

Item 8: Second Protocol

Approaches to the implementation of Article 7 – Disclosure of subscriber information

► Update and exchange of views by Parties

8. Second Protocol on enhanced cooperation and disclosure of electronic evidence*

T-CY members are invited to share information on their **approaches to the implementation of Article 7** on the disclosure of subscriber information, including:

- Amendments in domestic law;
- Intention to make use of the notification regime under Article 7.5 and how to implement such a regime;
- Intention to make the declaration under Article 7.2.b requiring certain conditions to be met for the issuance of orders;
- Issues raised by service providers.



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What type of amendments in which domestic laws to implement Article 7?

Article 7 – Disclosure of subscriber information

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

2. a. Each Party shall adopt such legislative and other measures as may be necessary for a service provider in its territory to disclose subscriber information in response to an order under paragraph 1.

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Key elements:

- procedural power for competent authorities in a Party to issue an order to a service provider in another Party;
- an obligation for Parties to adopt any necessary measures for service providers in their territory to respond to an order issued by a competent authority in another Party;
- standard format (minimum information) to be provided by an authority issuing an order and additional information;
- notification or consultation procedure (discretion) – single authority (registry to be updated regularly);
- grounds for refusal;
- timeframe for execution;
- specific enforcement mechanism;
- electronic transmission;
- declarations;
- reservations.

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Intentions to make use of the notification regime of Article 7.5?

Article 7.5 – Notification regime

Declarations:

7.5.a A Party **may**, at the time of signature of this Protocol or when depositing its instrument of ratification, acceptance or approval, and at any other time, notify the Secretary General of the Council of Europe that, when an order is issued under paragraph 1 to a service provider in its territory, the Party requires, in every case or in identified circumstances, **simultaneous notification** of the order, the supplemental information and a summary of the facts related to the investigation or proceeding.

7.5.e A Party **shall** designate a single authority to receive notification under paragraph 5.a and perform the actions described in paragraphs 5.b, 5.c and 5.d. The Party **shall**, at the time when notification to the Secretary General of the Council of Europe under paragraph 5.a is first given, communicate to the Secretary General the contact information of that authority.

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Intentions to make the declaration under Article 7.2.b?

Article 7 – Disclosure of subscriber information

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

Declaration:

Article 7.2.b At the time of signature of this Protocol or when depositing its instrument of ratification, acceptance or approval, a Party **may** – with respect to orders issued to service providers in its territory – make the following declaration:

“The order under Article 7, paragraph 1, must be issued by, or under the supervision of, a prosecutor or other judicial authority, or otherwise be issued under independent supervision”.

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Implementation of Article 7:

- ▶ Issues raised by service providers?