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## **Cybercrime Convention Committee (T-CY)**

### **Opinion of the T-CY**

**On the**

### **Draft Convention against the manipulation of sports competitions (version 2.1 of 27 March 2013)**

**Adopted by the T-CY at its 9<sup>th</sup> Plenary (4-5 June 2013)**

## Opinion of the T-CY

### On the

#### **Draft Convention against the manipulation of sports competitions (version 2.1 of 27 March 2013)**

1. The T-CY welcomes the opportunity to express its opinion on the Draft Convention against the manipulation of sports competitions as requested by the Secretariat of the Drafting Group on 16 April 2013.

2. The T-CY notes the manipulation of sports competitions is among the many types of crime that involve electronic evidence in a transnational context. This entails the need for urgent measures at domestic and international levels to secure electronic evidence ranging from the expedited preservation of data, to search and seizure of computer data or systems, production orders, the real-time collection of traffic data and the interception of content data. Such measures are foreseen in the Budapest Convention on Cybercrime (ETS 185).

3. The T-CY is thus of the opinion that consideration be given to maintaining the reference to the Convention on Cybercrime in the Preamble of the Draft Convention.

4. Article 23 of the Draft Convention is to ensure that provisions on cybercrime in domestic law also apply to offences set forth in the Draft Convention. The T-CY suggests to broaden this scope to include provisions on electronic evidence in general ("Article 23 – Cybercrime and electronic evidence", "that the relevant provisions on cybercrime and electronic evidence apply to criminal offences set forth in accordance with this Convention").

5. Article 24 of the Draft Convention is to cover the "preservation and management of electronic data". The T-CY has the following observations:

- Article 24.1 refers to what in the Convention on Cybercrime is called "Article 18 – Production order". If Article 24.1 is maintained, it may be advisable to rename it "production order" and to seek inspiration from Article 18 Convention on Cybercrime regarding the wording. Article 24.1 as it stands is rather unclear (e.g. submit data to whom, which operators are covered and where are they located? Etc.)
- Article 24.2 appears to refer to what in the Convention on Cybercrime is called "Article 16 – Expedited preservation of stored computer data". It remains to be clarified by the Drafting Group whether the intention is to introduce here the possibility of preservation orders for specified computer data in the meaning of Article 16 Convention on Cybercrime or a general data retention obligation which is not foreseen in the Convention on Cybercrime.<sup>1</sup> If the intention is to introduce a provision on "expedited preservation", the Drafting Group may seek inspiration from the wording of Articles 16 and 17 Convention on Cybercrime.
- The T-CY wishes to underline that provisions on "production orders" and "expedited preservation" are not sufficient to secure electronic evidence. Additional provisions

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<sup>1</sup> The Drafting Group may refer to the recent T-CY Report assessing the expedited preservation provisions of the Budapest Convention on Cybercrime in detail and with reference to the concept of "data retention".

[http://www.coe.int/t/dghl/cooperation/economiccrime/cybercrime/T-CY/TCY2013/TCYreports/TCY\\_2012\\_10\\_Assess\\_report\\_v30\\_public.pdf](http://www.coe.int/t/dghl/cooperation/economiccrime/cybercrime/T-CY/TCY2013/TCYreports/TCY_2012_10_Assess_report_v30_public.pdf)

on “search and seizure” (see Article 19 Convention on Cybercrime), on the “real-time collection of traffic data” (see Article 20 Convention on Cybercrime) or the “interception of content data” (see Article 21 Convention on Cybercrime) would be required. Furthermore, such powers need to be subject to conditions and safeguards (see Article 15 Convention on Cybercrime).

- All such powers would also need to be available in international investigations (see Chapter III Convention on Cybercrime) but are currently not foreseen in Chapter V of the Draft Convention.

6. The T-CY is of the opinion that a detailed replication of the specific provisions of Chapters II (procedural law) and III (international cooperation) of the Convention on Cybercrime is not advisable.

7. The T-CY would propose instead that the Drafting Group,

- introduce a strong reference to the Convention on Cybercrime in the Preamble of the Draft Convention with further explanations in the Explanatory Report;
- replace Article 24 with a generic provision that each Party adopt legislative or other measures to secure electronic evidence through the expedited preservation of stored computer data, expedited preservation and partial disclosure of traffic data, production order, search and seizure of stored computer data, real-time collection of traffic data and the interception of content data;
- ensure that such powers are subject to safeguards and conditions (see Article 15 Convention on Cybercrime);
- introduce a generic provision in Chapter V similar to Article 23 Convention on Cybercrime, possibly complemented by a requirement for Parties to engage in mutual assistance for the preservation of stored computer data, the expedited disclosure of preserved traffic data, accessing of stored computer data, real-time collection of traffic data and the interception of content data.

8. On a general note, the T-CY is concerned that terms are used that are not self-explanatory (“monitoring”, “surveillance”, “supervision”). The same applies to data and data flows (“information”, “spontaneous information”, “facts”, “flag intelligence”), while the term “evidence” is only used in Article 24. Other provisions (such as Article 32) are difficult to understand. The T-CY wishes to underline that for criminal investigations it is essential that evidence can be secured and exchanged in an efficient manner, but that clarity is needed in relevant provisions to ensure that human rights and rule of law requirements are met.

9. The T-CY is available to further assist the Drafting Group if needed.

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