the efficiency of the mutual legal assistance process related to cybercrime and electronic evidence.
Measures taken/relevant developments: The Philippine Department of Justice – Office of Cybercrime (DOJ-OOC) faithfully maintains records/database of the on-going and out-going mutual legal assistance processes related to cybercrime and electronic evidence.	
Rec 3	Parties should consider allocating more and more technology-literate staff for mutual legal assistance not only at central levels but also at the level of institutions responsible for executing requests (such as local prosecution offices).
Measures taken/relevant developments: Aside from creating DOJ-OOC, which is the central authority in all matters related to international mutual assistance and extradition, R.A. No. 10175 also mandated for the creation of special units, such as the Philippine National Police – Anti-Cybercrime Group (PNP-ACG) and the National Bureau of Investigation – Cybercrime Division (NBI-CCD), which are composed of technology-literate staffs, exclusively responsible in handling cases involving cybercrimes and cyber-related offenses.	
Rec 4	Parties should consider providing for better training to enhance mutual legal assistance, police-to-police and other forms of international cooperation on cybercrime and electronic evidence. Training and experience exchange should in particular target prosecutors and judges and encourage direct cooperation between judicial authorities. Such training should be supported by the capacity building programmes of the Council of Europe and other organisations.
Measures taken/relevant developments: Since its creation, the DOJ-OOC continuously conducts technical trainings to investigators, public prosecutors, public attorneys, states counsels, and judges, which cover the procedures in cybercrime investigations, handling and analyzing electronic and digital evidence, digital forensics, and international cooperation.	
Rec 5	Parties and the Council of Europe should work toward strengthening the role of 24/7 points of contact in line with Article 35 Budapest Convention, including through: a. Ensuring, pursuant to article 35.3 Budapest Convention that trained and equipped personnel is



## Philippines

<p>available to facilitate the operative work and conduct or support mutual legal assistance (MLA) activities</p> <ul style="list-style-type: none"> <li>b. Encouraging contact points to pro-actively promote their role among domestic and foreign counterpart authorities;</li> <li>c. Conducting regular meetings and training of the 24/7 network among the Parties;</li> <li>d. Encouraging competent authorities and 24/7 points of contact to consider procedures to follow up to and provide feedback to the requesting State on Article 31 requests;</li> <li>e. Considering to establish, where feasible, contact points in prosecution offices to permit a more direct role in mutual legal assistance and a quicker response to requests;</li> <li>f. Facilitating 24/7 points of contact to play a supportive role in “Article 31” requests.</li> </ul>
<p>Measures taken/relevant developments: The DOJ-OOC also serves as the 24/7 point of contact for the Philippines. It is composed of technically trained investigators and lawyers who are able to extend and facilitate expedited international cooperation.</p>
<p>Rec 6 Parties should consider streamlining the procedures and reduce the number of steps required for mutual assistance requests at the domestic level. Parties should share good practices in this respect with the T-CY.</p>
<p>Measures taken/relevant developments: The DOJ-OOC drafted and proposed the adoption of the Procedure in Drafting Mutual Legal Assistance Requests for Cybercrime and Cyber-Related Cases which reduces the number of steps required for processing mutual assistance requests.</p>
<p>Rec 7 Parties should make use of all available channels for international cooperation. This may include formal mutual legal assistance, police to police cooperation and others.</p>
<p>Measures taken/relevant developments: Aside from pursuing formal mutual legal assistance, the DOJ-OOC also pursues police to police cooperation with regard to a case.</p>
<p>Rec 8 Parties are encouraged to establish emergency procedures for requests related to risks of life and similar exigent circumstances. The T-CY should document practices by Parties and providers.</p>
<p>Measures taken/relevant developments: 2 Answer already provided in T-CY(2016)13</p>
<p>Rec 9 Parties should confirm receipt of requests systematically and give, upon request, notice of action taken.</p>
<p>Measures taken/relevant developments: The DOJ-OOC, in partnership with the Supreme Court of the Philippines, proposed the adoption of the Special Rules on Cybercrime and Cyber-related Cases which requires ISPs to confirm/acknowledge receipt of requests being received.</p>
<p>Rec 10 Parties may consider the opening of domestic investigation upon a foreign request or spontaneous information to facilitate the sharing of information or accelerate MLA.</p>

<sup>2</sup> Completion of this field is only requested if information has not been provided to the T-CY before (See document [T-CY\(2016\)13](#)).

## Philippines

Measures taken/relevant developments: As mentioned in the preceding item, the Special Rules on Cybercrime and Cyber-related Cases will cover instances wherein a foreign request may be considered as one of the grounds for initiating/conducting criminal investigation on the subject local ISP.	
Rec 11	Parties should make use of electronic transmission of requests in line with Article 25.3 Budapest Convention on expedited means of communication.
Measures taken/relevant developments: Electronic transmission of requests are allowed to facilitate/initiate an investigation and/or request. Nevertheless, the original copy thereof shall be subsequently sent for records purposes.	
Rec 12	Parties should ensure that requests are specific and complete with all necessary information.
Measures taken/relevant developments: Each requests are carefully reviewed before acting on the same. If there are missing requirements, the Requesting State will be immediately contacted to inform on the matter and to comply with the same in the soonest time possible.	
Rec 13	Pursuant to Article 25.5 Budapest Convention and Paragraph 259 Explanatory Report, Parties are reminded to apply the dual criminality standard in a flexible manner that will facilitate the granting of assistance.
Measures taken/relevant developments: To date, the application of the dual criminality standard “in a flexible manner” has not been put in to test since all requests strictly complies with the dual criminality rule.	
Rec 14	Parties are encouraged to consult with authorities of requested Party prior to sending requests, when necessary.
Measures taken/relevant developments: It has been the practice of the DOJ to send a copy of the draft legal request to the Requested State for their initial reviews/comments, so that the final draft to be transmitted will be sufficient in form and in substance.	
Rec 15	Parties should consider ensuring transparency regarding requirements for mutual assistance requests, and reasons for refusal, including thresholds for minor cases, on the websites of central authorities.
Measures taken/relevant developments: Constant communication with the Requesting State during the implementation and/or execution of the legal request is being practiced by the Philippines.	

Question 2: Please provide information on time periods for preservation requests under Article 29 Budapest Convention in your country. <sup>3</sup>

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<sup>3</sup> Article 29.7 Budapest Convention foresees that:

Philippines

Rec 16 The T-CY should facilitate greater transparency regarding the time period for data preservation upon a foreign preservation request in line with Article 29 Budapest Convention. The T-CY should document time periods.

Time periods for preservation of data following a foreign request: Once foreign request is coursed through the DOJ-OOC, such request is immediately acted upon within the working day that the same was received.

Conditions and periods to extend or renew the preservation of specified data: A one (1) time request for extension of period for preservation may be allowed under R.A. No. 10175.

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"Any preservation effected in response to the request referred to in paragraph 1 shall be for a period not less than sixty days, in order to enable the requesting Party to submit a request for the search or similar access, seizure or similar securing, or disclosure of the data. Following the receipt of such a request, the data shall continue to be preserved pending a decision on that request."

1.32 Poland

Question 1: Please provide information on measures taken or on relevant developments with respect to each of the following Recommendations. Please attach additional information as appropriate.

<p>Rec 1 Parties should fully implement and apply the provisions of the Budapest Convention on Cybercrime, including preservation powers (follow up to T-CY Assessment Report 2012).</p>
<p>Measures taken/relevant developments: All provisions of the Budapest Convention on Cybercrime have been fully implemented in Poland, including preservation powers.</p>
<p>Rec 2 Parties should consider maintaining statistics or establish other mechanisms to monitor the efficiency of the mutual legal assistance process related to cybercrime and electronic evidence.</p>
<p>Measures taken/relevant developments: Statistics or other mechanisms to monitor the efficiency of the mutual legal assistance process related to cybercrime and electronic evidence are not the only way. Parties should consider solutions that make this process quicker. It takes too much time to get data in official requests sent as a mutual legal assistance.</p>
<p>Rec 3 Parties should consider allocating more and more technology-literate staff for mutual legal assistance not only at central levels but also at the level of institutions responsible for executing requests (such as local prosecution offices).</p>
<p>Measures taken/relevant developments: From the National Prosecutor Office point of view it is necessary to create Cybercrime structures in 11 Regional Prosecutor Offices in Poland. Prosecutors responsible for this kind of cases would also be responsible for executing requests for mutual legal assistance. In the District Prosecutor Offices more prosecutors would be assigned to carry out the tasks arising from this type of international cooperation.</p>
<p>Rec 4 Parties should consider providing for better training to enhance mutual legal assistance, police-to-police and other forms of international cooperation on cybercrime and electronic evidence. Training and experience exchange should in particular target prosecutors and judges and encourage direct cooperation between judicial authorities. Such training should be supported by the capacity building programmes of the Council of Europe and other organisations.</p>
<p>Measures taken/relevant developments: From the Police and the National Prosecutor Office it is necessary to provide trainings on mutual legal assistance. These trainings should be provided for police officers, prosecutors and judges. Council of Europe, Eurojust and EUROPOL should support these kind of initiatives.</p>
<p>Rec 5 Parties and the Council of Europe should work toward strengthening the role of 24/7 points of contact in line with Article 35 Budapest Convention, including through:</p> <ul style="list-style-type: none"> <li>a. Ensuring, pursuant to article 35.3 Budapest Convention that trained and equipped personnel is available to facilitate the operative work and conduct or support mutual legal assistance (MLA) activities</li> <li>b. Encouraging contact points to pro-actively promote their role among domestic and</li> </ul>

Poland

	<p>foreign counterpart authorities;</p> <ul style="list-style-type: none"> <li>c. Conducting regular meetings and training of the 24/7 network among the Parties;</li> <li>d. Encouraging competent authorities and 24/7 points of contact to consider procedures to follow up to and provide feedback to the requesting State on Article 31 requests;</li> <li>e. Considering to establish, where feasible, contact points in prosecution offices to permit a more direct role in mutual legal assistance and a quicker response to requests;</li> <li>f. Facilitating 24/7 points of contact to play a supportive role in "Article 31" requests.</li> </ul>
	<p>Measures taken/relevant developments: According to the Article 35 of Budapest Convention 24/7 contact point has been created in Cybercrime Bureau of National Police Headquarters. The National Prosecutor Office is of the opinion that it is necessary to create this kind of contact point in it's structure. It is also believed that trainings and raising role of contact points is needed. Trainings should be supported by Council of Europe and other institutions.</p>
<p>Rec 6</p>	<p>Parties should consider streamlining the procedures and reduce the number of steps required for mutual assistance requests at the domestic level. Parties should share good practices in this respect with the T-CY.</p>
	<p>Measures taken/relevant developments: It would be good solution to make procedures easier but depends on international directives (e.g. Council of Europe) that force national bodies to change it.</p>
<p>Rec 7</p>	<p>Parties should make use of all available channels for international cooperation. This may include formal mutual legal assistance, police to police cooperation and others.</p>
	<p>Measures taken/relevant developments: It depends on national legal solutions. It is possible to send requests by other channels in Poland, e.g. police to police. All parties should make available these way of contact. It also depends on kind of data or information requested. Court or prosecutor warrant often is necessary.</p>
<p>Rec 8</p>	<p>Parties are encouraged to establish emergency procedures for requests related to risks of life and similar exigent circumstances. The T-CY should document practices by Parties and providers.</p>
	<p>Measures taken/relevant developments: If request is related to risks of life and similar exigent circumstances polish contact point will proceed it as quick as possible. Time of preserving data or sending it to party depends on time of day and possibility to cooperate with ISP or ICP.</p>
<p>Rec 9</p>	<p>Parties should confirm receipt of requests systematically and give, upon request, notice of action taken.</p>
	<p>Measures taken/relevant developments: All requests should be answered as soon as possible with notice of action taken.</p>
<p>Rec 10</p>	<p>Parties may consider the opening of domestic investigation upon a foreign request or spontaneous information to facilitate the sharing of information or accelerate MLA.</p>

Poland

Measures taken/relevant developments: If request is related to perpetrator who is citizen of requested party it should be possible to open domestic investigation. It would make easier to exchange information between parties.	
Rec 11	Parties should make use of electronic transmission of requests in line with Article 25.3 Budapest Convention on expedited means of communication.
Measures taken/relevant developments: Using electronic transmission of requests is the quickest way. It is not a problem to send it again with official channel in a later time if needed.	
Rec 12	Parties should ensure that requests are specific and complete with all necessary information.
Measures taken/relevant developments: Specific and complete information are necessary to ensure correct data preservation. Lack of information causes delay in action taken on request.	
Rec 13	Pursuant to Article 25.5 Budapest Convention and Paragraph 259 Explanatory Report, Parties are reminded to apply the dual criminality standard in a flexible manner that will facilitate the granting of assistance.
Measures taken/relevant developments: From the Polish point of view it is necessary condition to cooperate on Budapest Convention.	
Rec 14	Parties are encouraged to consult with authorities of requested Party prior to sending requests, when necessary.
Measures taken/relevant developments: Agreed	
Rec 15	Parties should consider ensuring transparency regarding requirements for mutual assistance requests, and reasons for refusal, including thresholds for minor cases, on the websites of central authorities.
Measures taken/relevant developments: All requirements for mutual assistance requests are available on the National Prosecutor Office website. If request is refused reason is fully explained.	

Question 2: Please provide information on time periods for preservation requests under Article 29 Budapest Convention in your country.

Rec 16	The T-CY should facilitate greater transparency regarding the time period for data preservation upon a foreign preservation request in line with Article 29 Budapest Convention. The T-CY should document time periods.
Time periods for preservation of data following a foreign request: if data is preserved on international request it is not necessary to renew it.	

Poland

Conditions and periods to extend or renew the preservation of specified data:

### 1.33 Portugal

Question 1: Please provide information on measures taken or on relevant developments with respect to each of the following Recommendations. Please attach additional information as appropriate.

<p>Rec 1 Parties should fully implement and apply the provisions of the Budapest Convention on Cybercrime, including preservation powers (follow up to T-CY Assessment Report 2012).</p>
<p>Measures taken/relevant developments: No measure was taken, as the all the provisions were already implemented in the national law (Cybercrime Law – L n° 109/2009, from 15 September).</p>
<p>Rec 2 Parties should consider maintaining statistics or establish other mechanisms to monitor the efficiency of the mutual legal assistance process related to cybercrime and electronic evidence.</p>
<p>Measures taken/relevant developments: No measure was take. Currently, it is not possible to maintain statistics on international request, for several reasons, mainly because direct contacts with judicial authorities – and direct requests to judicial authorities –, are allowed. This is above all the case within the European Union, but it is also possible within other treaties, for example, from the Council of Europe. Therefore, there is not a centralised point of exchange, or record, of all the requests, which that can follow different channels.</p>
<p>Rec 3 Parties should consider allocating more and more technology-literate staff for mutual legal assistance not only at central levels but also at the level of institutions responsible for executing requests (such as local prosecution offices).</p>
<p>Measures taken/relevant developments: No specific measure was take.</p>
<p>Rec 4 Parties should consider providing for better training to enhance mutual legal assistance, police-to-police and other forms of international cooperation on cybercrime and electronic evidence. Training and experience exchange should in particular target prosecutors and judges and encourage direct cooperation between judicial authorities. Such training should be supported by the capacity building programmes of the Council of Europe and other organisations.</p>
<p>Measures taken/relevant developments: No specific measure was take. However, international cooperation is a regular topic both for initial and continuous training of judges and prosecutors, at the Centre of Judiciary Studies. In fact, modules on international cooperation are included in the initial training programme. Besides, seminars, conferences and workshops on various international cooperation topics are available all the years in the continuous training plan. Judges and prosecutors have a legal obligation to attend, at least, two training sessions per year and some of them appoint themselves to events on international cooperation.</p>



Portugal

Rec 5	Parties and the Council of Europe should work toward strengthening the role of 24/7 points of contact in line with Article 35 Budapest Convention, including through:  a. Ensuring, pursuant to article 35.3 Budapest Convention that trained and equipped personnel is available to facilitate the operative work and conduct or support mutual legal assistance (MLA) activities b. Encouraging contact points to pro-actively promote their role among domestic and foreign counterpart authorities; c. Conducting regular meetings and training of the 24/7 network among the Parties; d. Encouraging competent authorities and 24/7 points of contact to consider procedures to follow up to and provide feedback to the requesting State on Article 31 requests; e. Considering to establish, where feasible, contact points in prosecution offices to permit a more direct role in mutual legal assistance and a quicker response to requests; f. Facilitating 24/7 points of contact to play a supportive role in "Article 31" requests.
Measures taken/relevant developments: No specific measure was taken, besides of revising the efficiency and availability of the 24/7 contact point.	
Rec 6	Parties should consider streamlining the procedures and reduce the number of steps required for mutual assistance requests at the domestic level. Parties should share good practices in this respect with the T-CY.
Measures taken/relevant developments: No specific measure was taken until now.	
Rec 7	Parties should make use of all available channels for international cooperation. This may include formal mutual legal assistance, police to police cooperation and others.
Measures taken/relevant developments: No specific measure was taken. However, prosecutors and judges regularly use the existing channels and explore properly the available instruments.	
Rec 8	Parties are encouraged to establish emergency procedures for requests related to risks of life and similar exigent circumstances. The T-CY should document practices by Parties and providers.
Measures taken/relevant developments:	
Rec 9	Parties should confirm receipt of requests systematically and give, upon request, notice of action taken.
Measures taken/relevant developments: No specific measure was taken until now.	
Rec 10	Parties may consider the opening of domestic investigation upon a foreign request or spontaneous information to facilitate the sharing of information or accelerate MLA.

## Portugal

<p>Measures taken/relevant developments:</p> <p>No specific measure was taken until now.</p> <p>However, sometimes, domestic investigations are open, in parallel, if there is some sort of evidence relating the crime to Portugal. Nevertheless, according to the current practise, the scope of this proceeding has to be merely intern and should not pretend to increase the efficiency of the cooperation provided internationally.</p>	
Rec 11	Parties should make use of electronic transmission of requests in line with Article 25.3 Budapest Convention on expedited means of communication.
<p>Measures taken/relevant developments:</p> <p>No specific measure was taken. However, according to the current practise, requests are already sent, when possible, by expedited means of communication.</p>	
Rec 12	Parties should ensure that requests are specific and complete with all necessary information.
<p>Measures taken/relevant developments:</p> <p>No specific measure was taken. However, per the current practise, requests must be specific and complete, and must contain all necessary information.</p>	
Rec 13	Pursuant to Article 25.5 Budapest Convention and Paragraph 259 Explanatory Report, Parties are reminded to apply the dual criminality standard in a flexible manner that will facilitate the granting of assistance.
<p>Measures taken/relevant developments:</p> <p>No specific measure was taken. However, the existing legal framework (mainly, Article 4, 3 of the International Cooperation Act – Law 144/99) already allows Portuguese authorities to provide cooperation, even without reciprocity, if such cooperation is advisable by the reason and the nature of the facts or the need to combat certain serious forms of crime; also if the cooperation can contribute to improving the situation of the accused or his or her social reintegration; finally, if it clarifies facts related to a Portuguese citizen.</p>	
Rec 14	Parties are encouraged to consult with authorities of requested Party prior to sending requests, when necessary.
<p>Measures taken/relevant developments:</p> <p>No specific measure was taken.</p>	
Rec 15	Parties should consider ensuring transparency regarding requirements for mutual assistance requests, and reasons for refusal, including thresholds for minor cases, on the websites of central authorities.
<p>Measures taken/relevant developments:</p> <p>No specific measure was taken. However, the International Cooperation Act – Law 144/99, on Articles 4 to 10, states clearly which are, according to the law, the grounds for refusal of cooperation.</p>	

Portugal

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Question 2: Please provide information on time periods for preservation requests under Article 29 Budapest Convention in your country.

Rec 16 The T-CY should facilitate greater transparency regarding the time period for data preservation upon a foreign preservation request in line with Article 29 Budapest Convention. The T-CY should document time periods.

Time periods for preservation of data following a foreign request:

Expedited preservation of computer data within international cooperation is provided for in Article 22 of the Cybercrime Law – Law 109/2009, from 15 September.

According to it, it may be requested to Portugal the expedite preservation of data stored in a computer system located in the country. The request shall be submitted to a prosecutor (or Police when in an emergency or if there is danger in delay) who will order the preservation by a term up to three months.

Conditions and periods to extend or renew the preservation of specified data:

A prosecutor may order the renewal of the measure for periods of three months, provided they meet the respective requirements of admissibility, to the maximum a year.

1.34 Romania

Question 1: Please provide information on measures taken or on relevant developments with respect to each of the following Recommendations. Please attach additional information as appropriate.

<p>Rec 1 Parties should fully implement and apply the provisions of the Budapest Convention on Cybercrime, including preservation powers (follow up to T-CY Assessment Report 2012).</p>
<p>Measures taken/relevant developments:</p> <p>Romania has implemented the provisions of the Convention on Cybercrime.</p> <p>For more information see the legal profile of Romania at:  <a href="http://www.coe.int/en/web/octopus/countries">http://www.coe.int/en/web/octopus/countries</a></p>
<p>Rec 2 Parties should consider maintaining statistics or establish other mechanisms to monitor the efficiency of the mutual legal assistance process related to cybercrime and electronic evidence.</p>
<p>Measures taken/relevant developments:</p> <p>The Directorate for Investigation Organized Crime and Terrorism Offences (DIOCT) maintains statistics with regard to cybercrime offences, including international cooperation requests.</p> <p>At the level of central authority statistics on MLA can be compiled on a specific request.</p> <p>Statistics regarding requests on electronic evidence are not available.</p>
<p>Rec 3 Parties should consider allocating more and more technology-literate staff for mutual legal assistance not only at central levels but also at the level of institutions responsible for executing requests (such as local prosecution offices).</p>
<p>Measures taken/relevant developments:</p> <p>Within the Directorate for Investigation Organized Crime and Terrorism Offences (DIOCT) functions an Office for international cooperation (6 prosecutors). This office deals with passive and active requests for all types of crimes investigated by DIOCT.</p> <p>All personnel have received training on international cooperation and foreign languages. The clerks (2) have bachelor degree in law and also knowledge of foreign languages.</p> <p>The 24/7 Contact Point (Service for Combating Cyber criminality) due to its legal competences supports, with its 7 prosecutors, the execution of complex requests, mostly dealing with cybercrime investigations. Most of the prosecutors working in the above-mentioned service are experienced and very experienced in this field. The new comers are included within the first year in DIOCT in specialised trainings (in house or in partnership with the National Institute for Magistracy or police). By Government Emergency Ordinance</p>

Romania

no.78/16 November 2016 DIOCT has been reorganized and the prosecutor's number within the Service for Combating Cyber-criminality will be increased to 10.

At the level of central authority (Ministry of Justice) the personal dealing with judicial cooperation have a law degree and good knowledge of foreign languages.

Rec 4 Parties should consider providing for better training to enhance mutual legal assistance, police-to-police and other forms of international cooperation on cybercrime and electronic evidence. Training and experience exchange should in particular target prosecutors and judges and encourage direct cooperation between judicial authorities. Such training should be supported by the capacity building programmes of the Council of Europe and other organisations.

Measures taken/relevant developments:

Prosecutors, judges, police officers, as well as staff from the Ministry of Justice have participated in different fora, events, trainings etc.

For example:

- bilateral training on MLA between Romania (MoJ and the Prosecution Office) and the USA, Bucharest, April 2016.
- trainings organised by the European Judicial Network on MLA for prosecutors and officials from the Ministry of Justice (2015, 2016).
- at the EU level Romania participated in the meeting on MLA between EU and Japan (July 2016).
- representatives of the Romanian Police participate in events organized by Europol / EC3: seminars, workshops or meetings of experts in various fields, as well as in coordination meetings on specific cases conducted in several states.
- representatives of the Romanian Police attend the EC3 board meetings as EMPACT project driver/card fraud.
- Europol representatives participated in activities carried out in Romania, within certain operations, in order to ensure an efficient exchange of data and to provide the necessary support.

At the Europol level under the EMPACT cybercrime priorities are included in the Operational Action Plan; training activities on specific topics and police officers from Romania are taking part in the programs.

Within the Romanian National Police there is an annual training plan on specific topics related cybercrime and international cooperation, dedicated to the police officers working in the area of cybercrime.

Romanian National Police, having as partners the Prosecutor's Office attached to the High Court of Cassation and Justice (DIOCT), CERTt-o; University College of Dublin and others, carried out a project for establishing a Centre of Excellency on Cybercrime with the main objective to conduct training activities for police officers and magistrates. This project will continue under the umbrella of ISF projects with European funds.

The annual National Conference on Cybercrime took place in November 2016 and police officers, private industry representatives, magistrates and LEA representatives from abroad participated.

Rec 5 Parties and the Council of Europe should work toward strengthening the role of 24/7 points of contact in line with Article 35 Budapest Convention, including through:

- a. Ensuring, pursuant to article 35.3 Budapest Convention that trained and equipped personnel is available to facilitate the operative work and conduct or support mutual legal assistance (MLA)

## Romania

### activities

- b. Encouraging contact points to pro-actively promote their role among domestic and foreign counterpart authorities;
- c. Conducting regular meetings and training of the 24/7 network among the Parties;
- d. Encouraging competent authorities and 24/7 points of contact to consider procedures to follow up to and provide feedback to the requesting State on Article 31 requests;
- e. Considering to establish, where feasible, contact points in prosecution offices to permit a more direct role in mutual legal assistance and a quicker response to requests;
- f. Facilitating 24/7 points of contact to play a supportive role in "Article 31" requests.

### Measures taken/relevant developments:

Service for Combating Cybercrime, Directorate for the Investigating Organised Crime and Terrorism (DIOCT)

By Art. 62 of Law No. 161/2003 a permanently available point of contact (Service for Combating Cybercrime) was set up within the Prosecutor`s Office of the High Court of Cassation and Justice (former Supreme Court of Justice). Later on it was incorporated - by Law no.508/2004 - within the Directorate for Investigating of Organized Crime and Terrorism Offences (former Section for Combating Organized Crime and Drug Trafficking) and subsequently maintained with the same competences in DIOCT - the specialized prosecution unit in combating organized crime - by Government Emergency Ordinance no.78/2016.

The Service for Combating Cyber-criminality has the following responsibilities:

- grants specialized assistance and provides information about the Romanian legislation on similar contact points in other states;
- orders the immediate preservation of data, and the seize the objects containing computer data or information related to traffic data requested by a competent foreign authority;
- carries out or facilitates execution, according to the law, of letters rogatory required in cases of combating cybercrime, by cooperating with all the relevant Romanian authorities.

The Service for Prevention and Combating Cybercrime is composed by specialised experienced and very experienced prosecutors in cybercrime investigations. Any information regarding Romanian legislation and procedural steps is provided on demand without any formalities.

Preservation request should contain the following information:

- the requesting authority
- case file number
- short description of facts
- crime committed (specific article of Criminal Code or Law)
- the data sought (including date/time format if the case)
- intention to send a letter rogatory covering the data to be preserved
- contact person/email address

A preservation request received is processed in the same day by a prosecutor who will send an order to the provider. The sender of the request will receive in the same day or in due time the registration number of

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the request or a short answer if the data couldn't be preserved or it is held by another provider.

Disclosure of preserved data may be obtained only with a court order upon receiving from the foreign competent authority a letter of request asking for the preserved data.

Within the Romanian National Police - by Regulation on the functioning of the Directorate for Combating Organised Criminality no S/926805/2010 - a secondary 24/7 point of contact was established to assist the existing one from the Prosecutor's Office, namely the Service for combating Cybercrime.

The Service has designated personnel who deal with the incoming requests and process them. The functionality of the point of contact is given by having an e-mail address, a cell phone and a fixed phone and fax line in order to ensure taking requests.

The two points of contact from the Prosecutor's Office and Police keep in touch and coordinate their activities.

**Rec 6** Parties should consider streamlining the procedures and reduce the number of steps required for mutual assistance requests at the domestic level. Parties should share good practices in this respect with the T-CY.

Measures taken/relevant developments:

Law No. 302/2004 on international judicial cooperation in criminal matters stipulates the pre-eminence of international law being applied on the basis and for the execution of relevant international instruments in criminal matters to which Romania is a Party to. As a result, the domestic law applies where such norms have not been regulated by an international treaty or to complete them as the case may be.

Law No. 161/2003 (Title III-Prevention and combatting cybercrime-Chapter 5) provides specific provisions related to international cooperation in cybercrime cases as provided by the Budapest Convention.

In the process of international judicial cooperation at multilateral level, Romania is using the Convention on Cybercrime, European Union Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union in conjunction with MLA Conventions of the Council of Europe, as well as the United Nations Convention against Transnational Organized Crime.

In order to facilitate the MLAT process electronic transmission of requests are often used, as well as direct transmission of the request to the competent judicial authority.

**Rec 7** Parties should make use of all available channels for international cooperation. This may include formal mutual legal assistance, police to police cooperation and others.

Measures taken/relevant developments:

Police-to police Cooperation

The authorities in Romania often use the police-to-police cooperation for exchanging data and information

## Romania

such as subscriber info, logs, operative data.

For the international police-to-police cooperation the following channels are frequently used:

- Europol for exchanging information from data bases, mobile office, operational meetings, contacts with third countries, coordination of the joint international operations;
- Interpol for exchanging information and contacts with third countries;
- liaison officers for exchanging information, contact points, operational meetings and coordination of the joint investigations;
- direct contacts where there are bilateral or multilateral contacts.

At the level of the Romanian Police, there is extensive experience in terms of the cooperation between Europol and the Directorate for Combating Organised Criminality – the Service for Combating Cybercrime targeting areas such as: cyber attacks, sexual exploitation of minors via the Internet and card fraud.

Police-to police cooperation is used during the process of executing the MLA requests for coordination of the activities.

### Mutual Legal Assistance (MLA)

Based on the applicable treaty the competent central authorities competent to send/received the MLA request are:

- Public Ministry for MLA requests issued during investigation and criminal prosecution stage (DIOCT for most of the cybercrime investigations) and the Ministry of Justice for requests issued during the trial and the execution stage or
- Ministry of Justice if the request has been issued in the absence of a treaty and based on reciprocity or if the treaty applicable designates the Ministry of Justice as the single central authority.
- Ministry of Justice for sending and receiving extradition requests

With reference to the channels of communication, usually, at EU level there is a direct channel used between the issuing and executing judicial authorities.

For the execution of the requests the judiciary is in charge of depending on the type of request and the stage of the trial (investigation and prosecution, or trial/execution stage).

Other channels:

24/7 Network

Cooperation within EUROJUST

Cooperation within the European Judicial Network (EJN) in criminal matters

Rec 8 Parties are encouraged to establish emergency procedures for requests related to risks of life and similar exigent circumstances. The T-CY should document practices by Parties and providers.

Measures taken/relevant developments:



Romania

<p>Romania is included in the T-CY document.</p>	
Rec 9	<p>Parties should confirm receipt of requests systematically and give, upon request, notice of action taken.</p>
<p>Measures taken/relevant developments:</p> <p>The 24/7 Point of Contact within DIOCT constantly confirms the receipt of any request and in due time and informs the requesting 24/7 POC with relevant information about the execution of the request.</p> <p>An automatic reply is given from the email address set for communication' of the 24/7 POC network (cybercrime@mpublic.ro); usually proper reply is send after assessing the request.</p>	
Rec 10	<p>Parties may consider the opening of domestic investigation upon a foreign request or spontaneous information to facilitate the sharing of information or accelerate MLA.</p>
<p>Measures taken/relevant developments:</p> <p>Information received is limited to the purpose for which it was sent (principle of speciality). Thus in order to open an investigation permission is required.</p> <p>Spontaneous information can be sent/or received by the Police and Prosecution Office with the purpose of opening an investigation in a foreign country/Romania.</p>	
Rec 11	<p>Parties should make use of electronic transmission of requests in line with Article 25.3 Budapest Convention on expedited means of communication.</p>
<p>Measures taken/relevant developments:</p> <p>Electronic transmission (regular email and disks - optical or magnetic - are used by the Romanian authorities for transmission and receiving requests in addition to regular mail (letter) and fax.</p>	
Rec 12	<p>Parties should ensure that requests are specific and complete with all necessary information.</p>
<p>Measures taken/relevant developments:</p> <p>Requests sent through the central authority are subject to the regularity check.</p>	
Rec 13	<p>Pursuant to Article 25.5 Budapest Convention and Paragraph 259 Explanatory Report, Parties are reminded to apply the dual criminality standard in a flexible manner that will facilitate the granting of assistance.</p>
<p>Measures taken/relevant developments:</p> <p>While processing a request, prosecutors within DIOCT are instructed to make approximations regarding both criminalization and procedure to be followed in order to execute it.</p>	

Romania

Rec 14	Parties are encouraged to consult with authorities of requested Party prior to sending requests, when necessary.
Measures taken/relevant developments:	
Informal pre MLA consultations have been used, including through email with the competent relevant authorities.	
Rec 15	Parties should consider ensuring transparency regarding requirements for mutual assistance requests, and reasons for refusal, including thresholds for minor cases, on the websites of central authorities.
Measures taken/relevant developments:	
DIOCT experiences shown that reasons for refusals are strictly interpreted. There is no threshold for minor cases.	

Question 2: Please provide information on time periods for preservation requests under Article 29 Budapest Convention in your country.

Rec 16	The T-CY should facilitate greater transparency regarding the time period for data preservation upon a foreign preservation request in line with Article 29 Budapest Convention. The T-CY should document time periods.
Time periods for preservation of data following a foreign request:	
Maximum 60 days, which may be extended by the prosecutor, only once, for well-grounded reasons, for a term of maximum 30 days (see Article 154 of the Criminal Procedure Code).	
Conditions and periods to extend or renew the preservation of specified data:	
The preservation measure may be extended by the prosecutor, only once, for well-grounded reasons, for a term of maximum 30 days.	

1.35 Serbia

Question 1: Please provide information on measures taken or on relevant developments with respect to each of the following Recommendations. Please attach additional information as appropriate.

<p>Rec 1 Parties should fully implement and apply the provisions of the Budapest Convention on Cybercrime, including preservation powers (follow up to T-CY Assessment Report 2012).</p>
<p>Measures taken/relevant developments: Provisions of the Budapest Convention are implemented and applied in line with the national legal framework. In order to fully implement this Convention, amendments to the Criminal Code and Law on organization and competences of government authorities combating cyber crime are envisaged. Republic Public Prosecutor`s Office and Special Prosecutor`s Office for Cyber crime drafted proposal for amending these laws.</p>
<p>Rec 2 Parties should consider maintaining statistics or establish other mechanisms to monitor the efficiency of the mutual legal assistance process related to cybercrime and electronic evidence.</p>
<p>Measures taken/relevant developments: Special Prosecutor`s Office for Cyber crime has separate registry book and statistics of the mutual legal assistance process related to cybercrime and electronic evidence. Monitoring the efficiency of the mutual legal assistance process is enabled.</p>
<p>Rec 3 Parties should consider allocating more and more technology-literate staff for mutual legal assistance not only at central levels but also at the level of institutions responsible for executing requests (such as local prosecution offices).</p>
<p>Measures taken/relevant developments: Having in mind austerity measures, it is not possible to allocate technology-literate staff for mutual legal assistance. For that reason, trainings on mutual legal assistance are organized for Public Prosecutors and Deputy Public Prosecutors in local Prosecution offices.</p>
<p>Rec 4 Parties should consider providing for better training to enhance mutual legal assistance, police-to-police and other forms of international cooperation on cybercrime and electronic evidence. Training and experience exchange should in particular target prosecutors and judges and encourage direct cooperation between judicial authorities. Such training should be supported by the capacity building programmes of the Council of Europe and other organisations.</p>
<p>Measures taken/relevant developments: Judicial Academy, which is in charge of all training programs for prosecutors and judges, included in its curriculum training on suppressing cyber crime and enhancing of mutual legal assistance related to cybercrime and electronic evidence.</p>
<p>Rec 5 Parties and the Council of Europe should work toward strengthening the role of 24/7 points of</p>

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contact in line with Article 35 Budapest Convention, including through:

- a. Ensuring, pursuant to article 35.3 Budapest Convention that trained and equipped personnel is available to facilitate the operative work and conduct or support mutual legal assistance (MLA) activities
  - b. Encouraging contact points to pro-actively promote their role among domestic and foreign counterpart authorities;
  - c. Conducting regular meetings and training of the 24/7 network among the Parties;
  - d. Encouraging competent authorities and 24/7 points of contact to consider procedures to follow up to and provide feedback to the requesting State on Article 31 requests;
  - e. Considering to establish, where feasible, contact points in prosecution offices to permit a more direct role in mutual legal assistance and a quicker response to requests;
  - f. Facilitating 24/7 points of contact to play a supportive role in "Article 31" requests.

Measures taken/relevant developments:

Special Prosecutor for Cyber Crime and Law Enforcement Officer from Ministry of Interior, Department for Cyber Crime are 24/7 points of contact. The role of our 24/7 contact point is based on Convention and presumes sending and receiving requests, communication, data exchange and legal advising with other contact points. In that sense, pro-active role of contact points, direct communication in mutual legal assistance process and quicker response to requests is provided.

Rec 6 Parties should consider streamlining the procedures and reduce the number of steps required for mutual assistance requests at the domestic level. Parties should share good practices in this respect with the T-CY.

Measures taken/relevant developments:

Number of steps required for mutual assistance requests is reduced. It depends on the scope of the request.

Rec 7 Parties should make use of all available channels for international cooperation. This may include formal mutual legal assistance, police to police cooperation and others.

Measures taken/relevant developments:

All available channels for international cooperation are used, especially direct contact by email. Communication and cooperation depends on the on the scope of the request and level of urgency.

Rec 8 Parties are encouraged to establish emergency procedures for requests related to risks of life and similar exigent circumstances. The T-CY should document practices by Parties and providers.

Measures taken/relevant developments:

Although emergency procedures are not available at the moment, specialized cyber-crime authorities are acknowledging exigent circumstances and are undertaking emergency procedures in such cases.

Rec 9 Parties should confirm receipt of requests systematically and give, upon request, notice of action taken.

Measures taken/relevant developments:

Receipt of requests is confirmed and notice of action taken given. It`s usually done by email, before

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submitting formal notification.	
Rec 10	Parties may consider the opening of domestic investigation upon a foreign request or spontaneous information to facilitate the sharing of information or accelerate MLA.
Measures taken/relevant developments: In cases when it is requested, investigation is opened and all relevant information gathered in that process is shared with foreign authorities.	
Rec 11	Parties should make use of electronic transmission of requests in line with Article 25.3 Budapest Convention on expedited means of communication.
Measures taken/relevant developments: Electronic transmission of requests is used for submitting and receiving MLA requests, but official request is submitted afterwards. It allows quicker acting upon requests.	
Rec 12	Parties should ensure that requests are specific and complete with all necessary information.
Measures taken/relevant developments: Competent authorities of the Republic of Serbia strive to ensure that all submitted requests are specific and complete with all necessary information on criminal act, defendant and other relevant facts for acting upon request. Also, list of questions and other necessary actions are provided.	
Rec 13	Pursuant to Article 25.5 Budapest Convention and Paragraph 259 Explanatory Report, Parties are reminded to apply the dual criminality standard in a flexible manner that will facilitate the granting of assistance.
Measures taken/relevant developments: Dual criminality standard is applied in a flexible manner in order to facilitate the granting of assistance. If a criminal act determined in the MLA request is not foreseen by the Criminal Code of the Republic of Serbia, we try, whenever it`s possible, to apply provisions of domestic legal framework related to most similar existing criminal act, with similar elements and modus operandi to the one described in MLA request.	
Rec 14	Parties are encouraged to consult with authorities of requested Party prior to sending requests, when necessary.
Measures taken/relevant developments: When necessary, 24/7 points of contact consult with authorities of requested Party prior to sending requests in order to develop complete MLA request and make sure that all necessary actions could be undertaken and all evidence gathered.	
Rec 15	Parties should consider ensuring transparency regarding requirements for mutual assistance requests, and reasons for refusal, including thresholds for minor cases, on the websites of central authorities.
Measures taken/relevant developments: Transparency regarding MLA request is already provided. Relevant laws are published on the website of the Ministry of Justice of the Republic of Serbia. Law on mutual legal assistance in criminal matters (requirements for mutual assistance requests and reasons for refusal)	

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[http://www.mpravde.gov.rs/files/Law%20on%20mutual%20assistance%20in%20criminal%20matters\\_180411.doc](http://www.mpravde.gov.rs/files/Law%20on%20mutual%20assistance%20in%20criminal%20matters_180411.doc)

Law on organization and competences of government authorities combating cyber crime (thresholds for minor cases)

[http://www.mpravde.gov.rs/files/Law%20on%20the%20Organisation%20and%20Competences%20of%20Government%20Authorities%20Combating%20Cyber%20Crime\\_180411.doc](http://www.mpravde.gov.rs/files/Law%20on%20the%20Organisation%20and%20Competences%20of%20Government%20Authorities%20Combating%20Cyber%20Crime_180411.doc)

Question 2: Please provide information on time periods for preservation requests under Article 29 Budapest Convention in your country.

Rec 16 The T-CY should facilitate greater transparency regarding the time period for data preservation upon a foreign preservation request in line with Article 29 Budapest Convention. The T-CY should document time periods.

Time periods for preservation of data following a foreign request:

A Serbian Criminal Procedural Code provisions does not provide articles on expedited preservation of stored computer data at the moment.

Conditions and periods to extend or renew the preservation of specified data:

1.36 Slovakia

Question 1: Please provide information on measures taken or on relevant developments with respect to each of the following Recommendations. Please attach additional information as appropriate.

<p>Rec 1 Parties should fully implement and apply the provisions of the Budapest Convention on Cybercrime, including preservation powers (follow up to T-CY Assessment Report 2012).</p>
<p>Measures taken/relevant developments:</p> <p>Please, see the Slovak replies to Recommendations no. 15 and 16.</p>
<p>Rec 2 Parties should consider maintaining statistics or establish other mechanisms to monitor the efficiency of the mutual legal assistance process related to cybercrime and electronic evidence.</p>
<p>Measures taken/relevant developments:</p> <p>At the level of the General Prosecutor´s Office requests under Article 29 and MLA requests, which are sent through the Central Authority are registered. In a new version of the so called PTCA (electronic system for prosecutors) legal basis for MLA requests are indicated (including Convention on Cybercrime). The efficiency of the system of mutual legal assistance based on the Convention is regularly evaluated.</p> <p>It is clear that providing mutual legal assistance by the key State Parties still takes significant time. As regards the MLA provided by the Slovak authorities the system seems to work efficiently.</p> <p>It should be noted that the scope of data available has been limited due to decision of the EU Court of Justice (annulment of the data retention directive) and subsequent decision of the Slovak Constitutional Court.</p>
<p>Rec 3 Parties should consider allocating more and more technology-literate staff for mutual legal assistance not only at central levels but also at the level of institutions responsible for executing requests (such as local prosecution offices).</p>
<p>Measures taken/relevant developments:</p> <p>At the EU level the European Judicial Cybercrime Network has been established. The first meeting will be organised on 24 November 2016.</p> <p>This summer a new multidisciplinary group of specialists on cybercrime has been created in the Slovak Republic. This will enable to discuss and provide solutions for problems coming from practice.</p> <p>Information obtained in various international activities is also spread through the General Prosecutor´s Office to all prosecutors.</p>

## Slovakia

As regards the international cooperation in general there are prosecutors specialized in this field at every level of prosecutorial hierarchy. This system has been established by the Order of the Prosecutor General. Regular meetings of prosecutors – specialist in international cooperation - are organised.

As regards cybercrime issues training activities are organised by the Judicial Academy.

Seminars and meetings also provide information from local prosecutors to the General Prosecutor´s Office. Practical problems are also identified at the level of Regional Prosecutor´s Offices.

Through seminars for prosecutors and judges, meetings of the prosecutors specialized in the international cooperation as well as guidance provided by the General Prosecutor´s Office, updated information is distributed to practitioners.

Such system enables circulation of information from upper levels to local levels and the other way around.

It is extremely important that close relations exist between the General Prosecutor´s Office and expert in the Cybercrime unit of Police Corps.

The skills of prosecutors are improved through training. Since this recommendation seems to be connected to Rec 4 see also response to Rec 4

Rec 4 Parties should consider providing for better training to enhance mutual legal assistance, police-to-police and other forms of international cooperation on cybercrime and electronic evidence. Training and experience exchange should in particular target prosecutors and judges and encourage direct cooperation between judicial authorities. Such training should be supported by the capacity building programmes of the Council of Europe and other organisations.

Measures taken/relevant developments:

There were numerous training activities organised over the years. Cybercrime is one of the regular topics of curricula of the Judicial Academy. Moreover, in 2015 one prosecutor and one police officer participated in the Training of trainers project organised in Madrid (one week), which was extremely useful. The project contained national, international legislation and practice in the field of Cybercrime. Both participants from Slovakia are now involved in providing regular training for police officers, prosecutors and judges.

The newly established European Judicial Cybercrime Network will also contribute to better exchange of information related to cybercrime and obtaining electronic evidence. It will bring together practitioners (mostly) from judicial authorities.

Member States of the European Union also benefit from the activities organised by Eurojust in the field of cybercrime. The information is shared with local prosecutors.

In the current year, the training activities based partially on the documents provided during the training project mentioned above and partially on practical experience of lectures, have been organised for



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prosecutors and prosecutors/judges. A conference has been organised by the General Prosecutor's Office for around 70 prosecutors from different prosecutorial offices (all levels). Experts from Cybercrime Unit, National Security Office, Europol, National Central Bureau of INTERPOL Bratislava (hereinafter referred to as INTERPOL Bratislava only), General Prosecutor's Office and even the Slovak Secret Service have been invited to present the different aspects of cybercrime and international cooperation. Cybercrime and obtaining e-evidence through MLA, including specific information on the US system were topics of the meeting organised by the Director of the International Department of the General Prosecutor's Office with the Deputies Regional Prosecutors from the whole Slovakia. Prosecutor and police officer presented these topics both from legal and technical point of views.

Seminars on cybercrime and e-evidence were organised by Judicial Academy for candidate judges and prosecutors and for judges and prosecutors.

As regards the international cooperation in general there are prosecutors specialized in this field at every level of prosecutorial hierarchy. This system has been established by the Order of the Prosecutor General. Regular meetings are organised.

See also respond to Rec 12

Rec 5 Parties and the Council of Europe should work toward strengthening the role of 24/7 points of contact in line with Article 35 Budapest Convention, including through:

- a. Ensuring, pursuant to article 35.3 Budapest Convention that trained and equipped personnel is available to facilitate the operative work and conduct or support mutual legal assistance (MLA) activities
  - b. Encouraging contact points to pro-actively promote their role among domestic and foreign counterpart authorities;
  - c. Conducting regular meetings and training of the 24/7 network among the Parties;
  - d. Encouraging competent authorities and 24/7 points of contact to consider procedures to follow up to and provide feedback to the requesting State on Article 31 requests;
  - e. Considering to establish, where feasible, contact points in prosecution offices to permit a more direct role in mutual legal assistance and a quicker response to requests;
  - f. Facilitating 24/7 points of contact to play a supportive role in "Article 31" requests.

Measures taken/relevant developments:

The Slovak 24/7 contact point is the INTERPOL Bratislava.

For purpose of effective cooperation among prosecutor's offices, Cybercrime police unit and INTERPOL Bratislava at national level, unified procedure has been established regarding obtaining requests pursuant to Article 29 from foreign contact points. INTERPOL Bratislava immediately contacts both the General prosecutor's office as well as Cybercrime police unit. If any deficiencies have been detected, foreign 24/7 contact point is informed without any delay. Prompt feedback is regarded as a very significant moment of effective cooperation.

INTERPOL Bratislava is primarily used for sending of Article 29 requests and for obtaining information on their execution. In urgent cases INTERPOL may be also used for sending Article 31 requests. As regards

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the role of facilitator for the execution of Article 31 requests, if INTERPOL receives such a request, it makes the first sight check and it signals to the partners if, for instance, translation or relevant information is missing.

24/7 contact point closely cooperates with competent prosecutors and with the specialized Cybercrime unit in the Police Presidium.

In the Slovak Republic there is a system of prosecutor/judge on duty 24/7. Therefore the national contact point can cooperate directly with the judicial authorities empowered to execute requests.

Rec 6 Parties should consider streamlining the procedures and reduce the number of steps required for mutual assistance requests at the domestic level. Parties should share good practices in this respect with the T-CY.

Measures taken/relevant developments:

In some cases, based on bilateral treaties, direct contacts are possible. For the purposes of Article 29, requests of expedited preservation are made directly by the competent prosecutor through the National Bureau of the INTERPOL (copy is sent by e-mail to the General Prosecutor´s Office). In general MLA requests are sent through the General Prosecutor´s Office (as a central judicial authority which can make binding guidelines to subordinated offices). This procedure provides benefits for an effective cooperation since the senior prosecutors may provide necessary guidance based on experience with relevant Parties to the Convention. For instance, in a particular case, involvement of the General Prosecutor´s Office in the whole process lead to requesting/providing MLA within 2 days. This was only possible due to broad experience with obtaining e-evidence.

Modern means of communication may be used with the subordinated prosecutor´s offices in order to speed up the whole process, where necessary.

Requests for MLA are, in principle, executed by competent district prosecutor´s office.

Rec 7 Parties should make use of all available channels for international cooperation. This may include formal mutual legal assistance, police to police cooperation and others.

Measures taken/relevant developments:

For obtaining electronic evidence the MLA is used. In some cases, INTERPOL and/or police attaché may be used for obtaining information and, in particular, to facilitate cooperation.

Rec 8 Parties are encouraged to establish emergency procedures for requests related to risks of life and similar exigent circumstances. The T-CY should document practices by Parties and providers.

Measures taken/relevant developments:

Rec 9 Parties should confirm receipt of requests systematically and give, upon request, notice of action taken.

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Measures taken/relevant developments:	
<p>In relation to Article 29 requests received by the 24/7 contact point in Slovakia, according to the procedure in place, receipt of such a request is always confirmed without any delay and if necessary, missing information or translation is requested.</p> <p>Receiving of requests is confirmed by the Slovak prosecutors. Communication with the U.S. authorities is well established.</p> <p>As regards the Slovak MLA requests, these always contain contact information of a competent prosecutor. We consider it very important for an effective cooperation.</p>	
Rec 10	Parties may consider the opening of domestic investigation upon a foreign request or spontaneous information to facilitate the sharing of information or accelerate MLA.
Measures taken/relevant developments:	
<p>There are some cases where the information has been used for domestic cases. However, it should be noted that the use of information from MLA request is limited to the purpose of the request.</p>	
Rec 11	Parties should make use of electronic transmission of requests in line with Article 25.3 Budapest Convention on expedited means of communication.
Measures taken/relevant developments:	
<p>This is applicable. In most cases the Interpol services are used. In some cases e-mail or other means of communication are used as well. A subsequent formal confirmation is always required.</p>	
Rec 12	Parties should ensure that requests are specific and complete with all necessary information.
Measures taken/relevant developments:	
<p>MLA requests from the Slovak authorities contain all necessary information. For instance based on the information provided by the U.S. authorities (in particular thanks to meetings organized by Eurojust) numerous training activities for the Slovak prosecutors have been organised in order to explain the process of obtaining electronic evidence from abroad, in particular, from the U.S. Differences for obtaining subscriber, traffic and content data have been explained. Probable cause was among issues contained in the topics of the training activities. Convention on Cybercrime, and in particular, the possibility of its use for obtaining electronic evidence (not only for the offences listed in Articles 2-11 of the Convention) has been highlighted.</p> <p>For practical purposes a form has been elaborated and is applied for Article 29 requests.</p> <p>General Prosecutor´s Office of the Slovak Republic also provides guidance to subordinated prosecutor´s offices on how to draft an MLA request.</p>	

## Slovakia

Prosecutors are specialized for international cooperation at all levels of the prosecutorial system in Slovakia (district, regional, central).

Some of the training activities for prosecutors were organized together with experts from Cybercrime Unit of the Police Presidium.

Some training activities of the Judicial Academy were organised for judges and prosecutors and the content of a request for e-evidence has been explained. Various requirements of different Parties have been highlighted as well based on experience.

Rec 13 Pursuant to Article 25.5 Budapest Convention and Paragraph 259 Explanatory Report, Parties are reminded to apply the dual criminality standard in a flexible manner that will facilitate the granting of assistance.

Measures taken/relevant developments:

So far dual criminality was not applied as ground for refusal. Therefore it seems that the system provides sufficient flexibility.

Rec 14 Parties are encouraged to consult with authorities of requested Party prior to sending requests, when necessary.

Measures taken/relevant developments:

Majority of requests under the Convention are sent to the United States of America. There is a very effective co-operation between the General Prosecutor's Office of the Slovak Republic and the Department of Justice of the U.S. Where necessary, consultations via e-mail take place either before sending of MLA request (for instance regarding the less known ISPs) or after the request is sent. However, the newly announced policy of the U.S. (September 2016) in the field of obtaining electronic evidence may significantly influence the current high level of cooperation in a negative way. This new policy requires that additional information (not foreseen by the Convention) is attached to the MLA request. These data should be obtained directly from the U.S. providers by authorities of the requesting state. It seems that it applies also to Article 29 requests. A letter was sent to the Department of Justice in order to clarify the situation.

Rec 15 Parties should consider ensuring transparency regarding requirements for mutual assistance requests, and reasons for refusal, including thresholds for minor cases, on the websites of central authorities.

Measures taken/relevant developments:

In order to ensure the transparency regarding requirements of MLA requests and reasons for refusal the Ministry of Justice of the Slovak Republic is going to publish it on its own website [www.justice.gov.sk](http://www.justice.gov.sk) in the near future.

In this context, it is necessary to underline that the Slovak national authorities do not apply de minimis policy.

Question 2: Please provide information on time periods for preservation requests under Article 29 Budapest Convention in your country.

Rec 16 The T-CY should facilitate greater transparency regarding the time period for data preservation upon a foreign preservation request in line with Article 29 Budapest Convention. The T-CY should document time periods.

Time periods for preservation of data following a foreign request:

The details concerning time periods are set out in Section 90 of the Code of Criminal Procedure (Act no. 301/2005 Coll. as amended).

Section 90

Preservation and Surrender of Computer Data

(1) If the clarification of facts relevant for criminal proceedings requires the preservation of stored computer data, including operational data saved through the computer system, the presiding judge of a panel or, prior to the commencement of criminal prosecution or in pre-trial proceedings, a prosecutor, may issue an order substantiated also by the facts of the case against the person who is in the possession of or control over such data, or to the provider of such services, requesting them to

- a) preserve and maintain integrity of such data,
- b) enable making and keeping copies of such data,
- c) prevent access to such data,
- d) remove such data from the computer system,
- e) surrender such data for the purposes of criminal proceedings.

(2) The order referred to under paragraph 1 subpar. a) or c) shall have to specify the period during which the data shall be preserved, the length whereof may not exceed 90 days; a new order shall have to be issued for any extension of the period of their preservation.

(3) If the stored computer data, including operational data saved through the computer system, are no longer needed for the purpose of criminal proceedings, the presiding judge of a panel or, prior to the commencement of criminal prosecution or in pre-trial proceedings, a prosecutor, shall forthwith issue an order vacating the previous order to preserve the data.

(4) The order referred to under paragraphs 1 through 3 shall be served on the person who is in the possession of or control over such data, or on the provider of such services, who may also be imposed the obligation to keep the measures set out in the order confidential.

(5) The person who is in the possession of or control over computer data shall surrender such data, or the provider of services shall surrender the information related therewith that is in its possession or under its control to the authority that issued the order pursuant to paragraph 1.

Conditions and periods to extend or renew the preservation of specified data:

## Slovakia

The details concerning conditions and periods to extend or renew the preservation of specified data are set out in Section 90 of the Code of Criminal Procedure (Act no. 301/2005 Coll. as amended).

### Section 90

#### Preservation and Surrender of Computer Data

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- a) preserve and maintain integrity of such data,
- b) enable making and keeping copies of such data,
- c) prevent access to such data,
- d) remove such data from the computer system,
- e) surrender such data for the purposes of criminal proceedings.

(2) The order referred to under paragraph 1 subpar. a) or c) shall have to specify the period during which the data shall be preserved, the length whereof may not exceed 90 days; a new order shall have to be issued for any extension of the period of their preservation.

(3) If the stored computer data, including operational data saved through the computer system, are no longer needed for the purpose of criminal proceedings, the presiding judge of a panel or, prior to the commencement of criminal prosecution or in pre-trial proceedings, a prosecutor, shall forthwith issue an order vacating the previous order to preserve the data.

(4) The order referred to under paragraphs 1 through 3 shall be served on the person who is in the possession of or control over such data, or on the provider of such services, who may also be imposed the obligation to keep the measures set out in the order confidential.

(5) The person who is in the possession of or control over computer data shall surrender such data, or the provider of services shall surrender the information related therewith that is in its possession or under its control to the authority that issued the order pursuant to paragraph 1.

Slovenia

1.37 Slovenia

Question 1: Please provide information on measures taken or on relevant developments with respect to each of the following Recommendations. Please attach additional information as appropriate.

Rec 1	Parties should fully implement and apply the provisions of the Budapest Convention on Cybercrime, including preservation powers (follow up to T-CY Assessment Report 2012).
Measures taken/relevant developments: They are proposals for additional provisions in criminal procedure code which are in connection with CCC, including data preservation. These proposals are in debate and in coordination with different Ministries.	
Rec 2	Parties should consider maintaining statistics or establish other mechanisms to monitor the efficiency of the mutual legal assistance process related to cybercrime and electronic evidence.
Measures taken/relevant developments: These mechanisms are established in Ministry of Justice and Ministry of Interior-Police in Sectors for international cooperations.	
Rec 3	Parties should consider allocating more and more technology-literate staff for mutual legal assistance not only at central levels but also at the level of institutions responsible for executing requests (such as local prosecution offices).
Measures taken/relevant developments: Ministry of Interior-Police and Justice already have Sector for International Cooperations which employes sufficient staff.	
Rec 4	Parties should consider providing for better training to enhance mutual legal assistance, police-to-police and other forms of international cooperation on cybercrime and electronic evidence. Training and experience exchange should in particular target prosecutors and judges and encourage direct cooperation between judicial authorities. Such training should be supported by the capacity building programmes of the Council of Europe and other organisations.
Measures taken/relevant developments: In the meantime police provided some trainings to public prosecutors and judges with themes: cybercrime, digital evidence, MLA-international cooperation – and with connections with CCC.	
Rec 5	<p>Parties and the Council of Europe should work toward strengthening the role of 24/7 points of contact in line with Article 35 Budapest Convention, including through:</p> <ol style="list-style-type: none"> <li>a. Ensuring, pursuant to article 35.3 Budapest Convention that trained and equipped personnel is available to facilitate the operative work and conduct or support mutual legal assistance (MLA) activities             <ol style="list-style-type: none"> <li>b. Encouraging contact points to pro-actively promote their role among domestic and foreign counterpart authorities;</li> <li>c. Conducting regular meetings and training of the 24/7 network among the Parties;</li> <li>d. Encouraging competent authorities and 24/7 points of contact to consider procedures to follow up to and provide feedback to the requesting State on Article 31 requests;</li> </ol> </li> </ol>

Slovenia

<p>e. Considering to establish, where feasible, contact points in prosecution offices to permit a more direct role in mutual legal assistance and a quicker response to requests;</p> <p>f. Facilitating 24/7 points of contact to play a supportive role in "Article 31" requests.</p>
<p>Measures taken/relevant developments: Slovenian 24/7 contact point is active and cooperative. In received cases they acted promptly.</p>
<p>Rec 6 Parties should consider streamlining the procedures and reduce the number of steps required for mutual assistance requests at the domestic level. Parties should share good practices in this respect with the T-CY.</p>
<p>Measures taken/relevant developments: According to the agreement with the ministry of justice all urgent cases can be sent via faster channels i.e. Interpol, Europol with the help of Sector for international police cooperation.</p>
<p>Rec 7 Parties should make use of all available channels for international cooperation. This may include formal mutual legal assistance, police to police cooperation and others.</p>
<p>Measures taken/relevant developments: Slovenia is using all available channels on regular basis and with accordance with domestic legislation.</p>
<p>Rec 8 Parties are encouraged to establish emergency procedures for requests related to risks of life and similar exigent circumstances. The T-CY should document practices by Parties and providers.</p>
<p>Measures taken/relevant developments:</p>
<p>Rec 9 Parties should confirm receipt of requests systematically and give, upon request, notice of action taken.</p>
<p>Measures taken/relevant developments: Slovenia is doing that actions.</p>
<p>Rec 10 Parties may consider the opening of domestic investigation upon a foreign request or spontaneous information to facilitate the sharing of information or accelerate MLA.</p>
<p>Measures taken/relevant developments: Is this is allowed (i.e. that we have probable cause for criminal act) Slovenia can open their own cases – also with agreement of public prosecutor and investigating judge.</p>
<p>Rec 11 Parties should make use of electronic transmission of requests in line with Article 25.3 Budapest Convention on expedited means of communication.</p>
<p>Measures taken/relevant developments: This is usually done in Sector for international police cooperation and 24/7 contact point.</p>
<p>Rec 12 Parties should ensure that requests are specific and complete with all necessary information.</p>
<p>Measures taken/relevant developments: We include in requests as many information, evidence</p>



Slovenia

as we have at that moment.	
Rec 13	Pursuant to Article 25.5 Budapest Convention and Paragraph 259 Explanatory Report, Parties are reminded to apply the dual criminality standard in a flexible manner that will facilitate the granting of assistance.
Measures taken/relevant developments:	
Rec 14	Parties are encouraged to consult with authorities of requested Party prior to sending requests, when necessary.
Measures taken/relevant developments: Slovenia is doing or will do that when necessary.	
Rec 15	Parties should consider ensuring transparency regarding requirements for mutual assistance requests, and reasons for refusal, including thresholds for minor cases, on the websites of central authorities.
Measures taken/relevant developments: no information	

Question 2: Please provide information on time periods for preservation requests under Article 29 Budapest Convention in your country.

Rec 16	The T-CY should facilitate greater transparency regarding the time period for data preservation upon a foreign preservation request in line with Article 29 Budapest Convention. The T-CY should document time periods.
Time periods for preservation of data following a foreign request:	
There are some proposals for additional provisions in criminal procedure act that will also formally regulate preservations. It is worth to mention that we don't yet have data legislation. At the moment in cases of preservation requests we are directly using CCC articles.	
Conditions and periods to extend or renew the preservation of specified data:	

## Spain

### 1.38 Spain

Question 1: Please provide information on measures taken or on relevant developments with respect to each of the following Recommendations. Please attach additional information as appropriate.

Rec 1	Parties should fully implement and apply the provisions of the Budapest Convention on Cybercrime, including preservation powers (follow up to T-CY Assessment Report 2012).
Measures taken/relevant developments: According to Article 96.1 of the Spanish Constitution, validly concluded international treaties once officially published in Spain, shall take part of the internal legal order. Therefore, with the publication in the Official State Gazette on 17 <sup>th</sup> September 2010 of the instrument of ratification of the Budapest Convention, this one shall apply in Spain. On the other hand, the recent reforms achieved in the Criminal Code by the Organic Law 1/2015 and in the Criminal Procedural Code by Organic Law 13/2015 just finished implementing the Budapest Convention's provisions that still had to be included in the domestic legislation.	
Rec 2	Parties should consider maintaining statistics or establish other mechanisms to monitor the efficiency of the mutual legal assistance process related to cybercrime and electronic evidence.
Measures taken/relevant developments: In the Spanish Central Authority's MLA IT application, one of the fields to be completed is clearly that one from the Convention underlying the request. Thus, it is possible to know the troubles and the itinerary of all MLA requests, including those one based on the Budapest Convention. However, work is ongoing on the need for the participants in the MLA process to properly fill the statistical fields and specifically that of the Convention in which the request is based on.	
Rec 3	Parties should consider allocating more and more technology-literate staff for mutual legal assistance not only at central levels but also at the level of institutions responsible for executing requests (such as local prosecution offices).
Measures taken/relevant developments: The Spanish Central Authority's constant concern is to have a suitable number of staff and to ensure adequate training.	
Rec 4	Parties should consider providing for better training to enhance mutual legal assistance, police-to-police and other forms of international cooperation on cybercrime and electronic evidence. Training and experience exchange should in particular target prosecutors and judges and encourage direct cooperation between judicial authorities. Such training should be supported by the capacity building programmes of the Council of Europe and other organisations.
Measures taken/relevant developments: As already noted, efforts are made to facilitate the involvement in training activities.	
Rec 5	Parties and the Council of Europe should work toward strengthening the role of 24/7 points of contact in line with Article 35 Budapest Convention, including through:

## Spain

- a. Ensuring, pursuant to article 35.3 Budapest Convention that trained and equipped personnel is available to facilitate the operative work and conduct or support mutual legal assistance (MLA) activities
  - b. Encouraging contact points to pro-actively promote their role among domestic and foreign counterpart authorities;
  - c. Conducting regular meetings and training of the 24/7 network among the Parties;
  - d. Encouraging competent authorities and 24/7 points of contact to consider procedures to follow up to and provide feedback to the requesting State on Article 31 requests;
  - e. Considering to establish, where feasible, contact points in prosecution offices to permit a more direct role in mutual legal assistance and a quicker response to requests;
  - f. Facilitating 24/7 points of contact to play a supportive role in "Article 31" requests.

Measures taken/relevant developments:

In general, these measures are already applied by Spanish contact points of 24/7 network.

Rec 6 Parties should consider streamlining the procedures and reduce the number of steps required for mutual assistance requests at the domestic level. Parties should share good practices in this respect with the T-CY.

Measures taken/relevant developments:

In practice, MLA procedures are facilitated through the use of electronic means in order to advance the sending of requests and thus enhance streamlining and speed of response.

Rec 7 Parties should make use of all available channels for international cooperation. This may include formal mutual legal assistance, police to police cooperation and others.

Measures taken/relevant developments:

Apart from the application of the common regime between countries of the European union for the mutual recognition of criminal decisions (article 27.1 BC), together with the formal MLA channels, the use of all possible means of cooperation is common practice. Examples include: contacts between police groups from different countries, liaison judges cooperation.

Rec 8 Parties are encouraged to establish emergency procedures for requests related to risks of life and similar exigent circumstances. The T-CY should document practices by Parties and providers.

Measures taken/relevant developments:

Spanish legislation does not expressly regulate the emergency situations and therefore, there is no special provision for data transfer to the law enforcement bodies in these cases, but the Code of Criminal Procedure generally regulates the transfer of certain data directly to the police without judicial authorisation. We can distinguish between the following types of data:

Subscriber information: Article 588.ter.m empowers the Public Prosecution and the Judicial Police to request the operators or service providers information relating to the ownership of a phone number or of any other communication means or, in the opposite sense, require the telephone number or the identifying data of any communication means; should this requirement not be met, the companies might incur the offence of disobedience.

Existing data in the automated files of the service providers.

Data not linked to a communication process. As provided for in Article 588.ter.j, unless required by a specific

## Spain

regulation, the Public Prosecution or the Police do not need, in principle, judicial authorisation to gather data kept by service providers or by people or entities who facilitate the communication when data kept are not linked to a communication process.

Data linked to a communication process. Judicial authorisation shall be needed to gather these data, since the constitutional right to the privacy of communications can be affected. (Article 18 (3) of the Spanish Constitution).

Information on contents. Judicial authorisation shall be always required for the transfer of contents.

As stated above, since there is no specific regulation on emergency situations, the way by which the foreign police may have access to data of a service provider operating within our territory would be through police cooperation or through the Public Prosecution Service. The requesting country's police should request the necessary data to the Spanish police or Public Prosecutor who would ask the service provider for such information, whenever the information requested is of the type they have direct access to, according to the classification made at the aforementioned point (subscriber data and data not linked to a communication process).

Neither the emergency situation nor the emergency process are specifically regulated, in general terms, in cases of international legal assistance, being applicable the criteria required for each case according to the country concerned, whether it is an EU State or a Third State.

When the requesting country is signatory of the Budapest Convention, use is being made of the provision contained in Article 27 (9) of the Convention, which enables, in emergency cases, the communication and transmission of requests for legal assistance directly between judicial authorities, without prejudice of sending a copy to the central authorities. There is in Spain the network 24/7 of contact points set out in Article 35 of the Convention. Also the possibility provided for in Article 25 (3) of the Convention for emergency cases is being used, for which rapid means of communication as fax or e-mail are used in order to answer the requests for legal aid.

Though no legal regulation is in place for emergency cases, it should be noted that in Conventions and Treaties signed by Spain, it is usual to include clauses stating that, in emergency cases, the request for legal assistance could be directly made between the authorities

In cases of international legal assistance, the foreign authorities may request any type of data and, according to the nature of such information as afore mentioned, once the request for assistance has been received, information shall be gathered directly from service providers or it shall be either obtained by judicial authorisation.

Rec 9 Parties should confirm receipt of requests systematically and give, upon request, notice of action taken.

Measures taken/relevant developments:

In practice, acknowledgement of receipt is always given upon request.

Likewise, the outcome of actions taken regarding a MLA request is notified if the requesting party so requests.

## Spain

Rec 10	Parties may consider the opening of domestic investigation upon a foreign request or spontaneous information to facilitate the sharing of information or accelerate MLA.
Measures taken/relevant developments:	Whenever the Spanish Authorities find in a MLA request arising from other State that part of the criminal activity referred to or that the effects of such activity took place in Spain, they shall open a process based on these facts.
Rec 11	Parties should make use of electronic transmission of requests in line with Article 25.3 Budapest Convention on expedited means of communication.
Measures taken/relevant developments:	The use of electronic mail and fax are common practice in order to expedite MLA procedures, without prejudice of further complying with formal proceedings.
Rec 12	Parties should ensure that requests are specific and complete with all necessary information.
Measures taken/relevant developments:	This verification is made either when the Central Authority is the requesting party or when it is the requested party. It is specially verified that the request includes enough reasonable grounds and the definition of the criminal offence which it is based on.
Rec 13	Pursuant to Article 25.5 Budapest Convention and Paragraph 259 Explanatory Report, Parties are reminded to apply the dual criminality standard in a flexible manner that will facilitate the granting of assistance.
Measures taken/relevant developments:	The dual criminality principle is applied with flexibility.
Rec 14	Parties are encouraged to consult with authorities of requested Party prior to sending requests, when necessary.
Measures taken/relevant developments:	This recommendation is usually carried out.
Rec 15	Parties should consider ensuring transparency regarding requirements for mutual assistance requests, and reasons for refusal, including thresholds for minor cases, on the websites of central authorities.
Measures taken/relevant developments:	The General Council of the Judiciary, the State Prosecutor's Office and the Ministry of Justice have developed a tool for legal practitioners in the field of international judicial cooperation. It is a software tool ( <a href="http://www.prontuario.org">www.prontuario.org</a> ) which provides information on all the treaties signed by Spain and the EU instruments on international judicial cooperation. Please find below the link to the Budapest Convention:

Spain

[http://www.prontuario.org/portal/site/prontuario/menuitem.0158a50e67e0aae3c4f37462555a4ea0/?vgnextoid=5a7ab4aa07b06310VgnVCM1000006f48ac0aRCRD&vgnextchannel=d43803a4b8e36310VgnVCM10000053a5e40aRCRD&vgnextfmt=formato1&vgnextlocale=es\\_ES&pais=&materia=c65204732eb34310VgnVCM10000053a5e40a](http://www.prontuario.org/portal/site/prontuario/menuitem.0158a50e67e0aae3c4f37462555a4ea0/?vgnextoid=5a7ab4aa07b06310VgnVCM1000006f48ac0aRCRD&vgnextchannel=d43803a4b8e36310VgnVCM10000053a5e40aRCRD&vgnextfmt=formato1&vgnextlocale=es_ES&pais=&materia=c65204732eb34310VgnVCM10000053a5e40a)

Question 2: Please provide information on time periods for preservation requests under Article 29 Budapest Convention in your country.

Rec 16 The T-CY should facilitate greater transparency regarding the time period for data preservation upon a foreign preservation request in line with Article 29 Budapest Convention. The T-CY should document time periods.

Time periods for preservation of data following a foreign request:

According to Article 588 octies of the Code of Criminal Procedure, data requested shall be preserved for a period of 90 days

Conditions and periods to extend or renew the preservation of specified data:

The abovementioned period may be extended only once up to a maximum of 90 more days.

The whole time period for preservation of data shall not exceed 180 days.

Law 25/2007 of 18 October, on the retention of data related to electronic communications and public communications networks is still in force after the sentence given by the Court of Justice of the European Union on the 8 of April of 2014. That Law establishes a term of 12 months to retain traffic data linked to a communication process. This guarantees that, in the event these data were requested they could be released –with previous judicial authorisation or even without it according to the above provisions- and within a short term, as the Article 7 of the Law establishes a maximum period of 7 calendar days for the transfer of data since the date the person required receives the request.

### 1.39 Switzerland

Question 1: Please provide information on measures taken or on relevant developments with respect to each of the following Recommendations. Please attach additional information as appropriate.

<p>Rec 1 Parties should fully implement and apply the provisions of the Budapest Convention on Cybercrime, including preservation powers (follow up to T-CY Assessment Report 2012).</p>
<p>Measures taken/relevant developments:</p> <p>Swiss authorities have the power to order a person in its territory to submit specified computer data stored in a computer system, or data storage medium that is in that person's possession or control based on art. 263 ff. and 265 of the Swiss Criminal Procedure Code</p> <p>Swiss law enforcement authorities have access to subscriber information via the Post and Telecommunications Surveillance Service based on art. 14 of the Swiss Federal Act on Postal and Telecommunications Surveillance (online call procedure).</p> <p>Swiss Criminal Procedure Code, art. 269 ff. <a href="https://www.admin.ch/opc/en/classified-compilation/20052319/index.html">https://www.admin.ch/opc/en/classified-compilation/20052319/index.html</a></p> <p>Swiss Federal Act on Postal and Telecommunications Surveillance <a href="https://www.admin.ch/opc/fr/classified-compilation/20002162/index.html">https://www.admin.ch/opc/fr/classified-compilation/20002162/index.html</a></p> <p>Federal Act on International Mutual Assistance in Criminal Matters, art. 18a f. <a href="https://www.admin.ch/opc/en/classified-compilation/19810037/index.html">https://www.admin.ch/opc/en/classified-compilation/19810037/index.html</a></p>
<p>Rec 2 Parties should consider maintaining statistics or establish other mechanisms to monitor the efficiency of the mutual legal assistance process related to cybercrime and electronic evidence.</p>
<p>Measures taken/relevant developments:</p> <p>Statistics are published online under the following links:</p> <p>Federal Office of Justice: <a href="https://www.bj.admin.ch/content/dam/data/bj/sicherheit/rechtshilfe/rhf-statistik-d.pdf">https://www.bj.admin.ch/content/dam/data/bj/sicherheit/rechtshilfe/rhf-statistik-d.pdf</a></p> <p>Post and Telecommunications Surveillance Service <a href="https://www.li.admin.ch/en/themes/statistics">https://www.li.admin.ch/en/themes/statistics</a></p>
<p>Rec 3 Parties should consider allocating more and more technology-literate staff for mutual legal assistance not only at central levels but also at the level of institutions responsible for executing requests (such as local prosecution offices).</p>

## Switzerland

Measures taken/relevant developments:

On federal and cantonal level prosecutor's offices established specialized units, e.g. Public Prosecutor's Office II of the canton of Zurich Competence Centre Cybercrime, Specialized Division at the Prosecutor's Office of the canton of Vaud (Lausanne), Specialized prosecutors at the Office of the Attorney General of Switzerland, which ensures the legal and technical know-how related to internet-based criminality in the frame of national criminal proceedings but also in the frame of mutual legal proceedings. There are several platforms which ensure the transfer of the specialized know-how within the same canton but also between the cantons and federal authorities

Rec 4 Parties should consider providing for better training to enhance mutual legal assistance, police-to-police and other forms of international cooperation on cybercrime and electronic evidence. Training and experience exchange should in particular target prosecutors and judges and encourage direct cooperation between judicial authorities. Such training should be supported by the capacity building programmes of the Council of Europe and other organisations.

Measures taken/relevant developments:

The Cybercrime Coordination Unit Switzerland (CYCO; <https://www.cybercrime.admin.ch/kobik/en/home.html>), the Federal Office of Justice but also on cantonal level, several authorities offer regularly training courses and seminars to enhance mutual legal assistance, and other forms of international cooperation on cybercrime and electronic evidence.

Rec 5 Parties and the Council of Europe should work toward strengthening the role of 24/7 points of contact in line with Article 35 Budapest Convention, including through:

- a. Ensuring, pursuant to article 35.3 Budapest Convention that trained and equipped personnel is available to facilitate the operative work and conduct or support mutual legal assistance (MLA) activities
  - b. Encouraging contact points to pro-actively promote their role among domestic and foreign counterpart authorities;
  - c. Conducting regular meetings and training of the 24/7 network among the Parties;
  - d. Encouraging competent authorities and 24/7 points of contact to consider procedures to follow up to and provide feedback to the requesting State on Article 31 requests;
  - e. Considering to establish, where feasible, contact points in prosecution offices to permit a more direct role in mutual legal assistance and a quicker response to requests;
  - f. Facilitating 24/7 points of contact to play a supportive role in "Article 31" requests.

Measures taken/relevant developments:

The Swiss 24/7 point of contact, the Operations Centre at the Federal Office of Police (OC fedpol) will be supported by the Cybercrime Coordination Unit Switzerland (CYCO) and the Federal Office of Justice, also 24/7 by their on call duty officers, if necessary.

Rec 6 Parties should consider streamlining the procedures and reduce the number of steps required for



Switzerland

mutual assistance requests at the domestic level. Parties should share good practices in this respect with the T-CY.	
Measures taken/relevant developments:	
n/a	
Rec 7	Parties should make use of all available channels for international cooperation. This may include formal mutual legal assistance, police to police cooperation and others.
Measures taken/relevant developments:	
Switzerland ensures that requests can be addressed to all law enforcement authorities, which are obliged to forward them to the competent authority.	
Rec 8	Parties are encouraged to establish emergency procedures for requests related to risks of life and similar exigent circumstances. The T-CY should document practices by Parties and providers.
Measures taken/relevant developments:	
n/a	
Emergency procedures may be used by prosecuting authorities, on a case by case basis, avoiding or postponing procedural elements or preconditions that may slow down the process.	
Rec 9	Parties should confirm receipt of requests systematically and give, upon request, notice of action taken.
Measures taken/relevant developments:	
The receipt of requests will not be confirmed automatically due to the lack of resources.	
Rec 10	Parties may consider the opening of domestic investigation upon a foreign request or spontaneous information to facilitate the sharing of information or accelerate MLA.
Measures taken/relevant developments:	
Based on art. 67a IMAC, Swiss judicial law enforcement authorities are able to transmit spontaneously evidence and or information that it has gathered in the course of its own investigation, when it determines that this transmission may permit the opening of criminal proceedings or facilitate an ongoing criminal investigation.	
<a href="https://www.admin.ch/opc/en/classified-compilation/19810037/index.html">https://www.admin.ch/opc/en/classified-compilation/19810037/index.html</a>	
Rec 11	Parties should make use of electronic transmission of requests in line with Article 25.3 Budapest Convention on expedited means of communication.
Measures taken/relevant developments:	

Switzerland

The FoJ and Swiss prosecutors accept electronically transmission of request in advanced.	
Rec 12	Parties should ensure that requests are specific and complete with all necessary information.
Measures taken/relevant developments:  The FoJ encourages Swiss authorities to present specific and complete requests to the requested authorities.	
Rec 13	Pursuant to Article 25.5 Budapest Convention and Paragraph 259 Explanatory Report, Parties are reminded to apply the dual criminality standard in a flexible manner that will facilitate the granting of assistance.
Measures taken/relevant developments:  The Swiss Criminal Code ensures that in the frame of cyber criminality assistance can be granted in all forms of criminal proceedings.	
Rec 14	Parties are encouraged to consult with authorities of requested Party prior to sending requests, when necessary.
Measures taken/relevant developments:  The FoJ invites requesting authorities to present in advance drafts of MLA requests or be contacted prior to sending requests.	
Rec 15	Parties should consider ensuring transparency regarding requirements for mutual assistance requests, and reasons for refusal, including thresholds for minor cases, on the websites of central authorities.
Measures taken/relevant developments:  The FoJ offers online guidelines: <a href="http://www.rhf.admin.ch/etc/medialib/data/rhf.Par.0089.File.tmp/abgrenzung-e.pdf">http://www.rhf.admin.ch/etc/medialib/data/rhf.Par.0089.File.tmp/abgrenzung-e.pdf</a> <a href="http://www.rhf.admin.ch/etc/medialib/data/rhf.Par.0089.File.tmp/abgrenzung-e.pdf">http://www.rhf.admin.ch/etc/medialib/data/rhf.Par.0089.File.tmp/abgrenzung-e.pdf</a>	

Question 2: Please provide information on time periods for preservation requests under Article 29 Budapest Convention in your country.

Rec 16	The T-CY should facilitate greater transparency regarding the time period for data preservation upon a foreign preservation request in line with Article 29 Budapest Convention. The T-CY should document time periods.
Time periods for preservation of data following a foreign request:	

## Switzerland

Based on art. 18 IMAC (provisional measures) Swiss authorities are able to preserve data in the frame of the application of art. 29 Budapest Convention. Swiss law does not stipulate a time period for data preservation, but formal MLA requests have to be presented generally within 90 days.

Conditions and periods to extend or renew the preservation of specified data:

Requests for preservation of data can be extend or renewed anytime within the deadline to present the formal MLA request.

## Turkey

### 1.40 Turkey

Question 1: Please provide information on measures taken or on relevant developments with respect to each of the following Recommendations. Please attach additional information as appropriate.

<p>Rec 1 Parties should fully implement and apply the provisions of the Budapest Convention on Cybercrime, including preservation powers (follow up to T-CY Assessment Report 2012).</p>
<p>This issue is related to "preservation power" which was regulated by Articles 16, 17, 29 and 39 of the Convention.</p> <p>Article 16 - Expedited preservation of stored computer data</p> <p>Article 17 - Expedited preservation and partial disclosure of traffic data</p> <p>Article 29 - Expedited preservation of stored computer data</p> <p>Article 30 - Expedited disclosure of preserved traffic data</p> <p>Regarding these issues; it must be stated that "preservation power" has been executed by 7/24 contact centers and Information and Communication Technologies Authority; however, these requests must be subsequently converted into legal assistance requests. The legal assistance request to be drawn up must comply with Article 8 of Law No. 6706 on International Legal Assistance in Criminal Matters, which entered into force on 5 May 2016. Accordingly, it will be necessary, firstly, to draw up a legal assistance letter of request and clearly state the demanded points.</p>
<p>Rec 2 Parties should consider maintaining statistics or establish other mechanisms to monitor the efficiency of the mutual legal assistance process related to cybercrime and electronic evidence.</p>
<p>Law No. 6706 on International Legal Assistance in Criminal Matters entered into force on 5 May 2016 in our country. This law can also be applied to cybercrimes and electronic evidence. Besides, you can obtain the statistical figures from the General Directorate of Criminal Records and Statistics, Ministry of Justice; the number of investigations, convictions and acquittals regarding cybercrimes based on the provisions of Turkish Penal Code. Statistics Office of our General Directorate can also provide the number of legal assistance requests filed regarding these crimes. Number of legal assistance requests regarding cybercrimes executed by our General Directorate is 6 in 2012, 3 in 2013, 3 in 2014 and 3 in 2015. Currently, procedures of 61 legal assistance requests are still ongoing, including the ones from previous years.</p>
<p>Rec 3 Parties should consider allocating more and more technology-literate staff for mutual legal assistance not only at central levels but also at the level of institutions responsible for executing requests (such as local prosecution offices).</p>
<p>Officers working at the prosecution office are being recruited according to some certain criteria and especially levels of technological literacy of staff working in data processing offices are strictly checked. You can get more detailed information about this issue from the General Secretariat of High Council of Judges and Prosecutors.</p>
<p>Rec 4 Parties should consider providing for better training to enhance mutual legal assistance, police-to-police and other forms of international cooperation on cybercrime and electronic evidence. Training and experience exchange should in particular target prosecutors and judges and encourage direct cooperation between judicial authorities. Such training should be supported by the capacity building programmes of the Council of Europe and other organisations.</p>
<p>In Turkish law, it was accepted that electronic evidence would be presented as evidence to the courts.</p>

## Turkey

The relevant legal texts are listed below:

Turkish Code of Civil Procedure (Law No: 6100)

Article 199:

Data in the format of written or published texts, certificates, drawings, plans, sketches, photos, films, images or audio recordings and electronic data and similar data carriers, which can be used as evidence in dispute cases are considered to be proofs according to this Law.

Article 205 -

(1) Ordinary certificates acknowledged before court or accepted to have emanated from the denier by the court, shall be considered as definite proofs -unless otherwise proven- (2) Electronic data duly formed by safe electronic signature, shall be considered as proofs. (3) The judge shall examine ex officio, whether the electronically formed document is formed by safe electronic signature, which were submitted to the court as evidence.

Article 219 -

The parties are obliged to submit to the court all documents that they have in their possession, which they use or the other party uses as evidence. Electronic documents shall be printed and be saved electronically to be available for examination, in case required and then be submitted to the court.

As for the documents that are being use continually, such as commercial records; only their relevant parts can be certified and submitted to the court.

Article 445 -

(UYAP) National Judiciary Informatics System is the system created for providing justice services electronically. When the lawsuits and other trial procedures are provided electronically, UYAP is used and data are saved and preserved.

In the electronic medium, cases can be filed by using safe electronic signatures, fees or advances can be paid, lawsuit files can be examined. Within the scope of this Law, minutes and documents which are planned to be drawn up physically, can be drawn up electronically with electronic signature and be sent. Those documents drawn up electronically, shall not be also sent physically, no replica of document shall be sought.

When a physical replica is required to be taken and printed electronically, it shall be stated that the minutes or document is just like its original, and then it shall be signed and sealed by the judge or by the editor in chief who was assigned by the judge.

Duration shall expire at the end of day, for the transactions carried out electronically.

Procedures and principles regarding usage of UYAP concerning ongoing proceedings at the courts, ex parte proceedings, temporary legal protection and all other transactions, shall be regulated by regulations.

Rec 5 Parties and the Council of Europe should work toward strengthening the role of 24/7 points of contact in line with Article 35 Budapest Convention, including through:

- a. Ensuring, pursuant to article 35.3 Budapest Convention that trained and equipped personnel is available to facilitate the operative work and conduct or support mutual legal assistance (MLA) activities
  - b. Encouraging contact points to pro-actively promote their role among domestic and foreign counterpart authorities;
  - c. Conducting regular meetings and training of the 24/7 network among the Parties;
  - d. Encouraging competent authorities and 24/7 points of contact to consider procedures to follow up to and provide feedback to the requesting State on Article 31 requests;
  - e. Considering to establish, where feasible, contact points in prosecution offices to permit a

## Turkey

<p>more direct role in mutual legal assistance and a quicker response to requests;</p> <p>f. Facilitating 24/7 points of contact to play a supportive role in "Article 31" requests.</p>
<p>In Turkey, the prosecutors are responsible to conduct criminal investigations with the help of law enforcement authorities. 24/7 PoC has all of the above mentioned conditions except for having more direct role as stated in paragraph (i)</p>
<p>Rec 6 Parties should consider streamlining the procedures and reduce the number of steps required for mutual assistance requests at the domestic level. Parties should share good practices in this respect with the T-CY.</p>
<p>In our country, Law no 6706 on International Legal Assistance in Criminal Matters entered into force on 5 May 2015 . By this law, international legal assistance issues and legal assistance issues regarding cyber crimes in this scope, have acquired a legal basis. While drawing up their legal assistance requests, within the framework specified by Law No. 6706, judicial authorities can now prepare them more easily.</p>
<p>Rec 7 Parties should make use of all available channels for international cooperation. This may include formal mutual legal assistance, police to police cooperation and others.</p>
<p>In Turkey, General Directorate of International Law and Foreign Relation, Ministry of Justice acts as the central authority for MLA. Our General Directorate, upon a written request of legal assistance concerning cyber crimes, transmits the relevant documents to the judicial authorities to be complied with. In Turkish law, in terms of committees, legal assistances between judicial authorities of two states can be executed. Moreover, it is possible to file requests instantly or online through 7/24 Contact Center functioning within the body of General Directorate of Security.</p>
<p>Rec 8 Parties are encouraged to establish emergency procedures for requests related to risks of life and similar exigent circumstances. The T-CY should document practices by Parties and providers.</p>
<p>If an emergency request received via 24/7 PoC, police take the first action, gather data or inform the related parties if they are authorized by law. If the police needs prosecutor's or judge's order in order to take the necessary action, send the request to the related institutions or departments. Just after the police receives oral or written order, take the required steps.</p>
<p>Rec 9 Parties should confirm receipt of requests systematically and give, upon request, notice of action taken.</p>
<p>In order to get information about the documents sent to the Ministry of Justice in the form of MLA papers, you can visit our General Directorate's website 'www.uhdigm.adalet.gov.tr' and send an e- mail to the address given there. In this way, you can get confirmation about your document and find out what is your MLA application's result or process.</p>
<p>Rec 10 Parties may consider the opening of domestic investigation upon a foreign request or spontaneous information to facilitate the sharing of information or accelerate MLA.</p>
<p>If our Country has jurisdiction over the subject of legal assistance request or our Country's judicial authorities are conducting an investigation on the subject of legal assistance, the owner state of the legal assistance request shall be notified about this situation and -if required-, a "transfer of investigation" or a "transfer of prosecution" can be done.</p>
<p>Rec 11 Parties should make use of electronic transmission of requests in line with Article 25.3 Budapest Convention on expedited means of communication.</p>
<p>It is possible to send an e-mail message to the Ministry of Justice or the General Directorate about the implementation of article 25/3 of the Cybercrime Convention. The necessary information in this regard can be given by e-mail.</p>

## Turkey

<p>Rec 12 Parties should ensure that requests are specific and complete with all necessary information.</p>
<p>All the information related to the subject of legal assistance must take place in the legal assistance requests that are being conducted via our General Directorate, which acts as the central authority. Subject of the request, summary of the incident which is the subject of the request, personal information of the relevant person, legal basis and related law articles must certainly take place in the relevant legal assistance papers. Also, the legal assistance papers sent from Turkey to other countries are being meticulously examined according to these criteria.</p>
<p>Rec 13 Pursuant to Article 25.5 Budapest Convention and Paragraph 259 Explanatory Report, Parties are reminded to apply the dual criminality standard in a flexible manner that will facilitate the granting of assistance.</p>
<p>In Turkish law, within the scope of Law No. 6706 and especially its Article 8/1-f, if there exists no judgment of conviction or acquittal rendered by Turkish courts regarding a person for whom a legal assistance request was filed, or his/her offense was not amnestied /pardoned or was not time- barred by statute, then a MLA request can be filed. Furthermore, European Convention on Mutual Assistance in Criminal Matters (ETS 30) -to which we are party - does not stipulate "dual criminality" for executing legal assistance requests. Only for the requests including "search and seizure", it is stipulated that the crime in question must be one of "extraditable crimes" (Law No: 6706, Article 8/1-ç). Therefore, it possible to say that the rule of "dual criminality" is applied to the requests including "search and seizure".</p>
<p>Rec 14 Parties are encouraged to consult with authorities of requested Party prior to sending requests, when necessary.</p>
<p>Although there is no legal provision about this matter, the central authority in international legal assistance General Directorate of International Law and Foreign Relation, Ministry of Justice, is taking the special conditions and practices of each country concerning legal assistance into consideration and preparing the requests accordingly. In case required, it is also possible to get information from the foreign missions of the relevant state.</p>
<p>Rec 15 Parties should consider ensuring transparency regarding requirements for mutual assistance requests, and reasons for refusal, including thresholds for minor cases, on the websites of central authorities.</p>
<p>In Turkey, the central authority in international legal assistance is the General Directorate of International Law and Foreign Relation, Ministry of Justice. Its official website "<a href="http://www.uhdigm.adalet.gov.tr">www.uhdigm.adalet.gov.tr</a>1 has general and explanatory information regarding legal assistance. Besides, you can have online access to the Law No. 6706, which is the basic law concerning Turkish practice.</p> <p>Turkey is also part of European Convention on Mutual Assistance in Criminal Matters (ETS 30) and its Additional Protocol (ETS No. 99). So this Conventions' requirement arrangements are also valid for MLA requests.</p>

Question 2: Please provide information on time periods for preservation requests under Article 29 Budapest Convention in your country.

<p>Rec 16 The T-CY should facilitate greater transparency regarding the time period for data preservation upon a foreign preservation request in line with Article 29 Budapest Convention. The T-CY should document time periods.</p>
<p>Although Budapest Convention article 29/7, advise parties to preserve data at least for 60 days, there are no specified article on preservation requests and preserving period. However Law no: 6706 article 8/1-c,</p>

## Turkey

which titled as "foreign judicial request" regulates preserving evidence, which also include preserving data temporarily, for 40 days. If the request is received in 40 days, the period of preserving of the data maintains.

Traffic data are also kept for a certain period within the scope of Law No. 5651. According to Article 5/3 of Law No. 5651, hosting service providers are obliged to keep the traffic data of the hosting services that they provide, for a period of time not less than one year and not more than two years, which shall be designated by the regulations, and are also obliged to ensure the accuracy, integrity and confidentiality of these data.

According to Article 6/1-b of Law No. 5651, access providers are obliged to save the traffic data of the services that they provide, for a period of time not less than six months and not more than two years, which shall be designated by the regulations, and are also obliged to ensure the accuracy, integrity and confidentiality of these data.

Please see the paragraph above.



1.41 United Kingdom

<p>Rec 1 Parties should fully implement and apply the provisions of the Budapest Convention on Cybercrime, including preservation powers (follow up to T-CY Assessment Report 2012).</p>
<p>Incoming requests for preservation orders are made to the National Crime Agency (NCA) as the UK Interpol and Europol bureau, and usually done police to police, using the 24/7 network.</p> <p>The UK process for preservation orders is that the type of data to be requested under MLA/ EIO and the alleged criminal offence are ascertained. The NCA check if and where this fits with legislation. A formal request is then made to the hosting company / CSP / ISP to retain the data that will be required and NCA are able to ask for evidentially, detailing the offence and relevant legislation.</p> <p>MLA requests will go to the UK Central Authority (UKCA) and are then referred on to the relevant law enforcement agencies to execute. Requests for Communications Data are required to comply with the Regulation of Investigatory Powers Act.</p>
<p>Rec 2 Parties should consider maintaining statistics or establish other mechanisms to monitor the efficiency of the mutual legal assistance process related to cybercrime and electronic evidence.</p>
<p>The UK Central Authority (UKCA) is the central authority for Mutual Legal Assistance for England, Wales and Northern Ireland and receive all non tax-related incoming MLA requests (over 8,000 requests were received in 2016) and all outgoing requests to non-EU member States.</p> <p>The UKCA uses a digital case working system. As part of this process paper files are not created; all incoming and outgoing correspondence is stored, generated and processed digitally on the case management system. To store these documents the UKCA uses the case management software (iCasework).</p> <p>From this case management software, the UKCA are able to produce management statistics showing the timeliness and progress in processing MLA requests, these are then combined to generate weekly, monthly and annual statistic reports. In addition, UKCA are able to searches by offence type for example cybercrime/malware hacking, or cyber-enabled fraud and type of assistance (eg witness interview etc), which can show data indicating numbers of and direction of movement.</p>
<p>Rec 3 Parties should consider allocating more and more technology-literate staff for mutual legal assistance not only at central levels but also at the level of institutions responsible for executing requests (such as local prosecution offices).</p>
<p>To execute and deliver the most complex cases, UK agencies (within law enforcement and prosecution agencies) ensure expertise is available at the appropriate level by establishing Single Points of Contact (SPOCs) to offer specialist advice and specialist units for delivery. For example, the UK has specialists in technology/cyber-crime within law enforcement agencies (such as National Cyber Crime Unit staff). There are also prosecutors that regularly handle cyber-crime cases.</p> <p>Alongside existing specialists there is a wide range of training for all staff involved in the MLA process at central and execution level (see response to recommendation 4).</p>

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It is also common practice for all preservation requests to go via a SPOC unit for technological sign off.

Rec 4 Parties should consider providing for better training to enhance mutual legal assistance, police-to-police and other forms of international cooperation on cybercrime and electronic evidence. Training and experience exchange should in particular target prosecutors and judges and encourage direct cooperation between judicial authorities. Such training should be supported by the capacity building programmes of the Council of Europe and other organisations.

A range of training for all staff involved in the MLA process is provided. This includes guidance, training (including face to face and online) and sharing of best practice internally and with wider international stakeholders. Guidance includes guidelines by the UK Central Authority (UKCA) to ensure effective delivery on MLA requests received by the UK (see further detail below) and that provided by the Crown Prosecution Service on MLA for prosecutors.

Within UK agencies, given the remit of for example the National Cyber Crime Unit (NCA), the UK can also be confident on the level of training provided to the staff/officers working in these related specialist areas.

Guidelines include:

The 12<sup>th</sup> edition of the UK Central Authority (UKCA) guidelines was published in March 2015 to ensure that requests for mutual legal assistance (MLA) received by the UK can be acceded to and executed promptly and efficiently. The 2015 Guidelines are found here:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/415038/MLA\\_Guidelines\\_2015.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/415038/MLA_Guidelines_2015.pdf)

The above guidelines contain advice on how to make an MLA request, service of process, transfer of proceedings, and restraint and confiscation of property and include:

Guidance to authorities who wish to make a formal request for MLA to the UK; and

Guidance to authorities on what can be requested without making a formal request for MLA to the UK

Rec 5 Parties and the Council of Europe should work toward strengthening the role of 24/7 points of contact in line with Article 35 Budapest Convention, including through:

- g. Ensuring, pursuant to article 35.3 Budapest Convention that trained and equipped personnel is available to facilitate the operative work and conduct or support mutual legal assistance (MLA) activities
  - h. Encouraging contact points to pro-actively promote their role among domestic and foreign counterpart authorities;
  - i. Conducting regular meetings and training of the 24/7 network among the Parties;
  - j. Encouraging competent authorities and 24/7 points of contact to consider procedures to follow up to and provide feedback to the requesting State on Article 31 requests;
  - k. Considering to establish, where feasible, contact points in prosecution offices to permit a more direct role in mutual legal assistance and a quicker response to requests;
  - l. Facilitating 24/7 points of contact to play a supportive role in "Article 31" requests.

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UK Central Authority (UKCA) has the function of receiving, acceding to and ensuring the execution of MLA requests. The National Crime Agency (NCA) and other law enforcement agencies undertake the execution of requests for evidence (electronic or otherwise, in cyber crime or any other type of case).

The UK has a network of Liaison Magistrates who have a role in progressing the MLA process.

The 24/7 point of contact (POC) is the national cyber crime unit of the NCA, awareness of the abilities of the team is spread to the Regional Organised Cyber Crime Units through regular meetings. Continuous awareness of the emergency/pre- MLA actions carried out will enable quicker overall responses and reduce any potential overlap of work.

SO15 (via international operations) have the capability to provide a 24/7 response to execution of MLA requests that have an international CT connection or threat to life requests.

The UK welcomes and attends meetings of the 24/7 Network of Contact Points of the Budapest Convention on Cybercrime.

Rec 6 Parties should consider streamlining the procedures and reduce the number of steps required for mutual assistance requests at the domestic level. Parties should share good practices in this respect with the T-CY.

The UK has broad legal provisions to facilitate requests for MLA. It is able to provide streamlined processes for EU Member States, which accounted for 80% of all incoming MLA requests in 2016. On 31 July 2017 the UK implemented the EU's European Investigation Order (EIO), which provides an efficient (timeframe imposed) means (via the mutual recognition of judicial orders) of sharing evidence between those participating EU Member States (except Denmark and Ireland).

There is a wide range of MLA that can be provided by the UK conditional on the correct criteria having been met, whether or not there is a bilateral or multilateral agreement (dual criminality is required for coercive measures). In some cases evidence can be obtained via law enforcement cooperation. Where such cooperation is available for a specific measure this is highlighted in our guidelines. This tailored approach enables the UK to respond appropriately to requests. There are no unduly restrictive measures placed on the provision of assistance – specifically, there is no requirement for reciprocity (except for tax matters). The UK gives reasons for refusal and consults with the requesting authority inviting it to modify the request so that assistance may be provided.

The UK offers a high level of flexibility and cooperation in ensuring that the maximum amount of assistance is provided and to ensure that the interests of justice are met.

The UKCA and UK's European Judicial Network contact points provide a high level of assistance to their overseas counterparts in response to queries concerning drafting and the operation of MLA.

UKCA has made vast improvements in efficiency and streamlined the internal processes by introducing a digital casework system (iCaseworkmanage). To monitor performance, the UKCA has introduced internal end-to-end key performance indicators (KPI) which are monitored at weekly performance meetings to

## United Kingdom

ensure that all cases are processed efficiently. These KPIs cover the process for receiving and registering a request on the case management system, consideration, referral to an executing authority and for responding to correspondence. All cases are assessed and prioritised to ensure the most sensitive and urgent cases are processed within appropriate timeframes.

The UKCA runs a programme of continuous improvement. New issues are recorded as soon as they arise. These issues are then reviewed during weekly performance meetings whereby remedial work streams are put in place. When required, case working processes are reviewed and improved to ensure MLA is delivered as effectively and efficiently as possible.

**Rec 7** Parties should make use of all available channels for international cooperation. This may include formal mutual legal assistance, police to police cooperation and others.

The Home Office MLA guidance encourages officers to use police to police cooperation. The NCA (and law enforcement more generally) do already make use of police to police cooperation rather than making formal MLA requests, if such a request is unnecessary. At present the SO15 (Communications Data Team) are able to use various routes to secure international cooperation including direct requests to US-based Internet service providers (Google/Apple etc) without involving US authorities, as permitted by US law. The UK welcomes and encourages the ability to use all means available.

More widely international fora and convention opportunities are used to develop and promote cooperation.

**Rec 8** Parties are encouraged to establish emergency procedures for requests related to risks of life and similar exigent circumstances. The T-CY should document practices by Parties and providers.

In the context of data needing to be preserved as an emergency (or at all) the UK uses the 24/7 process. The UK central/only point in the National Crime Agency that deals with this is the National Cybercrime Unit G7 team (Internet and Infrastructure team). The NCA's procedure is documented within the G7 and Budapest Convention guidance (and includes non and emergency scenarios).

If a life at risk scenario is identified, intelligence required is gathered and secured on a police to police basis. Applications from overseas agencies could be dealt with under the existing Regulation of Investigatory Powers Act legislation by SO15 (via international operations). Training around this legislation as per recommendation 4 could be provided to foreign agencies.

As previously mentioned, they have the capability to provide a 24/7 response to threat to life requests.

For urgent MLA requests, the UK Central Authority has strong processes to review all incoming MLA requests in a timely manner. Cases are triaged to identify requests which are urgent and given an appropriate priority to expedite delivery.

**Rec 9** Parties should confirm receipt of requests systematically and give, upon request, notice of action taken.

Confirmation of receipt and notice of action taken is done systematically under key performance indicators (KPIs) and monitored closely within weekly performance meetings.

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As mentioned in the response to recommendation 6, the UKCA has introduced internal end-to-end KPIs which are monitored at weekly performance meetings to ensure that all cases are processed efficiently. These KPIs cover the process for receiving and registering a request on the case management system, consideration, referral to an executing authority, notice of action and for responding to correspondence. All cases are assessed and prioritised to ensure the most sensitive and urgent cases are processed within appropriate timeframes.

The UKCA's current case management system was introduced in October 2014, the objective of this system was to enhance casework delivery and provide management and performance information. It enables the UKCA to monitor and record the progress of each MLA case from receipt to execution. Each incoming or outgoing request received is registered on the case management system and assigned to a caseworker. The caseworker is responsible for the efficient progress of their cases. The UKCA ensures cases are progressed expeditiously by setting and monitoring key performance indicators.

To further improve efficiency the UKCA has operated a digital casework system since April 2016. Paper files are no longer created; all incoming and outgoing correspondence is stored, generated and processed digitally on the case management system.

**Rec 10 Parties may consider the opening of domestic investigation upon a foreign request or spontaneous information to facilitate the sharing of information or accelerate MLA.**

There should be global agreement that international law enforcement agencies can share evidence on a police to police basis.

For example, there needs to be a victim, actor or offence in the UK for a domestic investigation to be opened. This must also meet UK tasking thresholds for prioritisation of resources. If this is the case, the UK is able to open its own investigation and enter into a joint investigation with the respective international law enforcement agency and share evidence on a police to police basis removing the need for MLA. Any evidence shared in this way will still need to meet the receiving country's evidential standards.

Where there are electronic investigations that involve more than one country, Joint Investigation Teams (JITs) have been set up and there has been close liaison between partners. Obviously any sharing of data would have to be in compliance with the Data Protection Act and the UK's data sharing obligations under the Crime and Courts Act 2013.

**Rec 11 Parties should make use of electronic transmission of requests in line with Article 25.3 Budapest Convention on expedited means of communication.**

Incoming requests can be received via any transmission method, including electronic. UKCA encourages and facilitates the use of electronic transmission where appropriate.

Email is used whenever possible and, if appropriate, the content of emails sanitised to facilitate this. The UK in response to requests received from non-secure email addresses has a policy to send any case sensitive material back by other means to ensure security.

United Kingdom

The UK is following closely the work the EU Commission is doing on setting up a secure online portal using e-CODEX.

Rec 12 Parties should ensure that requests are specific and complete with all necessary information.

The UK endeavours to ensure that requests are specific and complete, where possible.

Stringent quality control is applied for example, the UKCA have sight of and check all outgoing non-EU MLA requests prior to transmission, and the Crown Prosecution Service, as a matter of practice, get MLA requests (to EU member states) signed off by a senior prosecutor.

Rec 13 Pursuant to Article 25.5 Budapest Convention and Paragraph 259 Explanatory Report, Parties are reminded to apply the dual criminality standard in a flexible manner that will facilitate the granting of assistance.

The UK only requires dual criminality for search and seizure, production orders (including banking evidence), and restraint and confiscation. A conduct based approach is taken, i.e. the conduct underlying the alleged offence is considered when assessing dual criminality, rather than seeking to match the exact same term or offence category in both jurisdictions.

Rec 14 Parties are encouraged to consult with authorities of requested Party prior to sending requests, when necessary.

UKCA support and encourage early engagement. Our published guidelines contain contact details for UK agencies. UKCA welcomes delegations and ad hoc enquiries on specific and general MLA questions, as part of this approach the UKCA maintains a presence at and discusses matters in bilateral and multilateral events.

From a law enforcement perspective, the NCA already consults with authorities in the requesting state prior to sending requests in some cases, to ensure that the request is appropriately tailored to the requirements of the foreign state and/or is likely to succeed.

In addition, the UK has international networks which are available to assist overseas partners in relation to MLA matters. These include liaison prosecutors (including Criminal Justice Advisors and Asset Recovery Advisors), CT Police Liaison Officers (PLOs), National Crime Agency officers and HMRC officers based in countries abroad.

More widely parties can use Eurojust to assist with serious and organised crime cases.

Rec 15 Parties should consider ensuring transparency regarding requirements for mutual assistance requests, and reasons for refusal, including thresholds for minor cases, on the websites of central authorities.

The Home Office/UKCA issued guidance to foreign states in 2015 in relation to the making of mutual legal assistance requests, entitled "Requests for MLA in criminal matters – guidelines for authorities outside the UK". This includes the UK's policy on thresholds for minor cases. The guidelines can be accessed on the gov.uk website through the following link:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/415038/MLA\\_Guidelines\\_2](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/415038/MLA_Guidelines_2)

United Kingdom

015.pdf

Question 2: Please provide information on time periods for preservation requests under Article 29 Budapest Convention in your country.

Rec 16 The T-CY should facilitate greater transparency regarding the time period for data preservation upon a foreign preservation request in line with Article 29 Budapest Convention. The T-CY should document time periods.

Time periods for preservation of data following a foreign request.

Under the 24/7 procedure, data in the UK is typically available for one year. Preservation requests are valid for 90 days and can be extended for 90 day periods at a time indefinitely (i.e. until the data is provided as evidence via the MLA process or a warrant has been obtained).

Each sector will have different regulatory requirements regarding data retention (hence this is difficult to outline in detail). For example:

UK Data Retention for Communications Data is two years under the Investigatory Powers (IP) Act 2016 but depending on the type of data required this will vary. For example work is underway to define what IP data is required to create Internet Connection Records (ICRs) it is not currently clear the level of data that will be available during this retention period.

Conditions and periods to extend or renew the preservation of specified data:

As above.

1.42 United States

Question 1: Please provide information on measures taken or on relevant developments with respect to each of the following Recommendations. Please attach additional information as appropriate.

<p>Rec 1 Parties should fully implement and apply the provisions of the Budapest Convention on Cybercrime, including preservation powers (follow up to T-CY Assessment Report 2012).</p>
<p>Measures taken/relevant developments:</p> <p>The United States remains fully committed to improving mutual legal assistance and other forms of international cooperation on cybercrime and electronic evidence. United States law includes provisions for expedited preservation of stored computer data. Any U.S. law enforcement official can direct a service provider to preserve specified computer data, including traffic data, and subscriber information for a period of 90 days. This can be extended for 90 days. The U.S. routinely assists foreign law enforcement authorities with expedited preservation of computer data and subscriber information held by service providers located in the U.S. The U.S. 24/7 point of contact for expedited preservation is the U.S. Department of Justice, Criminal Division, Computer Crime and Intellectual Property Section (CCIPS). Another means of preservation is through U.S. law enforcement attachés at U.S. embassies around the world.</p> <p>CCIPS and the U.S. Central Authority (the U.S. Department of Justice's Office of International Affairs, or OIA) also assist foreign law enforcement authorities to obtain emergency disclosures of information from providers in qualifying emergencies. Finally, OIA assists foreign law enforcement authorities to obtain disclosure of information from U.S. providers in response to qualifying mutual legal assistance (MLA requests) on a non-emergency basis, as further described, below.</p>
<p>Rec 2 Parties should consider maintaining statistics or establish other mechanisms to monitor the efficiency of the mutual legal assistance process related to cybercrime and electronic evidence.</p>
<p>Measures taken/relevant developments:</p> <p>The U.S. Central Authority, the Office of International Affairs (OIA), maintains an electronic database for tracking all incoming MLA requests seeking electronic records. Regardless of whether a request is received in hard copy or through electronic channels, all requests are inputted into the system. The database is equipped with features that allow users to track, among other things, the length of time a request has been under review, communications to and from the requesting State, and how each requested assistance is ultimately resolved. Users can query the system's data to identify statistics and other trends concerning these types of requests.</p>
<p>Rec 3 Parties should consider allocating more and more technology-literate staff for mutual legal assistance not only at central levels but also at the level of institutions responsible for executing requests (such as local prosecution offices).</p>



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### Measures taken/relevant developments:

As part of its Mutual Legal Assistance Modernization Project, OIA has created and increased its staffing of a dedicated team of Department of Justice attorneys and support staff (called international affairs specialists) to focus exclusively on the execution of MLA requests from other countries to the U.S. (called "incoming" requests) that seek electronic records. These Cyber Unit professionals bring their expertise on a full-time basis to this unique area of the law, and because they devote all of their efforts to these types of requests, they are able to use their experience to advise our foreign partners on how best to develop requests and secure desired evidence from the U.S. OIA also partners with federal prosecutors across the U.S. who have specialized expertise in this area and assist OIA in executing requests.

Rec 4 Parties should consider providing for better training to enhance mutual legal assistance, police-to-police and other forms of international cooperation on cybercrime and electronic evidence. Training and experience exchange should in particular target prosecutors and judges and encourage direct cooperation between judicial authorities. Such training should be supported by the capacity building programmes of the Council of Europe and other organisations.

### Measures taken/relevant developments:

The U.S., through OIA, the Computer Crimes and Intellectual Property Section, and the Federal Bureau of Investigation, among others, provides training to foreign partners regarding how to obtain electronic evidence from the U.S. These trainings may be held abroad or offered in the U.S., and may also be presented via video conference. Participants in these trainings have included foreign judges, prosecutors, and law enforcement officials, and the U.S. is committed to fulfilling as many training requests as possible. The American system of law includes a judiciary that is independent from the investigation and prosecution of criminal matters; thus, the Department of Justice is distinct from the Federal Judicial Center that administers federal judges who adjudicate cases. It is Department of Justice employees, not federal judges, who carry out such training.

In addition to its own programs, the U.S. supports the Council of Europe's Global Action on Cybercrime programs, as well as relevant capacity building programs of the UN Office on Drugs and Crime, Organization of American States, and other regional organizations.

The U.S. also trains many of its own criminal investigators, prosecutors, and judges on means for international cooperation on cybercrime and electronic evidence.

Rec 5 Parties and the Council of Europe should work toward strengthening the role of 24/7 points of contact in line with Article 35 Budapest Convention, including through:

- a. Ensuring, pursuant to article 35.3 Budapest Convention that trained and equipped personnel is available to facilitate the operative work and conduct or support mutual legal assistance (MLA) activities
  - b. Encouraging contact points to pro-actively promote their role among domestic and foreign counterpart authorities;
  - c. Conducting regular meetings and training of the 24/7 network among the Parties;

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- d. Encouraging competent authorities and 24/7 points of contact to consider procedures to follow up to and provide feedback to the requesting State on Article 31 requests;
- e. Considering to establish, where feasible, contact points in prosecution offices to permit a more direct role in mutual legal assistance and a quicker response to requests;
- f. Facilitating 24/7 points of contact to play a supportive role in "Article 31" requests.

Measures taken/relevant developments:

The U.S.' 24/7 Point of Contact, CCIPS, is staffed by prosecutors specially trained in cybercrime, intellectual property crime, electronic evidence, and international cooperation, and paralegals with special training in international cooperation relating to 24/7 and MLA requests. The U.S. Central Authority, OIA, is composed of prosecutors and paralegals who are specially trained in and dedicated to responding to preparing and responding to MLA requests as described above.

As noted above, U.S. Department of Justice leads numerous trainings annually for both foreign and domestic authorities on utilizing the 24/7 Network and the MLA process to preserve and collect evidence across borders. During these trainings, the U.S. Department of Justice actively encourages the use of 4/7 networks and, for states not yet Parties, both accession to the Budapest Convention and use of the 24/7 Network.

The U.S. regularly participates in meetings and trainings with other 24/7 Network members and states parties to the Budapest Convention, as described above.

In the context of these trainings and meetings, the U.S. regularly seeks and receives feedback on its MLA request and response processes, and provides feedback to states on how to improve MLA requests to increase likelihood of timely and full responses. The U.S. also seeks and provides feedback informally.

The U.S. 24/7 contact point is a prosecution office, CCIPS, as described above. CCIPS and the U.S. Central Authority, OIA, work closely together on cybercrime and electronic evidence matters. A priority for OIA is to improve response times on MLA matters.

As described elsewhere, CCIPS is the U.S.' 24/7 contact point and works closely with OIA, supporting the MLA process.

**Rec 6** Parties should consider streamlining the procedures and reduce the number of steps required for mutual assistance requests at the domestic level. Parties should share good practices in this respect with the T-CY.

Measures taken/relevant developments:

OIA has established a Cyber Unit, which is dedicated to reviewing, developing, and where possible, directly executing, incoming MLA requests seeking electronic records. Direct execution of incoming requests by OIA's Cyber Unit means that OIA staff seek and obtain orders without having to refer the execution of the request to other federal prosecutor's offices.

In addition, OIA Attorneys in the Cyber Unit are assigned to specific countries and regions, providing our foreign partners with a point of contact to address requests for electronic records and related issues.

**Rec 7** Parties should make use of all available channels for international cooperation. This may include formal mutual legal assistance, police to police cooperation and others.

Measures taken/relevant developments:

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Generally, for U.S. authorities to compel the provision of records or assistance from U.S. entities, a MLA request seeking such records or assistance from the U.S. must be submitted to OIA. There are, however, other forms of assistance available that need not pass through the MLA channel. Examples of situations in which a MLA request to the U.S. may not be required include voluntary interviews, publicly available records, and obtaining information and evidence already held by U.S. law enforcement entities. Law enforcement sharing and cooperation is a valuable tool and an encouraged practice. Finally, we wish to emphasize that under current U.S. federal law, U.S. service providers may voluntarily accept preservation requests from, and produce stored traffic data and subscriber information directly to, foreign law enforcement authorities. As a result foreign partners are encouraged to seek preservation and stored traffic data and subscriber information directly from service providers.

Rec 8 Parties are encouraged to establish emergency procedures for requests related to risks of life and similar exigent circumstances. The T-CY should document practices by Parties and providers.

Measures taken/relevant developments:

Voluntary Disclosures by Service Providers

Under U.S. law, a service provider may voluntarily disclose content, and traffic data and subscriber information, relating to its customer's or subscriber's communications to U.S. law enforcement authorities without further legal process, if the provider, in good faith, believes that an emergency involving danger of death or serious physical injury to any person requires disclosure without delay of information relating to the emergency. Upon receipt of a qualifying emergency disclosure request through the 24/7 Network, CCIPS requests voluntary disclosure from the provider on the foreign country's behalf (without an MLA request). CCIPS discloses relevant information received to the foreign law enforcement entity. CCIPS staffs an attorney to a "duty telephone," who is available to respond to emergency requests at all hours.

Under U.S. law, a provider also may voluntarily disclose at any time (emergency or non-emergency) traffic data and subscriber information to foreign law enforcement authorities without an MLA request.

Emergency Compelled Disclosures

If a provider refuses to voluntarily disclose information relating to a subscriber's or customer's account in what the U.S. considers a qualifying emergency, U.S. law enforcement authorities can quickly obtain a production order from a judge to compel disclosure of the information. In cases where the request for emergency disclosure comes from a foreign law enforcement authority, OIA and CCIPS will work with the foreign government to process an MLA request and obtain compelled disclosure of the information on an expedited basis.

Rec 9 Parties should confirm receipt of requests systematically and give, upon request, notice of action taken.

Measures taken/relevant developments:

United States

OIA's Cyber Unit has in place a policy that requires Unit staff to acknowledge receipt of new MLA requests shortly after receiving those requests. The Unit also provides updates, upon request, about the status of previously submitted requests.

Rec 10 Parties may consider the opening of domestic investigation upon a foreign request or spontaneous information to facilitate the sharing of information or accelerate MLA.

Measures taken/relevant developments:

While cooperation may be faster between two or more countries, each of which has already opened its own domestic investigation, it is not common for a country to open its own investigation solely for the purpose of facilitating information sharing or accelerating MLA. In some situations, the opening of a parallel investigation in another country may instead complicate cooperation. OIA works closely with U.S. law enforcement authorities to ensure their awareness of MLA requests concerning conduct that may also implicate U.S. interests or investigations in order to determine whether opening a U.S. investigation would be appropriate.

Rec 11 Parties should make use of electronic transmission of requests in line with Article 25.3 Budapest Convention on expedited means of communication.

Measures taken/relevant developments:

With respect to incoming requests, OIA accepts MLA requests that are transmitted electronically. In urgent cases, OIA generally accepts advanced copies or other "informal" requests, so long as the requesting State makes assurances that an official request will be submitted through the MLA channel as soon as reasonably possible under the circumstances. With respect to outgoing requests, OIA sends MLA requests in solely electronic format to other countries that will accept requests in such a format.

Rec 12 Parties should ensure that requests are specific and complete with all necessary information.

Measures taken/relevant developments:

OIA endeavours to ensure that all outgoing requests for records are sufficient under the requested State's laws to obtain the requested evidence. With regard to incoming requests for records, OIA works with the requesting State by communicating the need for any additional information that is necessary in each case in order to obtain the applicable court order required to compel the production of evidence. To the extent that foreign partners can endeavour to note and include in the first instance the necessities of the parties of whom they are requesting records, this would facilitate the more expeditious exchange of such records.

Rec 13 Pursuant to Article 25.5 Budapest Convention and Paragraph 259 Explanatory Report, Parties are reminded to apply the dual criminality standard in a flexible manner that will facilitate the granting of assistance.

Measures taken/relevant developments:

United States

In those instances where the dual criminality standard applies (in particular, the production of content data), OIA employs a flexible analysis that focuses on the underlying conduct at issue, rather than the precise elements of the crime as defined by foreign law. Stated differently, OIA evaluates whether the conduct would be punishable under U.S. law by a penalty of more than one year, without regard to whether both the requested and requesting States have the same statutory elements and punishment for that conduct. The practical effect of this approach is that requests are less likely to be denied on dual criminality grounds, because most cases involve activities that are criminalized in many countries

Rec 14 Parties are encouraged to consult with authorities of requested Party prior to sending requests, when necessary.

Measures taken/relevant developments:

OIA endeavours to ensure that all outgoing requests for records are sufficient under the requested State's laws to obtain the requested evidence. Under usual circumstances, this does not require prior consultation with the requesting State's Central Authority. OIA may be familiar with requirements based on prior interactions and/or through police-to-police. In non-routine situations, it consults with the requested State.

Rec 15 Parties should consider ensuring transparency regarding requirements for mutual assistance requests, and reasons for refusal, including thresholds for minor cases, on the websites of central authorities.

Measures taken/relevant developments:

OIA is in the process of determining whether it is feasible to construct a webpage that can be accessed on the open Internet where it sets out applicable policies and procedures for MLA requests. At present, through both formal trainings and request-specific discussions, OIA seeks to communicate clearly the legal standards that must be satisfied in order to obtain the requested evidence. In those instances where requests cannot be executed, OIA explains the reasons for the non-execution, and where appropriate, invites the requesting State to present any additional information that may warrant reconsideration of the matter.

Question 2: Please provide information on time periods for preservation requests under Article 29 Budapest Convention in your country.

Rec 16 The T-CY should facilitate greater transparency regarding the time period for data preservation upon a foreign preservation request in line with Article 29 Budapest Convention. The T-CY should document time periods.

Time periods for preservation of data following a foreign request:

United States law requires service providers to preserve for 90 days from the receipt of notice from a U.S. law enforcement official. As described above, the U.S. will expeditiously direct preservation upon request

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from foreign law enforcement authorities. Providers may voluntarily choose to preserve when a foreign law enforcement authority directly requests preservation. Foreign law enforcement authorities should contact U.S. service providers to determine whether the provider will preserve with a direct request from the foreign law enforcement authority.

Conditions and periods to extend or renew the preservation of specified data:

United States law permits U.S. law enforcement officials to direct that a service provider to extend preservation for one 90-day period. As described above, a provider may voluntarily choose to extend preservation upon a request directly from a foreign law enforcement authority.

## 2 Appendix

### 2.1 The questionnaire

[www.coe.int/cybercrime](http://www.coe.int/cybercrime)

Strasbourg, 15 September 2016

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

T-CY (2016)27E

## Cybercrime Convention Committee (T-CY)

Assessment of the mutual legal assistance provisions of the Budapest Convention

### Questionnaire on follow up given by Parties to Recommendations on MLA adopted in December 2014

#### Background:

The purpose of this questionnaire is to allow the T-CY Plenary to review follow up given by Parties to the Budapest Convention to the [Recommendations on mutual legal assistance](#) adopted by the T-CY in December 2014. The T-CY had agreed that:

“Parties are invited to follow up on recommendations falling under the responsibility of domestic authorities to report back to the T-CY no later than 18 months from adoption of this report on measures taken to permit the T-CY, in line with the Rules of Procedure (Article 2.1.g), to review progress made.”

Recommendations 1 to 15 were considered “falling primarily under the responsibility of domestic authorities”. It is recalled that with regard to Recommendation 8 (emergency procedures), the T-CY documented practices by Parties and providers in May 2016 (document [T-CY\(2016\)13](#)).

#### [T-CY 15 \(May 2016\) decided:](#)

“To invite the Bureau to develop and the Secretariat to circulate a request for information on follow up given to Recommendations 1-7 and 9-15 of the MLA Assessment Report, as well as on Recommendation 16 on time periods for data preservation periods.”

#### Implementation:

[T-CY representatives](#) are invited to prepare/compile consolidated replies to this questionnaire from their respective country.

Replies should be submitted no later than 21 October 2016 in electronic form and in English or French to:

Alexander Seger, Executive Secretary of the Cybercrime Convention Committee, Council of Europe Email:  
[alexander.seger@coe.int](mailto:alexander.seger@coe.int)

The Bureau will then provide an initial summary to T-CY 16 (November 2016), and a full draft report by spring 2017 for consideration by T-CY 17 (mid-2017).



Question 1: Please provide information on measures taken or on relevant developments with respect to each of the following Recommendations. Please attach additional information as appropriate.

<p>Rec 1 Parties should fully implement and apply the provisions of the Budapest Convention on Cybercrime, including preservation powers (follow up to T-CY Assessment Report 2012).</p>
<p>Measures taken/relevant developments:</p>
<p>Rec 2 Parties should consider maintaining statistics or establish other mechanisms to monitor the efficiency of the mutual legal assistance process related to cybercrime and electronic evidence.</p>
<p>Measures taken/relevant developments:</p>
<p>Rec 3 Parties should consider allocating more and more technology-literate staff for mutual legal assistance not only at central levels but also at the level of institutions responsible for executing requests (such as local prosecution offices).</p>
<p>Measures taken/relevant developments:</p>
<p>Rec 4 Parties should consider providing for better training to enhance mutual legal assistance, police-to-police and other forms of international cooperation on cybercrime and electronic evidence. Training and experience exchange should in particular target prosecutors and judges and encourage direct cooperation between judicial authorities. Such training should be supported by the capacity building programmes of the Council of Europe and other organisations.</p>
<p>Measures taken/relevant developments:</p>
<p>Rec 5 Parties and the Council of Europe should work toward strengthening the role of 24/7 points of contact in line with Article 35 Budapest Convention, including through:</p> <ol style="list-style-type: none"> <li>a. Ensuring, pursuant to article 35.3 Budapest Convention that trained and equipped personnel is available to facilitate the operative work and conduct or support mutual legal assistance (MLA) activities             <ol style="list-style-type: none"> <li>b. Encouraging contact points to pro-actively promote their role among domestic and foreign counterpart authorities;</li> <li>c. Conducting regular meetings and training of the 24/7 network among the Parties;</li> <li>d. Encouraging competent authorities and 24/7 points of contact to consider procedures to follow up to and provide feedback to the requesting State on Article 31 requests;</li> <li>e. Considering to establish, where feasible, contact points in prosecution offices to permit a more direct role in mutual legal assistance and a quicker response to</li> </ol> </li> </ol>

<p>requests;</p> <p>f. Facilitating 24/7 points of contact to play a supportive role in "Article 31" requests.</p>
Measures taken/relevant developments:
<p>Rec 6 Parties should consider streamlining the procedures and reduce the number of steps required for mutual assistance requests at the domestic level. Parties should share good practices in this respect with the T-CY.</p>
Measures taken/relevant developments:
<p>Rec 7 Parties should make use of all available channels for international cooperation. This may include formal mutual legal assistance, police to police cooperation and others.</p>
Measures taken/relevant developments:
<p>Rec 8 Parties are encouraged to establish emergency procedures for requests related to risks of life and similar exigent circumstances. The T-CY should document practices by Parties and providers.</p>
Measures taken/relevant developments: <sup>4</sup>
<p>Rec 9 Parties should confirm receipt of requests systematically and give, upon request, notice of action taken.</p>
Measures taken/relevant developments:
<p>Rec 10 Parties may consider the opening of domestic investigation upon a foreign request or spontaneous information to facilitate the sharing of information or accelerate MLA.</p>
Measures taken/relevant developments:
<p>Rec 11 Parties should make use of electronic transmission of requests in line with Article 25.3 Budapest Convention on expedited means of communication.</p>
Measures taken/relevant developments:
<p>Rec 12 Parties should ensure that requests are specific and complete with all necessary</p>

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<sup>4</sup> Completion of this field is only requested if information has not been provided to the T-CY before (See document [T-CY\(2016\)13](#)).

information.
Measures taken/relevant developments:
Rec 13 Pursuant to Article 25.5 Budapest Convention and Paragraph 259 Explanatory Report, Parties are reminded to apply the dual criminality standard in a flexible manner that will facilitate the granting of assistance.
Measures taken/relevant developments:
Rec 14 Parties are encouraged to consult with authorities of requested Party prior to sending requests, when necessary.
Measures taken/relevant developments:
Rec 15 Parties should consider ensuring transparency regarding requirements for mutual assistance requests, and reasons for refusal, including thresholds for minor cases, on the websites of central authorities.
Measures taken/relevant developments:

Question 2: Please provide information on time periods for preservation requests under Article 29 Budapest Convention in your country. <sup>5</sup>

Rec 16 The T-CY should facilitate greater transparency regarding the time period for data preservation upon a foreign preservation request in line with Article 29 Budapest Convention. The T-CY should document time periods.
Time periods for preservation of data following a foreign request:
Conditions and periods to extend or renew the preservation of specified data:

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<sup>5</sup> Article 29.7 Budapest Convention foresees that:

“Any preservation effected in response to the request referred to in paragraph 1 shall be for a period not less than sixty days, in order to enable the requesting Party to submit a request for the search or similar access, seizure or similar securing, or disclosure of the data. Following the receipt of such a request, the data shall continue to be preserved pending a decision on that request.”