

# The implementation of the Convention on Cybercrime in Romania

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## **Title III of the Law 161/2003 on preventing and fighting cybercrime**

- Chapter I - General Provisions (definitions)
- Chapter II - Prevention of cybercrime
- Chapter III - Crimes and contraventions
- Chapter IV - Procedural provisions
- Chapter V - International Cooperation

## Definitions (Article of 35 Law no 161/2003)

- *computer system*
- *computer data*
- *service provider*
- *traffic data*
- *child pornography*
- *data on the users (subscriber information)*

- *automatic data processing*
- *computer program*
- *security measures*
- *without right*

### **The term: “without right” - Article 35 (2) of Law no 161/2003**

A person acts without right in the following situations:

- a) is not authorised, in terms of the law or a contract;*
- b) exceeds the limits of the authorisation;*
- c) has no permission from the qualified person to give it, according to the law, to use, administer or control a computer system or to carry out scientific research in a computer system.*

### **The intentional element -Article 19 paragraphs 2-3 of Criminal Code**

*(2) An act that resides in an action committed with negligence shall be an offence only when the law provides this expressly.*

*(3) An act consisting of inaction shall be an offence regardless of whether it was committed with intent or with negligence, unless the law sanctions only its commission with intent.*

## Title III of the Law 161/2003

- 1. Offences against the confidentiality and integrity of computer data and systems:**
  - 1.1 illegal access to a computer system;**
  - 1.2 illegal interception of a transmission of computer data;**
  - 1.3 data interference;**
  - 1.4 system interference;**
  - 1.5 misuse of computer devices or programs.**
- 2. Computer-related offences:**
  - 2.1 computer-related forgery;**
  - 2.2. computer-related fraud.**
- 3. Content-related offences:**
  - 3.1 offences related to child pornography through computer systems.**

**CONVENTION**

**ROMANIA**

**Article 2 - Illegal access**

**Article 42**

- (1) The access, without right, to a computer system.**
- (2) Where the act is committed with the intent of obtaining computer data.**
- (3) Where the act in paragraphs 1-2 is committed by infringing the security measures.**

**Article 3 - Illegal interception**

**Article 43**

- 1) The interception without right, of non-public transmissions of computer data to, from or within a computer system.**
- 2) The same penalty shall sanction the interception, without right, of electromagnetic emissions from a computer system carrying non-public computer data.**

**CONVENTION****ROMANIA****Article 4 - Data interference****Explanatory Report, 61:**

- **‘damaging’** and **‘deteriorating’** as overlapping acts relate in particular to a negative alteration of the integrity or of information content of data and programmes.
- **‘deletion’** of data is the equivalent of the destruction of a corporeal thing. It destroys them and makes them unrecognisable.
- **‘suppressing’** of computer data means any action that prevents or terminates the availability of the data to the person who has access to the computer or the data carrier on which it was stored.
- **‘alteration’** means the modification of existing data.

**Article 44**

- 1) The alteration, deletion or deterioration of computer data or restriction to such data without right.
- 2) The unauthorised data transfer from a computer system.
- 3) The unauthorised data transfer from computer data storage medium.

**Article 5 - System interference****Article 45**

The act of causing serious hindering, without right, of the functioning of a computer system, by inputting, transmitting, altering, deleting or deteriorating computer data or by restricting the access to such data.

**CONVENTION**

**ROMANIA**

**Article 6 - Misuse of devices**

**Article 46**

**(1) The production, sale, import, distribution or making available, in any other form, without right, of a:**

**a) device or a computer programme designed or adapted**

**b) password, access code or other such computer data allowing total or partial access to a computer system**

*for the purpose of committing any of the offences established in accordance with Articles 42-45*

**(2) The possession, without right, of a device, computer program, password, access code or computer data referred to at paragraph (1)**

*for the purpose ....*

**CONVENTION**

**ROMANIA**

**Article 7 - Computer - related forgery**

**Article 48**

**The input, alteration or deletion, without right, of computer data or the restriction, without right, of the access to such data, resulting in inauthentic data with the intent to be used for legal purposes.**

**Article 8 – Computer related fraud**

**Article 49**

**The causing of a loss of property to another person by inputting, altering, or deleting of computer data, by restricting the access to such data or by any interference with the functioning of a computer system with the intent of procuring an economic benefit for oneself or for another**

**CONVENTION**

**ROMANIA**

**Article 9 - Child pornography  
(through computer system)**

**Article 51**

**Production child pornography for the purpose of distribution, offering or making available, distributing or transmitting, procuring for oneself or for another person child pornography through a computer system or**

**Possession, without right, child pornography in a computer system or in a computer-data storage medium.**

**“Child pornography” – Art. 35 (1) i  
i) „*pornographic materials with minors*”**

**Child pornography**

**Law 678/2001 on preventing and combating trafficking in persons - Article 18**

**Law 196/2003 on preventing and combating pornography - Article 12**

**CONVENTION**

**ROMANIA**

**Article 10 - Infringements of copyright and related rights**

**Law on copyright (No. 8/1996) (amended)**

- making available to the public including by Internet or other computer networks the protected work
- unauthorised reproduction of computer software in any of the following ways: install, storage, running or execution, display or intranet transmission.
- distributing, importing in order to make available to the public, by digital technology, the protected work of which the information in electronic form on copyright or related rights were removed or altered without authorisation.

## CONVENTION

## ROMANIA

**Article 11 – Attempt and aiding or abetting**

**Aiding – Criminal Code (art.26-27)**

**Attempt – (Art. 47, 50, 51(2) Law on cybercrime)**

**Article 12 – Corporate liability**

**Article 19<sup>1</sup> – Criminal Code (amended)**

## CONVENTION

## ROMANIA

### Article 13 – Sanctions and measures

**Art. 42 – 49, 51 Law on cybercrime**

**Art. 53<sup>1</sup> Criminal Code**

**Law 8/1996 (amended)**

**illegal access: 6 months - 12 years (with qualified versions)**

**illegal interception: 2 - 7 years**

**data interference: 2 - 12 years (with qualified versions)**

**system interference: 3 - 15 years**

**misuse of device: 1 - 6 years**

**computer related forgery: 2 - 7 years**

**computer related fraud: 3 - 12 years**

**child pornography: 3 - 12 years**

**Infringements of copyright and related rights: 3 months – 4 years or a fine**

**Criminal liability of legal persons - fine from 2.500 - 2.000.000 RON /complementary penalties (ART. 53<sup>1</sup> Criminal Code)**

## Article 5 - System interference

### Article 13 – Sanctions and measures

#### Albania: Art. 192/b

- Fine or imprisonment up to 3 years;
- for serious consequences : imprisonment up to 7 years.

#### Armenia - Article 253

- fine with 300 to 500 minimal salaries or correctional labour for up to 1 year or imprisonment up to 2 years.
- severe consequences: imprisonment with 3-6 years.

#### Austria: Section 126b of the Austrian Penal Code

- imprisonment up to six 6 or a fine up to 360 day-fines.

#### Croatia: Art. 223 (2)

- fine or by imprisonment not exceeding 3 years.

#### Cyprus: Art. 7

- 5 years imprisonment or to 20.000 Cyprus Pounds fine or both.

#### Lithuania: Article 197

- fine, or imprisonment up to 3 years.

#### Germany - Section 303b (draft law)

- imprisonment of no more than 3 years or a fine.
- particularly serious cases: imprisonment from 6 months to 10 years.

## CONVENTION

## ROMANIA

**Article 14 – Scope of procedural provisions**

### **Article 58**

**Provisions applicable to criminal investigations or during the trial for the offences provided in the law on cybercrime or any other offences committed by means of computer systems**

**Article 15 – Conditions and safeguards**

**ART. 26 (1) 27 (3), 28 of Constitution of Romania**

**ART. 91<sup>1</sup> Criminal procedure Code**

**ART. 57 (1) (2) of Law no. 161/2003**

**ART. 3 (3) (5) of Law no. 365/2002 on electronic commerce (amended by Law no 121/2006)**

**ensure adequate protection of human rights and liberties**

## CONVENTION

## ROMANIA

**Article 16 – Expedited preservation of stored computer data**

### **Article 54 - Law on cybercrime**

**In urgent and dully justified cases, if there are data or substantiated indications regarding the preparation or the committing of a criminal offence by means of computer systems, for the purpose of gathering evidence or identifying the perpetrators, it can be ordered the expeditious preservation of the computer data or traffic data, which are subject to the danger of destruction or alteration.**

**The preservation is ordered by the prosecutor or during the trial by the court order**

**The measure - over a period no longer than 90 days (can be exceeded for 30 days).**

**Article 17 – Expedited preservation and partial disclosure of traffic data**

### **Art. 54 (5) - Law on cybercrime**

**In case the data referring to the traffic data is under the possession of several service providers, the service provider is bound to immediately make available for the criminal investigation body the information necessary to identify the other service providers in order to know all the elements in the communication chain used**

## CONVENTION

## ROMANIA

### Article 18 – Production order

**Law no. 508/2004 on establishing, organizing and operating of the DIOCTO**

**Art. 16 Order communication of the originals or copies of any data, information, documents, banking, financial or accounting documents and other such items, by any person who holds them or from whom they emerge, and such person shall be bound to comply**

**Failure to observe the obligation in paragraph (2) shall entail judicial liability, under the law.**

**Art. 35 g) of Law on cybercrime :**

**-term “data on the users” (*subscriber information*)**

## CONVENTION

## ROMANIA

### Article 19 – Search and seizure of stored computer data

**Art. 54 - Law on cybercrime; Art. 96, 99 (CPC)**

Whenever for the purpose of discovering or gathering evidence it is necessary to investigate a computer system or a computer data storage medium, the prosecutor or court can order a search.

When, on the occasion of investigating a computer system or a computer data storage medium it is found out that the computer data searched for are included on another computer system or another computer data storage medium and are accessible from the initial system or medium, it can be ordered immediately to authorize performing the search in order to investigate all the computer systems or computer data storage medium searched for.

**Criminal procedure Code:**

**ART. 96 - Confiscation of objects and writings**

**ART. 99 - Confiscation by force of objects or writings**

## CONVENTION

## ROMANIA

**Article 20 – Real-time collection of traffic data**

**Draft of the new Criminal Procedure Code**

**Article 21 – Interception of content data**

**Art. 57 - Law on cybercrime**

**The access to a computer system, as well as the interception or recording of communications carried out by means of computer systems are performed when useful to find the truth and the facts or identification of the perpetrators cannot be achieved on the basis of other evidence.**

**Article 91<sup>1</sup> (Section V<sup>1</sup>) of the Criminal Procedure Code on audio and video interception and recording of conversations or communications by telephone or by any other electronic means of communication**

**CONVENTION**

**ROMANIA**

**Article 24 – Extradition**

**ART. 60 of Romania Law no 161/2003**

**Title II of Law no. 302/2004 on international judicial co-operation in criminal matters as amended and supplemented by Law No. 224/2006**

**Article 25 – General principles relating to mutual assistance**

**Article 60 - 61**

**- Romanian legal authorities cooperate directly, under the conditions of the law and by observing the obligations resulting from the international legal instruments Romania is part of, with the institutions with similar attributions in other states, as well as with the international organisations specialised in the domain.**

**- On the Romanian territory can be perform common investigations for the prevention and fighting against cybercrime, based on the existing bilateral or multilateral agreements**

**- The Romanian competent authorities can also participate in common investigations performed on the territory of other states by observing their legislation**

**CONVENTION**

**ROMANIA**

**Article 26 – Spontaneous information**

**Article 66 of Law no 161/2003 - The competent Romanian authorities can send, ex-officio, to the competent foreign authorities, observing the legal provisions regarding the personal data protection, the information and data owned, necessary for the competent foreign authorities to discover the offences committed by means of a computer system or to solve the cases regarding these crimes.**

**Article 166 of Law no. 302/2004**

**Article 28 – Confidentiality and limitation on use**

**Article 12 of Law no 302/2004 -- Confidentiality**

**Romania is obliged to ensure to the extent possible at the request of the Requesting State the confidentiality of requests sent to it regarding the fields regulated by this Law, and of any documents attached to such requests.**

**In the event that it would be impossible to ensure confidentiality, Romania shall notify the foreign State, which shall decide.**

## International co-operation

### CONVENTION

### ROMANIA

**Article 27 – Procedures pertaining to mutual assistance requests in the absence of applicable international agreements**

**Law no 64/2004 for ratification of the Convention on cybercrime**

In accordance with Article 27, paragraph 2.c, of the Convention, Romania declares that the central authorities responsible for sending and answering requests for mutual assistance are:

- a) **the Prosecutor's Office** to the High Court of Cassation and Justice for the requests of judicial assistance formulated in pre-trial investigation
- b) **the Ministry of Justice** for the requests of judicial assistance formulated during the trial or execution of punishment.

## **International cooperation under existing MLA agreements. Need to be improved?**

**The fight against cybercrime requires increased, rapid, and well-function international cooperation in criminal matters**

**Effective combating of crimes committed by means of a computer system and effective collection of evidence in electronic form require a very rapid response**

**Mutual assistance regarding provisional measures or regarding investigative powers might be essential for an investigation .**

**In most cases investigated the Romanian authorities send at least a request for information to foreign authorities using any of the accepted police channels but the reply time even for information exceeds 20-30 days.**

**Pre-trial investigation and than the trial take a long time, given the procedure for summoning persons who live abroad (the summoning is executing according to MLA treaties concluded by Romania).**

### **Directorate for Investigating Organized Crime and Terrorism Offences**

**Difficulties in dealing with cybercrime arise from the extraneous element which is present in 80% of the cases.**

**It has to be distinguished between:**

- offences committed in Romania but the results of which occur abroad;**
- offences committed both in Romania and abroad committed by Romanian nationals but also foreign nationals;**
- offences committed entirely outside Romania but the proceeds of the offence are collected in Romania.**

**These led to a delay in assessing the evidence, incorporate them in the indictments or administrate them before courts.**

## International co-operation

### CONVENTION

### ROMANIA

**Article 29 – Expedited preservation of stored computer data**

#### **Article 63**

Within the international cooperation, the competent foreign authorities can require from the Service for combating cybercrime the expeditious preservation of the computer data or of the data regarding the traffic data existing within a computer system on the territory of Romania, related to which the foreign authority is to formulate a request of international legal assistance in criminal matters.

**Article 30 – Expedited disclosure of preserved traffic data**

#### **Article 64**

If, in executing the request for the expeditious preservation a service provider in another state is found to be in possession of the data regarding the traffic data, the Service for combating Cybercrime Fighting Service will immediately inform the requesting foreign authority about this, communicating also all the necessary information for the identification of the that service provider

**CONVENTION**

**ROMANIA**

**Articles 31, 33-34 Mutual assistance regarding:**

- **accessing of stored computer data**
- **real-time collection of traffic data**
- **interception of content data**

**Article 60 - The Romanian legal authorities cooperate with the institutions having similar attributions from other states and the international organisations specialised**

**Scope of cooperation:**

- **international legal assistance in criminal matters**
- **extradition**
- **identification, blocking, seizing or confiscation of the products and instruments of the criminal offence**
- **carrying out common investigations**
- **exchange of information**
- **technical assistance or of any other nature for the collection of information**
- **specialised personnel training**
- **other such activities**

**CONVENTION**

**ROMANIA**

**Article 32 – Trans-border access to stored computer data with consent or where publicly available**

**Article 65**

**A competent foreign authority without requesting the Romanian authorities can have:**

**-access to public Romanian sources of computer data;**

**-access and can receive, by means of a computer system located on the foreign authority territory, computer data stored in Romania with the approval of the authorised person under the conditions of the law to make them available by means of that computer system**

**CONVENTION**

**ROMANIA**

**Article 35 – 24/7 Network**

**Article 62**

**The Service for Combating Cybercrime was established within the Prosecutor's Office of the High Court of Cassation and Justice – Law 161/2003**

**The competences meet the requirements of the Convention on international co-operation and it is a liaison point available 24/7**

**Since 26.11.2004 the service has operated within the central Directorate for Investigation of the Organized Crime and Terrorism Offences.**

## ROMANIA

- **Tendency of committing of this type of crimes by organized groups**
- **Moving from traditional organized groups toward cybercrime**
- **The most common cybercrimes: internet fraud and electronic payment instruments fraud in view of fraudulent use**

### **2006:**

**959 files (255 from previous years)**

**182 cases solved**

**59 cases solved with indictments**

**328 persons investigated/127 defendants sent to the court**

**54 arrested**

### **2007**

**1175 files (683 from previous years)**

**364 cases solved**

**59 cases solved with indictments**

**679 persons investigated/140 defendants sent to the court**

**45 arrested**

# Conclusions

- *Romania used the Convention for drafting legislation on cybercrime*
- *In order to be effective it has to be promoted all over the world*
- *Open for accession to any country prepared to bring its legislation in line with the requirements of the Convention*

*THANK YOU FOR YOUR  
ATTENTION*

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