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T-CY (2017)21

Cybercrime Convention Committee (T-CY)

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

Summary report of the 1st Meeting of the T-CY Protocol Drafting Group (Strasbourg 19-20 September 2017)

Summary report

The 1st meeting of the T-CY Protocol Drafting Group (PDG) was held at the Council of Europe in Strasbourg on 19 and 20 September 2017 and chaired by Cristina Schulman (Romania), Vice-chair of the T-CY in the absence of the chair.

43 experts appointed by the governments of Albania, Australia, Canada, Chile, Czech Republic, Estonia, Finland, France, Germany, Italy, Japan, Latvia, Luxembourg, Mauritius, Netherlands, Norway, Portugal, Romania, Senegal, Serbia, Spain, Sri Lanka, Switzerland, Tonga, Turkey, Ukraine, United Kingdom and USA as well as an expert of the European Commission (invited ad-hoc) participated.

The PDG,

- welcomed the "Global Civil Society Submission" on the proposed Additional Protocol handed over on 18 September 2017 to the Council of Europe and confirmed its intention to engage in close consultation with civil society, data protection organisations and industry during the drafting process;
- took note of developments at the level of the European Union regarding electronic evidence and criminal justice in cyberspace and agreed that close coordination in the drafting of the Additional Protocol to the Budapest Convention and the preparation of relevant legal instruments by the European Union should be pursued;
- agreed on an "Initial inventory of provisions" for consideration by the Protocol Drafting Plenary (PDP). It agreed that this initial inventory may be modified if necessary;
- agreed on a draft workplan and working methods for consideration by the PDP;
- held initial discussions on concepts for provisions on direct cooperation with providers across jurisdictions, emergency procedures, international production orders for subscriber information and transborder access to data;
- noted that PDG members assumed responsibility for the preparation of initial draft provisions;
- agreed to submit to the PDP on 28-29 November 2017 for consideration the draft "Initial inventory of provisions" and the draft "Working methods and workplan" as well as initial concepts of provisions on "requests in English language", "audio-video hearings" and "emergency MLA procedures";
- agreed to make this summary report public;
- will hold the next meeting of the PDG from 31 January (PM) to 2 February 2018.

Appendix 1: Agenda / d'ordre du jour

<p>1. Opening and adoption of agenda / <i>Ouverture et adoption de l'ordre du jour</i></p>
<p>2. Relevant international developments / <i>Développements internationaux pertinents</i></p> <p>PDG members are invited to discuss relevant international developments to be taken into account.</p> <p><i>Les membres du PDG sont invités à discuter des développements internationaux pertinents à prendre en compte.</i></p> <p>Links:</p> <ul style="list-style-type: none">• https://ec.europa.eu/info/law/better-regulation/initiatives/ares-2017-3896097_en• https://ec.europa.eu/info/consultations/public-consultation-improving-cross-border-access-electronic-evidence-criminal-matters_en
<p>3. Inventory of provisions to be developed / <i>Inventaire des provisions à développer</i></p> <p>PDG members are invited to establish an inventory of provisions to be developed for inclusion in the Protocol. They may draw on the possible elements listed in the TOR and on section 4.5 of the Final Report of the Cloud Evidence Group.</p> <p><i>Les membres du PDG sont invités à établir un inventaire des dispositions à élaborer pour être incluses dans le Protocole. Ils peuvent s'appuyer sur les propositions énumérés dans les termes de référence et sur la section 4.5 du rapport final du Cloud Evidence Group.</i></p> <p>Links:</p> <ul style="list-style-type: none">• T-CY(2017)3 - Terms of Reference for the preparation of a draft 2nd Additional Protocol to the Budapest Convention on Cybercrime• Final Report of the Cloud Evidence Group / Rapport final du Cloud Evidence Group
<p>4. PDG workplan and working procedures / <i>Plan et procédures de travail</i></p> <p>PDG members are invited to agree on a PDG workplan as well as working procedures based on the terms of reference adopted by the T-CY.</p> <p><i>Les membres du PDG sont invités à accepter un plan de travail PDG ainsi que des procédures de travail fondées sur les termes de référence adoptés par le T-CY.</i></p> <p>Links:</p> <ul style="list-style-type: none">• T-CY(2017)3 - Terms of Reference for the preparation of a draft 2nd Additional Protocol to the Budapest Convention on Cybercrime
<p>5. Discussion of selected provisions / <i>Discussion des certains dispositions</i></p> <p>PDG members are invited to discuss initial proposals for selected provisions:</p> <p><i>Les membres du PDG sont invités à discuter des propositions initiales pour certaines dispositions :</i></p>

- Direct cooperation with service providers across jurisdictions / *coopération directe avec les fournisseurs de services d'autres juridictions*
- Transborder access to data / *d'accès transfrontalier aux données*
- International production orders and simplified MLA regime for requests for subscriber information / *Injonctions de produire internationales et Un cadre simplifié pour les demandes d'entraide judiciaire portant sur des données relatives aux abonnés*
- Emergency procedures / *Procédures d'urgence*

Links:

- [T-CY Transborder Group](#)
- [Final Report of the Cloud Evidence Group / Rapport final du Cloud Evidence Group](#)

6. Preparation of draft provisions by PDG members / *Préparation des projets de dispositions par les membres du PDG*

PDG members are invited to assume responsibility for the drafting of specific provisions following the 1st meeting.

Les membres du PDG sont invités à assumer la responsabilité de la rédaction de dispositions spécifiques à la suite de la 1^{ère} réunion.

Appendix 2: List of participants

Drafting Group Members

COUNTRY	NAME	INSTITUTION
NETHERLANDS	Erik PLANKEN T-CY Chair [APOLOGIZED]	Senior Policy Advisor Cybercrime Law Enforcement Department
ROMANIA	Cristina SCHULMAN T-CY Vice-Chair	Legal adviser Department for International Law and Judicial Cooperation Ministry of Justice
ALBANIA	Diana STILLO SILA	Head of Unit Department of Foreign Jurisdiction Relations Ministry of Justice
AUSTRALIA	Briony DALEY WHITWORTH	Senior Legal Officer Communications Security and Intelligence Branch
BELGIUM	Frederik DECRUYENAERE [APOLOGIZED]	Attaché Directorate-General for Legislation, Fundamental Rights and Freedoms Criminal Law Special Crimes and Procedures Service Federal Public Service Justice
CANADA	Gareth SANSOM	Director Technology and Analysis Criminal Law Policy Section Department of Justice Canada
CANADA	Lucie ANGERS	General Counsel Director, External Relations Criminal Law Policy Section Department of Justice Canada
CANADA	Thomas BEVERIDGE	Counsellor, International Criminal Operations Mission of Canada to the EU
CANADA	Jacqueline B.M. PALUMBO	General Counsel and Director, Mutual Legal Assistance and Cyber Unit International Assistance Group National Litigation Sector Department of Justice Canada
CHILE	José Luis CORTES ZEPEDA	Public Prosecutor´s Office of Chile
CZECH REPUBLIC	Jakub PASTUSZEK	Head of the International Criminal Law Unit, Ministry of Justice
DOMINICAN REPUBLIC	Claudio PEGUERO [APOLOGIZED]	Advisor to the chief of Police in ICT National Police
ESTONIA	Markko KÜNNAPU	Adviser Ministry of Justice

COUNTRY	NAME	INSTITUTION
FINLAND	Janne KANERVA	Counsellor of Legislation Legislative Affairs Ministry of Justice
FINLAND	Jouko HUHTAMÄKI	Ministerial Adviser Ministry of the Interior, Police Department
FRANCE	Sylvain BRUN	Deputy Head of OCLCTIC Central Office for the Fight Against Crime Related to Information and Communication Technologies Ministry of the Interior
FRANCE	Stéphanie PETITBON	Ministry of Europe and Foreign Affairs Directorate of Strategic Affairs, Security and Disarmament Sub-Directorate for Combating Terrorism and Organized Crime
FRANCE	Vanessa EL KHOURY-MOAL	Magistrate at the European and International Criminal Bargaining Office Criminal Matters and Pardons Directorate Ministry of Justice
GERMANY	Susanne MÜNCH	RB3 Federal Ministry of Justice and Consumer Protection
ITALY	Francesco CAJANI	Deputy Public Prosecutor High Tech Crime Unit Court of Law in Milan
JAPAN	Naoki WATANABE	Senior Attorney, Criminal Affairs Bureau, Ministry of Justice
JAPAN	Kazuki OGAWA	Attorney, International Safety and Security Cooperation Division, Foreign Policy Bureau, Ministry of Foreign Affairs
JAPAN	Hidetoshi AZECHI	Attorney, Treaties Division, International Legal Affairs Bureau, Ministry of Foreign Affairs

COUNTRY	NAME	INSTITUTION
JAPAN	Kosuke YUKI	Consul Consulate-General of Japan in Strasbourg
LATVIA	Aleksandra TUKISA	International Cooperation Bureau
LATVIA	Natalja KIVLENIECE	Chief Inspector, International Cooperation department of the Central Criminal Police Department of the State police of Latvia
LUXEMBOURG	Laurent THYES	Counsellor Ministry of Justice
MAURITIUS	Karuna Devi GUNESH-BALAGHEE	Parliamentary Counsel
NORWAY	Eirik TRØNNES HANSEN	Prosecutor Kripos
PORTUGAL	Pedro VERDELHO	Public Prosecutor General Prosecutor's Office of Lisbon
ROMANIA	Ioana ALBANI	Deputy Chief-Prosecutor Directorate for Investigating Organised Crime and Terrorism Prosecutor's Office attached to the High Court of Cassation and Justice
SENEGAL	Papa Assane TOURE	Magistrate Deputy Secretary-General of the Government
SERBIA	Branko STAMENKOVIC	Deputy Public Prosecutor Prosecutors Office of the Republic of Serbia
SPAIN	Eugenia HERNÁNDEZ FERNÁNDEZ	Prosecutor Adviser Directorate-General for International Legal Cooperation and Relations Ministry of Justice
SRI LANKA	Jayantha FERNANDO	Director ICTA

COUNTRY	NAME	INSTITUTION
SWITZERLAND	Andrea CANDRIAN	Stv. Chef, International Criminal Law Unit Federal Office of Justice
TONGA	Aminiasi KEFU	Acting Attorney General and Director of Public Prosecutions Attorney General Office
TURKEY	Bayram ERDAŞ	Investigation Judge
UKRAINE	Oleksii TKACHENKO	International Relations officer Cyber Department SBU
UNITED KINGDOM	Veronique READ	Policy Advisor, International Criminality Unit. International Directorate International and Immigration Policy Group
USA	Albert C. REES JR.	Senior Counsel International Programs Computer Crime & Intellectual Property Section United States Department of Justice
USA	Laura-Kate BERNSTEIN	USDOJ-CCIPS
USA	Kenneth HARRIS	USDOJ-Office of International Affairs
USA	Beth O'CONNOR	US Department of State-Office of the Legal Adviser

Experts

ORGANISATION	NAME	POSITION
EUROPEAN COMMISSION	Tjabbe BOS	DG Migration and Home Affairs (DG Home)
CONSULTANT	Betty SHAVE	Consultant

Council of Europe Secretariat

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