

Assessing implementation of Article 13: Sanctions & Measures

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Article 13

1. Each Party shall adopt such legislative and other measures as may be necessary to ensure that the criminal offences established in accordance with Articles 2 through 11 are punishable by **effective, proportionate and dissuasive sanctions**, which include deprivation of liberty.
2. Each Party shall ensure that legal persons held liable in accordance with Article 12 shall be subject to effective, proportionate and dissuasive criminal or non-criminal sanctions or measures, including monetary sanctions.

Study

- Questionnaire
 - 52 respondents
 - Sri Lanka, Ukraine & Senegal
 - No independent verification: Things may be wrong!
- Objectives
 - Examine the practice of the Parties
 - On the legislation & statistics
 - Identify non-compliance
 - Provide guidance
 - Recommendations
 - To the T-CY & the Parties

Understanding the obligation

- ‘Effective, proportionate and dissuasive’
 - Statutory provisions & judicial practice
 - Maximum (and minimum) sentences
 - Strategy and resources
 - Deterrent and detection
- Art. 15 Conditions and safeguards
 - Principle of proportionality
 - Procedural offences
- Convention objectives
 - International co-operation

Different perspectives

- Perpetrator
 - Natural & legal persons
 - ‘deprivation of liberty’ & ‘monetary sanctions’
 - Actual & prospective
- Victim
 - As prosecutor, beneficiary or claimant
- Procedural
 - Coercive & covert investigative techniques
 - Procedural offences
- International co-operation
 - ‘Dual criminality’

Assessment criteria

| Natural persons | Legal persons |
|--|--|
| Is the conduct criminalised? | Can legal persons be held liable? |
| Does the sanction involve the possibility of 'deprivation of liberty'? | Does the sanction involve the possibility of 'monetary sanctions'? |
| Does the sanction meet the 'dual criminality' threshold? | |

Offences committed by natural persons

- Mere access & access+
 - e.g. Bulgaria (fine)
- Interception
 - e.g. Serbia (6 months)
- Data interference: mere & serious harm
 - e.g. Denmark
- System interference
 - e.g. Austria (6 months)
- Misuse of devices
 - Reservations
 - Supply & possession
 - e.g. Turkey

Offences committed by natural persons

- Forgery
 - e.g. Hungary
 - Fraud
 - e.g. Panama
 - Child pornography
 - Possession
 - Copyright
 - e.g. Morocco (fine)
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- Maximums & minimums
 - Role of 'aggravating circumstances'

Offences under Arts 2-10 committed by legal persons

- Criminal offence, but non-criminal liability
 - Armenia, Japan
- Monetary sanctions
- Corporate death penalty
- Seizure & confiscation
- As beneficiaries
- Publicity
- Public authorities
- Natural persons

Aiding, abetting & attempt

- Principal & accessories
 - Lenient penalty
- Attempt
 - General criminal provision or specific reference
 - Lenient penalty
 - Non-compliant Parties
 - Armenia, Dominican Republic, Finland, France, Germany, Japan, Luxembourg, Montenegro, Norway, Panama, Portugal, Romania, Serbia, Slovenia

Alternative or cumulative sanctions for offences

- Spectrum
 - Warning or caution
 - Supervision
 - Tagging (e.g. Estonia)
 - Removal from office
 - Right to stand or practice
 - Unpaid work for the state
 - Prohibitions
 - Accessing the Internet (e.g. Croatia, Spain)
 - Confiscation
 - Innocent 3rd parties
 - Compensation

Sanctions in practice

- Statistics
 - 19 respondents
 - Fraud is most common
 - Custodial sentences the exception not the rule
 - Large discrepancy between maximum and judicial practice
 - Few prosecutions of legal persons
- Sentencing guidelines
 - Few examples
 - Cybercrime specific, e.g. UK, US, Philippines, Montenegro

Recommendations to the T-CY

1. Consider the possibility of developing a guidance note for the Parties on a sanctions regime for the Convention offences, including addressing the issue of 'serious offences'.
1. Consider the possibility of developing model sentencing guidelines for the Convention offences, which would elaborate potential relevant and irrelevant factors for consideration.
1. Future research should include an empirical study of the extent to which a Party's sanction regime has facilitated or hindered international co-operation in the fight against cybercrime.

Recommendations to the Parties

Criminal offences required

- Albania:** Possession of child pornography.
- Armenia:** Possession of devices.
- Bulgaria:** Supply and possession of devices.
- Denmark:** Illegal data interference needs to be widened to cover the conduct stated in Article 4.
- Hungary:** Computer-related forgery.
- Iceland:** Supply and possession of devices.
- Latvia:** Computer-related forgery needs to be adequately criminalized.
- Moldova:** Possession of devices needs to be criminalized.
- Norway:** Possession of child pornography needs to be criminalized.
- Panama:** Illegal interception; the supply and possession of devices; computer-related forgery and fraud; the possession of child pornography needs to be criminalized.
- Portugal:** Possession of devices needs to be criminalized.
- Serbia:** Supply and possession of devices needs to be criminalized.
- Turkey:** Supply and possession of devices and the supply and possession of child pornography.

Recommendations to the Parties

Imprisonment required as a sanction

- **Armenia:** Offence of illegal data interference
- **Belgium:** Offence of copyright infringement
- **Bulgaria:** Offence of illegal access
- **Morocco:** Offence of copyright infringement

Dual criminality threshold required

- **Austria:** Level of available sanction should be raised in respect of Art. 2-11 offences.
- **Bosnia:** Sanction for illegal access should be raised.
- **Denmark:** Sanction for illegal interception should be raised.
- **Morocco:** Sanction for illegal access & data interference should be raised.
- **Serbia:** Sanction for illegal access & interception should be raised.

Liability of legal persons

- **Armenia:** For all offences
- **Japan:** For some offences

Concluding remarks