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T-CY (2017)20

Cybercrime Convention Committee (T-CY)

Preparation of a 2nd Additional Protocol to the Budapest Convention on Cybercrime

Workplan and working methods

Adopted by the T-CY Protocol Drafting Plenary on 29 November 2017

1 Protocol Drafting Group and Plenary: working methods

1.1 Organisation of meetings and preparation of provisions

The Terms of Reference for the Preparation of a 2nd Additional Protocol to the Budapest Convention on Cybercrime adopted by T-CY 17 in June 2017 (see appendix) foresee seven sessions of the Protocol Drafting Group (PDG) and five sessions of the Protocol Drafting Plenary (PDP) between September 2017 and December 2019.

By December 2019, the text of a draft Protocol is to be available on which the opinion of the European Committee of Crime Problems (CDPC) is to be sought before submission to the Committee of Ministers.

The PDG shall meet back-to-back with the T-CY Bureau and the PDP shall meet back-to-back with T-CY Plenaries.

The PDG shall be an expert group that assists the PDP by preparing an initial inventory of provisions to be developed and by preparing draft text for each of these provisions for consideration by the PDP.

The PDG shall aim at preparing submissions to the PDP by consensus.

The preparation of text shall also take place between PDG and PDP meetings.

PDG members shall take responsibility for the drafting of specific provisions. For each provision, at least one member shall take the lead, preferably with the support of other members. The Chair, Vice-chair and the Secretariat shall facilitate work of volunteers as necessary.

The initial inventory may be adjusted in the course of negotiations. PDG members may propose and substantiate in writing additional provisions to be considered by the PDG.

If necessary, the text of draft provisions – with explanatory notes – shall be considered by the PDG and the PDP in more than one reading before preliminary adoption by the PDP.

If feasible, the PDG shall then hold a reading of the full draft Protocol by mid-2019 before submission to the PDP for consideration and preliminary adoption in late 2019.

Draft text prepared by the PDG shall remain confidential until released by the PDP. The deliberations of the PDG may be publicly discussed to the extent agreed upon by the PDG. Positions shall not be attributed to specific countries or members.

The PDG and PDP are to agree upon and publish summary reports after each of their meetings.

The PDG is to agree in each meeting which documents are to be forwarded to the PDP, circulated or published.

1.2 Coordination with the European Union

The European Union has launched a process addressing in parts the same issues as the T-CY.

Close coordination between the T-CY and the EU shall be sought. EU members involved in both processes shall, therefore, help promote consistency of provisions being developed.

PDG members shall be kept informed of the process within the EU.

1.3 Stakeholder consultations

According to the Terms of Reference, the T-CY may hold public hearings, publish drafts of its work, and invite public comments.

Close interaction with civil society, data protection organisations and industry shall be sought by making use of the Octopus Conferences foreseen for July 2018 and November or December 2019.

The PDP may invite stakeholders for a hearing in conjunction with the T-CY plenary in November or December 2018.

In between meetings, the PDG or the T-CY Chair, Vice-chair and Secretariat may hold focused discussions with specific groups of stakeholders.

2 Workplan

19-20 Sep 2017, Strasbourg	1st Meeting of the Protocol Drafting Group <ul style="list-style-type: none"> Workplan and working procedures Inventory of provisions to be developed Initial discussion of concepts of provisions [1-4]
28-29 Nov 2017, Strasbourg	1st Meeting of the Protocol Drafting Plenary <ul style="list-style-type: none"> Review and adoption of initial inventory Initial discussion of concepts of some provisions
31 Jan - 2 Feb 2018, Strasbourg	2nd Meeting of the Protocol Drafting Group <ul style="list-style-type: none"> 1st reading of provisions [1-4] Initial discussion of additional provisions
May 2018	3rd Meeting of the Protocol Drafting Group <ul style="list-style-type: none"> 1st reading of provisions [5-8] Initial discussion of additional provisions
9-10 July 2018	2 nd Meeting of the Protocol Drafting Plenary <ul style="list-style-type: none"> 2nd reading of provisions [1-8]
11-13 July 2018	Consultation with civil society, data protection organisations and industry (Octopus Conference) – preceded by public call for comments
Sep 2018	4th Meeting of the Protocol Drafting Group <ul style="list-style-type: none"> 3rd reading of provisions [1-8] 1st reading of provisions [9-12]
Nov/Dec 2018	3 rd Meeting of the Protocol Drafting Plenary <ul style="list-style-type: none"> Final provisional reading of provisions [1-8] 2nd reading of provisions [9-12] Hearing of stakeholders [data protection organisations and/or industry]
Feb 2019	5th Meeting of the Protocol Drafting Group <ul style="list-style-type: none"> 3rd reading of provisions [9-12] 1st reading of provisions [13-16]
Apr 2019	6 th Meeting of the Protocol Drafting Group <ul style="list-style-type: none"> 2nd reading of provisions [13-16] 1st reading of preamble and final provisions
June 2019	4th Meeting of the Protocol Drafting Plenary <ul style="list-style-type: none"> 3rd reading of provisions [13-16] 2nd reading of preamble and final provisions Invitation for public comments on all provisions
Sep 2019	7th Meeting of the Protocol Drafting Group <ul style="list-style-type: none"> Consideration of public comments 1st reading of Draft Protocol
Nov/Dec 2019	5 th Meeting of the Protocol Drafting Plenary <ul style="list-style-type: none"> 2nd reading [T-CY adoption]
Nov/Dec 2019	Briefing of civil society, data protection organisations and industry (Octopus Conference)

Appendix

T-CY Decision adopting the Terms of Reference for the preparation of an additional Protocol (T-CY 17 on 9 June 2017)¹

Agenda item 6: Cloud Evidence Group: Terms of Reference for the preparation of a draft Protocol to the Budapest Convention

- To adopt the Terms of Reference for the preparation of a draft Second Additional Protocol to the Budapest Convention on Cybercrime;
- To invite all State Parties to appoint experts for the Drafting Group without defrayal of expenses and in this connection to welcome the commitment of France, Romania and USA to appoint members at their own expense;
- To elect Australia, Chile, Germany, Italy, Japan, Senegal and Tonga to the Drafting Group with defrayal of expenses;
- To hold the first meeting of the Drafting Group at the Council of Europe in Strasbourg on 19 and 20 September 2017 following the T-CY Bureau on 18 September;

Terms of Reference for the preparation by the Cybercrime Convention Committee of a draft Second Additional Protocol to the Convention on Cybercrime (ETS 185)

Duration

Terms of reference valid from 1 September 2017 until 31 December 2019.

Main tasks

Having regard to:

- Article 46.1.c Budapest Convention on Cybercrime;
- [the decision adopted by the Cybercrime Convention Committee (T-CY) at its 17th Plenary (June 2017)];
- Parliamentary Assembly [Recommendation 2077 \(2015\)](#) on “Increasing co-operation against cyberterrorism and other large-scale attacks on the Internet” and the [response of the Committee of Ministers](#) of 27 April 2016;
- the Programme and Budget of the Council of Europe for 2016/2017 as adopted by the Committee of Ministers on 24/25 November 2015 referring to follow up to be given to the work of the T-CY on access to evidence in the cloud;
- agreement in principle by the T-CY at its 16th Plenary (November 2016) on the need for an additional Protocol, and drawing from the [Final Report and Recommendations](#) of the T-CY Cloud Evidence Group and, in particular Section 4.5 with possible elements of a Protocol;

the T-CY will prepare – seeking the opinion of the European Committee of Crime Problems – a draft 2nd Additional Protocol to the Convention on Cybercrime (ETS 185) and submit it to the Committee of Ministers in view of adoption.

Expected results

A draft Second Additional Protocol to the Convention on Cybercrime (ETS 185) – including an Explanatory Report – is prepared and finalised by the T-CY by December 2019.

¹ <https://rm.coe.int/t-cy-17-meeting-report-/168072366d>

Elements may include the following. It is understood that these elements – as proposed by the Cloud Evidence Group in its Final Report – are elements for reflection. Their feasibility would need to be determined during the negotiation of the Protocol. Other elements may also be considered in the course of the process.

- Provisions for more effective mutual legal assistance:
 - a simplified regime for mutual legal assistance requests for subscriber information;
 - international production orders;
 - direct cooperation between judicial authorities in mutual legal assistance requests;
 - joint investigations and joint investigation teams;
 - requests in English language;
 - audio/video hearing of witnesses, victims and experts;
 - emergency MLA procedures.
- Provisions allowing for direct cooperation with service providers in other jurisdictions with regard to requests for subscriber information, preservation requests, and emergency requests.
- Clearer framework and stronger safeguards for existing practices of transborder access to data.
- Safeguards, including data protection requirements.

Working methods

The draft Protocol will be prepared and finalised by the T-CY.

The regular T-CY Plenary meetings (5 Plenaries scheduled from 2017-2019) will be extended by one day each for work on the Additional Protocol.

The meetings will be held in closed sessions (Article 4.3 T-CY Rules of Procedure).

Articles 4.4 and 4.5 T-CY Rules of Procedure will apply to decision-making.

A Drafting Group will assist the Plenary in the preparation of the Additional Protocol. The Drafting Group will meet back-to-back with the T-CY Bureau.

Composition of the Plenary

Members

State Parties to the Convention on Cybercrime as represented in the T-CY and as per Article 3 of the [T-CY Rules of Procedure](#).

Further to the provisions of Article 3.1 regarding the defrayal of expenses, the cost of one additional per diem of one representative per State Party will be borne by the Council of Europe within the limits of budgetary appropriations.

Observers

States with observer status in the T-CY may send representatives, without the right to vote and without defrayal of expenses.

The following Council of Europe bodies may send one or more representatives, without the right to vote but with defrayal of expenses at the charge of their respective administrative Budgets:

- European Committee on Crime Problems (CDPC);
- Consultative Committee of Data Protection Convention 108 (T-PD);
- European Committee on Legal Co-operation (CDCJ);
- Steering Committee on the Media and Information Society (CDMSI);
- Committee of Experts on the Operation of European Conventions on Co-operation in Criminal Matters (PC-OC).

Organisations with observer status in the T-CY may send representatives without the right to vote and without defrayal of expenses.

The T-CY may invite individual subject-matter experts on an ad-hoc basis.

The T-CY may hold public hearings, publish drafts of its work, and invite public comments.

Composition of the Drafting Group

The Drafting Group will consist of representatives of State Parties as appointed by T-CY Heads of Delegation.

The T-CY shall elect seven representatives of State Parties (appointed by T-CY Heads of Delegation) taking into account expertise, geographical distribution, gender balance and legal systems, whose cost for travel and per diem will be borne by the Council of Europe within the limits of budgetary appropriations.

T-CY Bureau Members shall participate ex-officio and their additional per diems will be borne by the Council of Europe within the limits of budgetary appropriations.

The Drafting Group will be chaired by the Chair of the T-CY and in his/her absence by the Vice-Chair.

Individual experts may be invited to participate in meetings of the Group ad-hoc.

Meetings

- 5 T-CY Protocol Plenary meetings in 2017-2019;
- 7 T-CY Protocol Drafting Group meetings in 2017-2019.